ABORTION LAW REFORM (MISCELLANEOUS ACTS AMENDMENT) BILL 2016

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by Dr Mehreen Faruqi .

Second Reading

Dr MEHREEN FARUQI (11:09): I move:

That this bill be now read a second time.

At the turn of the twentieth century, in the year 1900, the New South Wales Crimes Act was passed in this Parliament. The Crimes Act codified the common law crimes of our State. Nineteenth century crimes of the English legal system were brought together in statute and set out as the amalgamated criminal laws of the then colony of New South Wales. Division 12 of the Crimes Act, or sections 82, 83 and 84, related to a woman's "attempts to procure abortion", and criminalised such attempts with jail sentences of up to 10 years. It also criminalised doctors who attempt to provide an abortion with 10 years in prison. Sixteen years into the twenty-first century, these offences remain, stubbornly, within the Act.

The abortion law reform bill that I am introducing today is about bringing these 116-year-old archaic and now irrelevant provisions in line with modern medical practice, modern expectations of reproductive health and the right of women to our bodily autonomy—the rights of a patient to make their own healthcare choices with full certainty of the law and unambiguously, without the shadow of criminality. While positioning abortion law reform as a feminist campaign, responding to historical and entrenched sexism and attacks on the bodies of women, this bill is deliberately gender neutral because we know that a range of people need to access reproductive health care, including non-binary people and transgender men.

For the first seven decades of the last century, division 12 of the Crimes Act was more or less the formal be-all and end-all of abortion law. Until the 1970s, the criminality of abortion meant that people seeking to procure pregnancy termination had to go behind closed doors, and risk often highly dangerous illegal procedures. Operating in the shadow of the law, women and their doctors suffered heavily to undergo and perform what should have been readily available procedures. Maternal mortality remained high. This changed with the 1971 District Court ruling of Levine J in the *R v Wald* case.

The now-famous Levine ruling established that abortions would be lawful if there was "any economic, social or medical ground or reason" upon which a doctor could base an honest and reasonable belief that an abortion was required to avoid a "serious danger to the pregnant woman's life or to her physical or mental health." The Levine ruling was reinterpreted restrictively in the Supreme Court judgment of the 1995 super clinics case, but then reaffirmed and somewhat expanded when the case went to the New South Wales Court of Appeal. The then President of the Court of Appeal, Justice Kirby, extended Levine's consideration of "serious danger" to dangers that may be relevant after the birth of a child, specifically referring to social and economic factors affecting the mother's physical and psychological health.

Sydney health lawyer Julie Hamblin, whom I must acknowledge today as having provided such fantastic legal guidance to me through the process of drafting the bill, has so clearly summarised the unsatisfactory nature of the current situation in the sentiment: "There is a clear disconnect between what the law says, what most people think it says, and what happens in practice." We know that many in New South Wales do not know that abortion is a criminal offence till they or someone they know needs to access one, but there is strong support for its being removed from the Act and decriminalised. Approximately 73 per cent of New South Wales people surveyed support decriminalisation.

Despite the District Court ruling that provides exceptions for when abortion can be "lawfully" performed, the undeniable reality is that it remains a crime under sections 82, 83 and 84 of the Crimes Act. People accessing abortions in New South Wales, and their doctors, remain vulnerable to the full force of the criminal law, including up to a decade in jail, for attempting to procure one of the most common medical procedures performed in our State. We know that many doctors do not perform this procedure due to fear of persecution and prosecution. Some estimates suggest that

approximately one in three Australian women have undergone the procedure. At the moment, we effectively consider them criminals unless they can prove otherwise. We also need to place abortions, and the circumstances in which they are currently performed, into perspective. Caroline de Costa, Professor of Obstetrics and Gynaecology, and Heather Douglas, Professor of Criminal Law, explain:

> … the overwhelming majority of abortions (94%) take place in the first 14 weeks of the pregnancy, and 5% between 14 and 20 weeks. The small number of women who choose termination after 20 weeks usually do so in circumstances where there is severe maternal physical or mental illness, late diagnosis of severe foetal abnormality, sexual assault or other exacerbating circumstances.

While incredibly common, abortion remains in a grey zone in the law and is not fully mainstream like other medical procedures. It is not routinely provided by public hospitals. Relatively few committed doctors perform these procedures, and mainly in the private sector. This uncertainty results in difficulties with access and cost, especially in regional and rural New South Wales. I would be very surprised if there were a single person in this Chamber without a close family member or friend who has had an abortion—whether they know about it or not.

And that, of course, is part of the problem. The criminalisation of abortion leads to its ongoing stigmatisation. People do not like to talk about it. There is a deep shame in the procedure. This should not be the case. Stigmatising people leads inevitably to social divisions, and we see this again and again in New South Wales with the ongoing harassment, abuse and intimidation of patients outside reproductive health clinics. As part of our reforms to abortion law, we must deal with this ongoing risk to the safety and wellbeing of patients who only want medical privacy. I will discuss this in more detail later.

It is time to move on and reform our laws to reflect what the community wants and what is actually taking place. As laws across much of the Australia have been brought in line with current practice and social expectations, New South Wales still lags behind. That is why today I am introducing the Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016. This is the first time an abortion decriminalisation bill has been introduced in the New South Wales Parliament. This bill is about access. It is about making access unambiguous but also removing the barriers that keep abortion services privatised and expensive, especially for rural and regional women.

New South Wales and Queensland remain the only States in Australia where the criminal laws from last century have not been amended. Let me say that again: New South Wales and Queensland remain the only States where the abortion offences remain unchanged in the Crimes Act. Members will be no doubt be aware that the Queensland private member's bill for abortion decriminalisation by Independent member of Parliament for Cairns, Mr Rob Pyne, is currently being examined by a parliamentary committee. Now it is time for New South Wales to confront this issue. The bill before us today is the culmination of months of intense consultations with doctors, lawyers, health and legal professionals, academics and women's groups before the exposure draft state. Further feedback after an exposure draft consultation period has been incorporated in the final bill. I am confident that we have crafted a bill that is comprehensive and careful, and meets public expectations in the twenty-first century.

The Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016 does three things. It repeals existing abortion offences, requires doctors to disclose a conscientious objection, and provides for safe access zones around reproductive health clinics. Going into more detail about the specific provisions of the bill, schedule 1.1 repeals all existing criminal offences relating specifically to abortion—that is, division 12 and sections 82, 83 and 84 of the Crimes Act 1900. In doing this, the bill follows the Australian Capital Territory model of repealing abortion offences. It is my intent, in this bill, for Parliament to signal that abortion ought not to be criminalised, but rather left up to the policies and decision-making of patients and their health practitioners, as occurs with other medical procedures. We do not have laws governing other parts of routine medical practice. We ordinarily leave it up to the profession to provide the best possible treatment and advice, and up to the patient to make the final decision.

In practice, much of this is already happening in New South Wales. NSW Health, for instance, provides a Policy Directive for a Framework for Terminations in New South Wales Public Health Organisations. This contains information about the appropriate level of medical oversight for terminations that may be requested in a range of circumstances.

Schedule 1.3 modifies the Health Practitioner Regulation National Law (NSW) to specify that it constitutes unsatisfactory professional conduct for a medical practitioner who has a conscientious objection to abortion to fail to advise a person requesting an abortion of the objection and to fail to refer the person to another health practitioner who does not have such a conscientious objection or to

a local Women's Health Centre. This schedule does not force any health practitioner to perform a pregnancy termination, nor does it vilify them for not performing one. In fact, it clarifies the action that must be taken by registered health practitioners who have a conscientious objection to abortion. This provision is to prevent a situation where a doctor who has an objection to abortion fails to inform a patient about all of their options, including termination. Patients rely on their health practitioners for knowledge and expertise. This ensures that patients get timely advice and access. However, this schedule also makes clear that in the case of an emergency a medical practitioner must treat a patient regardless of an objection to abortion. Again, this is no different from what medical professionals already undertake in case of other medical emergencies.

Schedule 2 makes amendments to the Summary Offences Act 1998 No 25 to enact 150-metre radius exclusion zones, also known as safe access zones, around premises at which abortions are provided with the purpose of prohibiting behaviour that is detrimental to health, safety and wellbeing or that compromises the privacy and dignity of those seeking to access reproductive health services, or doctors and employees of those services. New section 11AC makes it an offence for a person who is in an exclusion zone to bother, beset, harass, intimidate, interfere with, impede, obstruct or threaten by any means a person who is accessing, leaving or attempting to access or leave premises at which abortions are provided. New section 11AE protects patient and staff privacy by making it an offence to photograph, film or record or otherwise capture visual or audio data of people entering or leaving clinics.

The maximum penalty for breaching prohibitions defined in new sections 11AD and 11AE is 150 penalty units or imprisonment of six months. These provisions are largely modelled on the provisions in the Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015, which was passed in Victoria last year. Similar laws exist in Tasmania and the Australian Capital Territory. I have been to clinics in Surry Hills and Albury and witnessed the behaviour of some so-called protesters outside those clinics. Earlier this year as I stood with the community in Albury I thought, "Why does a woman on one side of the Murray River in Wodonga have the right to be free from harassment but a woman living on the other side in Albury is denied that right? This just makes no sense." We know that the 81 per cent of New South Wales residents who support exclusion zones around abortion clinics and service providers agree.

Let us be clear: Enacting exclusion zones is not about stopping people from having different views or expressing them. These are measures solely designed to prevent the harassment and intimidation of people accessing specific medical premises—reproductive health clinics. It is about medical privacy, safety and peace of mind for patients walking into and out of a clinic. In this spirit, I draw the attention of members to new section 11AG, which provides that the proposed restrictions do not apply so as to prohibit conduct near Parliament House to ensure that people who wish to protest against abortion can do so outside this people's House. This bill does not make a moral case for or against any behaviour or any procedure. It is, more than anything, an acknowledgment that abortions take place every day and that they are and have been accessed by our sisters, mothers, friends, family and so many other people we know. It provides a clear legislative commitment to not criminalising that behaviour.

To those in this Chamber who will be granted a conscience vote on this bill, some of whom may have some lingering discomfort with the idea of legalising the procedure, I urge them to consider both that abortions are already happening in New South Wales and that the right to choose abortion has overwhelming support in the community. In a poll conducted by Lonergan in September 2015 some 87 per cent of surveyed New South Wales residents supported the right to choose, and the backing is particularly strong in rural and regional areas, where services are less accessible. There was majority support for decriminalising abortion regardless of party affiliation, including Liberal-Nationals at 75 per cent, Labor at 77 per cent and The Greens at 86 per cent. There was clear majority support amongst men and women and across all age groups.

I know many members from rural and regional New South Wales may be thinking of what their constituents might think of how they will vote on this bill. They should be aware that people living in regional and rural New South Wales were more likely to have a view that abortion should be decriminalised, at 77 per cent, compared with people in Sydney, at 70 per cent. They are also overwhelmingly in support of safe access zones, with 93 per cent of people in rural and regional New South Wales strongly agreeing or agreeing to these zones compared with 87 per cent in Sydney. This is, of course, no surprise because it is regional and rural women who in many cases have to travel long distances to procure this procedure, and at great financial cost.

Finally, I will detail the process that has taken place to bring this bill to Parliament today. Members know that I first gave notice of a bill like this in 2014. I reintroduced it in the current Parliament in May 2015, before launching the End12 campaign to repeal division 12 of the Crimes Act in September. During that time I have held many meetings, roundtables, discussions and consultations with professionals, stakeholders and members of the public who all want to see this done. I have hosted a number of public meetings in regional areas and filled a packed-out Glebe Town Hall a couple of months ago. I have another planned in Newcastle next month.

I acknowledge the invaluable help of my staff, volunteers, the NSW Greens Women's Group and convenor Darelle Duncan in the campaign so far. I must also mention the advice and support from people such as Leslie Cannold, Caroline de Costa, Philippa Ramsay, Kirsten Black and Pieter Mourik and Bethany Sheehan and Anna Grothe from My Body, My Right. In our consultation process to date we have met or had discussions with representatives from numerous organisations who strongly support the bill, including the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the NSW Council for Civil Liberties, the NSW Nurses and Midwives' Association, the National Tertiary Education Unit NSW, the Women's Legal Service, Community Legal Centres and Family Planning NSW to name a few.

Of course, we have come this far not just as the result of the work of a group of stakeholders and abortion reform advocates over the past three years; it is the end result of many decades of campaigning by generations of feminist activists, doctors, lawyers, and people in the community who have been working towards the repeal of criminal laws governing abortion for decades. I acknowledge the incredible role of the women's movement in fighting for abortion rights, including the Women's Abortion Action Campaign. I also acknowledge that over the decades many people—particularly women—have suffered as a result of the criminalisation and stigmatisation of abortion. Many of these wounds are irreversible, and I hope that one day this Parliament will perhaps reflect on and acknowledge this in a more meaningful and sustained way. But for now I hope we can work together to pass what I believe is a comprehensive and carefully crafted bill.

In June this year Dean of Law at the University of New South Wales George Williams stated in an opinion piece in the *Sydney Morning Herald* that this bill is "far from radical". He is right. Provisions similar to this bill have been operating effectively for a number of years in many other jurisdictions of this country.

The bill does not do anything that has not been done before. It does not impinge on anyone's rights and it does not force anyone to do anything they do not want to do. It is not about encouraging or discouraging abortions. It is not about any compulsion but about the right to a choice. It grants the same rights that people in Victoria, the Australian Capital Territory and Tasmania already enjoy to people in need of reproductive health in New South Wales. It says to women and all people who choose to have an abortion that they are not criminals and that we are going to remove the stigma and shame they currently face, and that anyone in need of a pregnancy termination service has affordable access to it with dignity and privacy.

The law must be brought into line with reality and with modern medical practice. There must be watertight protections for patients and their doctors so they can be absolutely confident that they are on the right side of the law. We must make sure that patients are able to easily afford and access one of the most common medical procedures in privacy, safety and dignity. The people of New South Wales, the most populous State in Australia, will accept nothing less. It is way past time to make the changes proposed in the Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016. I look forward to working with members from all political parties to make this a reality. I commend the bill to the House.

Debate adjourned.