

Hon Kiri Allan
Minister of Justice

Proactive release – Government Response to the Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003

Date of issue: 15 May 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No information has been withheld,

No.	Document	Comments
1.	Government Response to the Report of the Education and Workforce Committee on the Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003 <i>Cabinet paper</i> Ministry of Justice 2 March 2023	Released in full
	Government Response to Report of the Education and Workforce Committee on Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act <i>Government Response</i> Ministry of Justice 2 March 2023	Released in full
2.	Government Response to the Petition of Pandora Black – Repeal Section 19 of the Prostitution Reform Act <i>Cabinet Minute [LEG-23-MIN-0002]</i> Cabinet Office 16 February 2023	Released in full

In Confidence

Office of the Minister of Justice
Chair, Cabinet Legislation Committee

Government Response to the Report of the Education and Workforce Committee on the Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003

Proposal

- 1 This paper seeks approval of the Government response to the Education and Workforce Committee report (the Report) on the petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003 (the Petition).

Background

- 2 The Petition, submitted by sex worker and activist Pandora Black, requests that the House of Representatives pass legislation to repeal section 19 of the Prostitution Reform Act 2003 (the Act) and apply the same rights and legal protections to migrant sex workers who are on a work visa as given to citizens.
- 3 The Act decriminalised prostitution for most people in New Zealand. 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.
- 4 Section 19 of the Act provides that while in New Zealand on a temporary entry class visa, a person may not provide commercial sexual services; or operate or invest in a business of prostitution. Doing so may make a person liable for deportation under the Immigration Act 2009. Section 19 was added by the then Minister of Immigration during the Committee of the Whole House stage of the Bill's legislative process, as there was concern that decriminalisation could be exploited by overseas traffickers to bring people into the country to work in the sex industry.
- 5 The petitioner asserts that repealing section 19 would not increase abuse or trafficking. Rather she considers that the existence of section 19 allows exploitation to occur because migrant sex workers feel unable to report abuse due to fear of arrest or deportation.

The Education and Workforce Committee findings

- 6 The Committee's report was presented to the House on 18 November 2022. The Government response to the Committee's recommendation must be presented to the House by 6 March 2023.

- 7 The Committee found that the issue raised in the petition warrants meaningful consideration, noting the concerns of the petitioner and other evidence before it.
- 8 The Aotearoa New Zealand Sex Workers' Collective (ANZSWC) submission noted that the New Zealand Human Rights Commission (HRC) and US State Department have identified section 19 as an enabling factor for human trafficking and abuse of migrant sex workers. In its submission to the Committee's inquiry into migrant exploitation in February 2022, the HRC stated that there is an "urgent need to reconsider the Prostitution Reform Act to mitigate the exploitation taking place in this space".
- 9 The Committee also stated that repealing section 19 of the Act would have many implications for the immigration system that would need to be fully worked through. The Committee notes the Ministry of Business Innovation and Employment's submission that repealing section 19 would only make sex work legal, in the first instance, for people who hold open work visas and that it is unclear whether the Government would grant Accredited Employer Work Visas for commercial sexual services.
- 10 The Committee recommended that the Government, in its next report on the implementation of the the United Nations Convention on the Elimination of Discrimination against Women (CEDAW), closely consider the petition and the evidence outlined in its report.
- 11 The Green Party recorded a differing view, noting that it would repeal section 19 of the Act.

Recommendation from the United Nations Committee on the Elimination of Discrimination against Women

- 12 In 2018, the United Nations Committee on the Elimination of Discrimination against Women expressed concerns about section 19 of the Act as it "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."
- 13 It recommended that the Government amend section 19 of the Act, with a view to reducing its negative impact on migrant women.
- 14 The Government is required to address this recommendation in its next report on CEDAW due in July 2023. The draft report was approved by Cabinet for public consultation on 19 December 2022 [CAB 22-MIN-0589 refers]. Submissions close on 23 March 2023.
- 15 Currently the draft CEDAW report, which is out for public consultation, notes the Petitioner's request, the recommendation of the Education and Workforce Committee, and that the Government response is due by 6 March 2023.

- 16 If Cabinet approves the draft Government response, the CEDAW report will be updated prior to submission to include the below summary of the response:
- The Education and Workforce Committee's report highlights concerns around the exploitation of migrant sex workers and submissions which note that section 19 may operate as barrier to reporting exploitation and abuse and seeking medical support.
 - This Government considers this issue warrants meaningful consideration.
 - The Government will consider the matters and evidence raised in the Committee's report and identify pathways for progressing the work necessary to address exploitation and abuse of migrant sex workers.
 - This is a complex area, involving immigration law as well as the Act. It will require careful consideration, in consultation with stakeholders, and will need to be balanced against other priorities.

Government response

- 17 I propose presenting the attached response to the Committee's report (Attachment 1). The response outlines that:
- The Committee's report highlights concern around the exploitation of migrant sex workers.
 - The Government agrees with the Committee that this issue warrants meaningful consideration.
 - There are complexities in addressing this issue effectively beyond the removal of section 19 of the Act.
 - The Government will consider the matters raised in the Committee's report and identify pathways for progressing the work necessary to address exploitation and abuse of migrant sex workers. This work will need to be balanced against other priorities.
 - The Government will reflect this approach in the final version of New Zealand's next report to the United Nations (UN) on CEDAW.

Timing of the Government response

- 18 The Government response must be presented to the House by 6 March 2023.

Impact Analysis

- 19 The regulatory impact analysis requirements do not apply to this paper as it does not propose any amendments to legislation.

Compliance

- 20 Te Tiriti o Waitangi, disability issues and population group considerations will be integral to the development of policy proposals and the drafting of any legislation. Further work is needed to identify the impacts on the main population group affected, namely migrant women and girls.

Human Rights

- 21 New Zealand is responsible for promoting and protecting women's rights and human rights under several international human rights treaties. Article 11 of CEDAW requires that countries take all appropriate measures to eliminate discrimination against women in the field of employment, including:
- (a) the right to work as an inalienable right of all human beings ...
 - (c) the right to free choice of profession and employment, and ...
 - (f) the right to protection of health and to safety in working conditions."
- 22 New Zealand already has other laws in place targeting trafficking and exploitation. People trafficking is prohibited under the Crimes Act 1961 and migrant exploitation is criminalised in the Immigration Act 2009.
- 23 Work to review section 19 and related immigration laws has potential to improve the human rights of migrant sex workers (and their partners and dependants) as identified by the UN Committee, and to improve New Zealand's ability to meet our international human rights obligations and our reputation as a gender equality and rights champion. Human rights implications would be integral to the development of policy proposals and the drafting of any legislation.

Consultation

- 24 The following agencies have been consulted on this paper: Ministry of Business, Innovation and Employment, Ministry for Women, Ministry of Foreign Affairs and Trade, New Zealand Police, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Te Puni Kōkiri, Te Arawhiti, Whaikaha – Ministry of Disabled People, Department of Corrections, Ministry of Social Development, Department of Internal Affairs. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

- 25 There are no financial implications arising from the recommendations in this paper.

Proactive Release

- 26 I intend to proactively release this Cabinet paper and related Minutes, on the Ministry of Justice website, subject to any redactions justified in accordance with the Official Information Act 1982.

Recommendations

27 The Minister of Justice recommends that the Cabinet Legislation Committee:

- 1 **note** that on 18 November 2022, the Education and Workforce Committee presented its report to the House entitled “Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003”;
- 2 **note** that the Education and Workforce Committee considers that the issue raised by the Petition warrants meaningful consideration; and recommends that the Government, in responding to the UN Committee on the Elimination of Discrimination Against Women, closely consider the Petition and the evidence outlined in its report;
- 3 **note** that, in 2018, the United Nations Committee on the Elimination of Discrimination against Women expressed concerns about Section 19 of the Prostitution Reform Act 2003, which “may have a negative impact on migrant women”;
- 4 **note** that the proposed Government response agrees that the issue raised in the Petition warrants meaningful consideration, and that the Government will identify pathways for progressing the work necessary to address exploitation of migrant sex workers. This work will need to be balanced against other priorities;
- 5 **approve** the Government response, attached to this submission, to the recommendation in the Report of the Education and Workforce Committee entitled “Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003”;
- 6 **note** that the Government response must be presented to the House by 6 March 2023;
- 7 **invite** the Minister of Justice to present the Government response to the House of Representatives as soon as is practicable;
- 8 **invite** the Minister of Justice to write to the petitioner enclosing a copy of the Government response to the recommendation of the Education and Workforce Committee on the Petition, after the response has been presented to the House.

Authorised for lodgement

Hon Kiri Allan
Minister of Justice

**Government Response to
Report of the Education and Workforce Committee
on
Petition of Pandora Black: Repeal Section 19 of the Prostitution
Reform Act 2003**

Presented to the House of Representatives

Introduction

The Government has carefully considered the recommendation of the Education and Workforce Committee (the Committee) in its report on the Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003 (the Report).

The Committee's report was presented to the House on 18 November 2022. The Government responds to the Report in accordance with Standing Order 256.

The Petition

The Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003 (the Petition), is a petition submitted by Pandora Black, a sex worker and activist.

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

The Act decriminalised prostitution for most people in New Zealand. 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 provides that while in New Zealand on a temporary entry class visa a person may not provide commercial sexual services or operate or invest in a New Zealand business of prostitution. Doing so may make a person liable for deportation under the Immigration Act 2009.

The petitioner asserts that repealing section 19 would not increase abuse or trafficking. Rather she considers that the existence of section 19 allows exploitation to occur because migrant sex workers feel unable to report abuse due to fear of arrest or deportation. She said that, at the time the bill was being considered, sex workers opposed section 19 as counterproductive and harmful.

The Education and Workforce Committee's report

The Committee found that the issue raised in the Petition warrants meaningful consideration, citing the evidence before it.

The Aotearoa New Zealand Sex Workers' Collective (NZPC) submission noted that the New Zealand Human Rights Commission (HRC) and US State Department have identified section 19 as an enabling factor for human trafficking and abuse of migrant sex workers. In its submission to the Committee's inquiry into migrant exploitation in February 2022, the HRC stated that there is an "urgent need to reconsider the Prostitution Reform Act to mitigate the exploitation taking place in this space".

The Committee also states that repealing section 19 of the Act would have many implications for the immigration system that would need to be fully worked through. The Committee notes the Ministry of Business Innovation and Employment's submission that repealing section 19 would only make sex work legal for people who

hold open work visas in the first instance. It is unclear whether the Government would grant Accredited Employer Work Visas for commercial sexual services.

The Committee urges 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.

The Committee's Recommendation

The Committee recommends that the Government, in its next report to the United Nations Committee on the Elimination of Discrimination Against Women, closely consider the petition and the evidence outlined in its report.

Recommendation of the United Nations Committee on the Elimination of Discrimination Against Women

In 2018, the United Nations Committee on the Elimination of Discrimination against Women expressed concerns about section 19 of the Act which “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”. It recommended that the Government amend section 19 of the Act, with a view to reducing its negative impact on migrant women.

In 2023, the Government will address this recommendation in its Ninth Periodic Report on the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

Government response

The Government thanks both Pandora Black for her advocacy for sex workers and human rights, and the Committee for their careful consideration of the matters raised in the petition.

It acknowledges the Committee's recommendation to ‘closely consider the petition and the evidence outlined in this report in responding to the recommendation of the United Nations Committee on the Elimination of Discrimination Against Women to amend section 19 of the Act with a view to reducing its negative impact on migrant women’.

The Committee's report highlights concern around the exploitation of migrant sex workers and submissions which note that section 19 may operate as barrier to reporting exploitation and abuse and seeking medical support.

The Government agrees with the Committee that this issue warrants meaningful consideration. The Government will consider the matters and evidence raised in the Committee's report and identify pathways for progressing the work necessary to address exploitation and abuse of migrant sex workers.

This is a complex area, involving immigration law as well as the Act. It will require careful consideration, in consultation with stakeholders, and will need to be balanced against other priorities.

The Government will reflect this approach in its next report on the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in 2023.



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Government Response to the Petition of Pandora Black - Repeal Section 19 of the Prostitution Reform Act

Portfolio Justice

On 16 February 2023, the Cabinet Legislation Committee:

- 1 **noted** that on 18 November 2022, the Education and Workforce Committee presented its report to the House entitled “Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003”;
- 2 **noted** that the Education and Workforce Committee considers that the issue raised by the Petition warrants meaningful consideration; and recommends that the government, in responding to the UN Committee on the Elimination of Discrimination Against Women, closely consider the Petition and the evidence outlined in its report;
- 3 **noted** that, in 2018, the United Nations Committee on the Elimination of Discrimination against Women expressed concerns about Section 19 of the Prostitution Reform Act 2003, which “may have a negative impact on migrant women”;
- 4 **noted** that the proposed government response agrees that the issue raised in the Petition warrants meaningful consideration, and that the government will identify pathways for progressing the work necessary to address exploitation of migrant sex workers, and that this work will need to be balanced against other priorities;
- 5 **approved** the government response, attached to the submission under LEG-23-SUB-0002, to the recommendation in the Report of the Education and Workforce Committee entitled “Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003”;
- 6 **noted** that the government response must be presented to the House by 6 March 2023;
- 7 **invited** the Minister of Justice to present the government response to the House of Representatives as soon as is practicable;
- 8 **invited** the Minister of Justice to write to the petitioner enclosing a copy of the government response to the recommendation of the Education and Workforce Committee on the Petition, after the response has been presented to the House.

Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon David Parker
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Willow-Jean Prime
Hon Rino Tirikatene
Tangi Utikere, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG