

Submission of Family Planning NSW

Crimes Legislation (Offences Against Pregnant Women) Bill 2020

January 2021

Family Planning NSW welcomes the opportunity to make a submission to the NSW Government regarding the exposure draft of the 'Crimes Legislation (Offences Against Pregnant Women) Bill 2020' hereafter referred to as 'the Bill'.

We thank the NSW Government for the opportunity to provide feedback on the Bill and commend the NSW Government for their transparency and commitment to seeking the views of reproductive and sexual health professionals and community members in relation to the development of the Bill.

About us

Family Planning NSW is the leading provider of reproductive and sexual health services in NSW and Australia. Our mission is to enhance the reproductive and sexual health and rights of our communities by supporting all people to have control over and decide freely on all matters related to their reproductive and sexual health. We have been operating for more than 95 years, working with communities across NSW including those in regional, rural and remote areas.

Family Planning NSW has significant experience in the provision of reproductive and sexual health information and services. Each year we provide more than 31,000 clinical occasions of service to clients, information and health promotion activities to communities, and best practice education and training in reproductive and sexual health for health professionals, educators, disability support workers and welfare professionals.

Our services are targeted to marginalised and disadvantaged members of the community, including Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people with disability and young people across NSW.

Reproductive health and rights

Reproductive and sexual health and rights has been an organisational priority of Family Planning NSW since its inception. We advocate for the reproductive health and rights of all people.

Reproductive health and rights are essential for the full and meaningful participation of all people in society.(1) Reproductive rights include the rights of individuals to make decisions about their own body. These include the ability to decide freely on the number, spacing and timing of children, engage in evidence-based comprehensive sexuality education and access high quality reproductive health services freely and without discrimination, including pregnancy management, contraceptive and cancer screening services.(2)

As an organisation, we seek to ensure that amendments to NSW legislation support:

- a woman's right to freely make choices about their healthcare and future
- a woman's right to make decisions regarding their pregnancy options
- a woman's right to access safe and legal healthcare, including abortion services
- health professionals to provide legal and essential healthcare, including abortion services, to all people free from persecution

Importantly, the Bill does not create a separate criminal offence for the death of a foetus. However, it does make allowances to consider the death of a foetus an 'aggravating factor' to criminal acts therefore increasing penalties.

As an organisation, we would not support unnecessary changes to the Crimes Act 1900 (amended in 2005) that have the potential to allow firm legal recourse against harm to a foetus. In 2010, the Honourable Michael Campbell QC reviewed the law surrounding criminal incidents involving the death of a foetus and found there was no need to change the current law, with existing penalties considered to be appropriate.(3)

Family Planning NSW is encouraged by the statements of the Premier and Attorney General in their joint release of the Bill for consultation. However, we are concerned that the unnecessary changes to the Crimes Act 1900 may impact on the Abortion Law Reform Act 2019, and therefore the rights and freedoms of women and healthcare workers in accessing and providing abortion services.

Key points

While we recognise the significant pain and grief experienced with the loss of a foetus as a result of a criminal act, we must ensure that women's reproductive rights are respected and upheld. It is essential that proposed legislation recognises a woman's right to access all forms of healthcare without threat of criminal offence, or further legal ramifications.

It is essential that any amendments made to existing legislation do not threaten the Abortion Law Reform Act 2019. We could not support legislation that would give rights to a foetus separate to the rights of the woman carrying the foetus – medically, legally or ethically. While the Bill does not create a separate criminal offence for the death of a foetus we are concerned that there may be broader implications of the Bill that threaten the reproductive rights of women and health professionals who perform essential health services.

In summary, we are pleased to see that the Bill does not create a separate offence for the death of a foetus, however, we hold significant concerns for the broader implications of the Bill in relation to future legislative changes regarding essential healthcare services such as abortion. The NSW Government must ensure that any proposed legislation concerning the death of a foetus as a result of a criminal act does not infringe on the rights of women to access safe and legal healthcare, including abortion.

References

1. United Nations Population Fund. Reproductive rights are human rights: A handbook for national human rights institutions. New York: UNFPA; 2014.
2. Temmerman M, Khosla R, Say L. Sexual and reproductive health and rights: A global development, health, and human rights priority. *The Lancet*. 2014;384(9941):e30-e1.
3. Campbell M. Review of Laws Surrounding Criminal Incidents Involving the Death of an Unborn Child. 2010.