

Submission of Family Planning NSW

Submission to the Legislative Council's Standing Committee on Social Issues regarding the Reproductive Health Care Reform Bill 2019

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Family Planning NSW thanks the NSW Legislative Council Standing Committee on Social Issues for the opportunity to inform its inquiry and report into the provisions of the Reproductive Health Care Reform Bill 2019.

This submission is divided into three sections;

1. About Family Planning NSW
2. Support for decriminalisation
3. Response to the Reproductive Health Care Reform Bill 2019.

Family Planning NSW is a lead agency in the NSW Pro-Choice Alliance and supports the submission provided by the Alliance.

Family Planning NSW urges members of the NSW Parliament to listen carefully to the views of highly trained professionals who hear the stories of and provide expert support to women every day¹.

We recommend that the Parliament decriminalise abortion by passing the Reproductive Health Care Reform Bill in its current form.

¹Although gendered language has been used throughout this submission, we acknowledge that transgender men and non-gender conforming people also become pregnant, and face additional challenges in accessing reproductive and sexual health care services including abortion.

1. About Family Planning NSW

Family Planning NSW is the state's leading provider of reproductive and sexual health services. We have provided independent, not for profit clinical services and health information to people across NSW since 1926. Family Planning NSW provides a range of services in relation to reproductive health, including:

- Infertility counselling
- Fertility awareness
- Contraception
- Pregnancy tests
- Non-directive pregnancy counselling
- Referrals to other service providers, including antenatal services and abortion care services
- Screening for domestic violence and reproductive coercion.

Family Planning NSW advocates for the reproductive and sexual health and rights of every body in every family, and supports people in our community who are marginalised and vulnerable. We respect the rights of women to have autonomy to control and decide freely on all matters related to their reproductive and sexual health. We believe that doctors, nurses, pharmacists and other qualified practitioners, and women themselves, should not be criminalised for performing or choosing to have an abortion.

Family Planning NSW believes that abortion should be legal, safe and accessible to all women to safeguard women's health and basic human rights.²

The United Nations Office of the High Commissioner on Human Rights notes that criminalising health services that only women need (such as abortion) is a form of sex discrimination³, and last year, a group of independent experts highlighted the urgency of decriminalising abortion to the United Nations, noting that 'Criminalizing termination of pregnancy ... [subjects] women to risks to their lives or health and deprives them of autonomy in decision-making'⁴.

² Please visit our website for our organisational position on abortion:

https://www.fpsw.org.au/sites/default/files/assets/Abortion-Policy_20190307.pdf

³ Information Series on Sexual and Reproductive Health and Rights: Abortion. OHCHR 2015. [Internet]. [Cited 2019 May 28]. Available from:

https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf

⁴ Human Rights Council. Report of the Working Group on the issue of discrimination against women in law and in practice. [July 2018, cited 2019 May 28]. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/85/PDF/G1813285.pdf?OpenElement>

2. Support for decriminalisation

Family Planning NSW strongly supports the decriminalisation of abortion in NSW.

Abortion is still a prosecutable offence in NSW

One in four women will have an abortion during their lifetime⁵. However, abortion offences are still contained in sections 82 to 84 of the *Crimes Act 1900*. This means that in NSW, women and their doctors can still be prosecuted for accessing or providing abortions. These laws have not changed in 119 years and leave NSW lagging far behind other Australian jurisdictions.

Criminalisation contributes to stigma and challenges in accessing abortion

Accessing abortion in NSW can be expensive, time consuming, stressful and in some cases almost impossible, especially in rural areas. The current laws contribute to problems with access, generating stigma, confusion and a fear of prosecution that can discourage doctors and facilities from providing a full range of reproductive health services, and make it difficult for women to access the healthcare they need.

Women in rural and remote communities are disproportionately affected

Criminalisation has a particularly devastating impact on women from disadvantaged or rural and remote communities who lack the financial means to pay for an abortion or who need to travel long distances to access one. Women facing domestic violence or homelessness often need to seek urgent funding, if it is even available, from charities, friends or family to access an abortion in NSW, with costs ranging from hundreds to thousands of dollars. Women in rural and remote communities often need to travel hundreds or thousands of kilometres or even interstate in order to access an abortion⁶.

In a number of regional areas, access to abortion services is severely limited. In areas where the local general practitioner (GP) does not provide this service, or the pregnancy is beyond 9 weeks and medical abortion is not possible, women rely on their doctors to advocate for them to be able to access abortion. One GP in a regional area who was interviewed as part of a research project told researchers about a 15 year old patient with an intellectual disability who was pregnant as a result of rape:

Eventually I got one from... one of the obstetricians here. I first of all had it declined and then I rang them up and it was only because I started crying that he agreed to do the termination because he's known me for a long time. He

⁵ SA Health. Pregnancy Outcome in South Australia. 2016. Available from: https://www.sahealth.sa.gov.au/wps/wcm/connect/4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1/Pregnancy+Outcome+in+South+Australia+2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKS_PACE-4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1-mAT252p

⁶ Based on clinical experience from Family Planning NSW and Women's Health NSW. For more on interstate travel, please see: Black K, Douglas H, de Costa C. Women's access to abortion after 20 weeks' gestation for fetal chromosomal abnormalities: Views and experiences of doctors in New South Wales and Queensland. *Aust N Z J Obstet Gynaecol.* 2015; 55(2):144-8. DOI: 10.1111/ajo.12305.

basically sort of said oh, for God's sake ..., I'll do it, but I'm not doing it again. So you can imagine how difficult it must be for women themselves without an advocate like you trying to access them. [GP, non-provider outer regional]⁷.

The broader Australian community, including legal and medical experts, supports decriminalisation

In 2016, the Australian Electoral Study undertaken by the Australian National University found that almost 70 per cent of Australians agreed that women should be able to obtain abortions readily⁸.

This position is shared by legal and medical experts, who are included in the more than 70 members of the NSW Pro Choice Alliance listed at this website:

<https://www.nswprochoicealliance.org.au/supporters>

Women are capable of making decisions affecting their own bodies

The decision to have an abortion comes with significant consideration, and research has shown that the vast majority (99%) of women who have an abortion feel they have made the right decision both at the time of termination and consistently for the next three years⁹.

There is no causal relationship between abortion and adverse mental health outcomes

The relationship between abortion and mental health is often strongly debated. However, there remains no evidence of a causal relationship between abortion and adverse mental health outcomes.

In 2005, The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) reviewed the evidence on the psychological impact of abortion and concluded that studies suggest there is mainly improvement in psychological wellbeing in the short term after termination of pregnancy and that there are rarely immediate or lasting negative consequences¹⁰.

The American Psychological Association's Taskforce on Mental Health and Abortion published its review of 20 years of research and studies into the psychological effects

⁷ Shankar M, Black KI, Goldstone P, Hussainy S, Mazza D, Petersen K, et al. Access, equity and costs of induced abortion services in Australia: a cross-sectional study. *Aust N Z J Public Health*. 2017;41(3):309–14.

⁸ Cameron S, McAllister I. Trends in Australian Political Opinion, Results from the Australian Election Study 1987-2016, Australian National University. Available from: <https://australianelectionstudy.org/publications/>

⁹ Rocca C, Kimport K, Roberts S, Gould H, Neuhaus J, Foster D. Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study. *PloS ONE*. 2015;10(7):1-16. DOI: <https://doi.org/10.1371/journal.pone.0128832>.

For a good overview of the research in this area please see: Black K. Some women feel grief after an abortion, but there's no evidence of serious mental health issues. *The Conversation*; 2018 [cited 2019 April 9]. Available from: <https://sydney.edu.au/news-opinion/news/2018/05/02/no-evidence-of-serious-mental-health-issues-for-women-after-abor.html>

¹⁰ Victorian Law Reform Commission: Law of Abortion Final Report 15, 2008. p.121. Available from: https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Abortion_Report.pdf

of abortion in 2008. It found no difference in the psychological effect of terminating an unplanned pregnancy and carrying that pregnancy to term.¹¹

Recent studies have failed to establish a causal relationship between abortion and adverse mental health outcomes¹². In 2018 Family Planning NSW commissioned the University of Technology Sydney to conduct a review of the association between abortion and mental health. That review echoed the findings of previous rigorous reviews of the evidence and found that “if a woman has an early abortion there is little or no increased risk of mental health issues”¹³.

3. Response to the Reproductive Health Care Bill 2019

Family Planning NSW recommends that the NSW Parliament pass the Reproductive Health Care Reform Bill in its current form. We have provided comment below in relation to a number of specific clauses contained within the Bill.

Gestational limit: cl 5 and 6

Most abortions take place during in the first trimester, with 91.2 to 95 per cent of abortions occurring before 14 weeks gestation¹⁴. Abortions after 22 weeks gestation are extremely rare.

These cases involve complex medical or psychosocial reasons and all are carried out within a multidisciplinary context in a hospital. A woman may be seeking an abortion at this stage for a range of reasons, including:

- Discovery of a devastating fetal abnormality during a routine ultrasound (at around 20 weeks of gestation)
- Continuing the pregnancy would put her life or health at risk
- She has been prevented her from accessing an abortion earlier due to complex social circumstances such as domestic violence.

¹¹ American Psychological Association, Task Force on Mental Health and Abortion. Report of the Task Force on Mental Health and Abortion. Washington, 2008. Available from:

<https://www.apa.org/pi/women/programs/abortion/mental-health.pdf>

¹² Steinberg JR, Tschann JM, Furgerson D, Harper CC. Psychosocial factors and pre-abortion psychological health: The significance of stigma. Soc Sci Med. 2016;150:67-75; Biggs MA, Upadhyay UD, McCulloch CE, Foster DG. Women’s mental health and wellbeing 5 years after receiving or being denied an abortion: A prospective, longitudinal cohort study. JAMA Psychiatry. 2017;74(2):169-178.

¹³ Sullivan E A, Dawson A J, Mahimbo A, Assifi A (2019), Report on the lack of association between early induced abortion and mental health. Australian Centre for Public and Population Health Research, University of Technology Sydney, Sydney, New South Wales, Australia: unpublished

¹⁴ Australian Institute of Health and Welfare. Use of Routinely collected national data sets for reporting on induced abortion in Australia. 2005. Available from: <https://www.aihw.gov.au/reports/mothers-babies/use-national-data-sets-reporting-induced-abortion/contents/table-of-contents> . Note that this figure includes some other procedures. See also SA Health. Pregnancy Outcome in South Australia. 2016. Available from:

https://www.sahealth.sa.gov.au/wps/wcm/connect/4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1/Pregnancy+Outcome+in+South+Australia+2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKS_PACE-4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1-mAT252p

Some fetal abnormalities cannot be diagnosed until 20 weeks gestation or later. Legislating for a 22 week gestational limit better allows time for the diagnosis of fetal abnormalities, providing pregnant women and practitioners more time to make an informed decision.

Victoria and Queensland legislated for gestational limits of 24 weeks and 22 weeks respectively when they decriminalised abortion in 2008 and 2018.

Family Planning NSW strongly supports the 22 week gestational limit outlined in the Bill.

Informed consent: cl 5 and 6

Current clinical guidelines require doctors to inform their patients about the benefits and risks of all medical procedures in order to obtain informed consent¹⁵. These clinical guidelines and current laws on consent should continue to apply in relation to abortion as with any other medical procedure.

The requirement of informed consent in the Bill does not contradict current clinical practice.

Family Planning NSW accepts the Bill's requirement of informed consent.

Specialist medical practitioner: cl 6

The reference to “other expertise” in this clause should be interpreted broadly and inclusively so as to include specialists from a number of fields. Should the bill find successful passage through the legislative council, Family Planning NSW recommends that NSW Health work with stakeholders to define the requirements for “specialist medical practitioners” as it related to this legislation.

Family Planning NSW accepts the Bill's requirements in relation to specialist medical practitioners.

¹⁵ The Royal Australian and New Zealand College of Obstetricians and Gynecologists, Consent and provision of information to patients in Australia regarding proposed treatment. July 2016]. Available from: <https://www.racgp.org.au/download/Documents/PracticeSupport/informedconsentinfosheet.pdf>; [https://ranzocg.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20General/Consent-and-provision-of-information-to-patients-in-Australia-\(C-Gen-2a\)-Review-July-2016.pdf?ext=.pdf](https://ranzocg.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20General/Consent-and-provision-of-information-to-patients-in-Australia-(C-Gen-2a)-Review-July-2016.pdf?ext=.pdf)

Approved health facility: cl 6 and 13

The requirement that abortions take place at approved health facilities is in line with existing clinical practice in NSW.

Family Planning NSW accepts the Bill's requirements in relation to specialist medical practitioners.

Requirement for information about counselling: cl 7

Both the Queensland and Victorian Law Reform Commissions recommended that professional, accurate, unbiased, confidential and non-judgmental counselling should be available and accessible to those who request it, and that this should be governed by clinical practice¹⁶.

We note that in practice, most women are unlikely to require counselling. Research shows that most women who seek an abortion have already considered their decision at length and have already discussed it with their friends and family¹⁷. The majority of women who experience an unintended pregnancy do not wish to speak to a counsellor before deciding how to proceed, and women who use standard counselling services provided by abortion clinics find them satisfactory¹⁸.

The requirement that a medical practitioner consider whether counselling would be beneficial to a woman is consistent with existing clinical practice.

Family Planning NSW accepts the Bill's clause in relation to counselling.

Conscientious objection: cl 9

Family Planning NSW supports legislation that requires health practitioners who do not agree with abortion to inform their patients about their conscientious objection and refer them to another health practitioner who does not have a conscientious objection. It is important that the rights of individuals to operate within their own moral

¹⁶ Queensland Law Reform Commission Report on Abortion: Review of termination of pregnancy Laws, 2018 p.194. Available from: https://www qlrc.qld.gov.au/_data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf / Victorian Law Report Commission: Law of Abortion Final Report 15, 2008. p.12. Available from: https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Abortion_Report.pdf

¹⁷ Rocca C, Kimport K, Roberts S, Gould H, Neuhaus J, Foster D. Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study. PloS ONE. 2015;10(7):1-16. DOI: <https://doi.org/10.1371/journal.pone.0128832>.

For a good overview of the research in this area please see: Black K. Some women feel grief after an abortion, but there's no evidence of serious mental health issues. The Conversation; 2018 [cited 2019 April 9]. Available from: <https://sydney.edu.au/news-opinion/news/2018/05/02/no-evidence-of-serious-mental-health-issues-for-women-after-abor.html>

¹⁸ Marie Stopes International Research cited in Victorian Law Report Commission: Law of Abortion Final Report 15, 2008, p.120. Available from: https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Abortion_Report.pdf

and religious beliefs be balanced with the ethical consideration health providers have to act in the best interests of their patients¹⁹.

The approach in the Bill is essentially identical to the process outlined in the NSW Ministry of Health's current Framework for Terminations in NSW Public Health Organisations. It is also consistent with the legislation implemented in the two Australian states that have recently decriminalised abortion: Queensland and Victoria and with the Codes of Conduct of peak bodies for health practitioners, including the Australian Medical Association, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the Australian Nursing and Midwifery Foundation, the Pharmacy Board of Australia, and the Medical Board of Australia.

Family Planning NSW accepts the Bill's clause in relation to conscientious objection.

Gender selection: cl 14

Given that there is no evidence that sex selective abortions occur in NSW, Family Planning NSW welcomes the Ministry of Health's review of this issue.

Family Planning NSW accepts the Bill's clause in relation to gender selection.

¹⁹ Victorian Law Reform Commission: Law of Abortion Final Report 15, 2008. p.7. Available from: https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Abortion_Report.pdf