

Opinion Piece

Care and Protection of Children act

Throughout Australia, sexually active young teenagers have access to confidential and trusted sexual and reproductive health services. Except that is in the Northern Territory, where the Government has recently passed a law that effectively takes this right away.

You probably don't know this, as those who make our law seem yet to have worked out how they are going to tell you. If you are an adult living in the NT, and you become aware that any person under the age of 16 is or is likely to be involved in sexual activity, then you are now obliged under NT law to make a report to the police or Family and Children's Services (FACS). Even if it is your own child. You can be prosecuted if you don't.

Any teenager under the age of 16 in the NT who seeks sexual health services needs to assume now that they will be notified to the police or FACS. The police have indicated clearly to health service providers that they intend to follow up every such report with interviews. This will not stop fifteen year olds becoming sexually active. It will however result in fifteen year olds having sex without seeking health advice, contraception and protection from sexually transmitted infections (STIs). They will not be able to seek confidential advice or treatment of infection without knowing the police may appear on their doorstep. The probable consequences are no mystery – untreated potentially serious illnesses, lifelong infertility, early teenage pregnancies and late presentation for antenatal care. There will also be lost opportunities to uncover abuse where it is occurring and discuss issues of consent.

The NT has a serious problem with high rates of STIs in teenagers and an alarming rate of early teenage pregnancies. This legislation is likely to worsen this situation.

Many NT health professionals believe that they will not now be able to practise ethically *and* within the law in the NT. Another major concern I have is this; in the public debate that ensues about this legislation, health professionals who care passionately about child protection but raise concerns about the wider implications of this legislation will be accused of collaborating with or covering up child abuse. This has already occurred.

What is seriously alarming is that legislation which has such profound public health implications was drafted and passed by the NT legislature, seemingly without any expert public health advice being sought, even from their own health department. Over many weeks now health professionals and health organisations have explained these issues to the relevant Ministers, but all to no avail.

The best spin that can be put on this is that it is a legislative mistake due to the requirement of the new Act to report any offence against a child and the separate existing provision of the criminal code that makes sexual intercourse under the age of 16 an offence. That is, our Government did not realise the implications of the legislation they introduced and passed. The long delay between the enacting of the legislation and the implementation of these provisions by the health department

suggests this is the case. If this is so then our MLAs and their advisors were asleep at the wheel and those who drafted the act did not have adequate competence. Now however, despite public health advice, the NT Government has proceeded to ensure these provisions are enforced; all health department staff have now been instructed to comply.

If it really was the intent of the Government to make all consenting sexual activity under the age of sixteen reportable, then why did they not seek extensive public health advice on the implications? Did they not want to hear advice to the contrary? Why also have they no apparent strategy for communicating to the public the enforceable obligations on all adults in the NT under this new Act?

The worst scenario is that someone who was involved in drafting this Act knew exactly its implications, but this was not conveyed to the politicians. I hope not, the consequences of this for the integrity of democratic process don't bear thinking about.

As mentioned above this legislation places a legal obligation to notify authorities of knowledge or suspicion of underage sexual activity on every adult in the NT. Parents, teachers, counsellors, health providers, anyone who a young teenager might turn to for advice and help. Even presumably someone who sees a fifteen year old purchasing condoms! This of course makes the legislation unenforceable which is another reason this is a bad law. Is there really a plan to prosecute a parent because they didn't tell the police when they learned that their child's fifteen year old friend had been up to mischief with a peer of similar age?

If a law is not universally enforceable then it can only be enforced selectively. This is dangerous. Are those who are prosecuted for failing to report going to be chosen randomly or for personal or political reasons? If there is no intention to prosecute then why has the provision to prosecute been written into law?

Teenage sexuality has always been an emotive issue in public debate, often characterised by denial of reality. Margaret Thatcher when she was British Prime Minister withdrew funding from research that showed high rates of sexual activity in young British teenagers because she didn't like the results. While many of us would strongly advise that commencing sexual activity before the age of sixteen is undesirable, the reality is it happens - all over the world.

A recent report into the sexual and reproductive health of young Victorians stated that of people born in 1986, 40% of men and 25% of women reported that their first sexual encounter was before the age of 16. This same report emphasises the need for access to sexual and reproductive health services for young teenagers in a trusted environment where clients are reassured of confidentiality at the start of each consultation. In the NT this now includes telling them that their details will be given to FACS or the police, and that they can expect to be interviewed, and potentially they or their partner prosecuted.

With eighteen years of experience working as a doctor in the NT, I believe child abuse in many forms remains as a serious and inadequately addressed issue. My experience and that of many health professionals over the years has been that notifications of child abuse are often inadequately or inappropriately followed up by

the relevant authorities due to under-resourcing and lack of skills. The provisions for compulsory notification in the previous legislation and guidelines, including the reporting to FACS of all sexual activity under the age of 14, and of known or suspected abuse in any child (defined as a person under the age of 18), were already strong and arguably wholly adequate. Many health providers have been confused though about their obligations, concerned about the personal implications of making a report and have lacked trust in an appropriate response.

What was needed was adequate resources and skills within FACS and the police to do a difficult job appropriately and well. Also sorely needed have been resources for the support and training of health staff. What we got instead is a law that will harm many of those it purports to protect while tying up resources that could be used to better manage abuse when it is uncovered.

This is otherwise welcome legislation which I will assume for the moment was passed by our elected representatives without them realising its full implications to access to health care. If this was a blunder, then it certainly calls into question whether this jurisdiction has the legislative maturity to be elevated to Statehood.

NT voters are entitled to answers from NT Labor to the following questions: Did they mean the legislation to have the implications it does, and if so on what advice? Or, did they make an error? If so when are they going to fix it?

It is essential to the health and well being of young teenagers in the NT that the real issues of early teenage sexuality are dealt with maturely and expertly. The internationally recognised need to provide access to confidential and trusted sexual health services to the quite large proportion of teenagers who become sexually active before they turn sixteen needs to be urgently restored by changing this legislation. This does not equate to taking the issue of child sexual abuse less seriously.