

20 February 2020

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Crimes (Definition of Female Genital Mutilation) Amendment Bill**

### **The Bill**

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1. We have considered whether the Crimes (Definition of Female Genital Mutilation) Amendment Bill ('the Bill'), a member's Bill in the name of Jenny Marcroft, Priyanca Radhakrishnan, Golriz Ghahraman, and Jo Hayes, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.
3. Section 204A(2) of the Crimes Act 1961 ('the principal Act') makes it an offence to perform or cause to be performed on any other person any act involving female genital mutilation. The principal Act provides that medical procedures performed for the benefit of a person's physical or mental health (including a sexual reassignment procedure) is not an offence. The principal Act also provides that no account shall be taken of religious or cultural belief or practice in determining whether a procedure is performed for the benefit of the person's health.<sup>1</sup> Consent to the procedure is not a defence to the offence.<sup>2</sup>
4. The Bill clarifies the definition of female genital mutilation at s 204A(1) of the principal Act and brings it into alignment with the World Health Organisation's definition of female genital mutilation. The existing definition in the principal Act refers expressly to the removal of external female genitalia (excision and infibulation, s 204A(1)), and uses the term "mutilation" as a catch-all for practices other than excision and infibulation. The Bill seeks to clarify the definition of female genital mutilation by:
  - 4.1. providing more detail about what is included in excision and infibulation (cl 4(b)(i) and (ii)); and
  - 4.2. being explicit that mutilation includes harmful procedures intended to alter the structure or function of the female genitalia, but which do not amount to the removal of the whole or part of the external genitalia. For example, actions that prick, pierce, incise, scrape, or cauterise (cl 4(b)(iii)).
5. The existing offence set out in the principal Act likely engages multiple rights protected in the Bill of Rights Act. Particularly, the principal Act balances rights to bodily integrity (reflected in ss 9 – 11 of the Bill of Rights Act) against the freedom of religion and belief (s 13 of the Bill of Rights Act). The principal Act resolves this balance in favour of

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<sup>1</sup> Section 204A(4).

<sup>2</sup> Section 204A(6).

bodily integrity, reflecting the severity of the harm caused by female genital mutilation, along with the lack of any health benefits.<sup>3</sup>

6. However, in our view these issues do not arise on the Bill. This is because the Bill does not establish a new offence. Rather, we consider the Bill makes explicit what is implicit in the principal Act: that female genital mutilation is not limited to removal of external genitalia.
7. As such, we have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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<sup>3</sup> <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.