

# The Prostitution Reform Bill

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## *Repeal of the laws against prostitution-related offences*

The Prostitution Reform Bill, sponsored by Labour MP Tim Barnett, proposes the repeal of those sections of the Crimes Act (1961) involving the offences of "brothel-keeping" (s. 147), "living off the earnings of prostitution" (s. 148) and "procuring sexual intercourse" (pimping) (s. 149). These "crimes against public welfare" are currently punishable by a maximum term of imprisonment of five years.

The Bill, before the Justice and Electoral Committee and due to be reported back to Parliament by November 6, proposes the "decriminalisation" of these offences and treats them as lawful "commercial sexual services" and/or "businesses." However, it will be illegal to employ prostitutes ("sex workers") who are "children" (defined in the Bill as persons under 18 years of age). Those convicted of causing a child to provide, or assisting a child in the provision of, commercial sexual services, will be liable to imprisonment for a term not exceeding 7 years.

Section 26 of the Summary Offences Act (1981) which outlaws "soliciting and indecency" will also be repealed. This means it will be legal for any "sex worker" of any age, including "children," to solicit in any public place, including outside churches, secondary schools and sports stadiums, on public transportation and outside anyone's residence or business. However, it will be made illegal for any person to "enter into a contract or arrangement as a result of which any person receives or is to receive commercial sexual services provided by a child." The present law prohibiting harassment will still apply to these "business" activities.

For the first time prostitutes and the operators of "brothels and businesses of prostitution" will be able to

openly promote "sexual services" and costs. However, the way they advertise in the public media will continue to be fettered by the advertising standards codes. Since these "services" will be treated under law as just part of the wider service industry, including child minding and care for the physically disabled and the aged, the advertising is likely with time to become increasingly explicit. Prevailing public perceptions of the prostitution 'industry' are bound to shift towards greater levels of tolerance towards advertising as a result of "decriminalisation."

Prostitution will also be brought, as the Bill states, "within the scope of existing legislation (for example, the Employment Relations Act 2000, the Resource Management Act 1991, and the Health and Safety in Employment Act 1992), enabling the application of controls and regulations that govern the operation of other businesses." The explanatory note to the Bill establishes the logical nexus between "decriminalisation" and "bring[ing] the industry [prostitution] within the scope of existing legislation."

For the first time all "sex workers" over 18 will have the same status in law as their adult clients. Proponents of the Bill argue that this will empower "sex workers" to assert their "rights," reducing if not eliminating the violence and abuse some of them claim to suffer at the hands of their clients. In view of the legislation protecting "children," it will be a case of "buyer beware."

## *Repeal of the Massage Parlours Act and Enforcement issues*

Under the current Massage Parlours Act 1978 (s. 30e), if "any masseur or masseuse employed or engaged by the licensee is convicted of any offence involving an act of prostitution; or performs an act of prostitution and the



*'I hadn't realised the Immoral Low Ground had quite so much going for it...'*

performance of that act was facilitated by the failure of the licensee to effectively supervise the conduct of his business,” the licensee can lose his or her license for operating a massage parlour. Certificates can be cancelled if the manager has been convicted of an offence against the Act, within 3 years after the date of that conviction, and “by reason of that offence is not a proper person to manage a massage parlour” (s. 31).

The Bill repeals the entire Act and provides no regulations, codes, or licensing, governing who can manage “brothels and businesses of prostitution.” Those recently convicted of prostitution-related offences under the present Crimes Act and promiscuous paedophiles who have served their time for sex offences with minors, will be able to legally set up shop. They will be able to manage, and make a living from “businesses of prostitution,” as well as actively recruit former convicted pimps, paedophiles and prostitutes as “sex workers.” All such ‘entrepreneurs’ will be able to legally apply for community funding for brothel establishment and development, as these “industry services” will have to be treated like all others under the law.

The regulations in the Act dealing with the “duties and powers of police” and “disciplinary provisions” to ensure compliance will go. The Bill provides nothing to address these matters, even though non-compliance with respect to some of the Bill’s provisions can result in penalties of up to 7 years imprisonment and fines of up to \$10,000. Instead, ‘enforcement’ will rely solely on the complaint system, which operates in the general service industry.

However, unlike, for example, the food service industry (e.g. meat processing and retail sales), where rigorous inspections by qualified health officers ensure that hygiene regulations are strictly adhered to, this Bill provides no provisions for regular health and safety inspections of brothels. These would ensure compliance with the law on the part of the brothel owner and/or operator and “sex workers.”

Under the Bill brothel owners will be required to

“take all practical steps to ensure the use of prophylactic sheaths [condoms] by clients of the brothel or business of prostitution,” by displaying information on safer sex practices prominently” and giving “information on safer sex practices” (the use of condoms) to both “sex workers and clients.” Failure to comply may result in a fine of up to \$10,000.

It will be unlawful for brothel operators to advertise their “sex-workers” as disease free. The person “who has effective control of a business of prostitution”

commits a criminal offence under Clause 6(d) if he or she uses “the fact of a sex worker’s attendance at a medical examination, or the result of such an examination, for the purpose of inducing a person to believe the sex worker is not infected with a sexually transmissible disease.”

This provision in the law, designed to safeguard the “human rights” of the “sex worker” from any legal action from the client, should he contract an STD or HIV/ AIDS, is skewed in favour of the

“sex worker” and brothel operator, as against the client. The client has reasonable “rights” to expect some level of assurance of good hygiene. However, he has no “rights” under the Bill, should he contract a disease through failure of a faulty condom provided by a careless “sex worker,” or through the prostitute’s unhygienic practices with clients infected with STDs. There can be no real possibility of a successful legal comeback for the client, as we find in the rest of the service industry, should he receive a substandard ‘service’. Again it will be a case of “buyer beware.” The normal consumer protection applying in the rest of the service industry will not apply.

#### *The (unfortunate) butcher’s shop analogy: flesh for sale*

If a law was enacted making it a criminal offence punishable by a fine of up to \$10,000 for meat vendors to post assurances in their shops that their meat was “disease free,” we might well wonder whom the law was written for! We might also legitimately raise doubts

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about the mental states of the legislators! It would send a clear signal: "buyer beware – you make your purchase at your own peril!"

Clearly such a law could not have been designed to safeguard the "human rights" of the buyers (clients) who have a legal right to formal assurances that what they eat is disease-free, particularly in a situation where there might be reason to doubt it. It also does nothing to safeguard the "human rights" of the vendor who has a right to protect his reputation and the reputation of his product(s), if his unscrupulous competitors are selling meat that is suspect or has been proven to be less than hygienic.

There are no needs for such disease-free assurances under a system where health inspections are regularly and meticulously carried out and current certificates of compliance posted in all meat vendors' premises. Do away with these safeguards and the client would have a right to demand some other form of disease-free assurance. When the vendor is notified by inspectors of a contamination of products or breaches of hygiene (perhaps via clients), his business is shut down, the product line is removed from the shelves, hygiene conditions must be upgraded before he can trade again, and he faces prosecution. Such safeguards protect the buyer and those businesses that do comply with regulations.

In the light of this analogy, a Bill which fines a brothel-operator for "inducing a person to believe the sex worker is not infected with a sexually transmissible disease" might seem absurd. The explanation for the inconsistency lies in the fact that despite claimed health benefits to be gained by making "safe sex" practice mandatory under the Bill, the reality is that no client can ever be given any level of guarantee or assurance that he will not become infected with an STD and/or HIV/AIDS from the prostitute.

Even if laws requiring prostitutes to be tested for STDs were implemented, they would be difficult to enforce and would give unrealistic assurances about the infectious state of the prostitute during the days or

weeks after any "free from disease" certificate was issued. STD clinics ensure full confidentiality for their clients, so even if a prostitute could show a certificate proving she has been to such a clinic, the certificate would not show whether or not she has been treated for a particular disease, or whether she is free from any particular disease.

In any case, a certificate purporting to show, for example, that a person was HIV negative when tested on a certain date, is reliable only up to that date—it gives no information about infection after that date. The unwritten assumption underlying the Bill's measures to

make "safe sex" practice mandatory is that prostitution is safe as long as condoms and "dental dams" (used in "oral sex") are used "every time." This is a false assumption—since even when condoms are used every time and do not split or slip off, there remain uncovered genital areas which can spread such things as genital warts (believed to cause cervical cancer), genital herpes and pubic lice.<sup>1</sup>

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#### *Prostitution is not a valid part of the service industry*

Under the Bill, for the first time, all earnings from prostitution and its related activities will be legal. By "decriminalising" the 'industry' the State can profit (like a pimp) with a 'clear conscience,' from this 'healthy' and 'destigmatised' 'service' industry, pretending to treat it like any other service industry. However, in practice it will not be treated in this way under the law. For a start, the clients of under-18-year-old "sex workers" will be treated differently under the law from those of over-18-year-olds.

The undeniable fact is that prostitution is not like any other service industry. It is the only profession that involves a client paying for using another person's body as one would an object to achieve sexual gratification and the "sex worker" selling her/his body to "service" the client's 'need.' It can be viewed as violence against women as most "sex workers" by far are women.

As Sheila Jeffreys, Associate Professor of Politics at Melbourne University and feminist author,

has stated: "Legalisation [and decriminalisation] is actually institutionalising, promoting and teaching the abuse of women and creating an ever expanding industry which normalises that abuse."<sup>2</sup>

The Bill treats commercial transactions for sex like purchasing meat, ordering a pizza, or purchasing quality care service from a health provider!

So different is the act of prostitution from any other "service" that the Bill encodes in law (s. 8) the "right" of "every sex worker ... to refuse to provide any commercial sexual service or, where the provision of that service has commenced, to continue to provide that service." This provision makes nonsense of the claim that the 'industry' can be subject to the Employment Relations Act 2000. No other service worker outside the prostitution 'industry' has an automatic right to withhold services in this manner without the possibility of incurring legal redress from a client and/or employer for time lost, damage incurred etc.

Prostitution should not be treated as a normal or valid part of the service industry because it involves the sex worker being *willingly used* in a degrading and demeaning fashion. The prostitute knows she/he is being *used* and detests being *used* and the client finds pleasure in *using* her/him. Some of the Bill's supporters ignore these facts and present the 'industry' with a sugarcoated gloss. The reality is that it is a destructive cancer attacking the very foundation of society – family relationships and the covenants of trust and fidelity upon which they are built.

The relationship between prostitute and client is one that inherently involves an imbalance of power and the subjugation of the "sex worker," a 'willing victim,' by the client, who ironically also becomes a victim too. A person who refuses to be used in this fashion, as in the case of a woman who resists a rape attack, has every right to claim every form of restitution, compensation and justice open to her, based on the fact that she has been violated and her human rights have been trampled on.

However, the prostitute, while deserving to be treated with dignity by her client, denies herself any

legal 'rights' to compensation from her employer and/or clients for emotional and psychological harm (e.g. feelings of self-hate etc.), by the fact of her willingness to allow herself to be used (as opposed to coerced) in a degrading fashion. Sadly, these forms of self-inflicted harm are par for the course in normal prostitution work<sup>3</sup> and explain why many prostitutes turn to alcohol and drugs to block out the memories and boredom of an endless stream of violations by largely unattractive and often repulsive clients. The damage occurs whether she recognises it or not and whether or not the act of prostitution is declared legal or illegal under the law.

#### *Fallacies underlying 'health' and 'safety' arguments*

The Bill states that decriminalisation will allow public safety and security provisions and protections to be applied more effectively. Its supporters quote the 1948 United Nations Human Rights Declaration which states that everyone

has a right to work, and then claim that those who choose to become "sex workers" have a "right" to do so and deserve their "human rights" safeguarded by law within their chosen field of employment.

All these arguments seem plausible but are based on a number of fallacies. First, prostitution is not like any other business or employment service as discussed. The safeguards put in place for the worker and the employer under the Employment Relations Act 2000 cannot work effectively in favour of victims of ongoing exploitation, since the abuse they suffer is inherent *in the very act of prostitution* they willingly engage in. While the Bill appears to offer protection against coercion from unscrupulous brothel operators and clients, in reality it offers little if any. The "sex worker" will continue to be damaged as outlined by the very nature of the "service" performed, even if all the measures recommended in the Bill are made law.

Second, unlike other service industries, prostitution involves serious health risks to both worker and client and can result in infertility and/or death through STDs and/or AIDS/HIV. As noted, this is despite claims that the wearing of condoms at all times provides safety.

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In recent times scientific evidence has proved that products of the asbestos industry damage both workers and clients exposed to them and many have died. Laws have been brought in worldwide to effectively shut down the industry. However, such laws cannot stop clandestine operations dealing with asbestos products, but they can minimise the harm done, by making it very difficult for the industry to operate.

Not so with the 'enlightened' Bill seeking to 'reform' prostitution. It parallels attempts by the State to decriminalise the actions of those installing asbestos products in the homes of clients who are aware of the danger, and then seeking to 'enforce' regulations by requiring installers and clients to wear protective face masks. The idea is absurd!

Health and safety measures can still be operative in a high-risk clandestine 'service industry,' and be self-regulating from within the industry, without the interference of the State pretending to be able to impose *effective* laws.

#### ***The human "rights" of prostitutes and their clients***

Prostitutes do deserve to be treated under the law in a way that acknowledges and safeguards their basic human rights. So too do their clients. However, when individuals engage in activities that are injurious to themselves and the public good, involve high health-risks, and are exploitative of other human beings, the issue of individual rights should never be allowed to override issues of individual responsibilities and societal rights.

Proponents of the Bill argue that there is an inconsistency and "injustice" in the current law on soliciting, with convicted prostitutes classed as "criminals" and "liable to a fine not exceeding \$200," while their clients commit no offence. It is claimed that this is a "human rights" and "equity" issue and the imbalance must be corrected.

Once convicted for soliciting, prostitutes cannot be employed under the present law as masseurs or masseuses for a period of three years, unless the

massage parlour licensee is willing to face the risk of having his or her licence cancelled. We are told that the client faces no such adverse effects under the law in terms of future employment. However, the scandals leading to forced or voluntary resignations involving politicians, ministers of religion, child care managers and others who have been exposed publicly for consorting with prostitutes suggests that there are many

victims beyond the few street prostitutes convicted of soliciting.

In Sweden a law—"Prohibiting the Purchase of Sexual Services Act"—came into force on 1 January 1999, making it a criminal offence for any person to seek "casual sexual relations in exchange for payment." Those convicted can be fined or sent to prison for at most six months. There is some

good evidence that the law has led to a major reduction in the number of prostitutes on the streets in Swedish cities. The critic might argue that such legislation only reverses the imbalance in favour of the "sex worker," drives the 'industry' underground, and denies the "human rights" of the client to satisfy his "sexual needs." A law levelled equally at both client and seller along with even-handed enforcement would be one obvious solution, not decriminalisation.

There is a good case for arguing that it is in the interests of "sex workers" and society that brothel operators, even when they operate illegally, minimise the health risks within their establishments by implementing codes and regulations that ensure safety. This is especially so in view of worldwide threat of HIV/AIDS. However, the State cannot intrude into the bedrooms of the nation, whether they be in brothels, motels, or private homes and impose regulations governing sexual relations. It is impossible to impose health standards for behaviour (e.g. wearing condoms) on *clandestine* activities.

Society has in recent years been so bombarded with the so-called "safe-sex" messages that few, if any adults, would be unaware of the dangers of promiscuity. The Bill cannot force "sex workers" to engage in 'safe-

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sex'. Where there is a demand by clients for 'unprotected sex' there will be a prostitute somewhere willing to cooperate for a negotiated price. Furthermore, in a decriminalised 'industry,' as evidence from New South Wales and elsewhere has shown, there is likely to be a growing demand by clients for prostitutes under 18 years of age. Supply generally follows demand.

### ***Sending the wrong signals to children***

The Bill includes "measures to protect children up to the age of 18 from sexual exploitation or sexual abuse in the context of prostitution – a right recognised in the *United Nations Convention on the Rights of the Child*,<sup>4</sup> which New Zealand has ratified." These measures found in Clause 9 of the Bill are commendable. However, decriminalising prostitution, as has occurred in New South Wales, or legalising prostitution, as has occurred in Victoria, has done little to reduce the incidence of child exploitation.

The latest figures as identified by ECPAT (the international body combating child prostitution and trafficking) show that 3,733 children are currently engaged in commercial sexual activities in Australia. The highest number of reported cases comes from Victoria, followed by NSW. The majority of cases involved young persons aged 16 to 17 years, but a disturbing finding was the number of 10 to 12 year olds and some under the age of 10 who were reported as participants in commercial sex work.<sup>5</sup>

It is ironic that the Bill, which treats prostitution as a normal part of the employment service industry, makes it illegal for a brothel operator to employ a 16-17 year old as a prostitute, even though they are within the age of consent; but does not make it illegal for the 16-17 year old to solicit for clients 18 years of age and older. It treats all prostitutes under 18 as "victims" who cannot be held accountable under the law for any of their actions.

Under the Crimes Act 1961 and the Health and Safety in Employment Regulations 1995, persons between the ages of 16 and 18 are treated as adults and are held accountable for their actions. While it is not

illegal under present NZ law for two 16 or 17 year olds to have consensual sex, one might well wonder why it will remain illegal under Clause 9 of the Bill for a 17 year-old to buy sex from a 16 or 17 year "sex worker"? The only answer proponents of the Bill have given is because the *UN Convention on the Rights of the Child*<sup>6</sup> defines the under 18-year-old sex worker to be a child and children are off limits for all buyers of "commercial sexual services." The Bill clearly negates the "rights" of 16-17 year old "sex workers" to advance their "service industry" careers, by turning *all* their clients into criminals!

Under Clause 9(4) of the Bill, any person under

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18 years of age who has sex with an under 18 year old for money, is "liable to imprisonment for a term not exceeding 7 years." By paying for sex from an under 18 year old prostitute, "children" (as defined under the Bill) can be potentially imprisoned for up to 7 years. Yet this "service" can be *offered* legally by any under 18 year old! It is a fact that in an economically deprived area child sex is sold and bought for

little more than the price of a few drinks

The Reform Bill, should it be passed, sends all the wrong signals to young people searching for employment opportunities. One of the likely consequences of this Bill will be that "children" will be subjected to the demands of the client for more secrecy, thereby opening them up the very real threat of blackmail and violence. The Bill does nothing to address the very real possibility that these young people may be driven further underground into less visible and potentially more dangerous situations.

The Bill's strict penalty for those convicted of "coercion" under Clause 7 is "imprisonment for a term not exceeding 7 years." It can only apply to persons who "coerce or attempt to coerce any person into providing commercial sexual services," or who "coerce any person into surrendering the proceeds of commercial sexual services provided by that person." It does not apply to clients who, having had paid sex with a willing child prostitute, attempt to coerce him or her not disclose information that may lead to a prosecution.



The penalty for "coercion", which could include rape under Clause 7 is inconsistent with the current penalty of up to 20 years imprisonment for "unlawful sexual connection" (rape) under the Crimes Act. The term "coerce" is defined in the Bill as: "to induce or compel another person to undertake any action against his or her will, including actual, or implied or explicit threats of physical harm..." etc.

### Summary and conclusions

Prostitution involves the exploitation and abuse of women and children which are human rights violations.

It can never be treated under law on the same basis as the wider employment service industry as the Prostitution Reform Bill proposes, as it is fundamentally different in nature, being injurious to the public good and involving the subjugation of the "service" provider by the client in a way that is comparable to forms of slavery. Decriminalisation of the 'industry' will make the earnings of prostitutes, pimps and brothel operators legal for the first time, increasing the tax revenue for the government. The Bill will achieve nothing for the welfare of prostitutes and only benefit those in control of the 'industry'. The New Zealand government is bound by international law to suppress the exploitation of prostitution.<sup>7</sup> The Bill does nothing to empower women trapped in the industry to make the choice to exit it. Instead the Bill will encourage more women to enter prostitution. It will not help suppress, minimise, or deal with the growing problem of child prostitution and health risks involving STDs and HIV/AIDS. It will only exacerbate them. It will lead to greater pain and suffering on the part of prostitutes; the families, spouses and partners of clients; and society in general. Any law change should reflect the fact that the purchasers of "commercial sexual services" are as culpable as the "service" providers. A law levelled equally at both client and seller along with even-handed enforcement would be one obvious solution, not decriminalisation. Parliament should reject the Bill.<sup>8</sup>

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<sup>1</sup> A report from the US Centers for Disease Control recently hit the headlines to the effect that there is no evidence that condoms provide full protection against a wide range of STDs. "The Australian" newspaper (26/7/01, p 3) reported: "A draft copy of the report by the US National Institutes of Health concludes that condoms, thought to protect against all STDs, are only effective in preventing pregnancy, HIV infection and gonorrhoea in men. It says data on preventing other diseases is sparse and neither supports nor refutes the effectiveness of condoms."

<sup>2</sup> "House of Hope" ABC TV "Compass" documentary. Presenter Geraldine Doogue. Producer Roger Bayley. Screened 29 April 2001 throughout Australia.

<sup>3</sup> Farley, Melissa; Baral, Isin; Kiremire, Merab; & Sezgin, Ufuk. (1998) "Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder," *Feminism & Psychology*, 8 (4): 405-426; Farley, Melissa and Barkan, Howard (1998) "Prostitution, violence against women, and posttraumatic stress disorder," *Women & Health*, Vol 27, (3): 37-49; Baral, Isin, Sezgin, Ufuk and Farley, Melissa (1998) "The Traumatic Consequences of Prostitution in Turkey," *Archives of Neuropsychiatry* (Turkey), 35: 1, 23-28; Schmidt, M., Cotton, A. & Farley, M. (2000) Attitudes toward prostitution and self reported sexual violence. Presentation at the

16th Annual Meeting of the International Society for Traumatic Stress Studies, San Antonio, Texas, November 18, 2000.

<sup>4</sup> Article 34 of the United Nations Convention on the Rights of the Child, which New Zealand ratified in 1993, states:

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices.
- (c) The exploitative use of children in pornographic performances and materials."

<sup>5</sup> Children's Rights: Reality or Rhetoric? The UN Convention on the Rights of the Child: The First Ten Years (The International Save the Children Alliance. Editor: Sarah Muscroft. "The reality against the rhetoric" pp. 93ff.

<sup>6</sup> Part I, Article 1 of the UN Convention on the Rights of the Child defines a "child" as follows:

"For the purposes of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child majority is attained earlier."

<sup>7</sup> Far from encouraging prostitution, international law requires States to protect women from the exploitation of prostitution. The Convention on the Elimination of all Forms of Discrimination against Women (1979) requires that: "Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic of women and exploitation of prostitution of women." (Article 6).

<sup>8</sup> The submission (dated 5 March 2001) to the Justice and Electoral Committee from the Society for the Promotion of Community Standards Inc. on the Prostitution Reform Bill can be found on the internet at: <http://www.vision-nz.co.nz/prb1.htm>