BARRIERS TO ACCESS

Women should have the right to access reproductive healthcare and to make decisions about their body without interference. Removing abortion from the Crimes Act 1900 (NSW) is the first step to removing barriers to reproductive healthcare for women in NSW.

MANDATORY COUNSELLING

Women should have the right to make decisions about their body without interference, including deciding whether to seek counselling before having an abortion.

Mandating counselling (or the offer of counselling) assumes that women do not have the right or the capacity to make their own decisions about their health care.

Research shows that:

- The majority of women who seek an abortion have already considered their decision at length and have discussed it with their friends and family[1]
- The majority of women who experience an unintended pregnancy do not wish to speak to a counsellor before deciding how to proceed
- Women who use standard counselling services provided by abortion clinics find them satisfactory[2]

The Victorian and Queensland Law Reform Commissions both concluded that neither counselling nor referral to counselling should be mandated.[3] They 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 practice.[4]

NSW Health's current Framework for Terminations in New South Wales Public Health Organisations already includes a requirement for all clinicians in the state's maternity services to offer counselling in the event of an abortion.[5] This framework is also distributed to private hospitals and day procedure centres, and divisions of general practice.

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[1] 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

[2] Marie Stopes International Research cited in Victoria Law Reform Commission (Victoria, 2008), Law of Abortion Final Report, p,120.

[3] Victoria Law Reform Commission (Victoria, 2008), Law of Abortion Final Report, pp. 118-122

[4] Queensland Law Reform Commission Report on Abortion 2018 p.194, Victoria Law Reform Commission Law of Abortion Final Report 2008, p.123

[5] Ministry of Health, NSW (New South Wales, 2014), Pregnancy - Framework for Terminations in New South Wales Public Health Organisations, p4.

Requiring women to attend counselling may cause distress and places a disproportionate burden on women who may need to travel long distances or take time away from work or caring responsibilities to attend the counselling.

COOLING OFF PERIODS

Cooling off periods treat the decision women make to have an abortion as frivolous and impulsive, but research shows that the majority of women who seek an abortion have already considered their decision at length.[6]

Imposing cooling off periods can delay access to abortion and may force a woman into having an abortion at a later stage of pregnancy which can be more complex and expensive.

As with mandatory counselling, delays place a disproportionate burden on women who may need to travel long distances or take time away from work or caring responsibilities to attend various appointments.

The VLRC recommended against mandatory cooling off periods. Rather, women should "be able to take the time they need to reach their own decision" and this should be governed by clinical practice, not legislation.[7]

The World Health Organisation also recommends that regulatory, policy and programmatic barriers that prevent access to the timely provision of abortion care are removed,[8] including the requirement of mandatory cooling off periods.

MANDATED INFORMATION/COMPULSORY VIEWING OF ULTRASOUNDS

Current clinical guidelines and laws requiring doctors to inform their patients about the benefits and risks of all medical procedures – including abortion – are sufficient in order to obtain informed consent.[9]

There is no need for the provision of specific, mandatory information about abortion, as doctors are in the best position to decide what information their patient's need.[10]

This includes the compulsory viewing of ultrasounds, which is unnecessary and has no medical benefit. This measure has been implemented elsewhere in an effort to encourage women to proceed with pregnancies that they do not wish to continue.

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[6] 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

[7] Victoria Law Reform Commission (Victoria, 2008), Law of Abortion Final Report, p127.

[8] World Health Organisation, Safe Abortion: Technical and Policy Guidance for Health Systems 2nd edn (2012, Switzerland), p. 9

[9] https://www.racgp.org.au/download/Documents/PracticeSupport/informedconsentinfosheet.pdf; https://ranzcog.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

[10] Victoria Law Reform Commission (Victoria, 2008), Law of Abortion Final Report, p117.

This is in line with the recommendations of abortion law reform commissions:

- The Victorian Law Reform Commission recommended that any new abortion law should not contain mandated information provisions[11]
- The Queensland Law Reform Commission recommended against including express requirements of consent in additional legislation as the existing law would continue to apply to abortions[12]

ADDITIONAL REQUIREMENTS FOR YOUNGER PEOPLE (PARENTAL CONSENT)

The existing law governing consent and confidentiality for young people is adequate and no additional legislative requirements are needed in the case of abortion:

Australian common law recognises that a child or young person may have the capacity to consent to medical treatment on their own behalf and without their parents' knowledge when they are under the age of 18 (Gillick competence)[13].

NSW law states that from the age of 14, a young person may be capable of giving consent to their own treatment.[14]

NSW Health has a policy that young people under the age of 14 require parental consent for medical treatment. They advise that health practitioners working with young people aged 14 and 15 should assess whether the young person is capable of consenting, and if not, the practitioner should seek the consent of a parent or guardian. From 16, a young person's consent is generally considered sufficient.[15]

Any additional requirements of parental consent risk placing young, vulnerable women at risk of distress and undermining their medical privacy.

[11] Victoria Law Reform Commission (Victoria, 2008), *Law of Abortion Final Report*, p. 8.
[12] Queensland Law Reform Commission (2018), *Abortion Report*, p. 93.
[13] Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112 [Online] Available at: http://www.bailii.org/uk/cases/UKHL/1985/7.html Accessed on 9 April 2019.
Northern Territory Department of Health and Community Services v JWB and SMB (Marion's case) [1992] HCA 15 [Online] Available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/175clr218.html?stem=0&synonyms=0&query=title(175%20CLR%20218) Accessed on 9 April 2019.
[14] Minors (Property and Contracts) Act 1970
[15] http://www.hccc.nsw.gov.au/Information/Information-for-health-consumers/Consent-for-treatment