

INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: NSW Pro-Choice

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Hon Shayne Mallard MLC
Chair, Standing Committee on Social Issues
Legislative Council
Parliament of New South Wales

Via email: socialissues@parliament.nsw.gov.au

13 August 2019

Dear Chair,

Thank you for the opportunity to make a submission to the inquiry into the Reproductive Health Care Reform Bill 2019 (the Bill).

Pro-Choice NSW is an organisation which campaigns for abortion in NSW to be safe, legal, accessible and free. Abortion is a health care issue, not a crime. After 119 years, it is time for abortion to be removed from the NSW Crimes Act 1900.

Pro-Choice NSW supports the Bill in its current form. Amendments proposed (and rejected) in the Legislative Assembly attempted to limit access to abortion services, undermined the interests and choice of women and had a number of other dangerous consequences.

Pro-Choice NSW thanks the Standing Committee on Social Issues for their work on the Bill. Pro-Choice NSW also supports the submissions of: the NSW Pro-Choice Alliance, the NSW Council of Social Services, Reproductive Choice Australia and other expert groups in support of the Bill. This submission is focussed on the importance of supporting the Bill in its current form. Further details on the danger of amendments rejected by the Legislative Assembly are outlined below.

Gestational period

We note that gestational periods have been a topic of extensive discussion. Pro-Choice NSW further notes that medical practitioners are required to take additional steps prior to performing an abortion on a person who is more than 22 weeks pregnant.

After this period, a specialist medical practitioner must only perform a termination if they have consulted with another specialist medical practitioner and both consider that, in all the circumstances, the termination should be performed. The specialist must also obtain informed consent and the termination must be performed at a hospital or approved health facility. Pro-

Choice NSW is of the view that these requirements sufficiently address the concerns which have been raised around gestational periods.

Amendments in the Legislative Assembly were debated (and rejected) to reduce the gestational period from 22 to 20 weeks, where these additional requirements are necessary. There has also been criticism of the Bill providing access to termination after 22 weeks.

Importance of 22 week distinction

Women who need to access abortion services after 22 weeks of gestation are faced with a complex and stressful situation. It is very rare for a woman to access an abortion after 22 weeks. Research has found that between one and three per-cent of abortions in Australia occur after 20 weeks¹.

Reasons for termination after 22 weeks are complicated, and are driven by the following:

- Most involve the diagnosis of a severe foetal abnormality or fatal foetal conditions
- In other instances a woman may be diagnosed with a life-threatening illness such as cancer where the continuation of the pregnancy threatens her health, life or access to treatment
- In less common circumstances, a woman may access a termination at a later gestational period because her access has been delayed by an abusive or controlling partner.

The Bill requires two medical specialists to consider all relevant circumstances prior to performing a termination after 22 weeks. The difficult situations outlined above are the kind of circumstances they are being asked to consider.

The forms of serious and/or fatal foetal abnormalities that may lead to a woman accessing a termination are often unable to be identified until the routine ultrasound that occurs at 18-20 weeks of gestation. While this scan may detect an abnormality, further tests are often required to confirm the nature and extent of the abnormality and the impact it has on the viability of the pregnancy and future quality of life. For women living in regional and remote areas, their access to tests and medical advice may be further delayed.

The 22 week distinction provides women faced with these difficult situations with additional time to access medical advice and support and make a fully informed decision about their pregnancy. A reduction of this time period from 22 to 20 weeks could result in women feeling rushed or pressured into making a decision about their pregnancy. Furthermore, such a change would limit the ability of doctors to provide the best healthcare to their patients.

NSW is the last state in Australia to decriminalise abortion. In other states where legislation similar to the Bill has been introduced, there is no evidence of an increase in access to abortion after 22 weeks.

¹ Queensland Law Reform Commission, Review of termination of pregnancy laws report, June 2018; Government of South Australia, Pregnancy Outcome in South Australia, September 2018.

As it stands, the Bill provides effective checks and balances to provide women accessing termination after 22 weeks with support and appropriate medical advice to make an informed decision about their pregnancy. The approach is consistent with other Australian states and territories and is supported by the Royal Australian College of Obstetricians and Gynaecologists (RANZCOG) and the Australian Medical Association (NSW).

RANZCOG has confirmed the rarity of later term abortions and has confirmed the Bill before parliament would not change the current clinical practice².

The 22 week time period should not be reduced to 20 weeks. To do so would unnecessarily complicate access to services for women already experiencing stressful and complex situations. It would also significantly limit women's access to termination and impede their ability to make an informed medical decision that is in the best interests of them, the foetus and their family.

Importance of access to termination at all stages

Cut-off points at any gestation period are not in the interests of women, their health or their well-being. Hard limits can result in women feeling pressured or rushed into making an important decision about her health. This may result in decisions being made without time to sufficiently review and consider medical information.

The claim that this Bill would *require* doctors to perform terminations until birth is categorically false. The Bill requires two medical specialists to confirm they have considered all circumstances. The practitioner must consider all relevant medical circumstances, the current and future health of the woman and professional standards and guidelines. The decision to terminate a pregnancy after 22 weeks is not one that is taken lightly by women or medical practitioners.

The need for termination to be accessible without any hard 'cut off' dates is crucial for women's health outcomes and their ability to make informed medical decisions about their bodies and their pregnancy.

Hospital Advisory Committee

An amendment was debated and rejected in the Legislative Assembly to require the approval of a Hospital Advisory Committee, or panel, prior to performing an abortion after 22 weeks.

This regulation is unnecessary and restricts access to termination. The Bill in its current form provides for the approval of a second medical specialist and is regulated by current frameworks and clinical guidelines. These checks and balances are sufficient and acknowledge the complex and multi-disciplinary nature of abortions after 22 weeks of gestation.

Any mandatory committee process will impose time-delays and limits women's abilities to make decisions about their healthcare.

² RANZCOG, Media Release, Reproductive Health Care Reform Bill 2019, 2 August 2019

Gender Selection

The Legislative Assembly considered and voted against an amendment regarding gender selection and termination. This amendment was dangerous, was not based on evidence and would not deliver the best outcomes for women.

The House voted in favour of an amendment by Leslie Williams (Amendment on sheet c2019-048C). In doing so, the House condemned the practice of gender-selective termination and established a review to be conducted within 12 months of the legislation passing.

Dangerous and discriminatory

If introduced, an amendment specifically restricting gender-selective terminations would be open to potential discrimination or misinterpretation of a situation based on ethnicity or religion. In her speech supporting the amendment, Tanya Davies made claims that women of particular ethnic and cultural backgrounds are engaging in the practice of gender-selective abortion³. Such broad-brush claims being made by law-makers are dangerous, discriminatory and could restrict access to termination.

The amendment proposed by Tanya Davies restricted medical practitioners from performing a termination if they had a 'reasonable belief' that the termination was being performed for the purpose of gender selection. This amendment would have required medical practitioners to make significant assumptions about women's motivations for accessing an abortion. This would have a significant impact on access to abortion services and could leave women from certain ethnic and cultural backgrounds exposed to the biases and prejudices of medical practitioners. This amendment would remove the ability of women to make decisions about their own healthcare.

Not in the best interests of women

Any legislation restricting access to abortion restricts the ability of a woman to make an informed and empowered choice. If there was evidence a woman was seeking a gender selective abortion, the best response is support for the woman, community education, and promotion of greater gender equality. Placing restrictions on what one person can do with their pregnancy and their bodies does not further the cause for gender equality.

The inclusion of legal restrictions on gender-selective abortion won't work and won't deliver the best outcomes for women and their families.

Not based on evidence

³ NSW Parliament Hansard, Legislative Assembly, Thursday 8 August, 2019

A Senate Inquiry was conducted in 2013 in response to a Bill before the parliament seeking to restrict Medicare funding for gender-selective abortions⁴. The Bill was unsuccessful. The Inquiry's report found that there is no robust evidence that gender-selective abortion is taking place in Australia and the country's gender ratio is within the expected range.

Is it also important to note that some genetic conditions are gender specific. In these instances, a gender-selective termination may be necessary to reduce the risk of medical genetic conditions.

Conscientious objection

An amendment was debated and rejected in the Legislative Assembly that would have allowed practitioners, who consider themselves "conscientious objectors", to refuse to provide a woman seeking a termination with information or a referral to another doctor.

When women seek medical advice regarding their pregnancies they have a right to receive unbiased and professional information from a practitioner. This Bill does not require practitioners who consider themselves "conscientious objectors" to perform terminations. This Bill does require doctors to fulfill an obligation to their patients to provide them with information on where they can access the medical advice and treatment they are seeking.

Any change to the Bill that would allow medical practitioners to refuse to provide women with medical information they have requested will limit women's access to termination services which would have an adverse effect on their health outcomes.

It would create barriers to timely and adequate reproductive healthcare and would significantly impact women in regional areas. There is already a lack of medical practitioners who can provide terminations in regional areas. The refusal of a doctor to provide information on how a woman can access a termination may lead to women believing there is no alternative.

Doctors have a duty of care to all patients and must act in their best interests. They must be required to refer patients, so as to ensure that all women have access to timely and adequate healthcare.

NSW Pro-Choice urges the Committee to support the Bill in its current form and recommends against any further amendments that restrict women's access to abortion services.

Regards,

NSW Pro-Choice

⁴ Australian Senate, Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013 Inquiry, 2013.