



# Manukau City Council (Control of Street Prostitution) Bill

6-1

Report of the Local Government and Environment Committee

---

## Contents

Recommendation	2
Introduction	2
Limitations of the bill	2
Prostitution Reform Act 2003	2
New Zealand Bill of Rights Act 1990	3
Street prostitution in the Manukau area	3
Existing statutory provisions and other measures	4
Initiatives to address street prostitution	5
Prostitution Law Review Committee	6
Conclusion	7
Petition 2005/0008 of Ian McGeachie and 1,273 others	8
Appendix	9

# Manukau City Council (Control of Street Prostitution) Bill

## Recommendation

The Local Government and Environment Committee has examined the Manukau City Council (Control of Street Prostitution) Bill and recommends that it not be passed.

---

## Introduction

The Manukau City Council (Control of Street Prostitution) Bill aims to prohibit street prostitution by making it an offence to solicit for prostitution in a public place in Manukau City, and is applicable to both sex worker and client. The bill also creates offences for conduct associated with prostitution, such as “loitering”, and provides police with the powers to require information and to arrest suspected offenders.

We heard from a number of people in Manukau City who expressed concerns about the negative effects of street sex work and associated conduct in the area. These impacts include increased littering, noise and nuisance, a reduced sense of public safety, and a decline in property values. Although we believe that these are real concerns that need addressing, we do not believe that the enactment of the Manukau City Council (Control of Street Prostitution) Bill will produce the results claimed by the bill’s promoter and supporters. In our view, there are various options available to Manukau City Council to increase street safety for all people which are more likely to be effective than the passing of a local Act.

This commentary discusses the reasons we believe the bill should not be passed, and explores alternatives to criminalising street prostitution.

## Limitations of the bill

We believe that the Manukau City Council (Control of Street Prostitution) Bill would present enforcement and jurisdictional difficulties. While local legislation typically addresses issues unique to a particular locality and does not involve itself with the criminal law, this local bill creates offences that criminalise behaviour that exists throughout New Zealand. If the bill were passed, citizens would be subject to conflicting criminal laws, depending on their current geographical location. Unlike federal states, New Zealand does not have an established framework for enforcing different criminal offences on a region by region basis.

## Prostitution Reform Act 2003

By passing the Prostitution Reform Act in 2003, Parliament decriminalised soliciting in New Zealand. This bill seeks to re-criminalise street soliciting within the geographical boundaries of Manukau City. From a legal perspective, it could be argued that changing the law in a localised way is an implicit amendment of the Prostitution Reform Act. We believe that allowing a local Act to amend a public statute in this way would set a significant and undesirable precedent.

Should the bill be passed, it is possible that street prostitution will simply move to neighbouring areas, where local authorities may propose their own local bills as a means of addressing the same issue. The result would be a gradual revocation of the Prostitution Reform Act.

We consider the Manukau City Council (Control of Street Prostitution) Bill contradictory to the intent of the Prostitution Reform Act. As well as decriminalising prostitution and soliciting, the Act recognised prostitution as a legitimate profession and sought to establish appropriate employment, health, and safety provisions to safeguard the rights of sex workers and protect them from exploitation.

A key aim of the Prostitution Reform Act was to prohibit the involvement of persons under the age of 18 in the sex industry. This aim is underpinned by the view that underage sex workers are victims rather than criminals. The offences in this bill would apply to persons under 18, and thus are inconsistent with both the Act and the Optional Protocol to the United Nations Convention on the Right of the Child on the sale of children, child prostitution, and child pornography, to which New Zealand is a signatory. By criminalising street prostitution, the bill would make it harder for both youth and adults to leave the sex industry. Criminal convictions may deter workers from seeking assistance to leave this type of work, and are likely to reduce their chances of finding alternative employment. In addition, the bill as drafted imposes a fine of \$10,000 for the offence of soliciting or loitering for the purposes of prostitution in a public place, thus potentially creating a perverse incentive for offenders to continue sex work in order to pay such a large fine.

Fear of prosecution could cause workers to move to other areas, within or outside the Manukau City boundaries. Should street prostitution be driven “underground”, increased threat to the safety of sex workers may result. These dangers will be exacerbated by reduced access to peer, social, and health support services.

### **New Zealand Bill of Rights Act 1990**

Clause 12 of the Manukau City Council (Control of Street Prostitution) Bill appears to be inconsistent with the New Zealand Bill of Rights Act. It provides the police with powers to require any person suspected of an offence to provide their name and address, and the name, address and whereabouts of anyone else believed to be connected to the offence. Any person who refuses to give information to the police, or knowingly gives false information, is liable to a \$5,000 fine. This seems to infringe section 23(4) of the New Zealand Bill of Rights Act, under which any person detained for an offence or suspected offence has the right to refrain from making a statement. We believe clause 12 of the bill is coercive and excessive.

### **Street prostitution in the Manukau area**

The promoters of the bill have indicated that street prostitution is primarily of concern to communities in three areas where suburban town centres are surrounded by residential housing. It appears that street prostitution has been an issue in Manukau City since the late 1990s and, according to some, has grown considerably since the passing of the Prostitution Reform Act in 2003.

Some people submitted that the extent of the problem in Manukau City may have been overstated (or indeed understated, depending on the perspective of the group or individual providing the statistics). We heard conflicting views on the numbers of street sex workers in the area. We acknowledge the difficulty of obtaining accurate information given the fluid and concealed nature of the industry. It may also be hard to distinguish sex workers from their friends and associates on the streets. While a significant number of young people are reported on the streets (unsurprising as Counties Manukau has a higher youth population than the rest of the country), the actual involvement of youth in sex work is hard to quantify.

Any increase in the numbers of street sex workers in Manukau City may have resulted partly from the territorial authority's highly restrictive brothel control bylaw. The bylaw makes it very difficult to establish a brothel in the area, and prohibits small owner-operated brothels from operating in residential areas. Should regulations on the location of brothels become more permissive, however, it is still extremely unlikely that street prostitution would stop. Some sex workers choose to work from the streets and others are unable to find work in brothels or other agencies. The majority of transgender sex workers work from the streets.

Manukau City has high rates of serious crime, and enactment of this bill would require the diversion of already allocated, and indeed stretched, police resources to enforce the proposed offences.

Where street prostitution involves underage workers, however, we do not believe that lack of resources should ever be an excuse for not intervening to protect these people.

### **Existing statutory provisions and other measures**

We note that there are a number of current offences that address the behaviour which the bill's promoter suggests are associated with street prostitution. The Crimes Act 1961 and the Misuse of Drugs Act 1975 contain provisions that deal with gang activity and illicit drug or substance abuse. Under the Summary Offences Act 1981, individuals can receive three months' imprisonment or a maximum \$2,000 fine for either disorderly behaviour or intimidation. This Act also has penalties for offensive behaviour or language, and obstructing a public way. Many submitters complained of an increase in litter, especially condoms, on streets where prostitution occurs. The Litter Act 1979 makes it an offence to deposit litter in a public place or on private land without the consent of the occupier, and to deposit litter that is likely to endanger any person or cause physical injury, disease, or infection to any person who comes into contact with it. In addition, Manukau City Council has an existing nuisance bylaw, under which it is an offence to deposit or accumulate litter.

Under section 145 of the Local Government Act 2002, a territorial authority has further bylaw-making powers, which provide scope for addressing soliciting and related conduct. However, any proposed bylaw would need to be consistent with the New Zealand Bill of Rights Act and not be repugnant to the Prostitution Reform Act.

The bill in its current form amounts to a prohibition of street prostitution. Provisions in the Resource Management Act 1991 may enable the promoter to achieve more effectively its stated intent of controlling this activity. Under sections 74 and 75 of this Act, local

authorities can use their district plans to establish residential, commercial, and industrial zones. This offers a mechanism to control where commercial sex workers operate.

Where zoning allows commercial and residential interests to coexist, we recognise that it can be difficult to address the conflict, expressed by a number of submitters, between street sex workers and residents in the affected areas.

It is our belief, and this view is endorsed by various submitters, that the behaviour of sex workers on the streets is generally regulated more effectively by their peers and outreach groups working with them than by legislation. We believe that it is important for non-governmental organisations doing this work to be adequately funded and subject to proper accountability to produce the best results. We hope that if sex workers respect the areas where they conduct street work, then residents will be more tolerant of their presence.

### **Initiatives to address street prostitution**

The committee was advised of the Swedish model approach to prostitution and other attempts to minimise street prostitution. However, other initiatives were also noted which respond to and manage the causes and effects of street prostitution, and which clearly separate nuisance behaviour in general from street prostitution in particular.

#### **Council-led initiatives**

Manukau City Council has developed this bill following what it perceives to be the failure of various initiatives including closing parks at night, cleaning, installing surveillance cameras, roading changes, traffic and pedestrian flow management, and an increase in police presence in the area. But some submitters expressed the view that better facilities, such as more street lighting, refuse bins, and public toilets would increase safety for residents, property owners, and sex workers, and increase respect for the environments where street prostitution takes place. We encourage Manukau City Council to continue to invest in initiatives that have succeeded elsewhere in addressing some of the nuisance associated with street sex work. Wellington, for example, adopted an intensive cleaning model in the central city. “Streetwise” operates 24 hours a day, seven days a week, and helps to promote the city as a safe and clean destination for everyone.

#### **Halfway houses and support services**

We acknowledge that no society has eradicated street prostitution. Initiatives that recognise this fact and the importance of protecting the health and welfare of street sex workers can have positive results. We heard of halfway house projects in California which provide food, clothing and shelter to sex workers, and also offer long-term services such as counselling, transitional housing, and educational and life skills programmes to help women leave the industry. One project concentrates on helping children aged 11 to 17 who have been sexually abused and are involved in street prostitution.

A similar project operates in South Auckland, but not currently in Manukau City. Āwhina Teina, a house for women aged 17 or under who are involved in, or at risk of involvement in, commercial sexual activity opened in Onehunga in April 2005. It aims to create opportunities for residents to make lifestyle changes, and provides emergency overnight accommodation. While Āwhina Teina takes both referrals from Child, Youth and Family and self-referrals in Manukau City, the house can accommodate only six residents.

It is essential that such projects receive adequate and secure funding.

### **Safe-house brothels**

Safe-house brothels, where sex workers can hire a room for work that would otherwise be conducted on the street, are designed to mitigate the social nuisance effects of car-based street prostitution. None exist in New Zealand at present. South Sydney Council has established safe houses within short walking distance of two unofficial tolerance zones, where street soliciting is ignored by the police. Since the introduction of safe-house brothels, the incidence of violence against street sex workers has reportedly decreased significantly, and workers say they feel safer and will continue to use the safe houses.

Safe-house brothels are privately-run businesses and do not provide outreach programmes, health, or social services for workers using them. They provide a safe environment for street sex work to take place, and reduce the disturbance this work can cause to the local community. The experience of South Sydney Council indicates that the success of safe-house brothels depends on careful consideration of where they are located and consultation with the local police.

### **Tolerance zones**

Tolerance zones for street prostitution have had mixed results. One of the more successful is in Utrecht, in the Netherlands. The tolerance zone was set up in response to residents' complaints about both the noise and traffic congestion caused by street-based sex work. Local police were concerned that sex workers were being victimised, and that crimes against them were not being reported.

The municipal council, in conjunction with the police, created the zone in an industrial part of the downtown area, after consultation with local sex workers and the local community. To work in the zone, street sex workers are required to register with the police, who ensure that workers are not underage or trafficked. The workers are safer because police know who is working and if anyone is missing.

The Utrecht tolerance zone differs from other less successful schemes because the zone receives ongoing "management". The police play an active role in ensuring the safety and legitimacy of workers, and social and health workers provide assistance without harassment. Since the establishment of the tolerance zone, complaints from residents have been almost eliminated and relations between police and street-based sex workers have improved.

### **Prostitution Law Review Committee**

A review of the Prostitution Reform Act, as provided for in the Act, has begun and will report its findings in 2008. The review committee consists of 11 people nominated by either a Cabinet Minister or the New Zealand Prostitutes Collective. The review will examine how the Act has operated since its commencement, the effect of the Act on the number of sex workers in New Zealand, and the nature and adequacy of measures to help people avoid or leave the commercial sex industry. Although the review does not specifically focus on street soliciting, it will include estimates of the numbers of street sex workers, discussions with street sex workers, and consultation with territorial authorities about street soliciting issues.

We note also that the Christchurch School of Medicine has received funding from the Ministry of Justice and the Health Research Council to investigate some of the broader health issues in the sex industry. This research, which will assess whether the Prostitution Reform Act has contributed to improvements in the health and safety of sex workers, began in 2006 and is expected to be completed by August 2007. This will allow the research results to contribute to the Prostitution Law Review process.

## **Conclusion**

We are concerned about the increasing amount of antisocial behaviour apparently occurring in New Zealand's urban areas, to which this bill appears in part to be a reaction, and we have sympathy with the local concerns expressed by Manukau City Council. We acknowledge that the problems described in Manukau may have national implications, especially given the possible connections between street prostitution and crimes such as domestic violence, child abuse, and gang-related crimes.

However, the majority of the committee does not believe that having a local law different from the national law in respect of prostitution is workable. We accept that the review of the Prostitution Reform Act may recommend that further support for communities be developed at a national level. We are very keen to see the intent of this bill and this report included in the Prostitution Law Review Committee's consideration, and welcome any action that enhances the efficacy of the Act.

Irrespective of the outcome of this proposed legislation, we urge Manukau City Council to continue to work with support from central government on local solutions that develop from consultation with all parties affected by street prostitution. The majority believe that initiatives supported by the local community, sex workers and their advocates, outreach workers, social agencies, and the police are a more effective and appropriate use of resources than the proposed legislated solution.

## **Minority view of New Zealand National**

Parliament was told that when prostitution was decriminalised that we would see a reduction in street prostitution.

This has not happened.

New Zealand National are concerned that children, girls and boys, claimed to be as young as twelve, are now soliciting on the streets of Manukau.

New Zealand National recognises that councils already have the ability through all sorts of legislation to control what happens in their community.

Business, stalls, and activities are all part of the Council's jurisdiction.

New Zealand National believe that councils should have the right to control the business of prostitution and to keep the business activity of prostitution off their streets if that is the council's decision.

The committee heard that the bill will not work because the police have not got enough resources to enforce it. Lack of police resourcing is not an excuse not to do anything.

The committee heard that Manukau City are concerned street prostitution is costing their ratepayers money because of the impact of soliciting within their community. Government has continued to pass responsibility to local councils and as a result is causing ratepayer costs and consequential rate increases.

The New Zealand National caucus has determined that this matter will be a conscience vote.

**Petition 2005/0008 of Ian McGechie and 1,273 others**

This petition supported the Manukau City Council (Control of Street Prostitution) Bill, and requested that it be referred to the Select Committee for consideration.

We have no matters to bring to the attention of the House.



## **Appendix**

### **Committee process**

The Manukau City Council (Control of Street Prostitution) Bill was referred to the committee on 7 December 2005. Submissions closed on 24 February 2006. 121 submissions were received, and 45 were heard. Hearings of evidence were held in Manukau City in April and in Wellington in May.

We received advice from the Ministry of Justice, the Department of Internal Affairs, and the Parliamentary Counsel Office.

### **Committee members**

Steve Chadwick (Chairperson)  
John Carter (Deputy Chairperson)  
Georgina Beyer  
Mark Blumsky  
Martin Gallagher  
Hon Marian Hobbs  
Pita Paraone (non-voting member)  
Eric Roy  
Hon Dr Nick Smith  
Mētīria Turei