



Report of the Education and Workforce Committee

Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003

November 2022

Contents

Recommendation.....	2
Request to repeal section 19 of the Prostitution Reform Act.....	2
About the Prostitution Reform Act	2
Comments from the petitioner	2
Comments from the Aotearoa New Zealand Sex Workers' Collective	3
Comments from the Ministry of Business, Innovation and Employment.....	4
Reporting exploitation.....	4
Comments from the Ministry of Justice.....	5
Legislative history and rationale for section 19	5
UN Committee on the Elimination of Discrimination Against Women.....	5
Our response to the petition	6
Green Party differing view	6
Appendix.....	8

Marja Lubeck
Chairperson

Petition of Pandora Black

Recommendation

The Education and Workforce Committee has considered the petition of Pandora Black—Repeal Section 19 of the Prostitution Reform Act 2003—and recommends that the Government, in responding to the United Nations Committee on the Elimination of Discrimination Against Women, closely consider Ms Black’s petition and the evidence outlined in this report.

Request to repeal section 19 of the Prostitution Reform Act

The petition was presented to the House on 3 March 2022. It requests:

That the House of Representatives pass legislation to repeal Section 19 of the Prostitution Reform Act 2003 and apply the same rights and legal protections to migrant sex workers who are on a work visa as given to citizens.

About the Prostitution Reform Act

The Prostitution Reform Act 2003 decriminalised prostitution for most people in New Zealand, “while not endorsing or morally sanctioning prostitution or its use”. The Act was designed to support harm reduction. It allows sex workers to benefit from ordinary employment relationships, the enforcement of health and safety laws, and the ability to exercise their work rights.

Section 19 of the Act sets out how the Immigration Act 2009 applies. It specifies that the holder of a temporary entry class visa may not provide sexual services for payment, or operate or invest in a prostitution business. People who do not comply with this section may be liable for deportation under the Immigration Act.

Comments from the petitioner

The petitioner, Pandora Black, is a sex worker and activist based in Auckland.

Ms Black said that being legally entitled to work as a sex worker in New Zealand means that, if something bad were to happen to her while working, she would be able to seek assistance from the police, the courts, the Human Rights Commission, WorkSafe, or a union. In contrast, she said, migrant sex workers are unwilling to report abuse because they would be liable for deportation. As a result, they are targeted by exploitative brothel owners and dangerous clients. She said she has personally witnessed this on numerous occasions. She said it is heart-breaking to see migrant sex workers have their earnings withheld, be pressured to see clients, or be assaulted or robbed by clients, only to be told they cannot seek help because they are working illegally. She wants section 19 of the Act to be repealed so that migrant sex workers feel able to report crimes committed against them.

Ms Black notes that section 19 was designed to prevent trafficking. However, she disagrees with assertions that most sex workers do not choose to work in the industry willingly. She

said that every migrant sex worker she had spoken to chose to work in the industry. They had not been trafficked and coerced.

Ms Black said that repealing section 19 would not increase abuse or trafficking. To the contrary, she said that section 19 creates conditions that allow exploitation to occur because migrant sex workers feel unable to report it to the authorities.

Ms Black said the Prostitution Reform Act has been a success because sex workers were involved in the process and listened to as experts. She said that, at the time the bill was being considered, sex workers opposed section 19 as counterproductive and harmful, but were ignored.

Comments from the Aotearoa New Zealand Sex Workers' Collective

The petition is supported by the Aotearoa New Zealand Sex Workers' Collective, from whom we received a written submission. The Collective believes that prohibiting visa holders from providing commercial sexual services is inconsistent with the overall purpose of the Act. It said that most migrant sex workers are from China and hold student or short-term visitor visas. It said that many student visa holders come to New Zealand intending only to study. However, because they are only allowed to work for a maximum of 20 hours a week, many turn to sex work to meet the cost of living. It said that, overwhelmingly, migrant sex workers are not victims of trafficking.

The Collective noted that the New Zealand Human Rights Commission and US State Department have identified section 19 as an enabling factor for human trafficking and abuse of migrant sex workers. In its submission on our inquiry into migrant exploitation,¹ the Human Rights Commission said that:

criminalising sex work for certain visa holders does not act as a solution but rather works as an enabler, particularly when many migrant workers on temporary visas continue to be employed in the sex industry. Restrictions placed on temporary visa holders can act as a barrier for them to come forward and report experiences of exploitation. This means there is an urgent need to reconsider the PRA to mitigate the exploitation taking place in this space.²

The US State Department has said that:

Traffickers utilized Section 19 of the PRA, which prohibited non-residents from legally working in the decriminalized commercial sex industry, to use threats of deportation or other adverse action from law enforcement to

¹ We conducted an inquiry into migrant exploitation between October 2021 and August 2022. [You can read our report on it here.](#)

² The Human Rights Commission's submission on the inquiry into migrant exploitation is available [on the Parliament website.](#)

deter migrants in commercial sex work from reporting verbal or physical abuse, unwanted or unsafe sexual practices, or non-payment of wages.³

Comments from the Ministry of Business, Innovation and Employment

We received a written submission from the Ministry of Business, Innovation and Employment (MBIE).

MBIE said that foreign nationals in New Zealand are required to abide by the conditions of their visa, including their work conditions. Currently, the only people who can legally work as a prostitute are New Zealand and Australian citizens or permanent residents, and New Zealand residents without conditions on their visa. Open work visa holders, employer-assisted work visa holders, and New Zealand residents with conditions on their visa cannot legally work as prostitutes. Someone who breaches their visa conditions may be liable for deportation.

MBIE said that, if section 19 were repealed, it is not clear whether the Government would grant Accredited Employer Work Visas for commercial sexual services. The Accredited Employer Work Visa is the main pathway for temporary work visas. It allows migrants to work in a specified occupation, for a specified employer, on the basis of a labour market shortage. It does not allow migrants to be self-employed. They have to be in an employment relationship.

MBIE noted that repealing section 19 would not materially change the situation for people working outside their visa conditions. They would still want to avoid attention of the authorities because they would still be working unlawfully and potentially be liable for deportation.

Migrants who held open work visas would be able to be sex workers if section 19 were repealed. MBIE said that this would likely lead to an increase in fraudulent applications for student visas from non-genuine students. MBIE said that this concern was noted when the Act was being considered by the House, alongside concerns that it would be difficult for labour inspectors to determine whether foreign nationals were being exploited.

Reporting exploitation

MBIE acknowledged that people working outside their visa conditions may be reluctant to report exploitation or breaches of labour standards. However, it noted that minimum employment conditions (such as provisions of the Employment Relations Act 2000, the Health and Safety at Work Act 2015, minimum wages, holiday pay, and sick leave) apply to everyone working in New Zealand, irrespective of whether they hold a valid visa. The Labour Inspectorate can, and has, enforced the payment of wages on behalf of unlawful workers.⁴

³ Refer to page 414 of the US State Department's report titled *Trafficking in Persons Report 2022*, available [on the State Department's website](#).

⁴ See for example the Employment Court judgement at *Labour Inspector of the Ministry of Business, Innovation and Employment v New Zealand Fusion International Limited* [2019] NZEmpC 181 (11 December 2019).

As part of a series of changes intended to address migrant exploitation, the Government has established an 0800 number which people can call to report exploitation. MBIE said that it has received one report of exploitation relating to a migrant sex worker since the hotline launched on 1 July 2021. MBIE said that awareness is gradually growing within the migrant community of government measures to address trafficking and exploitation.

Comments from the Ministry of Justice

We received a written submission from the Ministry of Justice. The ministry said that it does not have any work under way to review section 19 of the Act. However, it said that such work could be considered as part of a future review of the Act, or as part of the ministry's regulatory stewardship work.

Legislative history and rationale for section 19

Section 19 was added by the Minister of Immigration during the bill's committee of the whole House stage. The Minister said that section 19 was inserted to ensure that New Zealand fully meets its obligations under the United Nations Convention Against Transnational Organized Crime (UNTOC) and its protocols against the smuggling of migrants and trafficking of persons.⁵

However, the ministry's submission said that UNTOC and its protocols do not specifically require the banning of migrants as sex workers. The ministry said it is "not aware of any other international obligations that appear to require a ban on migrants undertaking sex work".

The ministry said that human trafficking and exploitation can occur in both legal and illegal industries. The main New Zealand case of trafficking to date involved work in a legal industry (horticulture). However, the legal status of an industry can be a factor that influences the level of control a trafficker or exploitative employer may have over a victim. People who have been trafficked or exploited can be threatened with being handed over to the authorities for working in an illegal industry. We note that, during public hearings for our inquiry into migrant exploitation, we heard repeatedly that exploitation often goes unreported because migrants fear deportation.

UN Committee on the Elimination of Discrimination Against Women

In a 2018 report, the United Nations Committee on the Elimination of Discrimination Against Women expressed concerns about section 19 of the Prostitution Reform Act 2003.⁶ The committee said section 19 "may have a negative impact on migrant women" and that "migrant women engaged in prostitution may be exposed to exploitation and are at risk of trafficking, owing to the ban on engaging in prostitution imposed on migrants, which prevents them from reporting abuse for fear of deportation."

⁵ Refer to Hansard's transcription of the committee stage for the Prostitution Reform Bill, available [on the Parliament website](#).

⁶ This report, titled *CEDAW/C/NZL/CO/8: Concluding observations on the eighth periodic report of New Zealand*, is available [on the United Nations' website](#).

The committee went on to recommend that the Government should “amend section 19 of the Prostitution Reform Act 2003, with a view to reducing its negative impact on migrant women”. The Government will need to respond to this recommendation in its next report to the UN committee, due in 2023.

Our response to the petition

We thank Ms Black for her articulate advocacy.

We note Ms Black’s comments that many migrants think prostitution is decriminalised for everyone in New Zealand (including temporary entry visa holders) and that they undertake sex work on that basis. We urge the Government to ensure that visa holders are fully aware of their work rights and conditions, as well as avenues to report exploitation or violations of minimum legal standards.

Repealing section 19 of the Prostitution Reform Act would have many implications for the immigration system that would need to be fully worked through. For example, we note MBIE’s comments that simply repealing section 19 would only make prostitution legal for people who hold open work visas. MBIE also said it is unclear whether the Government would grant Accredited Employer Work Visas for commercial sexual services.

In 2023, the Government will need to address the recommendation from the UN Committee on the Elimination of Discrimination Against Women that section 19 should be amended. In preparing its response, we recommend that the Government closely consider Ms Black’s petition, and the evidence outlined in this report. We believe that this issue warrants meaningful consideration, noting the concerns of the petitioner, the United Nations, the Human Rights Commission, and the US State Department.

Recommendation

We recommend that the Government, in responding to the United Nations Committee on the Elimination of Discrimination Against Women, closely consider Ms Black’s petition and the evidence outlined in this report.

Green Party differing view

The Green Party would repeal section 19 of the Prostitution Reform Act, which prohibits migrants from engaging in prostitution and sex work. Repealing this prohibition is necessary to prevent immigration-related coercion, and to extend to migrant sex workers the protections afforded under the Prostitution Reform Act. As migrant sex workers are currently forced to work illegally, they are especially vulnerable to exploitation. A migrant may be forced to perform sex work they do not wish to engage in under threat of being reported to Immigration New Zealand.

The Green Party has also been told of examples of serial sex offenders targeting migrant sex workers in the belief they will not report to the police because they would be liable for deportation. We have also heard from sex workers that there have been violent rapes that have not been reported for fear of deportation. This undermines the safety of our communities.

Even if no operators were approved as accredited employers, repealing section 19 would make it harder for potential offenders to distinguish between those working legally, such as students and those working on holiday partnership visas, and those working illegally. We believe this would help reduce targeted violence.

The goal of Te Aorerekura is “all people in Aotearoa New Zealand are thriving; their wellbeing is enhanced and sustained because they are safe and supported to live their lives free from family violence and sexual violence”. That is not just permanent residents and citizens.

One of the guiding principles of Te Aorerekura is “prioritising equity and inclusion in all spaces, ensuring equity of resourcing and outcomes; that all voices are heard and represented at all levels of decision-making; and that all people have options about the supports they receive.” This means we need to listen to (migrant) sex workers and act to ensure their safety, rather than put other institutional concerns first.

When the Prostitution Reform Act was passed, section 19 was added to prohibit migrants from engaging in sex work out of concern that it would lead to human trafficking. There is no correlation between legalising migrant sex work and human trafficking. Human trafficking is already prohibited under the Crimes Act 1961.

Appendix

Committee procedure

The petition was presented to the House and referred to the Petitions Committee on 3 March 2022. The Petitions Committee received written submissions from the petitioner, the Aotearoa New Zealand Sex Workers' Collective, and the Ministry of Justice.

The petition was transferred to us on 25 August 2022. We met between 31 August and 16 November 2022 to consider it. We received a written submission from the Ministry of Business, Innovation and Employment and heard oral evidence from the petitioner.

Committee members

Marja Lubeck (Chairperson)
Chris Baillie
Camilla Belich
Jan Logie
Jo Luxton
Ibrahim Omer
Angela Roberts
Penny Simmonds
Erica Stanford

Evidence received

The documents that were received as evidence in relation to this petition are available [on the Parliament website](#).

A recording of our hearing with the petitioner is available [online](#).