

Alternate Report to the 70th CEDAW Pre-sessional working group

Submitted by Te Whāriki Takapou, the Abortion Law Reform Association of New Zealand (ALRANZ), and Family Planning New Zealand

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Introduction

1. Te Whāriki Takapou provides nationwide sexual and reproductive health promotion and research services. Formed in 1990 the Trust is governed and operated by Māori, for the benefit of Māori communities. The organisation aims to improve the sexual and reproductive health of Māori and reduce inequities. Te Whāriki Takapou has strong working relationships with Māori organisations, iwi, and 'mainstream' organisations in the health, education and research sectors.
2. ALRANZ is an Incorporated Society formed in February 1971 to seek reform of the law in New Zealand so that a woman may choose whether to continue a pregnancy or obtain an abortion. ALRANZ is a national advocacy organisation supporting sexual and reproductive health and rights (SRHR).
3. Family Planning is New Zealand's largest provider of sexual and reproductive health services and information. A non-government organisation, Family Planning operates 30 clinics as well as school and community-based services, accredited clinical courses and workshops for doctors, nurses, midwives and other clinicians working in sexual and reproductive health. Health promotion teams run professional training and education programmes in schools and the community. Family Planning New Zealand is committed to increasing health equity as a strategic priority. Family Planning is ECOSOC accredited.
4. This is a combined report, from the above organisations. The report serves as an alternate to the New Zealand government report to the Committee. This report focuses specifically on abortion. Te Whāriki Takapou, Family Planning and ALRANZ have a combined interest in advancing women's SRHR.

Abortion in New Zealand

5. In the year ended December 2016, 12,823 abortions were performed in New Zealand.¹ The number of abortions in New Zealand has decreased dramatically since a high of 18,511 in 2003. In 2016, the general abortion rate was 13.5 abortions per 1,000 women aged 15-44 years, the lowest rate in over 25 years. Women age 20-24 years had the highest abortion rate yet it is also declining. The greatest decline in abortion rates was among 15-19 year olds. In 2016 it was a record low of 9 per 1,000.
6. While abortion rates are decreasing, statistics also highlight that:

¹ Statistics New Zealand (2017) Abortion Statistics.

http://www.stats.govt.nz/browse_for_stats/health/abortion/AbortionStatistics_MRYeDec16.aspx

- only fifty-seven (57%) percent of abortions were performed before the 10th week of pregnancy².
 - 13% of abortions are medical abortions, illustrating that access to these services is slow, limited and/or not an option for women in certain regions³.
 - Māori women are second only to Asian women in the number of abortions by ethnicity ratio (188 induced abortions per 1000 known pregnancies in 2015, compared with 166 for European women)⁴. Higher pregnancy and STI rates indicate that timely access to no cost and low cost, culturally responsive contraceptive and reproductive health services is lacking for this group.
7. Information obtained from the Abortion Supervisory Committee (ASC) through a request under the Official Information Act 1982 shows that in 2015 and 2016 certifying consultants deemed abortions unjustified 516 times.⁵ This means these doctors did not believe the grounds for a legal abortion were met, and in their view, an abortion should not be approved. While it is possible for a woman receiving a denial to still have an abortion if a third certifying consultant subsequently deems the abortion justified, a denial by a certifying consultant creates significant stigma and barriers. No information has been provided about why the grounds for legal abortion were not met for these women.

Abortion law in New Zealand

8. The New Zealand government has failed to implement the CEDAW Committee's recommendations on reviewing - with a view to simplifying - the current abortion laws to ensure women's right to bodily autonomy, and removing punitive measures for abortion.⁶
9. In New Zealand, abortion is regulated primarily through criminal statute: (i) The Crimes Act 1961, and its amendments, which provide the legal grounds for abortion, and; (ii) the Contraception, Sterilisation and Abortion (CS&A) Act 1977, covering procedure and administration including the requirement that two certifying consultants approve each abortion.

Disparities in the law

10. This 40-year old legal framework for abortion denies women their human rights and the highest attainable standard of health. The aforementioned framework fails to recognize the Treaty of Waitangi right of Māori to rangatiratanga or self-determination of the reproductive health of Māori women and families. It also contributes to inequity in

² 2016 Abortion Statistics -

http://www.stats.govt.nz/browse_for_stats/health/abortion/AbortionStatistics_HOTPYeDec16.aspx

³ See ASC's 2015 report for induce abortion by procedure - [https://www.parliament.nz/resource/en-](https://www.parliament.nz/resource/en-NZ/51DBHOH_PAP72270_1/3419371d46570c287ca518df6b57e79a41f363a6)

[https://www.parliament.nz/resource/en-](https://www.parliament.nz/resource/en-NZ/51DBHOH_PAP72270_1/3419371d46570c287ca518df6b57e79a41f363a6)

⁵ Official Information Act (OIA) Request 2017

⁶ CEDAW/C/NZL/CO/7. Retrieved from

http://women.govt.nz/sites/public_files/CEDAW%20concluding%20observations%202012.pdf.

society and disavows the ability of pregnant people to make reproductive decisions that are free from punitive measures.

11. Change in abortion law is required to ensure New Zealand is fulfilling its obligations to the Treaty of Waitangi, CEDAW, and that all women and families are able to realise their rights.

12. Specifically, the current approach to abortion:

- Undermines the dignity and autonomy of women by denying them the right to manage their reproductive health; it also renders invisible the experiences of pregnancy by trans-men and gender non-conforming people.
- Rejects the Treaty of Waitangi right of Māori to rangatiratanga or self-determination of reproductive health.
- Excludes rape as a ground on which abortion can be approved.
- Is discriminatory and inequitable — only pregnant people are required to go through this legal process to obtain a health service.
- Creates an inequitable system: there is geographical variation in the availability of abortion services with women who live in rural communities particularly disadvantaged. The overly complex system, which requires multiple unnecessary visits to health care providers and ensuing costs, creates significant barriers for low income women. This has relevance for Māori communities with the gap between the national and Māori median personal income doubling between 2006 and 2013⁷.
- Fails to address the right of Māori to free and accessible Māori knowledge-informed, abortion services.
- Does not promote best practice in abortion care. The percentage of abortions performed before the 10th week has not improved in any significant way since 2008 and is low by international standards. In 2016 in New Zealand only 57% of abortions were performed before the 10th week as compared to 81% in the UK⁸.
- Provides a punitive context for addressing a health issue and perpetuates stigma due to the criminal context of the management of this health issue.
- Uses antiquated and highly offensive language such as “subnormal.”
- Wastes resources. Annually approximately \$4 million is spent on fees to certifying consultants to approve a woman’s abortion, with no evidence of improved health outcomes for women.
- Stifles innovation and the inclusion of new technologies. The laws were written primarily for surgical abortion performed by doctors. Home-based administration for early medical abortion medication, for example, is not possible because of the law.
- Perpetuates paternalism, prioritising the decision-making of two certifying consultants over the individual and/or family involved.
- Opens the door to legal challenges. As the law is outdated and convoluted, there is significant uncertainty around how it is applied in a modern context.

⁷ Statistics New Zealand (2013). *2013 Census QuickStats about income*. Retrieved 6 July 2017 from <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-income/personal-income-ethnic.aspx>

⁸ UK Department of Health (2017) *Abortion Statistics, England and Wales: 2016*.

13. When presenting its 2016 annual report to the Justice and Electoral Select Committee, ASC Chair Dame Linda Holloway said that the Committee had been involved in litigation continually since 2004, apart from an 18-month break. The outdated abortion laws create uncertainty and confusion leaving the ASC open to legal challenges on many fronts, and women at risk of losing access to abortion. Two cases are worth noting:
 - a. Right to Life sued the ASC in 2005 over how it interpreted the CS&A Act, including how it reviewed whether certifying consultants were lawfully granting women abortions. While the Supreme Court eventually dismissed the case, a 2008 High Court judge did question the legality of most abortions under the current law.
 - b. In 2015 Right to Life initiated a court challenge over the ASC granting a licence to Family Planning New Zealand to provide medication abortion at a clinic in Tauranga. The High Court found in favour of the ASC. However, the case highlighted the challenges for the ASC applying the current law to modern abortion care.
14. We would like to highlight that in 2016, the ASC again made recommendations to Parliament that abortion laws be reviewed. Since 1988, the ASC has repeatedly asked for a review of abortion laws. Listed below are two recent examples, including the 2016 recommendation:
 - a. In its 2016 Annual Report the ASC said, *"We believe there could be changes to parts of this legislation [CS&A 1977] that would maintain the integrity and purpose for which the Act was originally written (i.e. adequate access to abortion services, safety, and robust consultation processes), but would allow for improvements in providing healthcare services at an operational level and more accurately reflect modern language and processes."*
 - b. In its report for the year to December 2000 the ASC commented that: *"The Committee recommends that the Government carry out a comprehensive review of the Contraception, Sterilisation, and Abortion Act 1977. The Act is outdated in its language and content. Its procedures are too complex and are not being followed as the law intended. Its provision for providing legal, safe abortion are not being consistently applied throughout the country. The Act is demeaning to women in requiring a medical procedure to be considered under the Crimes Act. It is also misleading that 98.2% of abortions have to be granted under mental health provisions."* (pg. 5)
15. The New Zealand Government response to CEDAW that it "has no plans to review the law on abortion but the Ministry of Health (MOH) is currently developing a new sexual and reproductive health action plan that will review the availability of abortion services" (pg 68) does not address the fundamental concerns raised by the Committee's Concluding Observations. The maintenance of current abortion law in New Zealand is highly questionable in a modern democratic state working towards gender equality and health equity.

Conclusion

16. The call for a review of the abortion laws in New Zealand by the CEDAW Committee and the ASC, the very Committee that oversees the implementation of the law, has been ignored for too long.
17. The law must be changed to support women's right to health, gender equality, equitable access to health care and best practice in abortion care.
18. We respectfully ask that the Committee continue to press the government to:
 - a. Review, with a view to removing, the inclusion of abortion within the Crimes Act 1961, and to deal with it as an integrated component of a comprehensive sexual and reproductive health service.
 - b. Shift the oversight of abortion law, policy and services, to the Ministry of Health from the Ministry of Justice.
 - c. Fund research on abortion care, access, funding and stigma that aligns to the principles of the Treaty of Waitangi and with a view to improving health outcomes for all.

Thank you for the opportunity to comment.



Alison Green
Chief Executive
Te Whāriki Takapou



Jackie Edmond
Chief Executive
Family Planning



Terry Bellamak
President
ALRANZ

