Abortion Legislation Bill

Oral Submission to the Abortion Legislation Committee – 24 September 2019

Joint submission by the New Zealand Catholic Bishops Conference & The Nathaniel Centre

1. Kia ora koutou. Thank you for the opportunity to speak to you today. We wish to focus on two points raised in our written submission – recognising the rights of the unborn child and the importance of robust processes to ensure full and informed consent.

2. As outlined in our written submission, Catholic teaching on abortion is premised on a belief that embryos and fetuses are entitled to be granted a place in the human family and to be treated with the same respect as persons, whatever their stage of development. This leads to the first of the two points we want to emphasise today; every pregnancy involves at least two lives – the mother and her unborn child – and therefore at least two sets of human rights. As the late Pā Henare Tate, Māori theologian and cultural commentator has written: *"The tapu of the child is already intrinsic tapu. The child has its own tapu i a ia, its own existence, as opposed to that of another, even of its mother ... This is because in the womb the child already has its own identity. It also has its own identity within and not just in relation to whānau, hapū and iwi."*

3. To hold that the fetus is not a 'legal person' ignores the fact that a genetically unique human life has begun which is neither that of the father or the mother. As Judge Sir John McGrath observed, in *Harrild v Director of Proceedings* (2003), a New Zealand case exploring whether ACC cover was available to a mother as a result of medical misadventure leading to the death of the fetus: "... the rule according legal rights only at birth is in modern times one founded on convenience. It does not rest on medical or moral principle." A fundamental flaw of the proposed new legal regime is that there will no longer be any requirement to take into consideration the rights of the unborn child. This is biologically, humanly and ethically dishonest. The current abortion law rightly recognises that every abortion decision involves the resolution of a tension between the rights of the mother and the rights of the unborn child.

4. Ignoring the existence of the unborn child is not only inconsistent with maintaining Section 182 of the Crimes Act, but it denies women the right to deal with abortion as the significant moral issue that it is, a point well-made by the feminist writer and abortion supporter Naomi Woolf whom we quote in our submission. Both the law and the processes surrounding an abortion must allow those who need it to grieve the loss involved. We do not serve women well by creating a legal narrative that abortion is only about the rights and choice of women. Every woman who chooses an abortion needs to know there is an emotional, spiritual and psychological space within which she can later deal with her decision as required. That space is, in the first instance, either created or destroyed by the language we use, including the narrative generated by the law governing abortions.

5. This leads to the second key point. Looking at abortion as a health issue, one of the factors that distinguishes abortion from other medical procedures is the very real risk of coercion. Choices are always made in a context and shaped by that context – in many cases limited by the context in which we find ourselves making that choice. Abortion is not an acceptable societal response to financial poverty or to a lack of physical or emotional support. Neither is it an acceptable solution to partner pressure or sexual violence. Those women whose decision to have an abortion is made from a place of 'no other choice' are much more likely to experience negative emotional and psychological consequences.

6. All of which underscores the importance of free and informed consent, without which there can be no exercise of true autonomy. Autonomy relies on good processes and supportive and honest relationships. The importance of such practices for abortion decisions has been flagged by the

Abortion Supervisory Committee itself in its 2017 Report to Parliament: "[T]he ASC recognises the merit in having a robust pathway in place, which requires certifying consultants to assess and certify patients and to ensure counselling is offered."

7. So, while the Explanatory note of the proposed law speaks of "additional layers of legislative requirements that are out of step with modern health law", as a problem, we are led to conclude the very opposite; precisely because of what is at stake, including the potential for negative consequences for the woman, it is entirely appropriate that the regulations surrounding abortion involve "additional layers" of requirements not attendant on other medical procedures. Indeed, we would go so far as to say that, it is the proposed Bill that is more out of step with modern health law, out of step because it substantially weakens the processes for obtaining informed consent and detecting coercion, processes that lead us to recommend that every abortion should necessarily involve a counselling session by someone independent of the abortion provider.

8. Finally, we wish to reinforce to the Committee our concern that the law as proposed (i) will allow abortions on the basis of gender (ii) will enable on demand late abortions because of what we see is an incredibly weak test and (iii) no longer explicitly prevents late abortions on the basis of fetal abnormality.