

1 March 2024

Stephan Hokke
fyi-request-25794-1af5d9d3@requests.fyi.org.nz

Our ref: OIA 109863

Tēnā koe Stephan

Official Information Act request: Abortion Legislation Act 2020

Thank you for your email of 20 February requesting, under the Official Information Act 1982 (the Act), information regarding the Abortion Legislation Act 2020 (ALA Act). Specifically, you requested:

In 2020 the Parliamentary Counsel Office may have sent you communications on abortion and the extending of the term of abortion beyond 20 weeks. There should have been a request to submit to the PCO on the liabilities, legalities, precedences of turning over the right to abort out of the hands of the Judiciary and into the hands of Health and perhaps in that or another submission your advice on extending the abortion term beyond 20 weeks. I would like to request the following information under the OIA: 1) a copy of your submission(s) to the PCO, 2) all drafts, advice, and internal communications (including emails) relating to submission(s)

Before answering your request, I would like to provide you with background information on why administration of the ALA Act was transferred from the Ministry of Justice (the Ministry) to the Ministry of Health (MOH). This information has been taken from correspondence sent to the then Prime Minister, by the then Minister of Justice and Minister of Health. I have appended a copy of this correspondence for you, released in full.

Prior to the enactment of the ALA Act, the Contraception, Sterilisation, and Abortion Act 1977 (CSA Act) was administered by the Ministry. This was because, with the exceptions outlined in the CSA Act, abortion was a criminal matter under the Crimes Act 1961. The Ministry also provided administrative support to the Abortion Supervisory Committee (ASC), which regulated hospitals where abortions were carried out, as well as approving the certifying consultants who were required to decide whether a woman could receive an abortion.

The intent of the ALA Act was to make abortion a health service by decriminalising abortion by removing certain offences in the Crimes Act. It also disestablished the ASC and transferred oversight and monitoring of abortion services to the MOH. Therefore, once the ALA Act came into force on 24 March 2020, it was agreed that it was more appropriate for responsibility for the CSA Act to sit with the Minister of Health and MOH. The Minister of Health and the Director-General of Health have statutory obligations under the CSA Act in

relation to the provision of contraception, sterilisation and abortion services. As MOH administers other health legislation, transferring administration of the CSA Act was consistent with aligning the provision of abortion services with other health services.

You can find more information about the Abortion Legislation Bill at: bills.parliament.nz/v/6/63430ae5-e486-4350-897e-f88fc518b1b7?Tab=history. The advice officials provided to the Select Committee is available on that website, alongside the submissions received.

The relevant Cabinet papers have been proactively released at: justice.govt.nz/assets/7607-Taking-a-Health-Approach-8012-Approval-for-Introduction-Abortion-proactive-release.pdf

The Law Commission report that preceded the Cabinet decisions and Bill is also available at: lawcom.govt.nz/our-work/alternative-approaches-to-abortion-law/

In response to parts 1 and 2 of your request, I must advise that the information sought does not exist. We did not provide a submission to the Parliamentary Counsel Office. I am therefore refusing your request under section 18(e) of the Act.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses/.

If you are not satisfied with this response, you have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted by email to info@ombudsman.parliament.nz or by phone on 0800 802 602.

Nāku noa, nā

A handwritten signature in blue ink that reads "Brightwell". The signature is written in a cursive style with a large initial 'B'.

Kathy Brightwell
General Manager, Civil & Constitutional

Hon Andrew Little

Minister of Justice

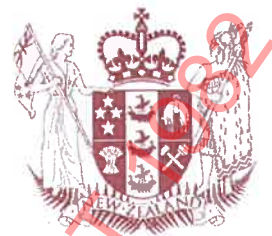
Minister for Courts

Minister for Treaty of Waitangi Negotiations

Minister Responsible for the NZSIS

Minister Responsible for the GCSB

Minister Responsible for Pike River Re-entry



Rt Hon Jacinda Ardern
Prime Minister
Parliament Buildings

Dear Jacinda

Transfer of responsibility for the Contraception, Sterilisation, and Abortion Act 1977

We are writing to request your approval to transfer ministerial responsibility for the Contraception, Sterilisation, and Abortion Act 1977 (the CSA Act) from the Minister of Justice to the Minister of Health.

Following enactment of the Abortion Legislation Act 2020, we consider that responsibility for the CSA Act would more appropriately sit with the Minister of Health (supported by the Ministry of Health). The Abortion Legislation Act came into force on 24 March 2020 and aligned the provision of abortion services with other health services. The Abortion Legislation Act also transferred responsibility for oversight and monitoring of abortion services to the Ministry of Health. The Minister of Health and the Director-General of Health have statutory obligations under the CSA Act in relation to the provision of contraception, sterilisation and abortion services. As the Ministry of Health administers other health legislation, transferring administration of the CSA Act is consistent with aligning the provision of abortion services with other health services.

We therefore request that you formally assign ministerial responsibility for the CSA Act to the Minister of Health, and consequentially assign administrative responsibility for the CSA Act to the Ministry of Health.

Yours sincerely


Hon Andrew Little
Minister of Justice

Hon Chris Hipkins
Minister of Health