Chapter 10

Sex Worker-Led Provision of Services in New Zealand: Optimising Health and Safety in a Decriminalised Context

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Introduction

Globally, sex work is regulated in very different ways. Repressive measures are used in some countries to criminalise sex workers or their activities or, in the case of other countries, to criminalise clients and other third parties. Then there are countries who either legalise or decriminalise sex work, and while these terms are sometimes used interchangeably, there are clear differences between these two models of regulation. Legalisation is a restrictive regulatory approach, which gives the State a means of controlling sex workers. Sex workers are able to work legally in licenced brothels, but should they work in unlicensed brothels, privately, or on the street, they are criminalised. This creates a two-tiered system. Full decriminalisation, on the other hand, encompasses the complete removal of the laws governing sex work and sex work-related offences, and the sex industry becomes subject to similar controls and regulations as those under which other businesses operate.

It has been repeatedly suggested that the best (and arguably only) way to optimise the health, safety, and human rights of sex workers is through decriminalisation [2–9]. There is evidence to support these suggestions [4, 6, 10–12], yet currently decriminalisation has only been realised in New Zealand (NZ) and one Australian state, New South Wales, and one Australian territory, the Northern Territory. Sex work was decriminalised in NZ in 2003, when the Prostitution Reform Act (PRA) was passed. The Act underwent many amendments in its journey through the Parliamentary process, and some of these amendments go against the spirit of full decriminalisation, particularly Section 19, which prohibits migrants on temporary

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visas from doing sex work. Migrants on work visas may work in any other industry in New Zealand besides sex work, which suggests that even though sex work is ostensibly treated as work like any other through decriminalisation, in reality, this is not the case. This amendment was included at a late stage in the parliamentary process as a consequence of some politicians' argument that decriminalisation would position New Zealand as a likely destination for trafficking. The conflation of sex work and trafficking is a common phenomenon in contemporary times. Inflated statistics are used to advance the argument, but there is no robust research to support this [13, 14]. While some sections of the Act therefore need to be challenged to achieve full decriminalisation, it remains clear that most sex workers in NZ have benefitted from decriminalisation in terms of their health and safety [15], and, 17 years later, there are few voices in NZ who would argue for change back to restrictive or repressive regulatory measures.

There is one sex worker-led country-wide organisation in NZ, New Zealand Prostitutes Collective (NZPC), and this organisation was crucial to the achievement of decriminalisation in this country. Undoubtedly, one of the primary reasons for their success was the diversity of sex workers involved with the ability to network, engaging with people from different spheres (policy makers, Members of Parliament, Police, NGOs, academics, and other organisations or groups), to support and give critical mass to achieving their objective of decriminalisation [16]. NZPC developed the first draft of the Prostitution Reform Bill in collaboration with those in their network, which had a strong representation of Māori (the indigenous population), who constitute around 30% of the sex worker population¹ [17]. This ensured that a genuine engagement with sex workers most affected by hostile laws was influential in the development of the resultant policy. Wagenaar et al. have argued that such collaborative governance 'proceeds by "authentic dialogue"', which ultimately leads to more successful sex work policy ([18]: p. 263).

Similarly, it is important that sex workers' voices are the loudest in the development of services to meet their needs [19]. NZPC collaborates with specialist services to operate clinics out of their community bases, but they often need to refer sex workers to other agencies or support services, such as the police, Medical Officers of Health, and Work and Income New Zealand. This requires engaging with these services in an interagency approach to ensure that services delivered not only meet sex workers' needs, but that sex workers can have a trusting relationship with those delivering the service.

Collaboration and participation are thus important, not only to the success in achieving decriminalisation of sex work in NZ, but also to the health, safety, and human rights of sex workers. This chapter also reflects the long-standing collaborative relationship between the two authors. It brings together research and community evidence to provide a well-rounded picture of three initiatives, which are the result of successful collaboration:

¹The 2013 NZ census reports that Māori make up around 15% of the NZ population. <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/ethnic-groups-NZ.aspx>. Māori are therefore over-represented in the sex worker population.

- Sex workers' access to police in reporting sexual assault
- Interagency collaboration when working with sex workers who have concerns about practices within certain brothels
- New sex workers' access to information on safe practices

Building Relationships with the Police: 'What to Do'

Criminal laws which target sex workers create a barrier to their health, safety, and right to protection [20]. Such laws increase the possibility of violence against sex workers, especially street-based sex workers [21–25]. A systematic review of the correlates of violence against sex workers showed that policing practices have a critical impact on sex workers' risk of violence [20]. Police are less motivated to protect sex workers against violence or threats of violence and are sometimes even the perpetrators of violence against sex workers [26]. Sex workers are less likely to report violent incidents, including sexual assault, to the police, because they fear possible arrest as a result of revealing that they are doing sex work [21, 27]. Police sometimes use excessive force, particularly on street-based sex workers, which decreases the likelihood of those workers reporting incidents [25]. Before sex work was decriminalised in NZ, sex workers were more likely to use their own informal networks to deal with the aftermath of violent experiences than report these to the police or other 'helping' professionals [28]. Many sex workers indicated that they did not believe that police would help, nor did they want to reveal to the police that they were sex workers [28].

Research done within 5 years of the enactment of the PRA showed a growing confidence in police, with many sex workers reporting that they could trust the process of reporting incidents to the police and following through on court proceedings [10, 12]. Fifty-seven percent of sex workers reported that police attitudes had improved following decriminalisation, and this was supported by qualitative evidence:

But now for the last couple of years, the police have been really good, really onto it. So we've been having more patrol cars going down the street and then hangouts. So that's real good. Yeah, yeah, now they actually care. Before (law change) they just didn't care. You know, if a girl, if a worker gets raped or, you know, anything like that, there wasn't much, then there wasn't much they could do. But now that the law's changed, it's changed the whole thing. (Joyce,² Street and Private, Female) ([17]: p. 238)

However, there was still reticence by some sex workers to report adverse incidents, primarily because of perceptions of stigmatisation related to their occupation, plus they felt that they could not be guaranteed name suppression [17]. Armstrong interviewed street-based sex workers and police key informants 8 years after

²All names and other personal identifiers of individuals listed by a first name only have been changed to protect privacy and confidentiality.

decriminalisation, and found that the relationship between the two parties was continuing to improve: the imbalance in power had shifted somewhat; street-based sex workers were more proactive in reporting incidents to the police and there was better dialogue between them, with sex workers helping police in solving crimes committed against others [29].

There is, however, still room for improvement when it comes to encouraging more sex workers to trust police sufficiently to be able to approach them without reservation. The Network of Sex Work Projects (NSWP) have argued that radical changes are necessary to change sex workers' perceptions of police from persecutors to protectors [7]. They suggest a collaborative engagement between police and sex worker communities, and this is what has subsequently occurred in NZ.

The New Zealand Police and the NZPC are working collaboratively with other support agencies to ensure the well-being of sex workers. Our aim is to provide all victims of sexual assault with the best possible support services we can, and to work with the industry to make it as safe as possible for sex workers (Sam Hoyle, District Commander, Wellington, NZ Police) [30].

The above quote illustrates the commitment of police to foster good relationships with sex workers; it is taken from the opening pages of a resource produced through a collaborative engagement between NZPC and the NZ Police. Scenario 1 gives a sex worker perspective on this engagement.

Scenario 1: 'What to Do'

Decriminalisation of sex work in NZ has enabled the relationship between sex workers and the police to be voluntary, allowing for trust to develop between both parties. The police can no longer arrest sex workers for sex work-related activities such as brothel keeping or soliciting and have no formal role in monitoring sex workers.

Nevertheless, NZPC is often called upon by sex workers to broker and support complaints to the police because some sex workers are anxious about experiencing negative attitudes or judgements from police about their work. Police are also aware of the need to create strong pathways for sex workers to approach police directly to report sexual assault. They recognise that there may be significant impediments for some sex workers to do so.

The police approached NZPC to discuss ways of overcoming barriers to sex workers reporting sexual violence to them. They asked how the police could better support sex workers who are victims of sexual violence. It was agreed the two organisations would work together to publish a '*Guide for Sex Workers who have experienced Sexual Assault*', titled '**What to Do**' [30]. This was done in consultation with other service providers and stakeholders with an interest in addressing sexual violence.

'**What to Do**' was developed in partnership between NZPC and the New Zealand Police to inform sex workers of their options in relation to reporting sexual assault. The resource also signalled to sex workers that the police were

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there ‘to provide all victims of sexual assault with the best possible support services, ... and to work with the industry to make it as safe as possible for sex workers’ ([30]: p. 9).

New Zealand Police brought together officers and detectives from specialised units that deal with sexual violence, for training with NZPC. The topic of the training workshop was ‘Sexual Assault’, focusing on appropriate ways to work with sex workers. This encouraged empathy and understanding among police officers, and it fostered collaboration between the two agencies.

NZPC and the police are represented within the resource. The resource is promoted and is available on both the police website and the NZPC website. In illustrating the success of this initiative, we draw on an example of how this has played out for a sex worker, Moana, who was drugged during a booking. She called NZPC for support.

I asked NZPC if they could help me ... The Police Officer met me at the police station lobby, which was great, I could bypass reception. The Police Officer was very reassuring regarding my concerns about having to go to court and about the person who had done this finding me, or finding out that I went to the Police.

There is growing confidence that sex workers’ rights will be upheld in respectful ways when dealing with police.

I went out to the place where the assault happened and picked her up. She’d never gone to the Police and was quite scared. We were in the Police station and I pulled out the booklet and the Police officer goes ‘no that’s alright we know about that resource, we’re all aware of that resource and the process on working with sex workers (NZPC Community Liaison worker).

Engagement with the police is an ongoing process as individual police officers take up new portfolios and therefore come and go, with a resulting shift in culture. An institutional response is required, as opposed to one-off training programmes, and, to this end, NZPC and the police will continue with their engagement.

Working Collaboratively with Government

One of the purposes of the PRA is to promote the welfare and occupational health and safety of sex workers. As sex work is now a recognised occupation, sex workers should have the same employment rights as those engaged in any other occupation. The review of the PRA, however, has found that, although there have been improvements in the working conditions of brothel-based workers, some are still vulnerable to exploitative and coercive employment conditions [12].

Sex workers who work under a system of management, i.e. in a brothel or parlour, are seen as having a safer environment than sex workers who work privately or on the street, because of the close proximity of management and other sex workers [24, 31–34]. When sex work was still criminalised in NZ, brothels operated under

the guise of massage parlours, where a fee was taken at the door for a massage and any extras were negotiated privately in the room between the sex worker and the client. Some massage parlour operators used manipulative management strategies to push sex workers into risky practices [35]. They did not encourage, and sometimes outrightly discouraged, the use of condoms. Participants in a study conducted in the late 1990s indicated that management would market particular services and sex workers were pressured to cooperate and provide such services [35]. Managers did not support sex workers when clients were abusive, and sex workers had few powers to refuse any particular client, even when they knew them on a personal level or had had a previous bad experience with them. This situation changed with the passing of the PRA. Under Section 17 of the PRA sex workers have the right of refusal to provide commercial sexual services, and consent can be withdrawn at any stage in the transaction. A survey carried out in Christchurch, NZ, in 1997, found that in the previous 12 months only 47% of indoor managed workers had been able to refuse a client, compared to 68% of sex workers surveyed 3 years after decriminalisation [10]. A number of sex workers have used the legal system when their right of refusal has been breached [36]. Safety has also been enhanced, with sex workers now able to negotiate what they will provide for clients' money, which reduces the chance of a client resorting to violence because of unmet expectations [17]. Reportedly, however, some people involved in managing sex workers and managing brothels are not actively promoting safe sex practices in their contact with clients, particularly when it comes to oral sex.

Under Section 8 of the PRA, brothel operators are required to adopt and promote safer sex practices within their establishments, by:

- Taking all reasonable steps to ensure that their workers and clients use appropriate protection in all services which carry a risk of acquiring or transmitting sexually transmitted infections (STIs).
- Ensuring that workers and clients are given health information and that this information is clearly displayed in brothels.
- Not implying that a medical examination of a sex worker means the sex worker is not infected with an STI.
- And taking all reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting STIs.

Similarly, under Section 9 of the PRA, sex workers, and clients are also compelled to take all reasonable steps to ensure that they use adequate protection during penetrative and oral sex, and minimise the risk of acquiring or transmitting an STI. In addition, sex workers and clients are also required not to state or imply that because they have had a medical examination, they are not infected with an STI.

These sections of the PRA were added to the Prostitution Reform Bill during its progress through Parliament. NZPC are not supportive of these additions, as they see them as creating an environment where sex workers could be 'policed' in their condom use. They also create the possibility of clients laying false complaints against a sex worker if they hold a grudge. However, research done following the enactment of the PRA demonstrated that sex workers themselves were

largely supportive of this part of the Act, as it made it easier for them to negotiate condom use with a client [10]. Several cases have gone to court where a client has removed their condom without the sex worker's consent (e.g.: [37, 38]), and most have resulted in the client being fined.

Under the PRA, Medical Officers of Health (MOH) are designated as inspectors of brothels. Interviews with Medical Officers of Health carried out shortly after decriminalisation found that most were happy to undertake this new addition to their role, maintaining a respectful distance and taking a largely 'hands-off' approach by only reacting to complaints [39]. Scenario 2 discusses, from a sex worker perspective, how NZPC and Medical Officers of Health engaged in developing a training programme to address concerns about disturbing practices in some brothels.

Scenario 2

In a decriminalised setting, sex work is acknowledged as labour, subject to the same health and safety protections as other occupations. Sex workers can access appropriate agencies directly to uphold their workplace rights. However, sex work remains a stigmatised occupation, and some sex workers can be reluctant to engage directly with government agencies when workplace conditions are not acceptable. Equally, government agencies without accurate understanding of sex work culture risk deterring engagement rather than encouraging it. As a peer-led organisation, NZPC can liaise with agencies and work collaboratively to promote best practice within the industry, as shown in the following examples:

When some brothel-based workers were unhappy with their work conditions, they approached NZPC for help. They were upset that brothel management was not adequately supportive of some safe sex practices, resulting in the sex workers experiencing difficult negotiations with clients about condom use and oral sex. Peers at NZPC talked with them about the various actions available, including engaging with the overarching health authority. NZPC then contacted the Medical Officers of Health, who are authorised to ensure health and safety requirements are adhered to in the context of sex work.

Working collaboratively, NZPC and MOH agreed not to identify the specific brothels, but rather to act broadly by engaging all the local brothels at an operator level. NZPC provided training for the MOH staff about sex work, brothel culture, and effective ways to engage with these operators. NZPC were able to review the draft of a letter sent to 15 brothel operators, and made sure that it was appropriate and effective. With this insider knowledge and input, all the brothel operators agreed to be visited by inspectors who observed onsite how safer sex was promoted within each brothel (policy, signage, information given to clients, availability of condoms, lube and other products, etc.). During this time brothel operators also contacted NZPC for assistance, providing a good opportunity for NZPC to remind operators of how to best support their workers' occupational safety and health.

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MOH found that most brothels actively advised clients about safe sex policy at the point of booking, provided information on their own websites, and trained sex workers to deal with clients who requested unsafe sex. Brothels that did not adequately promote best practices received follow-up for extra support.

This collaborative approach to compliance was effective because the sex worker lens provided guidance for best outcomes. This approach gently reminded all brothel operators of their obligations to health and safety requirements, and established functional relationships between health authorities and brothels. The expertise and inside knowledge of NZPC was integral to this outcome.

In a different jurisdiction, MOH sought advice from NZPC when contacting brothels about a recent increase in STI/syphilis cases. They had developed a plan of action, and they needed it reviewed with a sex worker lens before implementation. Adjustments to the drafted letter of information resulted in the removal of stigmatising language and showed a more nuanced understanding of roles and responsibilities of management with regard to supporting safe sex practices. Occupational health and safety is best supported by true collaboration and respectful relationships between sex workers and sex worker led organisations (NZPC), and government agencies.

Becoming a Sex Worker: ‘Stepping Forward’

Getting information when starting sex work is vital for protecting sex workers’ health and safety. Knowing how to negotiate with clients, how to deal with issues that come up with clients, and how to ensure safe sex, is particularly important, and this information should be provided by a peer support organisation. Prior to decriminalisation, although NZPC did provide printed and verbal information as well as a range of safer sex products to new sex workers, this was done in a fairly covert manner, as such provision could have been construed as aiding and abetting a crime. As brothel operators were working under the façade of massage parlours, they did not want any explicit links made between them and sex work-related activities. For this reason, management felt unable to be proactive in referring new sex workers to NZPC, nor did they want information on their premises, as it could put them at risk of a 5-year prison sentence for brothel keeping and/or procuring. A survey of 303 sex workers in Christchurch in 1997, prior to decriminalisation, found only 6% reported getting information and advice on sex work from NZPC when they started working [40]. Most advice was gleaned from co-workers or, for many (26%), nobody at all. Once sex work was decriminalised it became easier to display information on safe sex and to have condoms on brothel premises, as there was no longer a fear of prosecution on the grounds that this was evidence of brothel keeping [41]. Brothel operators are now also more likely to send new sex workers to NZPC to get the information they need to help keep themselves safe. In 2006, a mere 3 years

after decriminalisation, a survey of 772 sex workers in NZ found that 44% reported that they had received information on starting sex work from NZPC, and the number getting no information at all was 18% [10].

After decriminalisation, NZPC also developed a booklet, ‘Stepping Forward’, which is aimed at new workers, giving them tips on how to stay safe, negotiate with a client, and care for themselves, as well as providing comprehensive information on sexual health [42]. This booklet is presented to new workers who come into NZPC, along with free condoms, dental dams, lube, and sponges. It would not have been possible to provide such information in this format before decriminalisation. Scenario 3 gives a sex worker perspective on how decriminalisation has facilitated appropriate information sharing with people considering taking up sex work.

Scenario 3: Becoming a Sex Worker

The New Zealand model decriminalises most sex work-related activities, giving sex workers more control over their working conditions. The model allows those considering sex work to seek practical information without fear of breaching any criminal law. There is a range of information sources available to those considering sex work, including the sex worker peer-led organisation NZPC, as well as New Zealand-based online platforms, and other sex workers. As one worker commented,

I googled everything about sex work in New Zealand and I read the PRA [Prostitution Reform Act, 2003]. It made me a whole lot more comfortable when I was considering starting in the industry. I realised it was legal and I had rights. I was able to google agencies in my city to see if I would fit in and what sexual services would be expected of me.—Jill, Sex Worker

NZPC is frequently contacted by prospective and new workers for information on sex work, including information about the law, their rights, as well as practical information about safe ways to work, health advice, and so on. Decriminalisation facilitates a context where such peer-focused information may be given freely, directly promoting safe and healthy practices, reducing risk and minimising harm.

In my first interview at a brothel, the manager told me about NZPC. I got a NZPC new worker pack and was encouraged to get sexual health checks and information from NZPC. There I found a tangible community. I just feel like NZPC is a place where...it's not just all victim. I felt really well supported by NZPC.—Mel, Sex Worker

At the heart of decriminalisation is the concept of consent. As one worker comments,

The explicit consent, what the worker will and won't do is much clearer after decrim. I wouldn't have to commit to anything I didn't want to do.—Valentina, Sex worker

Decriminalisation means sex workers can choose to work in a range of settings—they may work independently or with other workers in small owner-operated venues, or meet and screen clients online or in public places such as

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known streets. They also may work in managed brothels. Such venues are also sources of information about sex work, in ways that would be difficult and illegal without decriminalisation.

When sex workers are hired, it is now possible for brothel operators to openly talk about sexual services that may be requested by clients and about which services the sex workers are prepared to provide. Furthermore, the brothel may keep this information and use it when clients make a booking with a particular request. This sets clear boundaries and reduces misunderstanding and unrealistic expectations.

It means that workers have the protection of clearly negotiating services and prices before agreeing to a booking, and that [sex workers] have the right to refuse or terminate services for whatever reason and have the backing of the law in that.—Belle

Safety is often a key concern for prospective and new sex workers. A decriminalised environment means that these concerns can be addressed directly: workers can work with others, brothels can install security equipment, and difficult clients can be refused or ejected in the knowledge that the law supports these actions. Sex workers can also contact the police without fear of prosecution.

I think about safety all the time. I feel really fortunate to have several ways of vetting and sharing information here in New Zealand. We are so lucky here.—Mel, Sex Worker

Conclusion

This chapter has discussed three initiatives: engagement with police to provide a better outcome for sex workers reporting sexual assault; engagement with Medical Officers of Health to enhance the workplace environment for brothel-based sex workers; and the provision of support to new sex workers to facilitate an informed and safer entry into sex work. None of these initiatives would have been possible in a criminalised context. Decriminalisation has provided NZPC with greater ability to engage with a variety of stakeholders, so that sex workers' voices are strongly present in all initiatives to improve their health, safety, and wellbeing. For an initiative to be effective, there needs to be a robust understanding of the population at whom that initiative is aimed [43]. Wherever possible, therefore, initiatives should be peer-led and, where appropriate, meaningful partnerships established.

Despite the many improvements to the health, safety, and wellbeing of NZ sex workers brought about via decriminalisation, it is acknowledged that these improvements do not benefit all sex workers. The PRA states that people who are not NZ citizens or residents, and who are in the country on tourist, temporary work, or student visas, may not do sex work. This results in a number of migrant sex workers working in a criminalised setting, who will continue to do so. Full decriminalisation provides a context where **all** sex workers can be self-managing and have their voices

heard in the implementation of appropriate services. While full decriminalisation is some way off, it is important to continue to work towards this ideal.

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