How Sex Work Laws are Implemented on the Ground and Their Impact on Sex Workers

Aotearoa New Zealand Case Study
Introduction

Sex work in Aotearoa New Zealand was decriminalised for residents and citizens with the passing of the Prostitution Reform Act (PRA) in 2003. This legislation removed all penalties concerning sex work and decriminalised activities such as living on the earnings, soliciting, procuring, and brothel keeping, and enabled sex workers to choose the context of their work. The PRA (2003) introduced some new laws pertaining to sex work, but sex workers are primarily covered by laws pertaining to occupational health and safety, public health, human rights, employment rights, immigration and so on. In short, sex workers have the same rights as any other worker and can access the same regulatory bodies to ensure they have fair work conditions. This case study explores the experiences of sex workers in the context of decriminalisation.

This report is based on 11 individual interviews with sex workers and four interviews with non-sex worker stakeholders who have engaged with the New Zealand Prostitutes' Collective (NZPC; Aotearoa New Zealand’s sex worker-led organisation). Sex worker participants were from Auckland (1), Wellington (6) and Christchurch (4), aged from 18 to over 50. One worker identified as non-binary, two as transgender women, one as male, and seven as female. Four worked from managed indoor settings, five worked privately indoors, and six worked from the street. Two of the participants were people who use drugs, one was living with HIV, and one had migrated to New Zealand. The four non-sex worker participants worked in immigration, occupational safety and health, human rights and legal professions.

The sex workers had similar narratives and experiences. Overall, sex workers report a strong sense of legitimacy and trust in the law that the legislation provides, yet there is a continued perception of stigma and discrimination from the general community and institutions. Since the passing of the PRA (2003) evidence suggests that most sex workers feel safer and are more likely to report violence to police. This is supported by the results of this case study, however there was a notable difference between transgender and cisgender women, and between indoor and street-based sex workers’ experiences with police (more on this below).

Safe Sex Laws

Aotearoa New Zealand’s legislation does not require sex workers to have mandatory sexually transmitted infection (STI) testing. Furthermore, PRA (2003) legislation states that workers and clients are not allowed to claim that a medical examination means they do not have an STI, and this law supports any worker living with HIV to continue to work without having to disclose their HIV status to clients. Instead, Section 9 (1) of the PRA (2003) provides that all reasonable steps should be taken to use a prophylactic sheath for activity that may transmit STIs between sex workers and clients. This was at the forefront of workers’ understanding and experience of the law. “Using protection is quite big because I’m asked so frequently” (Mel, private indoor). Workers felt this part of the law was upheld by brothel managers, and that they could apply it by citing the legislation if clients sought sex without a condom: “I say one, I always use a condom, and two, if you get caught it’s a $2000 fine” (Kendra, street-based). While it is a popular and frequently referenced part of the legislation, it is also acknowledged as problematic: “The condoms one. It’s good, but no one else has to use a condom. It’s good, it’s a good thing, but it’s two-sided. We’re only being policed on it because we’re sex workers.” (Coco, brothel-based). One worker believed it was a redundant part of legislation due to the volume of requests she fields for unprotected services—“the safe sex law in the PRA, it’s good but in the last year half of the texts are asking for

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natural which is like, no one cares about it” (Larissa, private indoor)—indicating that clients are not concerned with this part of the law. As use of condoms would be expected under the Health and Safety at Work Act (HSWA: 2015), this additional legislation under the PRA could be considered at best redundant, and at worse, stigmatising and harmful.

Choosing and enforcing boundaries as part of sexual consent forms the premise of sex work law in Aotearoa New Zealand (PRA, 2003; 17(1)). Coco believes that the PRA (2003) contributes to healthy work relationships because sex workers are able to refuse any booking based on simply “a feeling” and management will deal with it on a worker’s behalf. Coco’s workplace upholds workers’ right to refuse a service—required by the PRA (2003), but also the HSWA (2015) and human rights law. Human rights advocate Hannah suggested that the more awareness people have of their rights the more likely they will use human rights legislation to their advantage. In this study the younger workers, having known only a context of decriminalisation, were more aware of their rights.

“Having the law as a back-up feels like I’m able to take a step back and not feel pressured, it takes the blame of the decision not to see a client off me a little bit. I’m just exercising my human rights.” (Jane, brothel-based).

Local Bylaws

While the PRA provides overarching legislation for sex work, there is variation across the country due to local government bylaws. These bylaws control things like signage, location of sex work, regulations for home-based businesses and number of sex workers sharing a venue. Some city councils have made bylaws that are not consistent with the aims of the PRA (2003) and seek to outlaw street-based sex work (see Hamilton City Council3) or sex work altogether through heavy restrictions (Upper Hutt City Council brothels bylaw4). A lawyer attributed some of the variation to stigma: “Some local bodies choose to make evidence-based decisions to inform policy. Other city councils use pre-held biases to apply harmful bylaws even where these very obviously contradict evidence” (Belinda, lawyer). However, overall there is minimal variation of sex workers’ experiences with authorities across the main cities in New Zealand.

While each region or centre has bylaws about signage of sex work venues, there are no restrictions about the advertising of services in R18+ spaces. Advertising freedom allows for the explicit description of sexual services offered which subsequently supports respectful interactions with clients and reduces the conditions for dispute and negotiation—“I get to freely advertise, in Ozzie they can’t say what services they offer, I get to freely say stuff for what I want to do.” (Mel, private indoor). Many street-based workers now connect with clients through the internet.

Sex Workers’ Access to Justice

The relationship between sex workers and the police has improved since decriminalisation. This is apparent in the stories from the sex workers in this study, although cisgender workers had more positive views than transgender or non-binary workers, and indoor workers had less experiences with police than street-based workers.

It is reported that street-based sex workers are more heavily policed, and this is attributed to being visible and more stigmatised—“Street work is more heavily policed and trans more heavily policed than cis” (Zara, street-based). Street-based workers also reported more engagements with police including; being searched under the Misuse of Drugs Act; stopped for drinking alcohol publicly; or being stopped in a car with a client as an attempt to scare clients away from the area. “…police were taking girls away, not arresting them but stuffing up their night. They’d wait

3 Hamilton City Council, 2009, “Prostitution Bylaw”.
until they got a job and then stop the car and the clients didn’t like it because they’d ask for real names, it puts the clients off.” (Mandy, street-based). While street-based and transgender sex workers reported negative experiences with the police and a general sense that sex workers were treated unfairly, this was attributed to individual police rather than the institution as a whole. “Most of them do [treat sex workers fairly], you get the odd one that doesn’t!” (Kendra, street-based); “The personal opinion of the police officers matters to the outcome.” (Mandy, street-based). Brothel-based and other indoor workers in this study had no experience with police but had the impression that they were supportive of sex worker rights— “I’ve had no dealings with police. I’ve seen in the news that they support sex workers. If I needed them I expect they’d help.” (Mel, private indoor).

NZPC and NZ Police collaborated to ensure sex workers know they will be treated fairly and respectfully if they are assaulted. Four of the six street-based sex workers interviewed had already reported a crime or concerns to the police despite their negative opinions of law enforcement and felt fully supported. Jade, for example, contacted the police after being threatened and intimidated by a car full of men while working on the street: “so I called the police and they were on the phone with me the whole time and they sent units up and down, and I said I’m not getting off the street, I’m not going to give them the satisfaction and [the police] were up and down all night and I sort of felt that they were working for me.” (Jade, street-based). Jade’s story illustrates that in a decriminalised context, sex workers are part of the community that the police are there to protect.

In New Zealand it is widely understood that police would help in cases of assault, but experiences and fear of stigma while navigating the justice system were still apparent— “I’d feel nervous if I had to take anything to court though, I probably wouldn’t press charges — I’d lose my anonymity, lawyers, legal juniors, all sorts of people would read the notes and see my name” (Larissa, private indoor). One worker (who is living with HIV) discloses his HIV status to clients despite no legal obligation to do so, to avoid having to deal with the justice system: “It hasn’t been tested in court, I don’t have to disclose but I do anyway, theoretically it might go bad in court because of the stigma of HIV and the stigma of sex work” (Daniel, private indoor/outdoor).

Sex workers have other avenues available to them to access support and justice. Coco said she believes sex workers’ rights are upheld by the human rights authority: “they took my complaint seriously and took the events seriously, and supported the ‘right to say no’ law very much, there was no judgement” (Coco, brothel-based). Jane had a similar experience while seeking government financial support to stop doing sex work— “I expected annoyance and judgement because I exercised the right to skip the line. But I wasn’t made to feel uncomfortable or judged at all. It was the most positive interaction I’ve ever had after telling someone I was a sex worker” (Jane, brothel-based).

Migrant Sex Workers in Aotearoa New Zealand

Migrant sex workers remain largely ‘underground’ due to their compromised legal status. Visibility can put them at risk of violence and deportation. Section 19 of the PRA (2003) states that any person with a temporary visa is prohibited from engaging in ‘commercial sex’ either as a worker, manager or business owner. Despite this discrimination in the legislation, migrants still do sex work. The impact of Section 19 on migrant sex workers is two-pronged: they are living without the same access to justice that resident sex workers have, and are also living within a broader system that stigmatises and marginalises as both migrants and sex workers (Belinda, lawyer).

Immigration New Zealand (INZ) recently investigated reports of migrant exploitation and found little evidence of exploitation and no evidence of trafficking (Sarah, immigration worker). While finding support the view that decriminalisation does not increase instances of trafficking or exploitation, migrants are still less empowered to access justice and to have their occupational health and safety rights upheld due to Section 19. This is regarded as a failing of the law by sex workers and advocates. However, if a migrant is deported for engaging in sex work they are not deported for a criminal offence. So while the PRA does not uphold the rights of migrants doing sex
work in New Zealand, the decriminalisation of sex work partially reduces the risk of negative consequences if sex workers are deported to their home country.

Role of NZPC

Under decriminalisation, sex workers openly organise and support each other. NZPC provides a free clinic and safe space for workers to drop in; Coco cited the “ability to come into NZPC and talk openly about sex work and get information about safety” as a positive impact of sex work laws in New Zealand. Poppy mentioned that sex workers “can have a Christmas party” now sex work is decriminalised.

NZPC also engages, liaises and provides a sex worker voice to government agencies and regulatory bodies. Worksafe (NZ’s occupational health and safety agency) collaborated with NZPC when responding to health and safety complaints from sex workers to ensure that the privacy of sex workers was respected (Kathy, OSH worker). All workplaces, including sex work workplaces are subject to the same health and safety laws and human rights laws. The human rights commission (HRC) can investigate cases of harassment or discrimination for people who are self-employed. In 2014 a sex worker was awarded $25000 for sexual harassment from her boss. Human rights advocate Hannah suggests that the more marginalised the group, the harder it is to access justice; thus decriminalisation of sex work is pivotal in terms of removing barriers to upholding human rights.

Almost all the workers interviewed for this case study cited stigma of sex work as the most problematic aspect of their work. Whether the stigma was felt from the general community, individuals or institutions, it remained the most salient issue for sex workers. However, this sense of stigma is mitigated by legislation that recognises sex work as work, bound by the same laws as other occupations, and giving sex workers pathways to justice if something goes wrong.

Conclusion

Overall the impact decriminalisation has on sex workers’ practice is positive and broad. The relationship sex workers have with police continues to improve; all those interviewed were confident the police would help them if needed, despite some holding negative attitudes towards police. One transgender worker felt it was most significant as a transgender person “the biggest benefit for me is decrim of walking while trans” (Poppy, private indoor). Most workers reported a greater sense of safety, good work relationships, and an increasing belief that their rights would be upheld by the system.

New Zealand’s PRA is not perfect, sex workers are singled out as ‘other’ in the legislation, (namely Section 19 which singles out sex work as the only prohibited occupation for migrants, and Section 9 regulating the use of condoms) and these are parts of New Zealand’s laws that sex workers would like to see change, but otherwise sex workers are happy with the laws. The decriminalisation of sex work in Aotearoa New Zealand has improved the workplace health and safety conditions for sex workers, increased the capacity for workers to demand their rights are upheld, and reduced stigma and discrimination.
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