

9 July 2007

Paul Fitzharris
Chair
Prostitution Law Review Committee
c/o Ministry of Justice
PO Box 180
Wellington

Dear Mr Fitzharris

SUBMISSION TO THE PROSTITUTION LAW REVIEW COMMITTEE

1. Thank you for the opportunity to make this submission to the Prostitution Law Review Committee ("**Committee**").
2. Maxim Institute is an independent research and public policy think tank. Maxim Institute is a charitable trust, funded by donations.
3. Maxim Institute believes that all forms of prostitution are harmful to all who are engaged in them and to the wider community. We believe that those involved should be supported and encouraged to leave the industry. We opposed the passage of the Prostitution Reform Act 2003 ("**Act**") because decriminalisation makes it easier for vulnerable men and women to be drawn into a degrading and destructive activity.
4. You have advised us that the Committee is seeking submissions on the Act's operation and the extent to which it is achieving its purpose. Our main submission is that street prostitution and underage prostitution compromise the Act's objectives and that amendment of the Act is required.
5. We submit that the Act should be amended to:
 - a. provide a formal means for those engaged in street and underage prostitution to be supported to leave the industry by automatic referral to support services; and
 - b. criminalise purchasers of street prostitution and add to the penalties available against purchasers of underage prostitution.
6. Maxim Institute believes that this approach would be appropriate for all forms of prostitution. However, we expect that it is unlikely that the Committee would recommend these kinds of changes to the regime that applies to brothels, and so we have confined this submission to the issues of street and underage prostitution as they appear to raise particular issues of risk and harm.
7. We submit that as street and underage prostitution compromise the Act's objectives to the greatest extent, it is justifiable to treat them differently in law from prostitution in brothels. We submit that the law should treat them differently by amending the Act in the ways we have suggested.

OVERVIEW

8. This submission addresses the following issues:
 - a. the objectives of the Act, and the way that street and underage prostitution compromise them;
 - b. the harm done by involvement in prostitution, and particularly street and underage prostitution, to those involved and to the community;

- c. the evidence about the numbers involved with street and underage prostitution; and
- d. ways that the harm done by street and underage prostitution could be reduced.

ACT'S OBJECTIVES

9. The objectives of the Act are:¹

to decriminalise prostitution ... and to create a framework that:

- a. safeguards the human rights of sex workers and protects them from exploitation;
 - b. promotes the welfare and occupational health and safety of sex workers;
 - c. is conducive to public health;
 - d. prohibits the use in prostitution of persons under 18 years of age
10. Maxim Institute submits that there is an inherent contradiction in the Act's objectives, because all prostitution potentially compromises these objectives. However, the risks are highest with street and underage prostitution, which therefore compromise the Act's objectives to the greatest extent.
11. The next section of this submission sets out the risks associated with prostitution, and street and underage prostitution in particular. It demonstrates risks and harm that unquestionably compromise the Act's objectives of safeguarding human rights, protecting from exploitation, promoting welfare, health and safety and being conducive to public health. In relation to the last objective, prohibition of underage involvement, it seems that the Act's prohibition is not particularly effective. The evidence discloses that many who are involved in prostitution started out very young, and that there is still a significant and possibly growing problem with underage prostitution.

THE HARM DONE BY PROSTITUTION

12. A number of studies have been conducted which demonstrate the real and substantial risks to welfare, health and safety that those engaged in prostitution face. There appear to be particular risks for street and underage prostitutes. Significantly, the risk of underage involvement is highest in street prostitution.

Harm done by prostitution in general

13. Plumridge and Abel (2001) found that most of the sex workers in their study, whether indoor or street workers, "had had some violent or adverse experience in sex work in the course of their sex work career, with 83% of participants reporting one or more adverse or violent event."²
14. Another New Zealand study, though small and therefore limited in its findings, was considered to support:³
- the literature conclusion that the early experiences of those who get involved in underage commercial sexual activity are likely to be of such a disturbing nature that a high rate of PTSD [post-traumatic stress disorder] could be expected.
15. The author of a literature review carried out for the Committee stated that "the stresses associated with prostitution may promote drug use and/or dissociation as a means of managing the job." The "impacts associated with sex work" include "health costs, including increased vulnerability to rape and physical violence" and "the long-term emotional impact of years of distancing and dissociation in order to limit the intrusion of clients into the woman's personal, private sphere."⁴
16. Saphira (2004) conducted research into suicidal ideation of those engaged in commercial sexual activity.⁵ Interviews and questionnaires were completed with three groups of respondents: those who "became involved in commercial sexual activity under 16 years, 16 and 17 years old, and 18 years and over."

17. The study concluded:⁶

Current research suggests suicidal ideation occurs in about 29% of females and 17% of males in New Zealand. In this study 35% of sex workers reported suicidal ideation. There was a correlation between the age at which they began commercial sexual activity and the reporting of suicidal thoughts. The younger they began having sex for money, the higher the number of respondents who reported suicidal thoughts. Nearly half (48%) of those who began commercial sexual activity before the age of sixteen experienced suicidal ideation. This is clouded by the high numbers who had experienced childhood sexual assault which is a known contributing factor in suicidal ideation. In addition, early involvement in commercial sexual activity is exploitative and may have similar effects to childhood sexual abuse. The method of gathering information may have lowered the suicidal ideation figures.

18. Although the author stated that there were limitations to the findings, due to the methodology of the study, she concluded that “[t]he findings of this study support the literature” on the subject.⁷ It seems reasonably certain, therefore, that involvement in prostitution at any age increases the risk of suicidal ideation.

19. On the subject of the harm associated with prostitution, Saphira (2004) states that:⁸

In New Zealand, young people who become involved in commercial sexual activity under the age of 18 years are engaged in an illegal and secretive activity (Prostitution Reform Act 2003 Sections 20-23). It is an activity that involves considerable risk of violence, “emotional and psychological damage, introduction to drugs, self harm and suicide, pregnancy, making connections with criminals and social isolation” as well as risks to physical health (Fitzgerald, 1997).

20. It should also be noted that those engaged in prostitution tend to have come from very disadvantaged backgrounds. Engagement in prostitution, therefore, inflicts more harm on those who have already suffered. For example, one New Zealand study found that the families that female prostitutes had come from were described by those women “as having more interpersonal difficulties” and high rates of parental separation (although almost half of those in the sample did grow up with both parents). The women also described their parents’ relationship with them as “less caring” and they were significantly more likely than women in a control sample “to have experienced penetrative childhood sexual abuse.” They had also “experienced high rates of physical abuse.” They were also more likely to have left home and school early, “with subsequent early pregnancy, lower qualifications and reduced work opportunities.”⁹

Harm done by street and underage prostitution

21. The risks associated with street prostitution appear to be particularly high.¹⁰ In a New Zealand study that set out to “Assess differences in personal circumstances, risk exposure and risk-taking among female sex workers in different sectors of the New Zealand sex industry,” the authors found evidence of “segmentation.” In other words, they found that “street work is a different career-track to indoor work,” with higher risk factors associated with street work.¹¹

22. The study found that “street workers were more likely to have had less education than non street workers,” that “significantly more street workers ... cited drugs [as a current use of money] than indoor workers,” that street workers were more likely to use drugs at work and “were more likely than indoor workers to state they did so because drugs help ‘to get through work’.” In addition, “[s]treet workers had generally experienced more and more severe violence, harassment and adversity and were more likely to have had money stolen by a client, been physically assaulted, held somewhere against their will, been subjected to verbal abuse, and were more likely to have been raped and forced to have unprotected sex.”

23. It was also found that “Street workers tended to have started sex work at a younger age. Nearly two-thirds (62%) of street workers had been under 18 years old when they started work, whereas a fifth (20%) of indoor workers had been under this age.” Of the participants in that study, 12 were under 18 at the time of the study, with nine of those working on the streets.¹²

24. In fact, it seems that the risk of underage involvement in prostitution is highest for street prostitution. As one study has noted:¹³

Underage young people involved in commercial sexual activity are far less likely to work in a brothel situation (it is illegal to be employed in a brothel under the age of 18 years old). They mainly work on the street in the more dimly lit areas near where other prostitutes work. This means the young workers get harassed by older workers and may be threatened and forced to pay protection money (Personal Communication, Te Aronga Hou Inaianei. ... With the continued stress of the dangers on the street there is no opportunity to heal previous abuse (Briere, 1998).

25. Underage involvement in prostitution is associated with significant risks, such as the risk of:

- a. “earlier onset of alcohol and drug use and heavier consumption of alcohol and drugs;”¹⁴
- b. “higher rates of PTSD [post-traumatic stress disorder] than average;”¹⁵
- c. suicidal ideation;¹⁶
- d. “assault, rape, death” and sexually transmitted infections;¹⁷
- e. “making connections with criminals;”¹⁸ and
- f. social isolation.¹⁹

26. More generally, “There are numerous hazards in undertaking sex work, including rape, assault, robbery, abduction, clients demanding their money back after sex, refusing to drive the worker back to the street, or refusing to wear condoms.”²⁰

27. Another study notes various risk factors that can cause a young person’s involvement in prostitution and that can result from it, described by the study as “a cycle of abuse and disempowerment that young people might enter at any point and are then vulnerable to other factors in the cycle.” Most common risk factors were “sexual abuse histories, ... family breakdown/disconnection, ... drug use, ... and homelessness.”²¹

28. As many sex workers, and especially street workers, were underage when they commenced prostitution,²² the risks attached to underage involvement are likely to have a current or continuing effect on a significant number of those engaged in prostitution at any one time.

Harm done to the community

29. The conduct of prostitution harms not only those involved, but also their community. Recognition of this harm was a significant factor in the attempt by the Manukau City Council to have a law passed that would have criminalised street soliciting in their area. In support of this attempt, the Council:²³

identified the following problems in relation to the continued presence of street prostitution in Manukau City:

1. Street workers soliciting make people feel unsafe and creates a general public nuisance.
2. ... a loss of pride in communities affected by street prostitution.
3. Street prostitution and soliciting attracts an undesirable element
4. General Safety issues for sex workers and the public generally associated with street prostitution.
5. ... illicit drugs and substance abuse, and the litter and debris associated with illicit drugs and substance abuse.
6. ... offensive rubbish including used condoms.

7. The possible association of gangs and criminal behaviour with prostitution; and intimidating behaviour in areas where street workers are present.
 8. Children see this behaviour and there is public concern that this behaviour may become normalised and hence may lead to increased under age prostitution or other harm to children ...
30. In relation to gang involvement, Coppedge notes that “there are some women who are prostituted by gangs, who are under their control.”²⁴ This is consistent with research conducted by Police, which revealed connections between prostitution and organised crime.²⁵ It goes without saying that the presence of organised crime in a community tends not to be beneficial for it.
 31. One study referred to above has identified participation in prostitution as part of “a cycle of abuse and disempowerment.”²⁶ If this is correct, then it suggests that involvement in prostitution can feed into the other factors identified as part of the cycle. All of these have a more or less direct effect on the community.

EVIDENCE ABOUT NUMBERS INVOLVED IN STREET PROSTITUTION

32. Many claims have been made about the impact of the Act on the size of the sex industry on the streets. Before considering the various claims, we note that there are a number of obvious difficulties with collecting evidence about the number of those involved in street prostitution, not least that they may not want to be counted, particularly if they are underage.
33. Caution must therefore be exercised in relying too heavily on the statistics. In any case, given the harm done by involvement in street and underage prostitution, we submit that a change to the law dealing with such prostitution is justified.

Christchurch School of Medicine

34. The Christchurch School of Medicine publicised research that it claimed showed that “[t]he number of sex workers on the street since the passing of the Prostitution Reform Act has not increased.”²⁷ The study was conducted by “headcounts on several nights over a two week period” and suggested that “the number of sex workers on the street is much the same as before the Act came into force.”
35. A major weakness of this research appears to be the short period of time over which data was collected. We submit that data must be collected over a much longer period of time in order to be confident that there is actually a trend. Otherwise, there is a risk that the research is actually taking place during a short-term fluctuation in street worker numbers, and that this is skewing the results.
36. The short data collection period may also not have been long enough to include all street workers. Apparently the study found 77 street workers in Christchurch, “although outreach workers knew of a further 23 workers who were not seen during this time.”²⁸ Street workers who were not known to outreach workers and who were not observed on the street during the two week period therefore would not have been recorded. If data had been collected over a longer period, it is more likely that a higher proportion of street workers would have been recorded, producing more accurate and reliable data.

Streetwork

37. An organisation that has had contact with street workers over a sustained period of time is Streetwork, an outreach service that operates in Auckland. “Streetwork provides a confidential support service for those involved in prostitution, with the goal of encouraging them to exit from prostitution, and be empowered in the choices they make in their everyday life.” Among other services, Streetwork operates a drop-in centre and provides hot drinks and supper on the streets.²⁹

38. In the course of preparing this submission, we spoke to Streetreach, which was established in New Zealand seven years ago. They advised us that since decriminalisation in 2003, Streetreach have seen an increase in the number of street workers. Before decriminalisation, they said, Streetreach might make contact with up to 30 clients a night, but now a night could involve contact with up to 95 clients.
39. We were advised that the numbers that Streetreach sees vary depending on the time of year. For example, in winter months, the number of prostitutes out on the streets decreases as weather conditions worsen. Before the passage of the Act, a winter night for Streetreach could involve contact with 8 or 9 sex workers. Streetreach advised us that on one very cold night in the first half of June 2007, they had contact with 52 clients. This figure did not include any underage prostitutes due to Police presence on the streets that night.
40. Although no underage prostitutes were seen on that particular night, Streetreach said they have contact with significant numbers of underage clients.

Manukau City Council

41. The Manukau City Council produced a report on street prostitution in July 2005. The report noted that “The number of street prostitutes is considered to have grown” and that “Estimates indicate that the number of street workers in Manukau City may have quadrupled since June 2003...”³⁰

Comments on the evidence

42. There are difficulties with any studies of the number of street workers. For instance, before the passage of the Act in 2003, prostitutes were not likely to have wanted to be counted as they were engaged in an illegal activity. Even after the passing of the Act, the stigma associated with prostitution is likely to mean that many prostitutes do not want to make themselves available to be counted.
43. In these circumstances, it may be difficult to come up with anything more than an estimate of the numbers involved. Varying methodologies are used to collect statistics on the numbers engaged in street prostitution, making comparisons between studies difficult.
44. The evidence of Streetreach from their sustained contact with street workers strongly supports their claims that the number of people engaged in street prostitution has increased under the Act. A similar view, that “the number of under-age street workers has gone up since decriminalisation,” has been expressed by Mama Tere Strickland of Te Aronga Hou Inaianei.³¹
45. In addition, “Police in Auckland and Christchurch believe that the number of street workers has increased since the passage of the PRA and that there are more under-age girls involved,” and the New Zealand Prostitutes Collective “finds that the numbers of sex workers in Wellington has stayed about the same since the law was passed, but that numbers have gone up in Christchurch.”³²
46. However, even if we accept the most conservative estimate of street worker numbers, that of the Christchurch School of Medicine, there are as many prostitutes working on the streets now as there were before the passage of the Act. They do not appear to have moved indoors to the brothels regulated by the Act. The Act’s failure to reduce the number of those engaged in street prostitution should be sufficient justification for changes to the Act even without taking into account its apparent tendency to increase that number.
47. In addition, whether numbers have gone up or stayed the same since the passage of the Act, the advice provided to us by Streetreach makes it clear that there is a significant problem with the involvement of underage girls in street prostitution. This is supported by

Police evidence collected during 2003 and 2004, which identified 210 underage prostitutes at that time, the majority of which were working on the streets.³³

48. Streetreach also stated to us that they feel that street prostitution is becoming increasingly violent and dangerous. Since decriminalisation, they have observed a lot more drug use and a lot more men involved in “minding” the sex workers, and are also aware of gang involvement in “minding.” They consider that the Act “is not working” for their clients.

WAYS THAT THE HARM DONE BY STREET AND UNDERAGE PROSTITUTION COULD BE REDUCED

49. Having shown that street and underage prostitution pose particular risks, we submit that it is justifiable to amend the Act to criminalise purchasers of street prostitution, to extend the range of penalties available against purchasers of underage prostitution, and to create formal mechanisms that will assist those engaged in street and underage prostitution to leave the industry.
50. In this section of our submission, we consider some of the relevant evidence about why men and women engage in prostitution. It is important to consider this evidence in order to understand what measures might actually be effective. We then consider the amendments outlined above, with particular reference to Britain’s new Criminal Justice and Immigration Reform Bill, and legal and other issues that they raise.

Evidence about engagement in prostitution

51. As one study notes, the idea that prostitutes have exercised some sort of totally free choice to engage in prostitution “overrides the realities of family breakdown, child abuse, life on the street, life with an addiction and personal damage experienced by young people who chose to enter the sex trade.”³⁴ The presence of these multiple damaging factors illustrates the complexity that assistance out of prostitution must deal with.
52. A number of studies have looked at reasons why prostitutes become involved and/or find it hard to leave. These include:
- a. “alienation from their normal supports of care and nurturing;”³⁵
 - b. a tendency not “to seek assistance from clinics and services that are set up to assist people involved in the sex trade;”³⁶
 - c. lack of knowledge of “other social services that might be able to assist them and arrange counselling and support;”³⁷
 - d. money,³⁸ which may mean need for money “as an economic survival option,” to pay for “drugs, alcohol or gambling” or to “finance particular goals, such as overseas travel, house-buying, or education;”³⁹
 - e. sexual abuse;⁴⁰ and
 - f. inability to plan ahead, for example to save money to assist with an exit strategy from the sex trade.⁴¹
53. While some of these factors are drawn from studies which relate particularly to young people’s involvement in prostitution, it seems likely that they will apply to older prostitutes as well, especially given the young age at which many will have become involved.
54. It is clearly not easy to leave the sex industry. In one study, “Four fifths of the respondents had tried to stop having sex for money but only about one fifth succeeded ...”⁴² In another, only a quarter had been able to leave, although nearly two thirds had tried.⁴³
55. No doubt this is because “sex work participation is connected with other high risk activities and circumstances” which must be addressed simultaneously.⁴⁴ “[I]t is one part of a cycle of difficulties that ranges from family breakdown to economic deprivation.”⁴⁵
56. So what should be done? Saphira and Herbert (2004) state that:⁴⁶

There is a need to provide better support and health care for young people in distressing home environments and for those who have been subjected to sexual and physical violence. Enhancing family attachments may decrease early sexual behaviour and drug and alcohol abuse and allow healing to occur. Multi-agency networking and an increase in law enforcement against those who use young people for commercial sexual activity would reduce this exploitation of young people.

57. In another study, the same authors suggest that:⁴⁷

It is unlikely that 9 – 5 courses with fortnightly payments will offer sufficient incentive to enable people to leave commercial sexual activity. Courses that begin later in the day, utilise the former hours of work and give rewards at shorter intervals may engage a person leaving commercial sexual activities.

58. Clearly, there is a need for creative and intelligent solutions to complex problems. To discuss one such solution, we spoke to Mari Day, who was instrumental in establishing Awhina Teina. She told us that Awhina Teina is a “safe house” for girls at risk of, or involved in, prostitution and who are between 12 and 17 years old. Awhina Teina aims to provide these girls with alternative opportunities and with connections so that they have options other than prostitution and the ability to take those options.⁴⁸

59. Awhina Teina is therefore a model of an alternative way to approach those involved in prostitution. More specifically, Mari Day advised us that strategies that Awhina Teina uses to attempt to connect girls to the community so that they have pathways other than prostitution include:

- a. registering them with dentists and doctors and making appointments for them;
- b. getting the girls back into education;
- c. helping them to develop healthy contact with family members, where possible;
- d. assisting the girls to identify and develop their passions and their gifts;
- e. organising counselling, for example for addictions; and
- f. building strong communities around the girls.

60. Mari Day advised us that, in her experience, the main reasons that girls such as those in Awhina Teina get involved with prostitution are:

- a. a history of sex abuse, to the extent that the abuse has become normalised;
- b. family breakdown and a lack of family support;
- c. a family history of prostitution;
- d. time in care leading to contact with other girls who teach the “tricks of the trade”;
- e. a learned sense of being worthless and of no value;
- f. poverty;
- g. lack of education; and
- h. homelessness.

61. She noted that prostitution is often a symptom of underlying problems, such as those listed above, and said that many of the girls seen by Awhina Teina have a wide variety of contributing factors to their engagement in prostitution.

62. We turn now to consider changes to the way that the Act treats street and underage prostitution. These changes may help to address some of the underlying factors associated with involvement in street and underage prostitution.

Amendments to the Act

63. We submit that the Committee should recommend amending the Act to achieve two things:

- a. automatic referral of those involved in underage or street prostitution to support services (which may require the creation of such services or the provision of more funding to existing services);
 - b. criminalisation of the purchasers of underage or street prostitution.
64. Clearly, the Act itself envisages that it is appropriate to have some restrictions on prostitution (as in the case of brothels). We submit that the further restrictions we are suggesting are justified by reference to the risks associated with underage and street prostitution.
65. If our submission that these amendments are appropriate for all street prostitution is not accepted, we submit that they should be accepted in relation to underage prostitution. As purchasers of underage prostitution are already criminalised (even if they do not seem to be prosecuted all that often),⁴⁹ this effectively means that the main change would be that underage prostitutes would be automatically referred to support services in the way outlined below.
66. We suspect that the Police would welcome this change in light of Police comments on the existing law, that “enforcement is an option, but in terms of stopping under-age prostitution it’s a pretty blunt instrument. We would prefer to work with other agencies to help them so they (young sex workers) don’t feel they have to be engaged in under-age prostitution.”⁵⁰ A referral regime may be just the tool that Police are looking for.

Automatic referral

67. Referral would have to be to programs that take into account the complex interconnected factors that are associated with entry into prostitution and the need for connection and the creation of alternate pathways. Awhina Teina may be an example in this regard, and a need for more emergency housing for under 18 year olds has also been highlighted.⁵¹ For older men and women, or for those for whom residential support services are not appropriate, different models may need to be considered, such as that provided by Streetreach.
68. A referral scheme along these lines is being considered overseas. Only a fortnight ago, the British Government signalled its intention to provide a referral regime when it introduced the Criminal Justice and Immigration Bill.⁵² This Bill will allow courts:⁵³

to make an ‘order’ instead of imposing a fine or any other penalty. The order will require the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to promote rehabilitation, by assisting the offender to address the causes of their involvement in prostitution and to find ways of ending that involvement. ... A person is only suitable to act as a supervisor, if he or she appears to the court to have the appropriate qualifications or experience for helping the offender to make the best use of the meetings.

69. If someone who is subject to an order does not comply with it, he or she can be summonsed or arrested and brought before a court. If:⁵⁴

it is proved to the court’s satisfaction that the offender has failed to comply with the order without a reasonable excuse ... the court must revoke the order ... and may deal with the offender for the breach. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. This includes making another order ...

70. We submit that the intention of this Bill is good, and that it may provide a suitable model for New Zealand to follow. It provides for referral to support services for rehabilitative purposes, as we have recommended, and although referral is not stated to be automatic, in practice it may well be. The ability to return to court for breach of an order represents an appropriate incentive to comply with the order and engage with the rehabilitative process. It is also appropriate recognition of the fact that court orders must be obeyed,

especially as the possibility of punishment for breach is tempered by the possibility of another order being made instead.

71. While it seems unlikely that the three meetings prescribed by the Bill will be adequate for rehabilitation, much will depend on what follows from those meetings and what other support services the supervisor is able to connect their client to. It would not be difficult to make a similar provision in our law and to create a more detailed or lengthy regime of meetings and subsequent referrals. This does not detract from the potential value of the Bill as a model for our use, and the refinement of the Bill as it passes through the UK Parliament will no doubt be instructive.

Criminalising purchasers

72. In a literature review prepared for the Committee, it was said that “Prostitution primarily exists because of men’s demands and expectations regarding the purchasing of sexual services. Without a willing client group, the industry would quickly cease to exist.”⁵⁵
73. Targeting the purchasers of underage and street prostitution is an approach that has been taken in at least one other jurisdiction. The Committee will no doubt be familiar with “the Swedish model.” Criminalising purchasers of prostitution is fundamentally just; it recognises the part they play in creating an environment that encourages vulnerable men and women into a destructive practice. Not only that, but it seems likely to reduce the demand that creates that environment in the first place.
74. We submit that purchasers of underage and street prostitution should be subject to a regime that includes the possibility of fines, imprisonment and confiscation of property, as per Coppedge’s suggestion that “offenders face jail sentences and forfeiture of any items used to commit the crime, including the car the offender is in when he or she contracts for commercial sex ...”⁵⁶ We also consider that for some purchasers, there may be a need to be able to refer them to rehabilitation, and so we submit that the regime should include provision for such a referral as well.
75. While the Act already provides for purchasers of underage prostitution to be sentenced to up to seven years’ imprisonment, we submit that the addition of the penalty of confiscation of property used in the offence and the referral to rehabilitation will be valuable additions to the Act.
76. It may be argued that criminalising purchasers will only drive street prostitution underground, increasing the risks for both the prostitute and the purchaser. Similar fears were expressed that underage prostitutes would be driven underground by the passage of the Act and thus exposed to greater danger, but Coppedge concludes that this “does not appear to have materialised, as outreach workers can still get information on health and safety to under-age workers.”⁵⁷
77. The symbolic value and deterrence factor of criminalising purchasers will be high. It will signify that it is not right to use the most vulnerable members of our society for your own ends. It will back this up by creating sanctions for those who attempt to ignore this signal. For this to be truly effective, it will also be important to ensure that these provisions are enforced. As at mid-2006, Coppedge notes that “No offenders have been prosecuted in Auckland for contracting with a person under 18 for commercial sexual services.”⁵⁸

Bill of Rights Act issues

78. We consider that our proposed amendments to the Act are justifiable limitations of the rights contained in the New Zealand Bill of Rights Act 1990 (“**Bill of Rights Act**”).
79. The amendments may be considered to infringe the right to freedom of expression,⁵⁹ freedom of peaceful assembly,⁶⁰ freedom of association,⁶¹ and freedom of movement.⁶²

80. However, these rights are not absolute; they may be subject “to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”⁶³

81. We submit that the approach taken by the Ministry of Justice in its advice to the Attorney-General on the Manukau City Council (Control of Street Prostitution) Bill is correct. This advice considered issues raised by that Bill under the Bill of Rights Act, including the fact that the Bill was inconsistent with the right to freedom of expression.⁶⁴

82. The advice noted that:⁶⁵

The section 5 inquiry [into justifiable limits] is essentially two-fold: whether the provision serves an important and significant objective; and whether there is a rational and proportionate connection between the provision and the objective.

83. The primary objective of the amendments we have proposed is to reduce the harm done by street and underage prostitution by assisting those involved in such prostitution to engage with support services that will assist them to exit the industry and to deter those who would exploit them by imposing criminal sanctions on them. Given the unacceptably high risks posed by street and underage prostitution, we submit that this is an important and significant objective.

84. Further, we submit that there is a rational and proportionate connection between the amendments we have proposed and this objective. It is rational because the referral regime we propose is for referrals to support services that deal with the complex, interconnected factors that are associated with involvement in prostitution. It is also rational because the sanctions for purchasers will protect those most at risk from involvement in prostitution by deterring those who would exploit them.

85. It is proportionate because we do not recommend a punitive approach to those involved in prostitution, except to the minimal extent needed to ensure compliance with the referral regime, but rather one that seeks to rehabilitate. It is also proportionate because the sanctions against purchasers that we recommend are reflective of the harm done by their conduct and of the vulnerability of those they exploit.

86. In summary, we submit that the limitations to rights that arise out of our proposals are fully justified in accordance with the Bill of Rights Act.

CONCLUSION

87. Maxim Institute is deeply concerned about the harm that all forms of prostitution do to vulnerable men and women who engage in them. We submit that the Committee’s review must recommend changes to the Act that will alleviate the very worst of this harm.

88. Thank you again for the opportunity to provide this submission.

Yours faithfully

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ENDNOTES

- ¹ Prostitution Reform Act 2003, section 3.
- ² Plumridge, L. and Abel, G. "A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers," *Australian and New Zealand Journal of Public Health* 25, no. 1 (2001): 82.
- ³ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 8 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ⁴ Jordan, J. *The Sex Industry in New Zealand: A literature review* (Ministry of Justice, 2005), 13 [cited 5 July 2007]; available from <http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/sex-industry-in-nz.pdf>.
- ⁵ Saphira, M. *Suicidal Ideation in Commercial Sexual Activity* (ECPAT NZ, 2004) [cited 6 July 2007]; available at <http://www.ecpat.org.nz/pdf/suicidal%20ideation%20in%20csa.pdf>.
- ⁶ Saphira, M. *Suicidal Ideation in Commercial Sexual Activity* (ECPAT NZ, 2004), 6 [cited 6 July 2007]; available at <http://www.ecpat.org.nz/pdf/suicidal%20ideation%20in%20csa.pdf>.
- ⁷ Saphira, M. *Suicidal Ideation in Commercial Sexual Activity* (ECPAT NZ, 2004), 6 [cited 6 July 2007]; available at <http://www.ecpat.org.nz/pdf/suicidal%20ideation%20in%20csa.pdf>.
- ⁸ Saphira, M. *Suicidal Ideation in Commercial Sexual Activity* (ECPAT NZ, 2004), 2 [cited 6 July 2007]; available at <http://www.ecpat.org.nz/pdf/suicidal%20ideation%20in%20csa.pdf>. The author cites Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (Melbourne: ECPAT Australia, 1997) 25 [cited 3 July 2007]; available from http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ⁹ Potter, K. Martin, J. and Romans, S. "Early developmental experiences of female sex workers: a comparative study," *Australian and New Zealand Journal of Psychiatry* 33 (1999): 935-940.
- ¹⁰ Jordan, J. *The Sex Industry in New Zealand: A literature review* (Ministry of Justice, 2005), 56 [cited 5 July 2007]; available from <http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/sex-industry-in-nz.pdf>.
- ¹¹ Plumridge, L. and Abel, G. "A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers," *Australian and New Zealand Journal of Public Health* 25, no. 1 (2001): 78-83.
- ¹² Plumridge, L. and Abel, G. "A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers," *Australian and New Zealand Journal of Public Health* 25, no. 1 (2001): 80.
- ¹³ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 2-3 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ¹⁴ Saphira, M. and Glover, M. *Alcohol and Drug Use Among People Who Began Commercial Sexual Activity Before 18 years old* (ECPAT NZ, 2004) 7 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/alcohol%20and%20drug.pdf>; Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 25 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ¹⁵ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 2-3 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ¹⁶ Saphira, M. *Suicidal Ideation in Commercial Sexual Activity* (ECPAT NZ, 2004) [cited 6 July 2007]; available at <http://www.ecpat.org.nz/pdf/suicidal%20ideation%20in%20csa.pdf>; Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 25 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ¹⁷ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 25 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ¹⁸ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 25, 30 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ¹⁹ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 25 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ²⁰ Saphira, M. and Oliver, P. "A review of literature on child prostitution" *Social Policy Journal of New Zealand* 19 (2002): 141-163 [cited 5 July 2007]; available at <http://www.msd.govt.nz/publications/journal/19-december-2002/19-pages141-163.html>.
- ²¹ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 20 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ²² Saphira, M. and Oliver, P. "A review of literature on child prostitution" *Social Policy Journal of New Zealand* 19 (2002): 141-163 [cited 5 July 2007]; available at <http://www.msd.govt.nz/publications/journal/19-december-2002/19-pages141-163.html>; Plumridge, L. and Abel, G. "A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers," *Australian and New Zealand Journal of Public Health* 25, no. 1 (2001): 78-83; Jordan, J. *The Sex Industry in New Zealand: A literature review* (Ministry of Justice, 2005), 15 [cited 5 July 2007]; available from <http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/sex-industry-in-nz.pdf>.
- ²³ Manukau City Council, *Report of Manukau City Council on Street Prostitution Control* (Manukau City Council, 2005), 5 [cited 6 July 2007]; available at http://www.manukau.govt.nz/uploadedFiles/manukau.govt.nz/Publications/Plans_&Policies/mcc-report-on-street-prostitution-aug-2005.pdf.
- ²⁴ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 53 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf. The author cites a Ministry of Justice briefing paper on the Prostitution Reform Bill and New Zealand Police *The Vice Scene in New Zealand* (2001).
- ²⁵ Prostitution Law Review Committee, *The Nature and Extent of the Sex Industry in New Zealand: An estimation* (Wellington: Ministry of Justice, 2005), 37 [cited 6 July 2007]; available at <http://www.justice.govt.nz/pubs/reports/2005/nature-extent-sex-industry-in-nz-estimation/nature-extent-sex-industry.pdf>.
- ²⁶ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 20 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.

- ²⁷ Christchurch School of Medicine media release, *Big Increase of Sex Workers a Myth: Latest Research*, 12 September 2006 [cited 28 May 2007]; available at http://www.chmeds.ac.nz/newsevents/media_release/sexworkersmyth.htm.
- ²⁸ Christchurch School of Medicine media release, *Big Increase of Sex Workers a Myth: Latest Research*, 12 September 2006 [cited 28 May 2007]; available at http://www.chmeds.ac.nz/newsevents/media_release/sexworkersmyth.htm. Last accessed 28 May 2007.
- ²⁹ For more details, see http://www.lifecentretrust.org.nz/detail1.asp?page_id=164.
- ³⁰ Manukau City Council, *Report of Manukau City Council on Street Prostitution Control* (Manukau City Council, 2005), 1 [cited 6 July 2007]; available at http://www.manukau.govt.nz/uploadedFiles/manukau.govt.nz/Publications/Plans_&Policies/mcc-report-on-street-prostitution-aug-2005.pdf.
- ³¹ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 44 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ³² Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 50-51 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ³³ Prostitution Law Review Committee, *The Nature and Extent of the Sex Industry in New Zealand: An estimation* (Wellington: Ministry of Justice, 2005), 33 [cited 6 July 2007]; available at <http://www.justice.govt.nz/pubs/reports/2005/nature-extent-sex-industry-in-nz-estimation/nature-extent-sex-industry.pdf>.
- ³⁴ Saphira, M. and Herbert, A. *Exiting Commercial Sexual Activity* (ECPAT NZ, 2004) 1 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/exiting.pdf>.
- ³⁵ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 9 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ³⁶ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 9 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ³⁷ ECPAT NZ, *Post traumatic Stress Disorder and Under Age Sex Work* (ECPAT NZ, 2003), 9 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/ptsd.pdf>.
- ³⁸ Saphira, M. and Herbert, A. *The Involvement of Children in Commercial Sexual Activity* (ECPAT NZ, 2004), 7-8 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/The%20Involvement%20of%20Children%20in%20Commercial%20Sexual%20Activity.PDF>.
- ³⁹ Jordan, J. *The Sex Industry in New Zealand: A literature review* (Ministry of Justice, 2005), 39 [cited 5 July 2007]; available from <http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/sex-industry-in-nz.pdf>.
- ⁴⁰ Saphira, M. and Herbert, A. *Exiting Commercial Sexual Activity* (ECPAT NZ, 2004) 3 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/exiting.pdf>.
- ⁴¹ Saphira, M. and Herbert, A. *Exiting Commercial Sexual Activity* (ECPAT NZ, 2004) 4 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/exiting.pdf>.
- ⁴² Saphira, M. and Herbert, A. *The Involvement of Children in Commercial Sexual Activity* (ECPAT NZ, 2004), 7-8 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/The%20Involvement%20of%20Children%20in%20Commercial%20Sexual%20Activity.PDF>.
- ⁴³ Saphira, M. and Herbert, A. *Exiting Commercial Sexual Activity* (ECPAT NZ, 2004) 6 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/exiting.pdf>.
- ⁴⁴ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 3 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ⁴⁵ Fitzgerald, P. *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne* (ECPAT Australia, 1997), 7 [cited 5 July 2007]; available at http://www.childwise.net/uploads/Bridging_the_Gap.pdf.
- ⁴⁶ Saphira, M. and Herbert, A. *The Involvement of Children in Commercial Sexual Activity* (ECPAT NZ, 2004), 10 [cited 3 July 2007]; available from <http://www.ecpat.org.nz/pdf/The%20Involvement%20of%20Children%20in%20Commercial%20Sexual%20Activity.PDF>.
- ⁴⁷ Saphira, M. and Herbert, A. *Exiting Commercial Sexual Activity* (ECPAT NZ, 2004) 6 [cited 4 July 2007]; available at <http://www.ecpat.org.nz/pdf/exiting.pdf>.
- ⁴⁸ For more detail, see Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 43 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ⁴⁹ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 57 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ⁵⁰ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 41 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ⁵¹ See Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 42-43 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ⁵² The text of the Bill is available at <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/2007130.pdf>.
- ⁵³ Explanatory Notes, Criminal Justice and Immigration Bill (2007), 66-67 [cited 5 July 2007]; available at <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/en/2007130en.pdf>.
- ⁵⁴ Explanatory Notes, Criminal Justice and Immigration Bill (2007), 66-67 [cited 5 July 2007]; available at <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/en/2007130en.pdf>.
- ⁵⁵ Jordan, J. *The Sex Industry in New Zealand: A literature review* (Ministry of Justice, 2005), 51 [cited 5 July 2007]; available from <http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/sex-industry-in-nz.pdf>.
- ⁵⁶ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 67 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.
- ⁵⁷ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 52 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.

⁵⁸ Coppedge, S. *People Trafficking: An International Crisis Fought at the Local Level* (Fulbright New Zealand, 2006), 57 [cited 6 July 2007]; available at http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf.

⁵⁹ New Zealand Bill of Rights Act 1990, section 14.

⁶⁰ New Zealand Bill of Rights Act 1990, section 16.

⁶¹ New Zealand Bill of Rights Act 1990, section 17.

⁶² New Zealand Bill of Rights Act 1990, section 18.

⁶³ New Zealand Bill of Rights Act 1990, section 5.

⁶⁴ Ministry of Justice, Advice to Attorney-General on the Manukau City Council (Control of Street Prostitution) Bill, 6 December 2005 [cited 6 July 2007]; available at <http://www.courts.govt.nz/bill-of-rights/bill-list-2005/m-bill/manukau-city-council-control-street-prostitution.html>.

⁶⁵ Ministry of Justice, Advice to Attorney-General on the Manukau City Council (Control of Street Prostitution) Bill, 6 December 2005, para 11 [cited 6 July 2007]; available at <http://www.courts.govt.nz/bill-of-rights/bill-list-2005/m-bill/manukau-city-council-control-street-prostitution.html>.