

ALRANZ

Abortion Law Reform Association New Zealand Inc.

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June 2013

**ALRANZ's submission for New Zealand's
second Universal Periodic Review**

**The Abortion Law Reform Association of New Zealand's (ALRANZ) submission for the
Universal Periodic Review
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1. ALRANZ believes that women's autonomy to decide not to continue a pregnancy should be recognised as an ethical imperative and that the right to bodily autonomy should be recognised in New Zealand domestic law. The way a country deals with abortion is symbolic of women's status and how it treats women generally. The current legislative situation is unacceptable and does not treat women as equal citizens.
2. ALRANZ, therefore, requests that the New Zealand Government review the current abortion laws with a view to removing it from the provisions of the Crimes Act 1961 and to deal with abortion as an integral component of a comprehensive sexual and reproductive health service.

Background

3. In New Zealand abortion is a criminal offence as determined by the Crimes Act 1961 and is regulated by a number of statutes. Specifically, the Crimes Act 1961 and amendments outline the grounds for abortions. These include:
 - *Serious danger to the life or to the physical or mental health of the mother*
 - *Risk that the child would be severely handicapped, physically or mentally*
 - *Pregnancy as a result of incest or unlawful sex with a guardian*
 - *Severe mental sub normality of the mother*

Factors which can be taken into account but which are not grounds in themselves:

- *Extremes of age*
- *Sexual violation*

After 20 weeks gestation the grounds are:

- *To save the life of the mother*
- *To prevent serious permanent injury to the physical or mental health of the mother*

4. Provisions in the Crimes Act 1961 are supplemented with a number of provisions set out in the Contraception, Sterilisation and Abortion Act, 1977 (CS&A 1977). The Crimes Act 1961 and CS&A 1977 set out the criteria and procedural elements for the lawful termination of a pregnancy.
5. The core provisions of the CS&A 1977 relate to:
 - Establishing an Abortion Supervisory Committee (ASC), consisting of three members who are appointed on a three year, rotating basis by Parliament

- The appointment of certifying consultants¹ and procedures for approving an abortion (Certifying consultants are paid for each abortion referral – two consultants must approve an abortion)
- Establishing a system of licensing institutions for abortion services

6. ALRANZ believes law reform is essential because the current system is:

Expensive	In the past decade fees to certifying consultants alone amounted to around \$37 million. This money could be better spent on preventing unplanned pregnancies.
Unrealistic	Current laws do not recognise the importance of socio-economic factors in making a decision. In reporting on abortion the ASC note that almost 99% are carried out on the grounds of mental health.
Punitive	Current laws ‘punish’ women for contraceptive “mistakes”. To err is human. Enforced pregnancy is not in the long term interests of society. Women want to give their children the best start in life. Punitive systems perpetuate stigma.
Complicated	Complicated procedures create delays in the system and this inevitably results in abortions being carried out later than is desirable for safety. The ASC states that it is best practice for abortions to be carried out before 9 weeks. In year to December 2011, only one third of abortions were carried out before 9 weeks and only 12% before 8 weeks. In Scotland almost 70% or abortions are carried out before 9 weeks. In the year to December 2011, only 6.3% of abortions were medical abortions.
Inequitable	The complexity of the certifying consultant process plays a role in the geographical variation in abortion services throughout New Zealand. Vulnerable and rural women are disadvantaged. In 2008, a study looked at the geographical distribution of first trimester abortion services in New Zealand. The study found that women who live in regions that do not offer local termination of pregnancy (TOP) services must travel on average 221km to access TOP services. This equates to an average return-trip distance of 442km.
Outdated	There have been many changes in society since 1977 resulting in a change of public attitudes towards abortion and other reproductive health issues. There have also been advances in medical technology. The laws were written primarily for surgical abortions. In 2002, it was necessary for the

¹ The Abortion Supervisory Committee appoints medical practitioners to the list as certifying consultants for a term of one year. at least one-half of the total number of appointees shall be practising obstetricians or gynaecologists.

ASC to seek a ruling from the High Court (under Section 28 of the CS&A Act) with respect to the procedures for carrying out early medical abortions.

Disempowering ALRANZ firmly believes that a woman should decide whether or not to continue her pregnancy, not parliamentarians with a conscience vote and not state-funded doctors. With respect to informed consent the law does not conform to The Code of Health and Disability Services Consumers' Rights.

Anti-democratic In a democracy there should be tolerance for different beliefs and anti-abortionists should not be allowed to impose their views on others, however sincerely these views are held.

In addition:

7. The law's gestational limits are problematic in cases of abortions on the grounds of fetal abnormalities. This ground extends up to 20 weeks but sometimes the diagnosis is not made until after 20 weeks and the abortion must be done on the grounds of serious permanent injury to the mental health of the woman. The ASC has pointed out this anomaly to Parliament more than once, but no action has been taken. This situation is distressing for the woman and her family.
8. Under the CS&A Act, self-abortion remains an offense subject to a penalty of up to \$200. Prior to 1977 the penalty was up to seven years imprisonment. In the 21st Century this should no longer be a crime and in practice no prosecutions are made. International literature supports this and highlights that the criminalization of abortion only serves to increase maternal mortality and morbidity.
9. The sections on conscientious objection (Section 174 Health Practitioners Competence Assurance Act, 2003 duty to refer) and the referral to a certifying consultant (Sections 32 and 33 CS&A 1977) are confusing. There are differing interpretations of the legal requirement of a doctor with a conscientious objection to refer a woman seeking an abortion onto another doctor. In March 2009, the Medical Council's draft guidelines were challenged by a group of eight anti-abortion doctors in the High Court. Rather than take the decision to the Appeal Court the Medical Council withdrew the guidelines, leaving health practitioners to determine the meaning of the law. There must be a balance between the right of health practitioners to freedom of beliefs and the patient's entitlement to appropriate care and treatment.

Progress to Date

10. In 2012, Family Planning New Zealand and ALRANZ made a joint submission to the CEDAW examining committee requesting that: *Abortion law be reviewed with a view to removing it from the provisions of the Crimes Act 1961 and dealt with as an integral component of a comprehensive sexual and reproductive health service.*

11. In response, the CEDAW Committee concluding observations of New Zealand's seventh periodical report (2012) requested that the New Zealand Government²: *Review the abortion law and practice with a view to simplifying it and to ensure women's autonomy to choose;*
12. The Government has not yet responded to the Committee's concluding observations. Abortion is socially and politically very contentious.

Conclusion

13. Given that the legislative structure is punitive, outdated, expensive and inequitable it is clearly not in the best interests of women, nor does it positively contribute to advancing their right to the highest standard of health.
14. Furthermore, the laws are discriminatory; only women are required to access abortion services. ALRANZ wants abortion removed from the Crimes Act 1961 and managed, funded and legislated for as a reproductive health service.

² CEDAW/C/NZL/CO/7 34. (a)