

14 December 2020

Ken Orr
Secretary
Right to Life NZ Inc
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Tēnā koe Mr Orr,

**Response to your submission of recommended amendments to schedule 2 of the
Contraception, Sterilisation and Abortion Act 1977**

Thank you for your email of 2 November regarding suggested changes to the abortion notification form. We appreciate you taking the time to write, and for the thought you have put into your submission.

The Ministry of Health (the Ministry) is currently reviewing what data is collected about abortion, and what information needs to be collected in the future. It is the Ministry's view that information about health services should be collected for a purpose. It should not be collected if it cannot be used, whether or not it was collected under a previous legal framework.

Regarding several of your recommended amendments, information was previously collected because it was relevant to the statutory grounds for abortion at the time. Since the passing of the Abortion Legislation Act 2020 (the Act), the statutory grounds that were previously set out in the Crimes Act 1961 no longer apply. In some instances, this means that the Ministry does not have a use for the information you recommend collecting.

Our responses to each of your recommendations are below.

Reason for abortion

Prior to the passing of the Act, abortions were required to be authorised on one of the statutory grounds set out in the Crimes Act 1961. This meant that the statutory ground (reason for abortion) was information that was required to be collected. Under the new legislation, we do not require this information to be collected. The Ministry does not agree that collecting information about the reason for abortion is likely to improve health outcomes for women.

Foetal abnormality

Prior to the law changes, section 187A of the Crimes Act 1961 (the Crimes Act) permitted abortion up to 20 weeks gestation if there is a substantial risk that the child, if born, would be "so physically or mentally abnormal as to be seriously handicapped".

As you are aware, in 2018 the Law Commission reviewed New Zealand's abortion laws and made recommendations for legislative changes that would approach abortion as a health issue. In its briefing to the Minister of Justice, Hon. Andrew Little, the Law Commission recommended the repeal of section 187A.

The new legislation does not state statutory grounds for abortions before twenty weeks of pregnancy and requires health practitioners to consider a range of factors when deciding if an abortion would be clinically appropriate after twenty weeks. Consequently, it is possible that the abortion notification forms would not provide a full or accurate picture of the clinical assessment, if they were to state whether or not there was a diagnosis of fetal abnormality. The Ministry would not have a use for this information if it were to be collected.

Sexual violation

Prior to the law changes, pregnancy resulting from sexual intercourse between family members was a statutory ground for abortion before twenty weeks of pregnancy, under section 187A of the Crimes Act. In the same statute, pregnancy resulting from rape was a factor that could be considered but not an independent statutory ground for abortion. This meant that information about pregnancies resulting from sexual intercourse between family members was required to be collected for abortions occurring before twenty weeks. Neither rape nor pregnancy resulting from incest were grounds for an abortion after twenty weeks. This means that this information was not collected for later gestation abortions.

The Ministry's view is that it is important for health practitioners to conduct routine enquiries about family and sexual violence, and to support women with referrals to other agencies or the police if appropriate. However, health practitioners are not required to report this information to the Ministry. This is consistent across most health services. We do not believe it is likely that collecting information about sexual violation via the abortion notification forms would improve health outcomes, particularly as the forms do not identify individual women.

Counselling

Under the Act, women considering an abortion must be informed about the availability of counselling, but they are not required to have counselling.

As the abortion notification forms must be submitted to the Ministry within one month of the abortion taking place, data about post-abortion uptake of counselling collected via these forms would only capture counselling uptake for a maximum of one month after the abortion taking place. However, information about counselling may help inform the Ministry's reviews ensuring that there is timely and equitable access to counselling services, and provide useful information about the workforce providing counselling related to abortion. For these reasons, the Ministry is considering how best to collect information about counselling uptake for women who are considering an abortion.

Telehealth

Women having an early medical abortion in New Zealand are routinely dispensed these

medications in face to face consultations. The Ministry is considering how best to collect information about the method of dispensing, should this situation change in the future.

Reasons for 20 plus week abortions

The law for provision of abortion services from twenty weeks of pregnancy is set out in section 11 of the Act, which is provided below.

11 Provision of abortion services to women more than 20 weeks pregnant

(1) A qualified health practitioner may only provide abortion services to a woman who is more than 20 weeks pregnant if the health practitioner reasonably believes that the abortion is clinically appropriate in the circumstances.

(2) In considering whether the abortion is clinically appropriate in the circumstances, the qualified health practitioner must—

(a) consult at least 1 other qualified health practitioner; and

(b) have regard to—

(i) all relevant legal, professional, and ethical standards to which the qualified health practitioner is subject; and

(ii) the woman's—

(A) physical health; and

(B) mental health; and

(C) overall well-being; and

(iii) the gestational age of the fetus.

(3) Subsection (2) does not apply in a medical emergency.

The Ministry does not routinely collect information on clinical decisions made by doctors during the provision of health services, and we do not have a proposed use for this information. As these clinical decisions take into consideration a range of factors, the abortion notification form may not always be able to provide a full picture of the clinical assessment.

Requests for abortion declined

Prior to the law change, the Abortion Supervisory Committee (ASC) did not collect information on the numbers of requests for abortion that were ultimately denied. The ASC did collect information on the numbers of abortions that were declined by one of more certifying consultants. However, this data did not capture whether both certifying consultants declined to authorise the abortion, or whether one approved and one declined. In the latter instance, review by a third certifying consultant may have ultimately led to the abortion being authorised.

Under the current law, the role of certifying consultants has been abolished. However, individual health practitioners may still object to providing abortion services, whether because of conscientious objection at any gestation, or because (from twenty weeks) they believe the abortion is not clinically appropriate in the circumstances. The Act does not require notification where abortion was requested but not provided. However, the Ministry is considering how best to collect information about conscientious objection and other factors that can impact on timely and equitable access to abortion.

Abortions by Parent or Legal Guardian Notification

Under the previous legal framework, the ASC began collecting information in 2018 about whether young people under the age of 16 had notified a parent or legal guardian. The ASC cautioned that this information should be interpreted with care as it did not capture those women who had support of a trusted adult who is not specifically a parent or legal guardian. We note that it would also have not captured information about young people who notified a parent, guardian or trusted adult after the abortion had taken place, or whether this adult provided support to the young person.

The Ministry does not agree that this is useful information to collect, particularly as the abortion notification form does not identify individual women. However, the Ministry does believe it is important for health practitioners to consider whether additional support or referrals may be appropriate for any woman seeking an abortion, and this includes young women under the age of 16. This consideration can take place without formal notification.

Death of Woman

This information would already be captured by the abortion notification form, which requires health practitioners to report on any complication before discharge. This includes the open text form in the complications section of the form, "Other: please specify." This information was also captured by the abortion notification form prior to the law changes. However, the Ministry is not aware of any deaths of a woman being reported in New Zealand as a result of an abortion.

You can find further information on the Ministry of Health website (<http://www.health.govt.nz/>) by searching for the keyword 'abortion'. Thank you again for taking the time to write. We hope this information is useful, and we wish you well.

Nāku noa, nā



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