



**National Council of  
Women of New Zealand**

Te Kaunihera  
Wahine O Aotearoa

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**Submission to the Justice and Electoral Select Committee on the  
Prostitution Reform Bill**

The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella organization representing 43 nationally organized societies. It has 34 branches spread through out the country to which women from some 150 societies are affiliated.

For over a century NCWNZ has worked for the social, legal and economic advancement of women and for such conditions of life as will assure to all the opportunity for full and free development.

At the National Conference in 1996 NCWNZ urged “the introduction of legislation to decriminalise prostitution related offences while maintaining legislative controls to protect the independence and welfare of sex workers”.

There has been wide consultation among our membership via The Circular and this submission contains input from nine branches, two nationally organized societies, members of the Board of Management and the Employment Standing Committee which includes corresponding members throughout the country.

It is with this background and in line with achieving the policy of NCWNZ that this submission is prepared.

**General Comment**

While supporting the decriminalisation of prostitution, one nationally organised society and some members stress that this does not mean that they condone prostitution. In fact some members question whether prostitution itself is a human rights violation and suggest it perpetuates the power imbalance between men and women.

The welfare of women and children is of prime concern to NCWNZ and some members ask whether decriminalisation is for the good of society and for the protection of family life. Notwithstanding, NCWNZ strongly supports this bill which aims to safeguard the rights of women and children, provides for protection from exploitation and seeks to create an environment that promotes public health. It is essential that women working in the sex industry have protection regardless of whether they have chosen the industry as a career or have come into the industry because of a lack of options.

Decriminalisation will give prostitutes the protection and responsibilities that apply to any other business and will provide them with the same status before the law.

While NCWNZ supports the decriminalisation model, some few members query whether licensing or a form of registration would be appropriate. This was usually suggested in the context of testing of sex workers for sexually transmitted infections.





However it is the understanding of NCWNZ that sex workers are less likely to have an infection than clients. A member quoted a 1996 study commissioned by the Parliament of South Australia that found that the incidence of sexually transmitted infections among female sex workers was extremely low. For there to be any realistic purpose in mandatory testing it would need to include the entire sexually active community.

NCWNZ considers it is important that health information and health care is readily available for prostitutes and there be encouragement and expectation that this care be accessed. It is noted that there is a contradiction currently between the promotion of safe sex practices in the area of public health and the presentation in courts by the police of condoms and safe sex literature to provide evidence to secure a conviction for prostitution. The passing of this Bill will do away with this nonsense.

NCWNZ states that it is grossly unfair that prostitutes, the majority of whom are women, can be charged with offences while their clients, the majority of whom are men, are not prosecuted for using their services. It is high time that this discriminatory practice ceased.

Some of NCWNZ members have commented on the issue of trafficking and the need to protect vulnerable women from exploitation especially those brought in from another country. While recognising that the passage of this bill should make for safer working conditions for prostitutes we view trafficking as typically involving the use of deception to recruit and transport an individual who is held in slave – like conditions or forced or bonded into labour. This may be in the sex industry but also may be in another industry. The deception typically involves the working conditions or the nature of the work. This problem while needing to be addressed we see as a parallel issue. We note The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 6 “states parties shall take appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women”

### **Comment on specific clauses**

#### **Clause 4**

The term brothel as defined would include the family home. It is undesirable that a family home should be so defined and it is suggested that this be amended.

A child is defined as a person who is under 18 years. This fits with the UN Convention on the Rights of the Child, which New Zealand has ratified and links with other legislation in place in New Zealand. The membership strongly endorses this but also raises concerns about the status and opportunities for our 16 and 17 year olds. The age when children can consent to sex, can leave school and home and be employed is 16 years. There are youth benefits available but these are for very few situations with strict and confusing criteria. Sixteen and seventeen year olds who are not in school or training and who may not be living at home are left with minimal choice of life style. They need opportunities and protection. While this Bill purports to give protection to those under eighteen we ask how real this protection is for the most vulnerable young people.

#### **Clause 5**

NCWNZ asks that this clause be clearly expressed so it is understandable for the lay reader.

#### **Clause 6**

NCWNZ fully supports the requirements that brothels and businesses of prostitution must promote safer sex practices.

**Clause 6 (1) (a)**

Both males and females are engaged as sex workers and it should be expected that male prostitutes be required to provide prophylactic sheaths. The clause needs to be so amended.

**Clause 7**

NCWNZ supports this clause which aims to prevent coercion in the provision of commercial sexual services. The term of imprisonment not exceeding seven years suggests the seriousness of a breach of this clause.

**Clause 8**

While NCWNZ supports this clause some very few members queried the provision of the right to refuse to provide commercial sexual service or to continue to provide the service after commencement. It is noted that there is no system for settling the financial implication of the cancellation of what may well be considered a contract. This could provoke a violent situation where clients sought to recover money. However we also recognize that the workers in this trade may be vulnerable because of the very nature of the occupation and the right to refuse to provide service gives protection.

**Clause 9**

It is absolutely paramount that children are protected from exploitation and NCWNZ fully supports the provisions of this clause. However, one of our members working in the social service areas with a national church commented on her experience working with prostitutes under age 18 who have “chosen” this work. She commented that it is unfair that such persons should not be liable for any consequential penalty for their actions. A member of our Employment Standing Committee told about her distress when one of her students was taken down to the boats by her mother to work. These different experiences highlight the problem there may be for children under age 18. There is a real need to provide opportunities and training for other life choices.

**Clause 9 (5)**

It is suggested that the provision of health advice to a person under eighteen be extended to allow for the provision of health services to that person. This would make it clear that a health practitioner could prescribe contraception to a child known to be engaging in prostitution. The words “health advice” may not cover the situation.

**Clause 9 (7)**

The response from the membership was overwhelmingly in support of this absolute liability clause that there is no defence to a charge of contracting for commercial sexual services with a person under eighteen years. It was noted that the defence of a belief that the person was over eighteen years is allowed in rape charges. Some few members suggested that ID be provided. We would submit that liability for a maximum of seven years imprisonment would mean that a client or operator would be vigilant about checking the age of the sex worker because the greater the risk, the higher the standard of care required.

**Conclusion**

NCWNZ strongly supports the purposes of this Bill to:

- decriminalise prostitution
- safeguard the human rights of sex workers and protect them from exploitation
- provide a legislative framework for the welfare and health and safety of sex workers
- create an environment conducive to public health
- protect children from exploitation in relation to prostitution



We note that the unequal situation may well continue between a powerful employer and a vulnerable worker who may not be aware of her rights under legislation such as The Employment Relation Act 2000.

We hope that proposed law changes will remove legal impediments to the creation of a safer environment and will reduce potential risks to public health.

NCWNZ is pleased to have the opportunity to make this submission.

Barbara Glenie  
**National President**

Marian Redwood  
**Convener, Employment Standing Committee**