



New South Wales  
Council for Civil Liberties

**NSWCCL SUBMISSION**

**NSW LEGISLATIVE COUNCIL  
STANDING COMMITTEE ON  
SOCIAL ISSUES**

**INQUIRY INTO THE  
REPRODUCTIVE HEALTH CARE  
REFORM BILL 2019**

**13<sup>TH</sup> August 2019**

### **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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1. The NSW Council for Civil Liberties welcomes the opportunity to make a submission to the NSW Parliament Standing Committee on Social Issues inquiry into the Reproductive Health Care Reform Bill 2019.
2. The NSW Council for Civil Liberties is an independent, volunteer organisation dedicated to defending the rights and liberties of Australians. In this capacity we have, over the 56 years of our existence, consistently argued for the removal of abortion procedures from the criminal law so all aspects of women's reproductive health could be properly treated as medical health issues.
3. Over the last two years we have been proud participants in the WEL Round Table and more recently, the Pro-Choice Alliance of around 70 organisations dedicated to persuading the NSW Parliament that the time has come to act on behalf of the women of NSW and reform our archaic abortion laws.

### **Current situation**

4. The passage of the Reproductive Health Care Reform Bill 2019 through the NSW Legislative Assembly with a vote of 59 to 31 last week is a long awaited, historic moment for NSW women and the NSW Parliament. We are hopeful this will be followed by its passage through the Legislative Council without amendment leading to the removal of abortion from the criminal law in NSW.
5. It is really quite outrageous that NSW women who choose, for their own valid reasons, to seek a termination of a pregnancy, must still work around an archaic, 119 years old law which criminalises this medical procedure.
6. To obtain a legal abortion in NSW women have to establish exceptional circumstances emerging from the Levine ruling of 1971<sup>1</sup>: that the termination is necessary to preserve a woman from serious danger to her life or to her mental or physical health, and that it is not out of proportion to the danger to be averted.
7. Having to rely on this limited defence is a deeply flawed and unsatisfactory legal position for both women and medical practitioners. Some doctors are reluctant to perform terminations because of this legal uncertainty. Women with limited means and women living outside cities in regions who want a termination are disadvantaged in that access to qualified and willing medical practitioners is often not easily available.
8. While the current provisions in the Crimes Act cause uncertainty for doctors and women, they provide little practical legal substance. Given the way abortions are currently carried out in NSW and the tests applied, it would be difficult to conceive of a prosecution being properly brought arising from a self-termination or a termination performed by a qualified person or in a hospital or an approved health facility<sup>2</sup>. There is no practical positive reason for maintaining these provisions. They should be removed and replaced by a provision (such as is included in the Bill) to deal with the involvement of unqualified persons.

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<sup>1</sup> R v Wald (1971) 3 DCR (NSW) 25.

<sup>2</sup> The relevant public interest considerations that apply under NSW DPP Prosecution Guideline 4 include paragraphs 3.2, 3.3, 3.5, 3.6, 3.8, 3.9, 3.13, 3.14 and 3.16.

## The way forward

9. Instead of leading the way on reform on this important health issue for women, NSW is alone among the states and territories in not reforming its abortion laws. The Reproductive Health Care Bill 2019 provides the NSW Parliament with a long-overdue opportunity to fix this and make a just and historic decision for the women of NSW.
10. It is the correct decision for a democratic Parliament. While not all Australians support this change, a clear majority do – around 70% - and have done so for a very long time. A similar level of support (73%) has been recorded in NSW in a 2018 NSW Australian and New Zealand Journal of Public Health study.
11. It is a safe and sensible Bill in that it is well-researched and carefully drafted. It is strongly supported by over 70 peak legal, health and community bodies. Decriminalisation of abortion is supported by the Australian Medical Association and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.
12. The Bill is closely modelled on recent reproductive health reform laws in Victoria (Abortion Law Reform Act 2008) and Queensland (Termination of Pregnancy Act 2018). In both states the legislation followed detailed inquiries by the Victorian and Queensland Law Reform Commissions.

## What the Bill does

13. The provisions in the Crimes Act relating to terminations (ss82 to 84) will be repealed and common law offences relating to abortion abolished. A provision will be inserted to deal with the involvement of unqualified persons.
14. It will be legal for a medical practitioner to perform a termination on a person who is not more than 22 weeks pregnant and who has given informed consent for the procedure. Consent is not needed in an emergency if it is impractical. The vast majority (over 90%)<sup>3</sup> of terminations occur before 22 weeks.
15. It will be legal for a specialist medical practitioner to perform a termination on a person who is more than 22 weeks pregnant if the practitioner:
  - considers the termination 'should be performed' after having considered all relevant medical circumstances, current and future physical, psychological and social circumstances of the woman and professional standards and guidelines
  - has consulted with another specialist medical practitioner who also considers that, in all the circumstances, the termination should be performed,
  - has obtained the person's informed consent to the termination.
16. A medical practitioner may perform a termination on a person who is more than 22 weeks pregnant in an emergency without the above conditions to save the person's life or the life of another foetus.
17. Before performing a termination, a medical practitioner must:

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<sup>3</sup> 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>

- assess if it would be beneficial to discuss with the person their accessing counselling and
- if in the medical practitioner's assessment, it would be beneficial, provide all necessary information - including publicly funded counselling

A medical practitioner may in an emergency perform a termination on a person without the above.

18. The Bill respects the rights of medical practitioners with conscientious objection but requires them to inform the person of this as soon as possible and to give them information as to how to contact a practitioner, or transfer them to a registered practitioner or health service provider they believe does not have a conscientious objection and will perform the termination.
19. The Bill makes explicit that a person who consents to, assists in, or performs a termination on themselves does not commit an offence.

### **Amendments to the Bill in the Legislative Assembly**

20. The Bill was amended in the Legislative Assembly. The NSW Council for Civil Liberties strongly supported the Bill in its original form and would have preferred it to have progressed without amendment.
21. The amendments do not make substantial changes and do not hinder the main intention of the Bill. Some amendments we consider to be unnecessary as they already exist in other law or regulation or professional codes (eg the need for the person's informed consent). We do, however, appreciate that some members of parliament were more willing to support the Bill and its objectives if these matters were explicitly stated.
22. We do not therefore seek any reversal of these amendments. We do not see a need for any further amendment.
23. We do however, have a concern with the definition of '*Informed Consent*'. It states at (b) that it means consent *in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination.*<sup>4</sup>

We are not aware of any current guidelines which would be a problem in this context. However, we are concerned that this could allow a future 'guideline' to be drawn up outside the legislation which could hinder or subvert the intention of the Bill.

This is a matter which could be examined in a future context – possibly at the time of the statutory review within five years.

### **Summary of NSW CCL position**

24. **The NSW Council for Civil Liberties supports the Reproductive Health Care Reform Bill 2019 as a long overdue reform of the laws relating to women's right to make decisions as to their reproductive health and recommends the Legislative Council approves the Bill without amendment for return to the Legislative Assembly.**

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<sup>4</sup> Schedule 2 Dictionary

25. The Council for Civil Liberties wishes to thank the member for Sydney Alex Greenwich for introducing the Bill to Parliament, and Brad Hazzard the Minister for Health and Medical Research , Penny Sharpe (MLC and Deputy Leader Opposition in LC) and Trevor Khan MLC for their role as initial sponsors of the Bill - as well as the other parliamentarians who joined with them to create a record breaking sponsorship team of 15.



Therese Cochrane  
**Secretary NSWCCCL**

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