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S18.19

Submission to the Law Commission on Abortion Law Reform :

the criminal aspects of abortion law, the grounds for abortion and the process for receiving abortion services

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 245 organisations affiliated at either national level or to one of our 19 branches. In addition, about 350 people are individual members. Collectively our reach is over 350,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
- 0.2. This submission has been prepared by the NCWNZ Parliamentary Watch Committee after consultation with the membership of NCWNZ. Responses were received from branches, affiliated organisations and their branches, and individual members.

1. NCWNZ Policy

- 1.1. From as early as 1932, NCWNZ has had resolutions on abortion. In 1937 abortion¹ was seen as a social evil and that fathers or potential fathers played a part in the decision-making. More recently, in 2014², NCWNZ was seeking a review of abortion law and practice with a view to simplifying it and ensuring a woman's right to choose.
- 1.2. In the 2012 Concluding Observations³ the CEDAW Monitoring Committee raised concerns about New Zealand's "convoluted abortion laws", recommending the Government:

35(a) To review the abortion law and practice with a view to simplifying it and to ensure women's autonomy to choose;

¹ NCWNZ. 2012. 115 years of resolution. <http://www.ncwnz.org.nz/wp-content/uploads/2013/06/115-years-Register-everything-2.pdf>. 9.1.3

² NCWNZ. Appendix "D" Resolutions of National Meetings 2011-2017. <https://www.ncwnz.org.nz/wp-content/uploads/2018/02/Appendix-D-Resolutions-2011-2017.pdf>. 12.2.1.5

³ United Nations. Committee on the Elimination of Discrimination against Women. Fifty-second session 9-27 July 2012. Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand.

35(b) To prevent women from having to resort to unsafe abortions and remove punitive provisions imposed on women who undergo an abortion.

2. Abortion as a health issue

- 2.1. The majority of responses from the membership supported abortion being treated as a health issue rather than a criminal one as it is seen as a social issue. The current criminal status means that it is seen instead as an illegal act and/or a social issue, rather than a health issue. Sexual and reproductive rights are a health issue as stated in CEDAW Article 11⁴.
- 2.2. Likewise the outcome document of the International Conference on Population and Development to which New Zealand has subscribed over many years recognises a woman's right to choose the number and spacing of her children.
- 2.3. Physically, mentally, and emotionally it is a health issue. To continue to consider abortion as a criminal act is to illustrate the lack of concern for the well-being of individuals, families and the different communities that make up New Zealand as a country. Resources need to go into ensuring wellbeing, and preventing the need for abortion through the development of a national Sexual and Reproductive Health strategy, promised in 2001 but still not delivered. There needs to be provision of affordable, accessible, appropriate quality sexual and reproductive health services as part of primary care, which could also be provided by specialised community health services. Consent education and comprehensive sexual and reproductive health education programmes⁵ which tackle issues related to gender norms and stereotypes, relationships, coercion, sexual violence and informed consent and after care should be in all schools. All of these are health resources and require specialised competencies in clinical and public health. This is also mandated by the United Nations Convention on the Rights of the Child⁶, a legally binding Convention to which New Zealand is a signatory.
- 2.4. Medical advances mean that most abortions can be provided through community health care clinics. The introduction of the medical abortion pill means that this can be safely taken at home once women have received the necessary advice and support. These advances have been recognised by the World Health Organization⁷.
- 2.5. Abortion has a very low complication rate – it is safer than childbirth. The way to protect women from unsafe, illegal abortions is to make abortion legal. The earlier in a pregnancy that an abortion takes place, the safer it is for a woman's health and the less complicated for the abortion provider.

⁴ United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Article 11.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁵ NCWNZ. Appendix "D" Resolutions of National Meetings 2011-2017. <https://www.ncwnz.org.nz/wp-content/uploads/2018/02/Appendix-D-Resolutions-2011-2017.pdf>. 5.3.3.6

⁶ United Nations. 1989. Convention on the Rights of the Child.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁷ World Health Organization. 2012. Safe abortion: technical and policy guidance for health systems. 2nd ed.

http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=44E12A24A3518B9F132EAA46CD769160?sequence=1

- 2.6. Costs incurred from unsafe abortions include long-term complications of damage to reproductive organs, inflammatory disease and secondary infertility. In addition the associated shame and stigma that many women experience is exacerbated by the knowledge that this health intervention remains within the Crimes Act.
- 2.7. Most respondents stated that the revised legislation needs to prescribe when an abortion will be legal, with anything outside this needing to be treated as a criminal issue. Some identified unsafe abortions as a serious public health issue.
- 2.8. A few respondents referred to a recent blog posting by Margaret Sparrow⁸. There was both support and critical comment on the 16 reasons given to change the abortion law.
- 2.9. Women who cannot access safe abortion services resort to clandestine, risky procedures instead and then avoid seeking treatment for complications due to stigma and fear of punishment. Access to abortion services should make certain that there is no the need to seek unregistered providers and unsafe procedures which cause a public or clinical health problem.
- 2.10. An unintended pregnancy as a result of lack of contraception, inefficient or failed contraception or insufficient knowledge, sexual coercion, or an unintended sexual act, let alone rape or violence, is a major turning point in a woman's life whereas this pregnancy will often have a comparatively lesser impact on her male partner.
- 2.11. Reference was made to SDG 5⁹ to achieve gender equality and empower all women and girls. Gender inequality persists worldwide, depriving women and girls of their basic rights and opportunities. Achieving gender equality and the empowerment of women and girls requires more vigorous efforts, including legal frameworks, to counter deeply rooted gender-based discrimination that often results from patriarchal attitudes and related social norms. To fulfil the 2030 agenda, governments and civil society must accelerate actions to repeal laws that criminalize women who seek abortion or who in other ways exercise their sexual and reproductive rights.

3. Right to choose

- 3.1. Respondents supported the woman's right to choose. Women should be able to make informed choices about their own bodies without it being seen as a criminal action. Everybody has different life experience and respecting personal individual views is imperative.
- 3.2. Women commented that their body belongs to them and they have the right and responsibility to take care of it themselves and to make the decisions that will make their life a productive one for them as an individual and for the community.

⁸ Sparrow, M. 2018. Abortion is not a crime: 16 reasons to change the law. The Spinoff.

<https://thespinoff.co.nz/politics/07-09-2017/abortion-is-not-a-crime-16-reasons-to-change-the-law/>

⁹ United Nations. 2016. Sustainable Development Goal 5: Achieve gender equality and empower all women and girls.

<https://sustainabledevelopment.un.org/sdg5>

- 3.3. Counselling is seen as an important aspect of the decision to choose. It is also recognised by some that compulsory counselling is not necessarily effective in any setting, when compared with voluntary counselling.
- 3.4. There was some, but not unanimous – one respondent was vehemently against – support for the involvement of the father in the decision making process. It was agreed that, where the environment is positive, he should have the ability to influence the decision but not be the ultimate decision maker. To be involved, the father needed to be available in a timely fashion. While members thought the involvement of the father was important, there should not be a statutory requirement around involvement of fathers.
- 3.5. Reasons identified for abortion as a health issue included the use of abortion as contraception. This is not a widely held view. When abortion is seen as a health issue this could be addressed internationally evaluated health education programmes.
- 3.6. Economic and social issues can be an important factor, especially when contraception has failed.
- 3.7. For someone who has been raped, an abortion should be immediately available.
- 3.8. One aspect of abortion is that of parents choosing to have an abortion/termination when scans have shown that there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped. While this is not a criminal situation, it is a very sensitive issue amongst members of the disabled community who use the argument that some people just want a “perfect” baby. Those raising this believe that parents are entitled to make their own choice provided they are given all of the relevant information plus adequate counselling.
- 3.9. Whatever the circumstances, women do not take a termination of pregnancy decision lightly.

4. Barriers to accessing abortion services

- 4.1. Concerns were raised on access to abortion services, especially in small towns and rural areas, meaning women in these areas have the added stress of having to organise an abortion away from support. Safe abortion in a hospital is currently more possible for women in some parts of the country than others, where access to services requires a day’s journey to a different city where services are available, additional costs and explanations regarding absence from work or home, or where the only clinical help available is a doctor who has a conscientious objection. Nevertheless it was felt that health practitioners should be able to refuse to carry out an abortion. If this were to be the case, there must be a timely referral to someone who will.
- 4.2. There needs to be equal access to non-judgemental services.
- 4.3. Delay is the worst part of having an abortion in New Zealand because the system requires first getting a referral from a doctor and then the approval of two certifying consultants. This requires a woman to tell her story, which may be traumatic, at least three times – a process that does not contribute to mental wellbeing at a difficult time.

- 4.4. To put members of the medical profession in the position of being a judge and jury is a huge responsibility for them and not all people would accept that task which could be to the detriment of the pregnant woman. The law requires that abortions are performed by doctors but nurse practitioners and doctor assistants could oversee medical abortions and perform early surgical abortions successfully.

5. Abortion as a criminal issue

- 5.1. A small portion of responses, particularly from members holding strong religious beliefs, supported retaining abortion within the Crimes act because abortion involves the killing of a human person – the life of a separate but dependent person. These members stated that an unborn child has the right to life, the sanctity of life should be upheld, and that abortion is effectively manslaughter. Their underlying philosophy is respect for life and that favouring one life over another is unjust.
- 5.2. Others would argue that the status of a child is achieved only when there is the capacity for independent life, as a separate being.
- 5.3. There was a challenge to a women’s right to choose, querying who makes the choice on behalf of the unborn child.
- 5.4. Many identified as criminal the performing of abortions by unregistered abortionists on unlicensed premises (i.e. what is commonly referred to as back street abortion).
- 5.5. The comment was made that women are not made criminals by the current legislative guidelines and protections and that the existing safeguards are there to protect women from unlicensed procedures.

6. Conclusion

- 6.1. While the majority of responses favoured abortion being treated as a health issue, there is need for further debate on such matters as the criteria for abortion, the services provided to the woman, and the requirements for medical practitioners to be involved.
- 6.2. The values of self-determination and autonomy that are increasingly integral to our society have to be reflected in any legislation affecting an individual’s decisions on their health and well-being.
- 6.3. When considering health care and human rights, legislation covering abortion – the Crimes Act 1961 and the Contraception, Sterilisation and Abortion Act 1977 – is no longer fit for purpose.



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