19th September 2019

Submission on

Abortion Legislation Bill 2019

Women's Health Action **supports** the passage of this Bill, and we would like to make an oral submission.

Tena koe,

Women's Health Action greatly welcomes the opportunity to provide a written submission on the Abortion Legislation Bill. We consider the introduction of this Bill to be a watershed moment in sexual and reproductive health rights and justice in Aotearoa New Zealand. We commend the current government for introducing this Bill and demonstrating its commitment to health rights and equity for New Zealand women[1]. The following submission provides an introduction and background on our organisation, an overview of our key points, and a discussion on why we support the Law Commission's Model A and do not support the 20-week statutory test.

[1], Women's Health Action, acknowledges that not all people who will become pregnant and who may seek an abortion will identify as women, and not all women can or will become pregnant. We encourage the use of gender diverse language and support the use of the term' pregnant person' in addition to or instead of pregnant woman in abortion policies, guidelines, and legislation.

Introduction

About our organisation

Women's Health Action (WHA) is a charitable trust in its 34th year of operation. Formerly Fertility Action, WHA was founded in 1984 by women's health activists Phillida Bunkle and Sandra Coney. Fertility Action had its beginnings in reproductive health and rights and came to national prominence with our key role in exposing the 'Unfortunate Experiment' at National Women's Hospital which resulted in the landmark Cartwright Inquiry and subsequent 'Cartwright Report' in 1987/1988. Our team work with consumers (service users), whānau, hapū, iwi, health professionals and other agencies/providers (including Ministries and DHBs) across the health, social development, education, and justice systems/sectors.

We aim to reduce inequalities, draw attention to the social determinants of health, and take an assets-based approach to health promotion and disease prevention. We have special interests in maternal and child health (including breastfeeding); body image (including weight and size-based discrimination); sexual and reproductive justice; and screening. We approach health within a holistic framework of the whole of women's lives recognising Taha tinana, Taha wairua, Taha whānau, Tahahinengaro.

We believe abortion should be treated as an essential women's health service and emphasise the importance of equity of access, timeliness, choice of abortion method, and reducing abortion stigma. We have been involved with providing consumer perspectives on abortion services in national and regional contexts including, most recently, the Abortion Supervisory Committee's review of the 'Standards of care for women requesting abortion in Aotearoa New Zealand.'

Women's Health Action believes:

- Abortion is an essential women's health service and should be managed under health regulations.
- Abortion should not be a crime in New Zealand.

- Abortion services should be part of a comprehensive sexual and reproductive health strategy that includes age appropriate sexuality education, access to a range of contraceptive devices, and access to emergency contraception.
- It is a woman's choice to decide not to continue a pregnancy.
- Women have a right to safe, legal, free abortion services that are accessible to where they live.
- Access to information on all legally available abortion services is every women's right under the Code of Health and Disability Services Consumer Rights.
- Women have a right to information and support so that they are able to make an informed decision about the abortion service that is best suited to their needs and situation.

Pathway to decriminalisation of abortion in New Zealand

Our organisation has long called for the decriminalisation of abortion in New Zealand. We view abortion as both a fundamental human rights issue as well as a core women's health service, with one in four women accessing an abortion in their lifetime. Research has consistently demonstrated a connection between the legislation governing abortion and issues related to abortion access and timeliness, and the perpetuation of abortion stigma (e.g., Silva, McNeil, & Ashton, 2011). Evidence is clear that where abortion is treated as the essential women's health issue that it is supported with appropriate health policies and guidelines, access to and the timeliness of abortions is improved, and the stigma associated with abortion is reduced, resulting in better health outcomes for women with unwanted pregnancy (Kumar et al., 2009; Norris et al. 2011). Vice versa, regressive abortion legislation that criminalises this basic health service creates additional costs and barriers to accessing abortion leading to reduced/delayed and inequitable access to abortions and greater stigma attached to the procedure with a range of negative sequalae.

We applaud the thorough work undertaken by the Law Commission in preparing its' report 'Alternative approaches to abortion law reform' including extensive consultation to which we contributed a submission. We urge the Committee to utilise this resource in its deliberations.

Our View on the Bill

Women's Health Action supports the passage of this Bill. In particular, we strongly support:

- The intent to decriminalise abortion
- The provision of abortions like any other health service, governed with appropriate health regulations to ensure safety, quality, and competency
- Removing any statutory test on the health practitioner for a person who is not more than 20 weeks pregnant
- Recognition of the importance of health consumer informed choice and consent, including the optional provision of counselling
- Self-referral to an abortion service provider
- Allowing for qualified health practitioners who are not doctors to provide abortion care and the provision of abortion services in settings regulated under health legislation
- Clarifying the obligations for practitioners who conscientiously object to abortion
- The provision for the Minister of Health to establish safe areas around abortion services
- The collection of national data on abortion services by the Ministry of Health. We would like to see this data made available

We also hold the following reservations about the Bill:

- We do not support the Bill's provision for a statutory test over 20 weeks and support the Law Commission's Model A as the basis of abortion legislation reform.
- We believe the harassment regulations should apply to all abortion services not just at the discretion of the Minister of Health on a case-by-case basis.
- We are of the view that the conscientious objection requirements still favour health practitioners and disadvantage pregnant people. We believe health practitioners who conscientiously object should have to, at a minimum, provide a referral to another provider. We support the requirement that the Ministry of Health hold a list of abortion providers and ensure this list is accessible to pregnant people seeking an abortion. However, we support a further requirement that health providers who conscientiously object to be required to make this explicit within their practices so

that pregnant people have the best opportunity possible to avoid an unsupportive practitioner.

- We agree with ALRANZ and Family Planning that the language of the Bill be amended to acknowledge gender diversity replacing the term pregnant woman with pregnant person/people.

Why do we not support the 20-week statutory test?

Women's Health Action does not support the 20-week statutory test. It is our view that retaining a statutory test is a missed opportunity to contemporise abortion legislation and creates an unhelpful loophole in an otherwise progressive and health-centred piece of legislation. If abortion is to be treated like any other health service then it is the pregnant person who should be able to make an informed choice and give their informed consent to an abortion without having to negotiate arbitrary timeframes imposed by legislation nor require the consent of her doctor/health practitioner.

We remind the Committee that relatively few abortions are performed over 20 weeks pregnancy (ASC, 2018) and that the circumstances surrounding termination of pregnancy beyond 20 weeks are often complex, including a diagnosis of fetal abnormality. We are strongly of the view that a 20-week statutory test needlessly contributes potential complication and stress with negative impacts on pregnant people and their family/whānau at an already challenging time. We wonder whether retaining a statutory test for later term abortions is more about punishing women/pregnant people than it is about improving health and well-being. We note that most pregnant people will chose to have an fetal anatomy scan between 18-20 weeks where fetal abnormalities may be identified which makes the 20-week statutory test particularly harsh and unrealistic.

We also note that in other jurisdictions similar to New Zealand that have retained a statutory test, this test is more commonly applied between 24-28 weeks gestation. For example, the state of Victoria, Australia, decriminalised abortion in 2008 but retained a 24-week statutory test (Keogh et al., 2017). In assessing the outcomes of abortion decriminalisation in Victoria,

Keogh et al. observe that there are enduring issues with accessing a publicly funded abortion after 20 weeks of pregnancy that are not helped by legislative barriers, even when these barriers are placed at a later gestation. Retaining a statutory test perpetuates the stigma of later term abortions and those who perform them, reducing the workforce of willing health providers, and the readiness of health services to accept later term abortions as a necessary health service. This, in turn, reduces access and timeliness to later term abortions (Keogh et al., 2017).

Conclusion

Women's Health Action supports the passage of the Bill. However, we call on the committee to recommend the removal of a 20-week statutory test in order to place abortion decisions firmly in the hands of women/pregnant people and their families/whānau.

Whilst we applaud the progress of this Bill we also note that the learnings from other similar jurisdictions tell us that the decriminalisation of abortion alone will not ensure quality, safe, timely, accessible and culturally competent abortion services. In order to realise the vision of this Bill to reframe abortion as a health issue and make it a women' s/pregnant person's choice, legislation will need to be followed by policy and practice changes that enforce the intent of the law and ensure the delivery of the services the community needs and deserves. Quality, safe, timely, accessible and culturally competent abortion services will require government investment, community and consumer engagement and responsiveness, and will need to be part of a wider commitment to sexual and reproductive healthcare overseen by a national strategy.

References

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