



# New Zealand Women's Law Journal Te Aho Kawe Kaupapa Ture a ngā Wāhine

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## **Letter in support of repeal of section 19 of the Prostitution Reform Act 2003**

1. We write on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine (the Trust) to signal our support for repealing s 19 of the Prostitution Reform Act 2003 (the Act).
2. The Trust is writing this letter following the Education and Workforce Committee's consideration of the Petition of Pandora Black in 2022. As submissions are not currently being sought, we have kept our reasons for supporting the repeal brief. However, we would welcome the opportunity to provide detailed submissions on any future consultation on the repeal of s 19 of the Act.
3. By way of background, the Trust is responsible for administering the New Zealand Women's Law Journal. It is the only academic publication that is solely dedicated to publishing legal scholarship about gender justice and supporting the work of women lawyers in New Zealand. The primary aims of the Trust are to promote awareness about gender justice in the law and to support women in the New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.
4. The Trust acknowledges that people of any gender can participate in sex work. Accordingly, this letter uses gender-neutral language throughout. However, the Trust wishes to emphasise that the rights and protections of sex workers are a gendered issue, and one that overwhelmingly affects women, trans, and non-binary people.<sup>1</sup>

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<sup>1</sup> Jan Jordan *The Sex Industry in New Zealand: A Literature Review* (Ministry of Justice, March 2005) at 12.



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5. The Trust has previously published an article on s 19 of the Act. In 2019, Kade Cory-Wright wrote a commentary – he pito kōrero titled “Sex work in New Zealand: A case for repeal of section 19 of the Prostitution Reform Act 2003”.<sup>2</sup> The article highlighted that excluding migrant sex workers from the Act exposes migrant sex workers to risk, and evidence indicates that repealing s 19 will not increase trafficking. The article advocated for decriminalising migrant sex work in New Zealand through repeal of s 19.
6. In summary, the Trust supports the repeal of s 19 of the Act. We echo the arguments in Cory-Wright’s article, that:
  - a. section 19 leads to more harm than good;
  - b. the Act did not lead to an increase in the number of sex workers; and
  - c. the risk of trafficking can be addressed in other ways.

### The Act

7. The Act is a historically significant piece of legislation. Not only does it decriminalise sex work, but it also introduces health and safety requirements for operators of businesses involved with sex work, sex workers, and clients.<sup>3</sup> The Act further provides “a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person” despite the existence of a contract for the provision of commercial sexual services.<sup>4</sup>
8. But, the protections provided by the Act do not extend to all sex workers in New Zealand due to the operation of s 19. The provision says no visa may be granted to a person on the basis that the person has provided, or intends to provide, commercial sexual services. Further, it is a condition of every temporary entry class visa that the holder of the visa may not, while in New Zealand, provide commercial sexual services. An immigration officer may be justified in determining that a temporary entry class visa holder is liable for deportation if the officer believes, on reasonable grounds, that the visa holder is engaged in providing commercial sexual services.

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<sup>2</sup> Kade Cory-Wright “Sex Work In New Zealand: A Case for Repeal of Section 19 of the Prostitution Reform Act 2003” (2019) NZWLJ 277.

<sup>3</sup> Prostitution Reform Act 2003, ss 8–10.

<sup>4</sup> Section 17.



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9. Section 19 was introduced to combat the perceived risk of an increase in sex trafficking after the decriminalisation of sex work.<sup>5</sup>

**Reasons for repeal of section 19**

*Section 19 leads to more harm than good*

10. It is our view that s 19 creates the perfect conditions for exploitation of migrant sex workers.
11. Section 19(2) states that the holder of any temporary entry class visa may not provide commercial sexual services without breaching their visa conditions. Consequently, a migrant sex worker can only rely on the provisions provided in the Act by exposing themselves to a demonstrable risk of deportation under s 19(3).
12. Growing evidence suggests that s 19 facilitates conditions conducive to exploitation of migrant sex workers.<sup>6</sup> This point is echoed by the United Nations Committee on the Elimination of Discrimination Against Women.<sup>7</sup> The net result is that s 19 silences migrant sex workers rather than protecting them.<sup>8</sup>

*The Act did not lead to an increase in the number of sex workers*

13. Since the Act was passed, research has found there has been no increase in the number of sex workers. Studies have concluded decriminalisation has had little impact on the number of sex workers in New Zealand.<sup>9</sup>

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<sup>5</sup> Cory-Wright, above n 2.

<sup>6</sup> Dr Calum Bennachie and others “New Zealand results SexHum 2017-2020” (2020) New Zealand Prostitutes Collective <[https://www.nzpc.org.nz/pdfs/Bennachie,-Mai,-Pickering,-and-Lee,-\(2020\)-NZ-Findings-SexHum-2017-2020.pdf](https://www.nzpc.org.nz/pdfs/Bennachie,-Mai,-Pickering,-and-Lee,-(2020)-NZ-Findings-SexHum-2017-2020.pdf)>.

<sup>7</sup> Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of New Zealand UN Doc CEDAW/C/NZL/CO/8 (25 July 2018) at 27 and 28.

<sup>8</sup> Dr Lynzi Armstrong “Decriminalisation and the rights of migrant sex workers in Aotearoa/New Zealand: Making a case for change” (2017) 31(2) Women’s Studies Journal 69 at 74.

<sup>9</sup> Gillian Abel, Lisa Fitzgerald and Cheryl Brunton The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee (Department of Public Health and General Practice, University of Otago, November 2007) at 39.



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14. Opponents to s 19 reform argue the Act is the primary reason sex trafficking exists in New Zealand.<sup>10</sup> Estimating the impact of the Act on sex trafficking is difficult due to a lack of data—particularly given migrant sex workers’ reluctance to participate in research because of potential repercussions.<sup>11</sup> However, research now indicates the Act has not impacted the number of sex workers or their reasons for entering the industry. It seems unlikely that there are more incentives for sex trafficking now than there were prior to the Act.

*The risk of trafficking can be addressed in other ways*

15. It is our view that other legislation is better placed to address issues of human trafficking in New Zealand. For example, s 98D of the Crimes Act 1961 contains a human trafficking provision that could be used to address increases, if any, in trafficking of sex workers.
16. Even if s 19 was simply repealed, the feared ‘flood’ of trafficked sex workers would still need to go through New Zealand’s immigration system, which generally requires a high threshold to be met before a visa is issued.
17. A full review of the visa options for migrant sex workers could be conducted to ensure only specific and safe avenues are available. New Zealand’s robust immigration and justice system could be reviewed at a similar time to any repeal of s 19 to ensure any rise in sex trafficking, real or perceived, is managed appropriately.

### **Conclusion**

18. Thank you for taking the time to read this letter supporting the repeal of s 19 of the Act. We note again our intention to prepare detailed submissions on this matter should any opportunity arise.

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<sup>10</sup> Cory-Wright above n 2, at 286.

<sup>11</sup> Joel Ineson “Calls for legal migrant prostitution after research finds some exploited” Stuff (New Zealand, 10 October 2018).



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19. Please feel free to contact us if you have any questions or wish to discuss anything addressed in this letter further.

Ngā mihi nui,

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