



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# Reproductive Health Care Reform Bill 2019 [Provisions]



Report 55

August 2019

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Standing Committee on Social Issues

**Reproductive Health Care  
Reform Bill 2019  
[Provisions]**

Ordered to be printed 20 August 2019

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues**

Reproductive Health Care Reform Bill 2019 / Standing Committee on Social Issues. [Sydney, N.S.W.] : the Committee, 2019. — [ix, 80] pages ; 30 cm. (Report ; no. 55)

“August 2019”

ISBN: 9781922258953

Chair: Hon. Shayne Mallard MLC.

1. New South Wales. Parliament. Legislative Assembly. Reproductive Health Care Reform Bill 2019
2. Abortion—Law and Legislation--New South Wales
3. Decriminalization—New South Wales
  - I. Title.
  - II. Mallard, Shayne.
  - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues. Report ; no. 55.

342.084 (DDC22)

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## Terms of reference

That:

- (a) the provisions of the Reproductive Health Care Reform Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by Tuesday 20 August 2019.

The terms of reference were referred to the committee by the Legislative Council on 6 August 2019 on recommendation of the Selection of Bills Committee.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 6 August 2019, p 292.

## Committee details

### Committee members

<b>Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>Hon Niall Blair MLC*</b>	The Nationals	
<b>Hon Greg Donnelly MLC*</b>	Australian Labor Party	
<b>Hon Rose Jackson MLC</b>	Australian Labor Party	
<b>Hon Trevor Khan MLC*</b>	The Nationals	
<b>Hon Natasha Maclaren-Jones MLC*</b>	Liberal Party	
<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	

- \* Mr Donnelly substituted for Mr Mookhey as a member of the committee for the duration of the inquiry.
- \* Mr Khan substituted for Mr Franklin as a member of the committee for the duration of the inquiry.
- \* Mr Blair substituted for Mrs Ward as a member of the committee for the duration of the inquiry.
- \* Mrs Maclaren-Jones substitute for Mr Martin as a member of the committee for the duration of the inquiry.

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## Chair's foreword

The Reproductive Health Care Reform Bill 2019 is a private member's bill that was referred to the Standing Committee on Social Issues by the Legislative Council on the recommendation of the Selection of Bills Committee. This followed the passage of the bill through the Legislative Assembly. This is the second short inquiry conducted by the Social Issues Committee following the earlier Ageing and Disability Commissioner Bill inquiry. Similar timelines and procedures were followed for this inquiry.

This bill seeks to reform the law relating to terminations of pregnancies and regulating the conduct of health practitioners in relation to terminations. It seeks to remove terminations from the *Crimes Act 1900* and establish them in a stand alone health care Act.

The operation of short format inquiries is a process that the Legislative Council is adapting to. However given the short time frame for this inquiry it was still able to canvas a broad representative sample of opinion and submissions on the bill. In particular I note:

- Over 13,000 submissions via the web site portal or email
- 15 hours of hearings over three days
- 15 panels of witnesses grouped into areas of interest
- 44 witnesses including 10 senior religious representatives
- Approximately 300 questions asked by committee members
- 174 pages of Hansard transcript.

The inquiry heard from religious leaders, ethicists, right to life and right to choose advocates, academics, women's organisations and the legal and medical professionals amongst the witnesses.

During the inquiry the committee considered a number of concerns that were raised by stakeholders including gestation periods, conscientious objection, counselling and sex selection, amongst others.

The committee acknowledges these concerns and has recommended that the Legislative Council proceed to consider the Reproductive Health Care Reform Bill 2019 and consider any amendments in the committee stage that may address stakeholder concerns raised in this inquiry.

This report does not seek to take a position on the bill but rather present the evidence and opinions as presented to the inquiry for the Legislative Council to consider in debating the bill.

Finally I would like to sincerely thank my fellow committee members for the restrained and generally civil manner in which this contentious issue was examined. I also note that the public galleries were respectful of the process.

I want to thank the Clerks and secretariat for their professional dedication and skills. The committee particularly singled out the Deputy Clerk, Steven Reynolds and Clerk Assistant, Stephen Frappell for their commitment to this report. I also pay thanks to other members of the committee secretariat including Elise Williamson and Sam Griffith.

I commend the report to the House.

A handwritten signature in black ink that reads "Shayne Mallard". The signature is written in a cursive, flowing style.

Hon Shayne Mallard MLC  
**Committee Chair**

## Recommendation

### Recommendation 1

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That the Legislative Council proceed to consider the Reproductive Health Care Reform Bill 2019, including any amendments in the committee stage that address stakeholder concerns raised during this inquiry.



# Chapter 1 Introduction

This chapter provides information on the introduction, objects of and passage through the Legislative Assembly of the Reproductive Health Care Reform Bill 2019.

## Introduction of the bill in the Legislative Assembly

**1.1** The Reproductive Health Care Reform Bill 2019 was introduced into the Legislative Assembly on Thursday 1 August 2019 by Mr Alex Greenwich MP, the Member for Sydney. It was introduced as a private member's bill. Unusually, the bill was co-sponsored by 15 members from across both Houses of the Parliament: in the Legislative Assembly the Hon Shelley Hancock MP, Trish Doyle MP, the Hon Brad Hazzard MP, Ryan Park MP, Jenny Leong MP, the Hon Leslie Williams MP, Alex Greenwich MP, Jenny Aitchison MP, Felicity Wilson MP, Greg Piper MP and Jo Haylen MP; in the Legislative Council the Hon Penny Sharpe MLC, the Hon Trevor Khan MLC, the Hon Abigail Boyd MLC and the Hon Emma Hurst MLC.

## The objects of the bill

**1.2** The explanatory memorandum to the Reproductive Health Care Reform Bill 2019 as introduced in the Legislative Assembly on 1 August 2019 cited the objects of the bill as follows:

- (a) to enable a termination of a pregnancy to be performed by a medical practitioner on a person who is not more than 22 weeks pregnant,
- (b) to enable a termination of a pregnancy to be performed by a medical practitioner on a person who is more than 22 weeks pregnant in certain circumstances,
- (c) to identify certain registered health practitioners who may assist in the performance of a termination,
- (d) to require a registered health practitioner who has a conscientious objection to the performance of a termination on a person to disclose the objection and refer the person to another practitioner who does not have a conscientious objection,
- (e) to repeal offences relating to abortion in the *Crimes Act 1900* and abolish any common law rules relating to abortion,
- (f) to amend the *Crimes Act 1900* to make it an offence for a person who is not a medical practitioner otherwise authorised under the Act to terminate a pregnancy.

**1.3** In his second reading speech on the bill, Mr Greenwich made the following case for the bill:

The Reproductive Health Care Reform Bill 2019 recognises that the best outcomes in women's reproductive health care are achieved when abortion is treated as a health matter, not a criminal matter, and a woman's right to privacy and autonomy in decisions about their care is protected. In New South Wales it has been a criminal offence to procure an unlawful abortion since 1900, when the Crimes Act was first written. The law has not changed since then. ...

In our State's twenty-first century healthcare system pregnancies are safely terminated in licensed healthcare facilities and by registered doctors. But the women, doctors and healthcare professionals obtaining, conducting and assisting in these vital healthcare services are operating under an out-of-date law from the 1900s that creates a risk that they are committing a crime with penalties of up to 10 years in prison.

Our Crimes Act still makes it a criminal offence to procure an unlawful abortion. The framework that enables pregnancies to be terminated does not come from the law, but from common law interpretations of what "lawful" and "unlawful" terminations constitute. The courts have ruled that terminations are lawful if they protect a woman from serious danger to her life or physical or mental health, taking into account economic, social or medical reasons. The first ruling to allow for lawful terminations was in 1971 by Judge Levine in *R v Wald*. ...

There is no clarity beyond this interpretation in the law itself and determining whether each termination meets the common law criteria for "lawful" remains a grey area in the law. This has a number of poor consequences for women trying to access reproductive health care. The courts can consider any termination that occurs in this State on a case-by-case basis, and assess each woman's personal situation to make a determination. The threat of prosecution of women and healthcare professionals is real. As recently as August 2017 a Blacktown mother of five was prosecuted for self-administering a drug to cause a miscarriage. If the law is left unchanged, the courts can continue to interpret what does and does not constitute a lawful termination with no guidance from the Parliament in over 100 years. The bill finally provides that guidance. ...

The Reproductive Health Care Reform Bill 2019 will regulate the practice of terminating pregnancies in New South Wales, bringing the law in line with clinical practice, community attitudes and the rest of the country. This bill will provide a framework for lawful and unlawful terminations in a new standalone Act. Provisions in the bill are based on those enacted in Queensland and Victoria, which came out of extensive Law Reform Commission processes, adopting the principles of ready access to early stage terminations and use of current common law provisions with additional oversight than currently exists from a second doctor for later stage terminations.<sup>2</sup>

## Passage of the bill through the Legislative Assembly

- 1.4 Following its introduction on 1 August 2019, the Reproductive Health Care Reform Bill 2019 was debated in the Legislative Assembly over three days from 6 to 8 August 2019.
- 1.5 In summary of these proceedings, the second reading debate occupied much of the time of the Legislative Assembly on 6 and 7 August 2019, before the question that the bill be read a second time was agreed to on division, 56 votes to 33, on the morning of 8 August 2019.<sup>3</sup> Subsequently, the Legislative Assembly considered a significant number of amendments to the bill from a number of members. The details of these amendments are considered in the following chapter, but in summary, the Legislative Assembly adopted amendments to the bill in relation to:
- informed consent,
  - terminations after 22 weeks being performed only by specialist medical practitioners,

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<sup>2</sup> *Hansard*, NSW Legislative Assembly, 1 August 2019, pp 3-4.

<sup>3</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 242.

- terminations after 22 weeks being performed only at approved public health facilities,
- the provision of information about counselling,
- the obligations on medical practitioners with a conscientious objection to terminations, and
- a review after 12 months of whether terminations are being used for the purposes of gender selection.

1.6 At the conclusion of the sitting day on 8 August 2019, the Legislative Assembly agreed to the third reading of the bill, as amended, on division, 59 votes to 31.<sup>4</sup> The bill, as amended, was forwarded by the Legislative Assembly to the Legislative Council the next day, Friday 9 August 2019.

### Conduct of this inquiry

1.7 On Tuesday 6 August 2019, the Legislative Council's Selection of Bills Committee recommended to the House that the 'provisions' of the Reproductive Health Care Reform Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and report by Tuesday 20 August 2019. The House adopted the recommendation. The committee notes that the time available to it to conduct this inquiry was very short, although a similar time frame applied to the last bill referred to this committee.<sup>5</sup> An amendment for the committee to instead report by Sunday 10 November 2019 was negated.<sup>6</sup>

1.8 The referral of the 'provisions' of the bill enabled the committee to consider the proposed clauses and schedules of the bill, notwithstanding that receipt of the bill from the Legislative Assembly had not been reported in the Legislative Council. However, the committee took the decision at a deliberative meeting on Wednesday 7 August 2019 not to formally commence the inquiry and seek submissions until it became clear whether the bill would pass the Legislative Assembly, and if so, the form in which it passed. The committee believes that this decision was validated by the fact that the bill was subsequently amended in a number of respects in the Legislative Assembly. Parties to the inquiry also clearly addressed their comments to the revised bill.

1.9 Following the conclusion of the Legislative Assembly's consideration of the bill, and the forwarding of the bill by the Legislative Assembly to the Legislative Council on Friday 9 August 2019, the committee immediately advertised its inquiry and sought submissions from interested parties by close of business Tuesday 13 August 2019. In total, over 10,000 submissions were received by the close of submissions. However because of a technical problem with the website on Tuesday afternoon which prevented some submissions being received, the Committee resolved to extend the time for receipt of submissions until midnight on Thursday 15 August. At the close, over 13,000 submissions were received, over 3,000 of which arrived by email and the remainder through the website.

<sup>4</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 261.

<sup>5</sup> Standing Committee on Social Issues, *Ageing and Disability Commissioner Bill 2019*, June 2019.

<sup>6</sup> *Minutes*, NSW Legislative Council, 6 August 2019, p 292.

- 1.10** When Upper House committees receive such a large number of submissions limited staff resources mean it becomes impractical to process all submissions received. Consistent with the approach taken in an earlier inquiry by this committee into same sex marriage, the committee chose to publish all submissions provided by witnesses appearing, and a number of other more extensive submissions by agencies and organisations. These are listed at Appendix One. To fairly reflect the other submissions received, the secretariat processed close to 900 submissions received through the website, processing every 50<sup>th</sup> submission, then every 25<sup>th</sup>. A sample of 100 of these submissions was then de-identified and published as a document to provide an indication of the views expressed by those who engaged with the inquiry. Of the sample, 96 were opposed to the bill, 3 were blank so expressed no view, and 1 suggested amendments. A similar exercise was undertaken with a sample of 40 submissions received by email. Of this sample, 36 were opposed to the bill and 4 supported the bill. The committee wishes to thank all those many members of the community who sought to express their views and took the time to prepare submissions.
- 1.11** Three public hearings were subsequently held at Parliament House on Wednesday 14, Thursday 15 August and Friday 16 August 2019 at which the committee took evidence from religious leaders and representatives of pro-life groups, legal organisations, women's rights groups, medical associations and reproductive and sexual health services. The witnesses appear as Appendix Two.

## Chapter 2 Background to the bill

This chapter provides background information on the Reproductive Health Care Reform Bill 2019 and the views of parties to the inquiry.

### The *Crimes Act 1900* and the common law

- 2.1** Abortion in New South Wales is currently a criminal offence under Part 3, Division 12 (sections 82, 83 and 84) of the *Crimes Act 1900* dealing with 'Attempts to procure abortion'. This Division has been part of the *Crimes Act 1900* since it was enacted. An offence under section 82 or 83 carries a maximum penalty of 10 years imprisonment.
- 2.2** However, the application of these provisions of the *Crimes Act 1900* is modified at common law by the decision of Judge Levine in the District Court case of *R v Wald*.<sup>7</sup> This case involved a surgeon, an anaesthetist and an orderly being charged with unlawfully using an instrument to procure the miscarriage of nine different women, contrary to section 83 of the *Crimes Act 1900*. The matter proceeded to trial, where the accused were acquitted by a jury. However, in determining whether the matter should go to trial by jury, Judge Levine gave the following significant judgement on the scope of section 83:

Everything turns upon the word “unlawful”. In my view, s 83 envisages that it is not every use of an instrument upon a woman with intent to procure a miscarriage that constitutes an offence, the offence is only committed if it be done unlawfully; and it would seem to me that the legislature had in mind that there were circumstances in which such use of an instrument could be lawful.<sup>8</sup>

- 2.3** As a result of the decision in *Wald*, the offences under sections 82, 83 and 84 of the *Crimes Act 1900* in relation to abortion are not routinely enforced. In its written submission, the NSW Council for Civil Liberties put it in the following terms:

To obtain a legal abortion in NSW women have to establish exceptional circumstances emerging from the Levine ruling of 1971: 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.<sup>9</sup>

- 2.4** During the conduct of the inquiry, the committee received evidence that since the judgement of Judge Levine in *Wald*, abortion, or abortion which is 'not unlawful', has been available to women in New South Wales. In particular, the committee notes the submission of the NSW Council for Civil Liberties that given the way abortions are currently being carried out in New South Wales, 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 in a hospital or approved health facility.<sup>10</sup> The committee also understands that the NSW Police currently have

<sup>7</sup> (1971) 3 DCR (NSW) 25.

<sup>8</sup> *R v Wald* (1971) 3 DCR (NSW) 25 at 28.

<sup>9</sup> Submission 42, NSW Council for Civil Liberties, p 3.

<sup>10</sup> The NSW Council for Civil Liberties' submission cited the relevant public interest considerations that apply under NSW DPP Prosecution Guideline 4 as including paragraphs 3.2, 3.3, 3.5, 3.6, 3.8, 3.9, 3.13, 3.14 and 3.16. Submission 42, NSW Council for Civil Liberties, p 3. See also Evidence, Mr

a policy of not bringing prosecutions, although it would be open to a future government to alter this policy.

- 2.5 However, the committee also notes the submissions from the Human Rights Law Centre and Women's Health NSW citing the 2017 case of *R v Lasuladu*,<sup>11</sup> in which a mother of five was prosecuted for administering misoprostol to herself in an attempt to procure an abortion.<sup>12</sup> The committee also notes the 2006 case of *R v Sood*.<sup>13</sup>

## **The Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016**

- 2.6 During the conduct of the inquiry, reference was made to previous occasions on which the Parliament has been asked to consider change to the provisions of the *Crimes Act 1900* in relation to abortion. Most recently in 2017, the Legislative Council debated the Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016, a private member's bill introduced in the Legislative Council by the Hon Mehreen Faruqi (sometimes referred to during the inquiry as the "Faruqi bill"). This bill, was similar to the Reproductive Health Care Reform Bill 2019 in that it also proposed the repeal of the offences in sections 82, 83 and 84 of the *Crimes Act 1900*. However it differed in that it did not regulate access to abortions at not more than 22 weeks and after 22 weeks as proposed in the Reproductive Health Care Reform Bill 2019. Ultimately, the second reading of the Faruqi bill was negated in the House 25 votes to 14 on 11 May 2017.<sup>14</sup>

## **Legislation in other jurisdictions**

- 2.7 The NSW Parliamentary Library released an Issues Backgrounder prior to the conduct of this inquiry that compared abortion law in all Australian states and territories as at 5 August 2019, which the committee reproduces below. All states and territories have different gestation cut-off points for gestation for abortion on request as summarised in the table.

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Nicholas Cowdery AC QC, NSW Council for Civil Liberties, 14 August 2019, uncorrected transcript, p 49.

<sup>11</sup> [2017] NSWLC 11.

<sup>12</sup> Submission 25, Human Rights Law Centre, p 4; Submission 31, Women's Health NSW, p 4.

<sup>13</sup> [2006] NSWSC 1141.

<sup>14</sup> *Minutes*, NSW Legislative Council, 11 May 2017, pp 1611-1612.

Abortions performed with consent on a woman by a medical practitioner									
	Criminalised					Decriminalised			
	SA	NSW (current law)	NSW (2019 Bill)	QLD	ACT	NT	TAS	VIC	WA
Covers both surgical and drug-based abortions	✓	✓	✓	✓	✓	✓	✓	✓	✓
Abortion available on request	x	x	(up to 22 weeks)	(up to 22 weeks)	✓	x	(up to 16 weeks)	(up to 24 weeks)	(up to 20 weeks)
Abortion available if doctor(s) satisfied of certain matters	✓	✓	(after 22 weeks)	(after 22 weeks)	x	(up to 23 weeks)	(after 16 weeks)	(after 24 weeks)	(after 20 weeks)
Conscientious objection by doctors recognised	✓	x	✓	✓	✓	✓	✓	✓	✓
Doctors who conscientiously object must redirect woman to abortion services	x	x	✓	✓	x	✓	✓	✓	x
Counselling mandatory	x	x	x	x	x	x	x	x	✓
Safe access zones	x	✓	✓	✓	✓	✓	✓	✓	x

- 2.8** While the law in New South Wales in relation to abortions has not changed since 1900, the committee notes that other Australian states have changed their laws. During the inquiry, particular note was made of relatively recent changes to the law in Queensland and Victoria.
- 2.9** In August 2018, the Queensland Parliament passed the *Termination of Pregnancy Act 2018*. It commenced on 3 December 2018. This Act defines its purpose as enabling reasonable and safe access by women to terminations and regulating the conduct of registered health practitioners in relation to terminations.<sup>15</sup> It was adopted following publication in June 2018 of a Queensland Law Reform Commission report entitled *Review of termination of pregnancy laws*.<sup>16</sup>
- 2.10** In August and September 2008, the Victorian Parliament passed the *Abortion Law Reform Act 2008*. It commenced on 23 October 2008. This Act defines its purpose as reforming the law relating to abortion; regulating health practitioners performing abortions; and amending the *Crimes Act 1958* (Vic) amongst other things to repeal provisions relating to abortion and to abolish the common law offences relating to abortion. It was adopted following publication in March 2008 of a Victorian Law Reform Commission's report entitled *Law of Abortion*.<sup>17</sup>
- 2.11** The committee notes that the provisions of the Reproductive Health Care Reform Bill 2019 are based closely on the provisions of the Queensland and Victorian legislation.

## Statistics on the number and timing of abortions in New South Wales

- 2.12** During the conduct of this inquiry, many parties observed that there are no reliable statistics on the number of abortions performed in New South Wales. While there are no accurate statistics on the number of abortions being performed, extrapolating from a study of abortion rates in Australia in 2005, up to 36,000 abortions may be performed in New South Wales each year.<sup>18</sup> An estimate from South Australia put to the committee during the inquiry is that one in four women have had an abortion.<sup>19</sup>
- 2.13** The committee also notes the suggestion from many parties to the inquiry that NSW Health collate and publish on a regular basis accurate data on the number of abortions being performed in New South Wales each year.<sup>20</sup>

## The debate around the morality of abortion

- 2.14** The committee notes that there is ongoing debate concerning the morality of abortion and the legal status and rights of an unborn foetus or child. Indeed, the committee acknowledges that

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<sup>15</sup> *Termination of Pregnancy Act 2018* (Qld), s 3.

<sup>16</sup> Queensland Law Reform Committee, *Review of termination of pregnancy laws*, Report No 76, June 2018.

<sup>17</sup> Victorian Law Reform Commission, *Law of Abortion*, Final Report, March 2008.

<sup>18</sup> Submission 38, Rape and Domestic Violence Services Australia, p 6.

<sup>19</sup> Submission 33, Australian Christian Lobby, p 3; Submission 36, Women and Babies Support (WOMBS), p 5; Submission 15, Family Planning NSW, p 4.

<sup>20</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, p 6; Submission 33, Australian Christian Lobby, p 15; Submission 21, Prof Anna Walsh, p 5; Submission 17, Dr Whitehall, Chairman of the Christian Medical and Dental Fellowship, p 8.

even in referring to 'an unborn foetus or child' there is controversy. The medical terms "embryo" and "foetus" are seen by some as dehumanising, while everyday terms such as "baby" or "child" are viewed by others as unduly ascribing human status to the unborn foetus.

- 2.15** In general terms, there are two sides to the debate, sometimes referred to as "pro-life" and "pro-choice" perspectives.

### **The "pro-life" perspective**

- 2.16** The "pro-life" perspective in the abortion debate emphasise the right of the unborn child to gestate to full term and be born. "Pro-life" advocates generally argue that there are only very limited circumstances in which abortions can be justified, generally those where there is danger to the life of the mother, for example ectopic pregnancies,<sup>21</sup> or potentially where there are proven foetal abnormalities which may or may not be fatal to the child if born.<sup>22</sup> However, it is notable that "pro-life" advocates generally oppose abortion in cases of suspected or confirmed congenital abnormalities.<sup>23</sup>

### **The "pro-choice" perspective**

- 2.17** The "pro-choice" perspective in the abortion debate emphasise the right of a women to control her own body and its life-support functions, including the right to determine whether or not to be pregnant, and whether to terminate a pregnancy. They argue that women should not be forced to remain pregnant, or alternatively be forced to have an abortion, if this is against their will.<sup>24</sup>

### **"Personhood"**

- 2.18** Intertwined with the debate around the morality of abortion are different opinions as to when a foetus or child in the womb acquires "personhood". In general terms, "pro-life" advocates generally ascribe "personhood" to an unborn child from conception. As such, the "pro-life" perspective is that abortion is the killing of a person, or at least an unborn child that has the potential to develop into a person.<sup>25</sup> By contrast, "pro-choice" advocates argue that an unborn

<sup>21</sup> Evidence, Archbishop Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, pp 13, 17; Evidence, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, 16 August 2019, uncorrected transcript, p 3; Evidence, Bishop Kodseie, Metropolitan, Antiochian Orthodox Archdiocese of Australia, 16 August 2019, uncorrected transcript, p 4.

<sup>22</sup> See for example Submission 1, Rabbinical Council of NSW, p 1; Submission 34, Social Issues Committee of the Anglican Archbishop of Sydney, covering letter from the Archbishop of Sydney; Submission 33, Australian Christian Lobby, p 8.

<sup>23</sup> Submission 13, Right to Life NSW, pp 16-17.

<sup>24</sup> Submission 28, Our Bodies, Our Choice, p 8.

<sup>25</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, pp 1, 2; Submission 22, Maronite Eparchy of Australia, p 1; Evidence, Bishop Kodseie, Metropolitan, Antiochian Orthodox Archdiocese of Australia, 16 August 2019, uncorrected transcript, pp 2, 7; Evidence, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, 16 August 2019, uncorrected transcript, p 7; Submission 33, Australian Christian Lobby, p 3; Submission 13, Right to Life NSW,

foetus is not a person until much later in a gestation period, such as when the foetus develops consciousness and the ability to feel pain, or potentially at birth.<sup>26</sup>

- 2.19** The committee notes that these positions were expressed during the inquiry. As an example, the submission of the Catholic Bishops of NSW cited human life as beginning at conception, and stated that any attempt to choose a point after conception to ascribe rights is necessarily arbitrary.<sup>27</sup> This was reiterated by Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, responding to Jeremiah 1:4-5:

If I could say, I think it goes to the heart of a notion that pretty well every human being has—even those that do not share our three faiths—and that is that life is sacred, that life is precious, even before it is seen, as it were, even before it was born. <sup>28</sup>

- 2.20** Similarly, Archbishop Glenn Davies, Anglican Archbishop of Sydney, stated:

When I represent the New South Wales Council of Churches, which are seven denominations, they hold the classic view of life from conception. That is a long-held view—if I had time I would quote *Exodus* for you, but I will not—with regard to how we recognise the importance and the value of life.<sup>29</sup>

- 2.21** The committee also notes the evidence of Rabbi Schapiro, President of the Rabbinical Council of Australia:

In relation to the issue that we are discussing here today, we unashamedly believe in the divine sanctity of human life and the divine sanctity of the beginning of human life, which is the foetus.<sup>30</sup>

- 2.22** Similarly, Reverend Azize, Priest of the Maronite Eparchy of Australia, submitted in evidence:

Our starting point is this: The taking of an innocent life is always wrong and the child in the mother's womb is an innocent life. I set this out more in my submission: What do people imagine is happening during the period of gestation? Do they think that something inanimate suddenly becomes human at the time of birth? The only sensible view, in our opinion, is that it is an innocent human being inside its mother's womb. It is a human life.<sup>31</sup>

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p 3; Submission 35, The Australian Family Association, pp 1-2; Evidence, Dr Simon McCaffrey, 15 August 2019, uncorrected transcript, p 81.

<sup>26</sup> Evidence, Dr Margaret Mayman, Pitt Street Uniting Church, 15 August 2019, uncorrected transcript, pp64.

<sup>27</sup> Submission 20, Catholic Bishops of New South Wales, p 3. See also submission 22, Maronite Catholic Eparchy of Australia, p 2

<sup>28</sup> Evidence, Archbishop Anthony Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 7.

<sup>29</sup> Evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 14.

<sup>30</sup> Evidence, Rabbi Schapiro, President, Rabbinical Council of Australia, 14 August 2019, uncorrected transcript, p 4.

<sup>31</sup> Evidence, Reverend Azize, Maronite Eparchy of Australia, 14 August 2019, uncorrected transcript, p 14.

- 2.23** The contrary perspective was also expressed clearly during the inquiry. For example, the committee notes the evidence of Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, that 'right to life occurs at birth', and that a baby in utero has no rights until it is born.<sup>32</sup>
- 2.24** Of course the committee also acknowledges that between these two positions, there is a broad spectrum of opinion. The committee notes the evidence of the Revd Dr Peter Stuart, Anglican Bishop of Newcastle:

Anglicans in general hold one of three main positions in relation to the status of unborn life. One position argues that a human life begins at the moment of conception. Another position says that until birth the unborn life is part of the woman, who has autonomy over her body. A third view is that the moral significance or value of an embryo/fetus accrues as it develops. No one view of when life begins is required of Anglicans; our theological formulations offer at least these three.<sup>33</sup>

### **Bodily rights and broader societal arguments**

- 2.25** Also intertwined in the debate around the morality of abortion are questions about the bodily rights of women, the status and freedom of women in society and the type of society in which we all live.
- 2.26** In general terms, "pro-life" advocates are concerned that women sometimes have abortions for 'social' or 'lifestyle' reasons rather than health reasons. As such, they argue that society should do more to ensure that women are supported in pregnancy, and that they have options and alternatives to abortion, whether that be bringing up the child up in a supportive community and family or surrendering the child for adoption.<sup>34</sup> As an example of this position, was expressed in the submission of the Australian Christian Lobby:
- .. rather than allowing abortion, a just and compassionate society will assist women who find themselves in difficulty because of pregnancy to be supported, socially and financially. Choosing abortion in the absence of other support is not a free choice.<sup>35</sup>
- 2.27** "Pro-life" advocates also argue that abortion is often associated with adverse long-term health outcomes for women, and that it increases rather than prevents maternal mortality.<sup>36</sup>

<sup>32</sup> Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 11.

<sup>33</sup> Evidence, Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, p 61.

<sup>34</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, p 3; Submission 36, Women and Babies Support (WOMBS), p 1; Evidence, Archbishop Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 8; Evidence, Archbishop Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, pp 13, 16; Evidence, Bishop Kodseie, Metropolitan, Antiochian Orthodox Archdiocese of Australia, 16 August 2019, uncorrected transcript, p 6.

<sup>35</sup> Submission 33, Australian Christian Lobby, p 3.

<sup>36</sup> Submission 13, Right to Life NSW, p 5; Submission 35, The Australian Family Association, p 2; Submission 46, Women's Forum, p 4.

- 2.28** By contrast, "pro-choice" advocates argue that the ability of a woman to choose for herself whether to bear a child is necessary in order for women to achieve equality in society. Fundamental to this position is the argument that women should be trusted to know their own minds and bodies and to make their own informed decisions without external intervention.<sup>37</sup> As stated in evidence by Ms Edwina MacDonald, Legal Director of the Human Rights Law Centre:

Passing the bill would demonstrate that this Parliament respects women as competent decision-makers over their bodies and is committed to promoting women's health, safety and equality.<sup>38</sup>

- 2.29** The committee also notes the evidence of Adjunct Prof Ann Brassil, CEO, Family Planning NSW:

... women should have the right to make these decisions themselves, given their circumstances, given the complexities in their life, given the complexities in their relationships, their health status, the health status of their children, the health status of their family members, their social circumstances, et cetera—these are very difficult decisions to make, and women do not take these decisions lightly and we should trust women to make decisions about their own health care. At the present time the system does not allow women to be trusted to make decisions about themselves, yet in so many parts of life we rely on women to make enormous decisions that have massive social ramifications, but in this area we still have the anachronistic view that women cannot make these decisions themselves and they must be controlled by the law.<sup>39</sup>

- 2.30** Those adopting the "pro-choice" perspective also dispute that the decision to have an abortion has long-term adverse mental health outcomes for women.<sup>40</sup>

### **The perspective of religious leaders on the bill**

- 2.31** The committee notes that while in general terms religious leaders expressed strong concerns about the bill, the position they expressed to the committee during the inquiry was more nuanced than simply opposition to the bill. The committee takes this opportunity to cite some of the perspective put to it by religious leaders during the inquiry.

- 2.32** In his evidence to the committee, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, observed:

The Catholic Church believe every human life is both invaluable and inviolable. The right to life and love is not qualified by age, sex, ability or wantedness; it is for every human being.<sup>41</sup>

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<sup>37</sup> Submission 28, *Our Bodies, Our Choices*, p 15; Submission 47, Dr Margaret Mayman, Pitt Street Uniting Church, p 3.

<sup>38</sup> Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 3.

<sup>39</sup> Evidence, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, 15 August 2019, uncorrected transcript, p 17.

<sup>40</sup> Submission 15, Family Planning NSW, p 5.

<sup>41</sup> Evidence, Archbishop Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 3.

**2.33** The Revd Dr Peter Stuart, Anglican Bishop of Newcastle, observed:

A consistent stance across the worldwide Anglican communion is to oppose the termination of pregnancy as a means of birth control, family planning, sex selection, or any reason of mere convenience. Anglicans are concerned about ethical practices that deny the dignity and contribution of people born with a disability.<sup>42</sup>

**2.34** Reverend Azize, Priest of the Maronite Eparchy of Australia, submitted:

This legislation disrespects the basic principle of the sanctity of human life. Part of the reason that abortion is tolerated by many people who otherwise would be in principle opposed to the taking of an innocent human life is that no other victim is so completely faceless, so completely unable to speak for itself, as the life in the womb. If one wishes to brush this issue under the carpet, to hide it from one's conscience, one can, because there is no face for these children. But yet they are human lives. It is not simply a question of the mother's body or the mother's rights. The child in the womb is not the mother's body. The child can be of a different sex. The child can be of the different blood type. The child is itself a human being.<sup>43</sup>

**2.35** Bishop Kodseie, Metropolitan, Antiochian Orthodox Archdiocese of Australia, submitted:

According to this bill, the fetus has no right to life at all. Its humanity is, in no way, recognised. The proposed law suggests that there is a moral and legal right to abort the fetus at any time up until birth with the approval of either one or two medical practitioners, as the case may be. The Orthodox Church is seriously concerned that this legislation promotes an ideology and practice that abortion is the sole and favourite option.<sup>44</sup>

**2.36** Rabbi Schapiro, President of the Rabbinical Council of Australia, argued:

I believe if this bill comes through it will be a blotch on society. It will weaken the bedrock of our society, which is the absolute sanctity of life.<sup>45</sup>

**2.37** Imam Hassan Elsetohy, President, Australian National Imams Council NSW, representing the office of the Grand Mufti of Australia, Dr Ibrahim Abu Mohammad, indicated to the committee:

... the position of the mufti himself and the community he represents is balance it in a way that it does not give unconditional rights for abortion and open the door without any conditions, nor just prevents it strictly with regards with any circumstances. So in general, it does not support the abortion; however, unless there is a very particular

<sup>42</sup> Evidence, Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, pp 61-62.

<sup>43</sup> Evidence, Reverend Azize, Maronite Eparchy of Australia, 14 August 2019, uncorrected transcript, p 14.

<sup>44</sup> Evidence, Bishop Kodseie, Metropolitan, Antiochian Orthodox Archdiocese of Australia, 16 August 2019, uncorrected transcript, p 2

<sup>45</sup> Evidence, Rabbi Schapiro, President, Rabbinical Council of Australia, 14 August 2019, uncorrected transcript, p 4.

situation such as there is an threat to the life of the mother, where in these cases it can be.<sup>46</sup>

**2.38** Archbishop Makarios, Primate of the Greek Orthodox Church of Australia, explained in his submission:

The Orthodox Christian Faith and Tradition unequivocally teach that life begins from the first time of the conception, that the life of the unborn is sacred and infinitely valued by God, and therefore must be considered with the same dignity and worth we enjoy ourselves.<sup>47</sup>

**2.39** However, religious leaders also brought varying perspectives. Reverend Simon Hansford, Moderator of the Synod of NSW and the ACT, Uniting Church of Australia, expressed the following view:

When abortion is practised indiscriminately, it damages respect for human life. However, we live in a broken world where people face difficult decisions. Respect for the sacredness of life means advocating for the needs of women as well as every unborn child. We reject two extreme positions: that abortion should never be available, and that abortion should be regarded as simply another medical procedure. It is not possible to hold one position that can be applied in every case because people's circumstances will always be unique.<sup>48</sup>

**2.40** In her submission, Dr Margaret Mayman, Pitt Street Uniting Church, observed

I think that a distinction needs to be made between human life in the early stages of pregnancy and human personhood. Our tradition has wrestled with that throughout history. There have been many religious teachers who are significant, like Aquinas and Augustine and others, who have actually believed that human personhood began at birth—at the beginning of taking a breath. There is another part of our tradition that sees that happening at the point at which the fetus is quickened. So we are talking about human life because it is a potential human being in the womb, but the status of that as a human person, we believe, evolves through the pregnancy and needs to be considered in that light.<sup>49</sup>

## **Summary of parties to the inquiry supporting and opposing the bill**

**2.41** The committee addresses the specific provisions of the bill in detail in the following chapter. However, having acknowledged the competing positions in the debate about the morality of abortion, the committee attempts to summarise below the major parties to the inquiry that supported and opposed the bill.

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<sup>46</sup> Evidence, Bishop Daniel, Bishop for the Coptic Orthodox Church, 14 August 2019, uncorrected transcript, p 9; Evidence, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, 16 August 2019, uncorrected transcript, p 3.

<sup>47</sup> Submission 48, Greek Orthodox Church of Australia, p 1.

<sup>48</sup> Evidence, Reverend Simon Hansford, Moderator, Synod of NSW and the ACT, Uniting Church of Australia, 15 August 2019, uncorrected transcript, p 60.

<sup>49</sup> Evidence, Dr Margaret Mayman, Pitt Street Uniting Church, 15 August 2019, uncorrected transcript, p 67.

2.42 In general terms, those major parties that supported the bill were:

- Legal or civil liberty groups including the NSW Council for Civil Liberties,<sup>50</sup> the NSW Bar Association,<sup>51</sup> Women's Legal Service NSW<sup>52</sup> and the Human Rights Law Centre,<sup>53</sup>
- Peak medical organisations and reproductive and sexual healthcare providers such as the Australian Medical Association (NSW),<sup>54</sup> the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG),<sup>55</sup> the New South Wales Nurses and Midwives' Association,<sup>56</sup> the Australian College of Nursing,<sup>57</sup> Family Planning NSW,<sup>58</sup> Rape and Domestic Violence Services Australia,<sup>59</sup> Women's Health NSW<sup>60</sup> and Marie Stopes Australia,<sup>61</sup>

<sup>50</sup> Submission 43, NSW Council for Civil Liberties, p 3. The NSW Council for Civil Liberties submitted that it would have preferred the bill to have passed the Legislative Assembly without amendment, but that the amendments do not change the main intention of the bill. See also Evidence, Mr Nicholas Cowdery AC QC, NSW Council for Civil Liberties, 14 August 2019, uncorrected transcript, p 48.

<sup>51</sup> Submission 19, NSW Bar Association, p 1. The NSW Bar Association supported the bill in its unamended form as introduced into the Legislative Assembly, and opposed any further amendments to the bill. See also Evidence, Mr Timothy Game QC, President, Bar Association, 14 August 2019, uncorrected transcript, p 71.

<sup>52</sup> Submission 32, Women's Legal Service NSW, p 1. Women's Legal Service NSW submitted that it supported the bill as introduced in the Legislative Assembly, and while not supporting the amendments to the bill, urged the bill's passage without further amendment. See also Evidence, Ms Janet Loughmann, Women's Legal Service NSW, 14 August 2019, uncorrected transcript, p 48.

<sup>53</sup> Submission 25, Human Rights Law Centre, pp 3-4. The Human Rights Law Centre submitted that a number of the amendments made to the bill have been criticised for being unnecessary, confusing or insulting to medical professionals and women, but nevertheless recommended that the bill be passed without further delay. See also Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 11.

<sup>54</sup> Submission 45, Australian Medical Association (NSW), p 1. The Australian Medical Association (NSW) submitted that certain amendments to the bill were unnecessary, but that they should not prevent the bill from proceeding without further amendment. See also Evidence, Dr Danielle McMullen, Vice President, Australian Medical Association (NSW), 15 August 2019, uncorrected transcript, p 25.

<sup>55</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 1. RANZCOG supported the passage of the bill without further amendment.

<sup>56</sup> Submission 23, New South Wales Nurses and Midwives' Association, p 1, Evidence, Ms Judith Kiejda, Assistant General Secretary, NSW Nurses and Midwives Association, 15 August 2019, uncorrected transcript, pp 26-27.

<sup>57</sup> Evidence, Adjunct Prof Kylie Ward FACN, CEO, Australian College of Nursing, 15 August 2019, uncorrected transcript, p 36.

<sup>58</sup> Submission 15, Family Planning NSW, p 2. Family Planning NSW supported the bill in its current form. See also Evidence, Adjunct Prof Deborah Bateson, Medical Director, Family Planning NSW, 15 August 2019, uncorrected transcript, pp 16, 22.

<sup>59</sup> Submission 38, Rape and Domestic Violence Services Australia, p 5, Evidence, Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, 15 August 2019, uncorrected transcript, p 22.

<sup>60</sup> Submission 31, Women's Health NSW, pp 3, 5. Women's Health NSW supported the bill being enacted without further amendment. See also Evidence, Ms Denele Crozier, CEO, Women's Health NSW, 15 August 2019, uncorrected transcript, p 15.

<sup>61</sup> Submission 14, Marie Stopes Australia, p 2

- Pro-choice advocates and women's right and family planning groups such as the NSW Pro-Choice Alliance,<sup>62</sup> NSW Pro-Choice<sup>63</sup> and Our Bodies, Our Choices.<sup>64</sup>
- A minority of religious leaders.<sup>65</sup>

**2.43** In general terms, those parties that opposed the bill, or at the very least expressed significant concerns about the bill, were:

- The majority of leaders of the major faiths, including Archbishop Anthony Fisher, the Catholic Archbishop of Sydney,<sup>66</sup> Archbishop Glenn Davies, the Anglican Archbishop of Sydney, Rabbi Nochum Schapiro, President, Rabbinical Council of Australia, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, the Australian Christian Lobby,<sup>67</sup> together with many other religious leaders,
- Pro-life organisations including Right to Life NSW,<sup>68</sup> the Australian Family Association,<sup>69</sup> Women and Babies Support (WOMBS),<sup>70</sup> Newcastle Pregnancy Help Inc,<sup>71</sup> and Women's Forum.<sup>72</sup>
- Individual medical practitioners and specialists,<sup>73</sup> lawyers<sup>74</sup> and medical and legal academics.<sup>75</sup>

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<sup>62</sup> Submission 26, NSW Pro-Choice Alliance, p 5. NSW Pro-Choice alliance expressed concerns about some of the amendments to the bill, but nevertheless argued that it should be passed in its current form. See also Evidence, Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW, 15 August 2019, uncorrected transcript, p 4.

<sup>63</sup> Submission 30, NSW Pro-Choice, p 1, Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 3.

<sup>64</sup> Evidence, Ms Claire Pullen, Chair, Our Bodies, Our Choice, 15 August 2019, uncorrected transcript, pp 3-4.

<sup>65</sup> Evidence Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, p71; Evidence, Reverend Simon Hansford, Moderator, Synod of NSW and the ACT, Uniting Church of Australia, 15 August 2019, uncorrected transcript, pp 60,62, Evidence, Dr Margaret Mayman, Pitt Street Uniting Church, 15 August 2019, uncorrected transcript, p 66.

<sup>66</sup> Submission 20, Catholic Bishops of New South Wales, p 4.

<sup>67</sup> Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, p 23.

<sup>68</sup> Submission 13, Right to Live NSW, p 2. See also Evidence, Dr Rachel Carling, CEO, Right to Life NSW, 14 August 2019, uncorrected transcript, pp 23, 27.

<sup>69</sup> Evidence, Ms Terri Kelleher, National Vice President, Australian Family Association, 14 August 2019, uncorrected transcript, pp 24, 27.

<sup>70</sup> Submission 36, Women and Babies Support (WOMBS), p 1.

<sup>71</sup> Submission 37, Newcastle Pregnancy Help Inc, p 5.

<sup>72</sup> Submission 45, Women's Forum, p 1. See also Evidence, Ms Rachel Wong, Managing Director, Women's Forum Australia, 15 August 2019, uncorrected transcript, p 47.

<sup>73</sup> Evidence, Dr Simon McCaffrey, 15 August 2019, uncorrected transcript, p 81, Evidence, Dr John Whitehall, Chairman, Christian Medical and Dental Fellowship, 15 August 2019, uncorrected transcript p74.

<sup>74</sup> Evidence, Mr Michael McAuley, St Thomas More Society, 14 August 2019, p65.

<sup>75</sup> Evidence, Professor Margaret Somerville, School of Medicine, University of Notre Dame, 14 August 2019, p59, Evidence Ms Anna Walsh, School of Law, University of Notre Dame, 14 August 2019, p66.

## **Committee comment**

- 2.44** The committee does not seek in this report to judge the competing positions that expressed on the abortion debate, including those of religious institutions and leaders. Rather it simply acknowledges and respects the full range of positions that were put to it during this inquiry.
- 2.45** The committee also recognises and endorses evidence from all parties to this inquiry that the decision to have an abortion is often a heart-rending and agonising decision that women and their families take, often in extremely difficult circumstances.



## Chapter 3 Provisions of the bill

This chapter outlines the key provisions of the Reproductive Health Care Reform Bill 2019, as amended by the Legislative Assembly. The bill, if enacted, will become the *Reproductive Health Care Reform Act 2019*, and will regulate the termination of pregnancies in New South Wales.

### Repeal of current abortion-related offences under the *Crimes Act 1900* and at common law

- 3.1** Schedule 2 of the Reproductive Health Care Reform Bill 2019 provides for the omission of Part 3, Division 12 (sections 82, 83 and 84) of the *Crimes Act 1900* dealing with 'Attempts to procure abortion'.<sup>76</sup> Instead, a new Division 12 (section 82) is proposed to be inserted into the *Crimes Act 1900* concerning 'Termination of pregnancies by unqualified persons'. In summary, an unqualified person who performs a termination on another person or who assists in the performance of a termination on another person commits an offence with a maximum penalty of seven years imprisonment. However, under clause 11 of the bill, persons do not commit an offence for termination on themselves.
- 3.2** These proposed provisions are the same as provisions contained in the Queensland *Termination of Pregnancy Act 2018*,<sup>77</sup> which amended the Queensland Criminal Code. By contrast, the Victorian *Abortion Law Reform Act 2008*, which amended the *Crimes Act 1958* (Vic), contained a single offence with a maximum penalty of 10 years, which prohibits a person who is not a qualified person from performing an abortion on another person.<sup>78</sup>
- 3.3** Schedule 2 of the Reproductive Health Care Reform Bill 2019 also provides that Schedule 3 of the *Crimes Act 1900* concerning 'Abolished common law offences and rules' be amended to insert at the end of the schedule a new section 8 to abolish any common law that creates an offence in relation to procuring a person's miscarriage.
- 3.4** This provision was not included in the Queensland *Termination of Pregnancy Act 2018*. Instead it is drawn from the Victorian *Abortion Law Reform Act 2008*.<sup>79</sup> In support of its enactment in Victoria, the Victorian Law Reform Commissions stated:

As there is so much uncertainty surrounding the scope of the old common law offence of procuring an abortion, it would be prudent to stipulate that it has been abolished and cannot be revived.<sup>80</sup>

<sup>76</sup> Schedule 2 of the bill also omits reference to sections 82, 83 and 84 in Schedule 1 of the *Criminal Procedure Act 1986* dealing with 'Indictable offences triable summarily'.

<sup>77</sup> *Termination of Pregnancy Act 2018* (Qld), s 25.

<sup>78</sup> *Abortion Law Reform Act 2008* (Vic), s 11.

<sup>79</sup> *Abortion Law Reform Act 2008* (Vic), s 11.

<sup>80</sup> Victorian Law Reform Commission, *Law of Abortion*, Final Report, March 2008, p 25.

### Stakeholders' views

- 3.5** The committee notes that some religious leaders who gave evidence to the inquiry supported abortion-related offences remaining in the *Crimes Act 1900*. For example, in his evidence to the committee, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, indicated as follows:

I think the reason that this is in the Crimes Act rather than just in health legislation or some other place is because it goes to the very origins of human life and babies right up to birth, as well as to protecting mothers. Therefore it would seem to make sense, because there are issues about assaults and harms to babies and their mothers, that it would be in the Crimes Act rather than just in health legislation or some other place. As interpreted, we know it is only actually ever used in this State against quite abhorrent cases of very, very negligent and harmful abortionists. So, as interpreted, I think no-one need fear this is going to be used to persecute women or in some way punish them, who are often in a very desperate situation. But that it remains in the Crimes Act as a statement that we do value human life in its origins and right up to birth and mothers when they are pregnant makes sense to me.<sup>81</sup>

- 3.6** Other religious leaders also advocated that abortion-related offences remaining in the *Crimes Act 1900*.<sup>82</sup>

- 3.7** However, certain other religious leaders supported the removal of abortion-related offences from the *Crimes Act 1900*. In evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, stated:

I can understand and I can see the wisdom of legislation with regard to defining what is lawful abortion. At the moment we are resting upon a judicial judgement. I do not think that is good government. We have the judiciary—my judge friends tell me they make the law—and the legislature. I think that your responsibilities as both Houses of Parliament are to make legislation. I have no problem about the decriminalisation aspect.<sup>83</sup>

- 3.8** The Revd Dr Peter Stuart, Anglican Bishop of Newcastle, also indicated his belief that this issue should be dealt with outside the criminal code.<sup>84</sup>

- 3.9** In her written submission, Dr Margaret Mayman, representing the Pitt Street Uniting Church, argued that criminalisation does not address larger societal challenges that prompt some women to seek abortions, and that religious and political leaders who oppose decriminalisation would be more effective in reducing the number of abortions performed in New South Wales if they

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<sup>81</sup> Evidence, Archbishop Anthony Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 3.

<sup>82</sup> Evidence, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, 16 August 2019, uncorrected transcript, pp 3, 7-8; Evidence, Archbishop Najarian, Primate, Diocese of the Armenian Church of Australia and New Zealand, 16 August 2019, uncorrected evidence, p 3.

<sup>83</sup> Evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 14. See also page 19.

<sup>84</sup> Evidence, Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, p 64. See also page 71.

addressed issues of poverty and violence in the lives of women and their families.<sup>85</sup> In her evidence to the committee, Dr Mayman affirmed the general view of the Uniting Church that the management of abortion does not belong in the criminal law.<sup>86</sup>

**3.10** A number of other parties to the inquiry also argued that abortion should not be an offence under the *Crimes Act 1900*. This argument had a number of elements.

**3.11** Primarily, it was argued that having to rely on the limited defense for lawful abortions established in *R v Wald* is deeply flawed and unsatisfactory for both women and medical practitioners,<sup>87</sup> and that health practitioners should not have to interpret judgments from case law in order to make an assessment as to whether a particular treatment or service is 'lawful'.<sup>88</sup>

**3.12** From a legal perspective, Mr Nicholas Cowdery AC QC, NSW Council for Civil Liberties and former Director of Public Prosecutions, observed:

The way in which the law has been interpreted and applied since about 1970, and the way in which abortion have been carried out in New South Wales in recent decades, it seems to me that sections 82 to 84 of the *Crimes Act* are no longer fit for purpose and should be repealed. It is almost impossible to conceive of the case of self-termination, or termination by a qualified medical practitioner, that could properly be prosecuted. ... The present state of this law, in my view, does not prevent harm it causes harm.<sup>89</sup>

**3.13** The President of the Bar Association, Mr Timothy Game QC, also described the situation as 'unsatisfactory' from a legal perspective.<sup>90</sup>

**3.14** Parties also pointed to the fact that a prosecution for abortion was brought in New South Wales in 2017 in the case of *R v Lasuladu*,<sup>91</sup> as cited in chapter 2.

**3.15** From the point of view of women seeking an abortion, it was submitted that while abortion remains a criminal offence, even though not enforced, it carries with it ongoing stigma, fear and shame, and increases the risk of woman accessing abortions in an unsafe way. The committee received a significant amount of evidence on this point,<sup>92</sup> and cites a small representative portion of it below.

<sup>85</sup> Submission 47, Dr Margaret Mayman, Pitt Street Uniting Church, p 3.

<sup>86</sup> Evidence, Revd Dr Margaret Mayman, Pitt Street Uniting Church, 15 August 2019, uncorrected transcript, p 64.

<sup>87</sup> Submission 42, NSW Council for Civil Liberties, p 3.

<sup>88</sup> Submission 23, New South Wales Nurses and Midwives' Association, p 4.

<sup>89</sup> Evidence, Mr Nicholas Cowdery AC QC, NSW Council for Civil Liberties, 14 August 2019, uncorrected transcript, pp 48-49. See also page 50

<sup>90</sup> Evidence, Mr Timothy Game QC, President, Bar Association, 14 August 2019, uncorrected transcript, p 72.

<sup>91</sup> Evidence, Ms Sinead Canning, Campaign Manager, NSW Pro-Choice Alliance, 15 August 2019, uncorrected transcript, p 4.

<sup>92</sup> Submission 26, NSW Pro-Choice Alliance, p 5; Submission 38, Rape and Domestic Violence Services Australia, p 5; Submission 14, Marie Stopes Australia, p 2; Submission 15, Family Planning NSW, p 4; Submission 28, Our Bodies, Our Choices, p 8; Evidence, Adjunct Prof Kylie Ward FACN, CEO, Australian College of Nursing, 15 August 2019, uncorrected transcript, p 36.

**3.16** Ms Janet Loughmann, Women's Legal Service NSW, submitted:

Women in, or trying to leave, violent relationships are put at further risk of ongoing violence and control because of the additional barriers that criminalisation poses, including access to services. We cannot be serious as a society about the prevention of domestic and family violence unless we remove abortion from the Crimes Act.<sup>93</sup>

**3.17** Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, submitted:

When women contact us to say, "I have been sexually assaulted and that is shocking, but now I am pregnant", the devastation that you hear in their voice and the discussion about what to do next is heart-rending for them and their families. One of the things we need to tell women when providing their full range of options—the three options that people have when they are pregnant—is that if they do choose abortion, it is still under the Crimes Act in New South Wales, and the ramifications of that. The pain in women's voices when they say, "You're telling me that if I go ahead with this, I will be a criminal? What about the crime was committed against me, does that not matter?"<sup>94</sup>

**3.18** The committee also notes submissions and evidence that access to abortion care is particularly hard for Aboriginal women.<sup>95</sup> Ms Melanie Fernandez, Co-Convenor, NSW Pro-Choice Alliance submitted:

We know that also for Aboriginal women who are living in remote communities, the access to adequate health care is a significant challenge that they face, and that there are often cultural barriers as well to engaging with the healthcare system. So having the current legislation in place, whilst it impacts on the availability of services, also the criminality can be something that hangs over women's head in a very significant way, not just in a symbolic way. So this is deeply problematic for vulnerable communities and particularly for Aboriginal and Torres Strait Islander women and communities.<sup>96</sup>

**3.19** From the point of view of medical practitioners, the committee notes the evidence of Dr Vijay Roach, President of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists:

We have a very simple job, which is that we see a patient and we take a history and we examine them and then we look after them. That should be as simple a job as we should have. We should not be wondering about whether the way in which we are delivering health care is legal or not legal. That should be something that is clear to us through our training and through our understanding. Then what we should do is look after the person who is in front of us. So, to place any additional burden or concern or wonder

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<sup>93</sup> Evidence, Ms Janet Loughmann, Women's Legal Service NSW, 14 August 2019, uncorrected transcript, p 48. See also page 50.

<sup>94</sup> Evidence, Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, 15 August 2019, uncorrected transcript, p 15.

<sup>95</sup> Submission 31, Women's Health NSW, p 4; Submission 47, Dr Margaret Mayman, Pitt Street Uniting Church, p 3. See also Evidence, Ms Denele Crozier, CEO, Women's Health NSW, 15 August 2019, uncorrected transcript, p 15; Evidence, Dr Danielle McMullen, Vice President, Australian Medical Association (NSW), 15 August 2019, uncorrected transcript, p 25.

<sup>96</sup> Evidence, Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW, 15 August 2019, uncorrected transcript, p 6.

about what we are doing will surely impact on the way that we interact with our patient and is to her detriment.<sup>97</sup>

**3.20** The committee also notes the evidence of Dr Philip Goldstone, representing Marie Stopes Australia, one of the largest abortion providers in New South Wales:

I would like to add to the question about how the legality impacts women and patients, and certainly it does add to the shame and stigma of women. But it also causes confusion and uncertainty amongst the medical practitioner profession. Medical abortion is now able to be provided in primary care by general practitioners and I know from talking to general practitioners that a number of them do not want to get involved in provision of abortion care because of the lack of clarity around the law.<sup>98</sup>

**3.21** It was repeatedly submitted during the inquiry that management of pregnant women seeking an abortion should be a healthcare matter rather than a criminal matter.<sup>99</sup>

**3.22** Evidence was also presented to the committee that the provisions of sections 82, 83 and 84 of the *Crimes Act 1900* were enacted at a very different time, when society was very different, and that they are no longer consistent with current community expectations.<sup>100</sup> Ms Wendy McCarthy, Campaign Chair of the NSW Pro-choice alliance, submitted:

Let us reflect. The New South Wales abortion laws have been in place for 119 years. While they may have been intended to protect women from backyard abortion providers they were also designed to punish women who dared to stray outside the nineteenth century boundaries of female sexuality when women were supposed to engage in sex only within marriage. These laws have not matured with our times. They have contributed to the shame, stigma and secrecy surrounding abortion in New South Wales and to the deaths of many women - well over the hundreds- as well as to the chronic ill health and infertility of many others. Many women of my age will remember visiting an underground abortion clinic, making furtive phone calls from public telephones to arrange the visit, driving to distant suburbs, passing through double doors after prepaying cash for the operation - 7 guineas in 1964. It was humiliating, shameful and degrading - an experience to bury in the deep recesses of consciousness.<sup>101</sup>

**3.23** Similarly, in her submission, Dr Margaret Mayman, representing the Pitt Street Uniting Church, argued:

The anachronism of locating abortion within the criminal code is apparent when we consider the context of the 1900 legislation. In 1900 it was widely accepted that women's

<sup>97</sup> Evidence, Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 15 August 2019, Uncorrected transcript, pp 27-28.

<sup>98</sup> Evidence, Dr Philip Goldstone, Marie Stopes Australia, 14 August 2019, uncorrected transcript, p 50.

<sup>99</sup> Submission 32, Women's Legal Service, p 1; Submission 19, NSW Bar Association, p 1; Submission 28, Our Bodies, Our Choices, p 9; Evidence, Ms Sally Joep, Board Director, Central Coast Community Women's Health Centre, 15 August 2019, p 37.

<sup>100</sup> Submission 24, NSW Council For Civil Liberties, p 3; Submission 25, Human Rights Law Centre, p 3; Submission 28, Our Bodies, Our Choices, p 9; Submission 47, Dr Margaret Mayman, Pitt Street Uniting Church, p 1.

<sup>101</sup> Evidence, Ms Wendy McCarthy, Campaign Chair, NSW Pro-choice alliance, 15 August 2019, uncorrected transcript, p 2.

bodies and women's sexuality were appropriately controlled by patriarchal power inherent in government, medicine, religion, and family life. .... this is not [now] the accepted position of Australian law or culture.<sup>102</sup>

- 3.24** The committee also notes the evidence of Ms Claire Pullen, Chair of Our Bodies, Our Choices, citing the following story from a woman who wrote to Our Bodies, Our Choices of her experience in getting an abortion:

"I sat in an abortion clinic on Macquarie Street and signed a document that ensured I understood that I was a criminal. I felt so much shame. I was convinced I had made the toxic relationship I was in work. The relationship finally ended four years later with police intervention and a court-ordered AVO.<sup>103</sup>

- 3.25** Parties to the inquiry also suggested that the ongoing criminalisation of abortion is not consistent with access to abortions under Medicare or the Pharmaceutical Benefits Scheme.<sup>104</sup>

- 3.26** The point was also made during the inquiry that New South Wales is alone amongst the Australian States in not having reformed its abortion laws to remove abortion from the criminal code, and that it is discriminatory that women in other states and territories can legally access termination services while women in New South Wales cannot.<sup>105</sup>

- 3.27** Some parties also argued that the current provisions of the *Crimes Act 1900* in relation to abortions are inconsistent with the international human rights framework.<sup>106</sup>

- 3.28** The committee also notes that some witnesses supported removing section 82 which criminalises women from the *Crimes Act 1900*, while arguing that section 83 or a similar offence should be retained to act as a deterrent in cases where coercion was used by a partner to encourage a woman to have an abortion. Other witnesses believed it would also act to restrain medical practitioners from performing unlawful abortions and to protect women. In its submission, Women's Bioethical Alliance stated:

... it concerns us that if a doctor performs a termination outside the new law, for example by failing to consult a second doctor before performing a termination after 22 weeks, then no criminal penalty applies.

We ask that a penalty for doctors performing TOP<sup>107</sup> outside the provisions of the law remains in the Crimes Act 1900 so as to provide protection to women and children. We support the removal of any penalty against a woman in relation to her own termination

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<sup>102</sup> Submission 47, Revd Dr Margaret Mayman, Pitt Street Uniting Church, p 1. See also Evidence, Revd Dr Margaret Mayman, Pitt Street Uniting Church, 15 August 2019, uncorrected transcript, p 65.

<sup>103</sup> Evidence, Ms Claire Pullen, Chair, Our Bodies, Our Choice, 15 August 2019, uncorrected transcript, pp 3-4.

<sup>104</sup> Submission 14, Marie Stopes Australia, p 2; Submission 15, Family Planning NSW, p 4.

<sup>105</sup> Submission 42, NSW Council for Civil Liberties, p 4; Submission 14, Marie Stopes Australia, p 2; Submission 19, NSW Bar Association, p 1; Evidence, Ms Gabrielle Bashir SC, Junior Vice-President, Bar Association, 14 August 2019, uncorrected transcript, p 71.

<sup>106</sup> Submission 25, Human Rights Law Centre, p 3; Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected transcript, p 3.

<sup>107</sup> Termination of pregnancy.

from the Crimes Act 1900. This could be done by a simple amendment to the Crimes Act 1900 while avoiding the many defects we have identified in the current Bill.<sup>108</sup>

## Coercion of women to have an abortion

**3.29** During the passage of the bill through the Legislative Assembly, the member for Mulgoa, Mrs Tanya Davies, moved an amendment to the bill in relation to intimidation or annoyance of a person to compel that person to have a termination. The amendment was as follows:

### **Criminal offences**

Page 9, proposed Schedule 2. Insert after line 2—

#### **[4] Section 545B Intimidation or annoyance by violence or otherwise**

Insert after section 545B(1)—

(1A) For the purposes of subsection (1), if a person is convicted of offence under that subsection involving any of the following circumstances the maximum penalty is 7 years imprisonment—

- (a) using intimidation or annoyance to compel a person to have a termination performed,
- (b) using intimidation or annoyance as a consequence of a person abstaining from having a termination performed.

#### **[5] Section 545B(2)**

Insert in appropriate order—

*termination* has the same meaning as in section 82.

**3.30** As explained by the Member for Mulgoa, the purpose of the amendment was to make clear that using intimidation or annoyance by violence or otherwise with the intention of compelling a person to abstain from having a termination is a crime. She argued that anyone who considers that a decision whether to terminate a pregnancy should be the free choice of the pregnant person and not of any other person such as an abusive partner involved.<sup>109</sup>

**3.31** The amendment was defeated in the Legislative Assembly, 27 votes to 59.<sup>110</sup> In arguing against the amendment, the Minister for Health, the Hon Brad Hazzard, argued that under section 545B of the *Crimes Act 1900*, it is already an offence to compel another person to do or to refrain from doing an act using violence or intimidation.<sup>111</sup>

<sup>108</sup> Submission 49, Women's Bioethical Alliance, p 8.

<sup>109</sup> *Hansard*, NSW Legislative Assembly, 8 August 2019, pp 79-80.

<sup>110</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 257-258.

<sup>111</sup> *Hansard*, NSW Legislative Assembly, 8 August 2019, p 80.

### Stakeholders' views

- 3.32** During the inquiry, parties from across the spectrum of debate on abortion and reproductive health care argued that the debate cannot be divorced from issues of domestic violence and coercion of women to have an abortion, or not to have an abortion.<sup>112</sup> The committee notes some suggestions that repealing the abortion related provisions of the *Crimes Act 1900* may expose women to greater risk of coercion.<sup>113</sup> In evidence, Ms Legge, CEO of WOMBS, argued:

With regard to women and that criminal attachment with regard to unlawful procedures, we believe it actually affords women some protection in the environment going forward. So we are in an era where the abortion pill can be obtained through the internet, through unscrupulous unnamed sources. We have heard of a case of a woman actually doing that while she was being coerced by her partner in Blacktown. That case was actually heard in the local court. No penalty was attached to her being prosecuted under that provision, but we believe it actually supports women in being able to say, "No, I cannot do this. It is illegal," and knowing that there is a significant penalty and a crime attached to that. So we believe it affords some protection and we do not believe that the intent of the law is to put women in jail.<sup>114</sup>

- 3.33** In its submission to the inquiry, Pregnancy Help Newcastle Inc. stated:

If a woman has experienced domestic violence, her needs may be much greater, and she will also generally be more susceptible to coercion. In fact, 95 per cent of the women who contact our centre for assistance and are seeking abortions, state that they do so because their partner is not supportive or is threatening to leave them if they do not have an abortion. We note that 100 per cent of the women contacting the 1300 helpline run by Sydney Pregnancy Help Inc. for post-abortion counselling state that they had no pre-abortion counselling; 95 per cent stated that they had been pressured into having an abortion.<sup>115</sup>

- 3.34** However other parties rejected this argument. For example, Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, observed in evidence:

When it comes to domestic violence we know that while the controlling behaviours will usually kick in within four to six months of the relationship occurring that the physical violence, which of course is just one aspect of domestic violence, will most often not begin until the first pregnancy—usually somewhere around six to seven months of pregnancy—where the woman's options of leaving are quite restrained by the fact that she is now pregnant. "Barefoot and pregnant" was the old saying—I think that is the other end of the coercion. I think at the moment the law supports that. Removing abortion from the law and making it a health care issue, where the individual who is

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<sup>112</sup> See for example Submission 20, Catholic Bishops of New South Wales, pp 14-15; Submission 13, Right to Life NSW, p 17; Submission 35, The Australian Family Association, p 3; Submission 24, Prof Margaret Somerville, p 5; Evidence, Ms Terri Kelleher, National Vice President, Australian Family Association, 14 August 2019, uncorrected transcript, p 25; Evidence, Ms Janet Loughmann, Women's Legal Service NSW, 14 August 2019, uncorrected transcript, p 48; Evidence, Dr Philip Goldstone, Marie Stopes Australia,, 14 August 2019, uncorrected transcript, p 49.

<sup>113</sup> Submission 36, Women and Babies Support (WOMBS), pp 5-6.

<sup>114</sup> Evidence, Ms Tiana Legge, CEO, Women and Babies Support (WOMBS), 14 August 2019, uncorrected transcript, p 37.

<sup>115</sup> Submission 37, Newcastle Pregnancy Help Inc., p 2.

attempting to access that health care support is the decision maker, will reduce the coercion rather than increase it.<sup>116</sup>

- 3.35 The committee also notes the evidence of Ms Legge advocating greater prosecution of third parties pressuring women to have an abortion.<sup>117</sup>

### Termination of pregnancy by medical practitioners at not more than 22 weeks

- 3.36 Clause 5 of the Reproductive Health Care Reform Bill 2019, as amended by the Legislative Assembly, provides that a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant, provided that the person has given informed consent to the termination (except where such consent is not practicable in an emergency). The full terms of Clause 5 are as follows:

#### Termination by medical practitioners at not more than 22 weeks

- (1) A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.
- (2) The medical practitioner may perform the termination only if the person has given informed consent to the termination.
- (3) However, subsection (2) does not apply if, in an emergency, it is not practicable to obtain the person's informed consent.

- 3.37 In his second reading speech, Mr Greenwich provided the following justification for the adoption of the threshold of not more than 22 weeks:

Twenty-two weeks was chosen with the advice of the AMA and follows the recommendations of the Queensland Law Reform Commission and is in line with the Queensland Act. It is supported by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists [RANZCOG]. Also, in line with consultation with the AMA and RANZCOG, these additional requirements are waived in emergencies where a termination might be required quickly to save the woman's life or to save another foetus.<sup>118</sup>

- 3.38 As indicated, the Queensland *Termination of Pregnancy Act 2018* adopts the same threshold.<sup>119</sup> The Queensland Law Reform Commission's 2018 report entitled *Review of termination of pregnancy laws* argued that this threshold:

- represented the stage immediately before the 'threshold of viability' under current clinical practice,

<sup>116</sup> Evidence, Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, 15 August 2019, uncorrected transcript, p 16.

<sup>117</sup> Evidence, Ms Tiana Legge, CEO, Women and Babies Support (WOMBS), 14 August 2019, uncorrected transcript, pp 36-37.

<sup>118</sup> *Hansard*, NSW Legislative Assembly, 1 August 2019, p 4.

<sup>119</sup> *Termination of Pregnancy Act 2018* (Qld), s 5.

- aligned with the Queensland Health Clinical Services Capability Framework for Public and Licensed Private Health Facilities pursuant to which terminations from 22 weeks gestation are required to be performed at particular hospitals,
- aligned with the local facility level approval process adopted at the Royal Brisbane and Women's Hospital,
- reflected that terminations after 22 weeks involve greater complexity and higher risk to the woman.<sup>120</sup>

**3.39** By contrast, the Victorian *Abortion Law Reform Act 2008* provides that a registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant.<sup>121</sup>

**3.40** During the bill's passage through the Legislative Assembly, clause 5 was amended to insert clauses 5(2) and (3), as cited above.<sup>122</sup> Clause 5(2) provides that a medical practitioner may perform a termination only if the person has given informed consent to the termination, which in relation to a termination means consent given freely and voluntarily and in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination.<sup>123</sup> However, a set of amendments moved by the Member for Mulgoa, Mrs Tanya Davies, to change the gestational limit for terminations under clause 5 from 'not more than 22 weeks' to 'less than 20 weeks' was defeated on division.<sup>124</sup>

**3.41** The committee notes evidence during the inquiry that most abortions take place within the initial 22 weeks of a pregnancy, with estimates that between 91 and 95 per cent of abortions occurring before 14 weeks gestation.<sup>125</sup>

### Stakeholders' views

**3.42** During the inquiry, various parties expressed concern that Clause 5 of the bill provides unfettered access to abortion of any pregnancy up to 22 weeks, subject to informed consent.

**3.43** In its submission, the Social Issues Committee of the Anglican Church Diocese of Sydney stated that the provisions of the bill are wider than the current common law in relation to abortion founded on the judgement of Judge Levine in *R v Wald*.<sup>126</sup> Based on this, the submission argued that the bill opens the floodgates to abortions, as woman can have an abortion up to 5½ months for any reason whatsoever, including economic and social reasons. As such, it was submitted

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<sup>120</sup> Queensland Law Reform Committee, *Review of termination of pregnancy laws*, Report No 76, June 2018, pp v-vi

<sup>121</sup> *Abortion Law Reform Act 2008* (Vic), s 4.

<sup>122</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 245.

<sup>123</sup> Reproductive Health Care Reform Bill 2019, Schedule 1.

<sup>124</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 241-242.

<sup>125</sup> Submission 15, Family Planning NSW, p 6; Submission 38, Rape and Domestic Violence Services Australia, p 6.

<sup>126</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, covering letter from the Archbishop of Sydney and pp 1, 4;

that the bill will have the effect of 'normalising' abortions.<sup>127</sup> This evidence was reiterated by Archbishop Glenn Davies, Anglican Archbishop of Sydney, in his evidence before the committee:

The fact is that under this bill abortion will be offered up to 22 weeks—that is, 5½ months and we know that you cannot hide a pregnancy at 5½ months and at that stage a child can be born and be viable—with no reason whatsoever for an abortion, no counselling and no understanding, although I think we now have informed consent in the bill from the lower House amendment. The fact that members of Parliament could vote against informed consent astounds me. The sense is that here no reason is given and after that there is no limit with regard to up until the birth of a child.<sup>128</sup>

**3.44** In his evidence to the committee, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, adopted the same position:

This bill seeks to make abortion more common. It is every bit as extreme as the bill rejected by the Legislative Council only two years ago. It allows for unlimited abortion up to 5½ months, thus including viable babies.<sup>129</sup>

**3.45** The submissions of the Catholic Bishops of New South Wales and the Australian Christian Lobby further argued that abortions up to 22 weeks are out of step with community attitudes and medical advances which have seen the point at which foetuses may survive outside the womb being brought forward as technology improves.<sup>130</sup>

**3.46** A number of other parties to the inquiry also raised similar issues.<sup>131</sup> In particular, the committee notes the submission of Women and Babies Support (WOMBS) that the bill, if enacted, will result in the ending of the lives of more babies than under the current law.<sup>132</sup>

**3.47** Based on such issues, a number of parties to the inquiry argued that at the very least, the application of Clause 5 should be reduced from the current 22 week limitation. Some parties advocated a limit of 20 weeks, consistent with the amendment moved in the Legislative Assembly by the Member for Mulgoa, Mrs Tanya Davies.<sup>133</sup> Other parties recommended a limit of 12 weeks, based on the argument that chemical abortion methods are effective up until 12 week's gestation.<sup>134</sup> Mr Rocky Mimmo, writing in his capacity as the Chairman of the Ambrose

<sup>127</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, covering letter from the Archbishop of Sydney and pp 1, 4;

<sup>128</sup> Evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 14. See also page 20.

<sup>129</sup> Evidence, Archbishop Anthony Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 3.

<sup>130</sup> Submission 20, Catholic Bishops of New South Wales, pp 6-7; Submission 33, Australian Christian Lobby, p 5.

<sup>131</sup> Submission 13, Right to Life NSW, p 8; Evidence, Dr Rachel Carling, CEO, Right to Life NSW, 14 August 2019, uncorrected transcript, p 28.

<sup>132</sup> Submission 36, Women and Babies Support (WOMBS), pp 3, 5.

<sup>133</sup> Submission 33, Australian Christian Lobby, p 6.

<sup>134</sup> Submission 24, Prof Margaret Somerville, p 3; Evidence, Prof Margaret Somerville, University of Notre Dame, 14 August 2019, uncorrected transcript, p 62; Submission 41, Plunkett Centre for Ethics, p 2.

Centre for Religious Liberty, suggested that 13 weeks, being the end of the first trimester, would be an appropriate benchmark, on the basis that by 13 weeks, there can be no doubt that a human life is in existence.<sup>135</sup> The submission of highly experienced obstetrician and gynaecologist Dr Simon McCaffrey argued that at the very least, a specialist medical practitioner should be involved in any termination from 16 weeks onward.<sup>136</sup> In evidence Dr McCaffrey stated:

At the moment medical practice in terms of fetal anomalies changes every month. We are discovery aspects of fetal development that we never knew in the past. A lot of ultrasounds, scans and radiological investigations are open to interpretation. Fetal conditions can stabilise and can often regress. Because of the fact that even two or three fetomaternal specialists can disagree on prognosis and outcomes, it gets back to knowledge and providing women with knowledge. The more knowledge we can provide them with to help them make their own decision the better. That is what it is all about. Fetomaternal medicine is such a vexed area and four fetomaternal specialists are going to provide that extra surety that the decision they are going to make is based on what is best for their infant. That is why I would like to see any framing of the bill include that.<sup>137</sup>

**3.48** However, other parties to the inquiry, including notably the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, supported the maintenance of the proposed 22 week deadline in Clause 5. It was indicated that ultrasound testing for foetal abnormalities is generally done at 18 to 20 weeks gestation, and that many anomalies are not diagnosed until this time, or indeed for several days later if repeat scans are required. Based on this fact, it was argued that the 22 week gestational limit is appropriate, as it means that women have time to consider the implications of any foetal abnormalities that may be detected.<sup>138</sup> In evidence, Adjunct Prof Deborah Bateson, Medical Director, Family Planning NSW, observed:

We have heard, I think in the previous day, about the need for that 22-week limit because of what we call the morphology scan, that is where foetal abnormalities are detected, and that happens between 18 and 21 weeks, and sometimes repeat scans have to happen as well, so women need time to make their decisions. These later abortions happen for severe maternal concerns and issues. These are never ever taken lightly, they are always within the context of a multidisciplinary team. There are many considered professionals involved in this in a compassionate way.<sup>139</sup>

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<sup>135</sup> Submission 40, Mr Rocky Mimmo, Ambrose Centre for Religious Liberty, p 2. See also Evidence, Mr Rocky Mimmo, Chairman, Ambrose Centre for Religious Liberty, 15 August 2019, uncorrected transcript, p 47.

<sup>136</sup> Submission 43, Dr Simon McCaffrey, p 2. See also Evidence, Dr Simon McCaffrey, 15 August 2019, uncorrected transcript, p 77.

<sup>137</sup> Evidence, Dr Simon McCaffery, 15 August 2019, p79.

<sup>138</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 2; Submission 26, NSW Pro-Choice Alliance, p 7; Submission 25, Human Rights Law Centre, p 10; Submission 28, Our Bodies, Our Choices, p 19; Submission 38, Rape and Domestic Violence Services Australia, p 7; Evidence, Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW, 15 August 2019, uncorrected transcript, p 4.

<sup>139</sup> Evidence, Adjunct Prof Deborah Bateson, Medical Director, Family Planning NSW, 15 August 2019, uncorrected transcript, p 18.

## Termination of pregnancy by medical practitioner after 22 weeks

**3.49** Clause 6(1) of the Reproductive Health Care Reform Bill 2019, as amended by the Legislative Assembly, provides that a specialist medical practitioner may perform a termination of pregnancy on a person who is more than 22 weeks pregnant, provided that the specialist medical practitioner considers that, in all the circumstances, the termination should be performed, that the specialist medical practitioner has consulted with another specialist medical practitioner who is of the same opinion, that the specialist medical practitioner has obtained the person's informed consent to the termination, and that the termination is performed at a hospital or an approved health facility. Under clause 6(3), in considering whether a termination should be performed, a specialist medical practitioner must consider the relevant medical circumstances, the person's current and future physical, psychological and social circumstances, and the professional standards and guidelines that apply to the specialist medical practitioner in relation to the performance of the termination. The full terms of clause 6 are as follows:

### Termination by medical practitioner after 22 weeks

- (1) A specialist medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if—
  - (a) the specialist medical practitioner considers that, in all the circumstances, the termination should be performed, and
  - (b) the specialist medical practitioner has consulted with another specialist medical practitioner who also considers that, in all the circumstances, the termination should be performed, and
  - (c) the medical practitioner has obtained the person's informed consent to the termination, and
  - (d) the termination is performed at—
    - (i) a hospital controlled by a statutory health organisation, within the meaning of the *Health Services Act 1997*, or
    - (ii) an approved health facility.
- (2) To remove any doubt, subsection (1)(d) does not require that any ancillary services necessary to support the performance of a termination be carried out only at the hospital or approved health facility at which the termination is, or is to be, performed.
- (3) In considering whether a termination should be performed on a person under this section, a specialist medical practitioner must consider—
  - (a) all relevant medical circumstances, and
  - (b) the person's current and future physical, psychological and social circumstances, and
  - (c) the professional standards and guidelines that apply to the specialist medical practitioner in relation to the performance of the termination.

(4) In an emergency, a medical practitioner, whether or not a specialist medical practitioner, may perform a termination on a person who is more than 22 weeks pregnant, without acting under subsections (1) and (3), if the medical practitioner considers it necessary to perform the termination to—

(a) save the person's life, or

(b) save another foetus.

(5) In this section—

*ancillary services* means—

(a) tests or other medical procedures, or

(b) the administration, prescription or supply of medication, or

(c) another treatment or service prescribed by the regulations.

**3.50** In his second reading speech, Mr Greenwich provided the following comments on the provisions of clause 6, as originally introduced in the Legislative Assembly:

The additional provisions after 22 weeks recognise that terminations at this later stage often involve disadvantage, distress, complexities and higher risks to the pregnant woman. The inclusion of a second doctor provides stronger safeguards than what is currently in place under common law provisions.<sup>140</sup>

**3.51** The provisions of clause 6, as introduced in the Legislative Assembly, were again taken almost wholly from the Queensland *Termination of Pregnancy Act 2018*.<sup>141</sup> The Queensland Law Reform Commission's 2018 report entitled *Review of termination of pregnancy laws* cited such arrangements as 'a reasonable balance between concerns over women's autonomy and calls for additional oversight for terminations after 22 weeks'.<sup>142</sup>

**3.52** During the bill's passage through the Legislative Assembly, the Legislative Assembly adopted a number of amendments to clause 6 to:

- require that only specialist medical practitioners may perform terminations after 22 weeks, and to define specialist medical practitioners as (a) a medical practitioner who, under the Health Practitioner Regulation National Law, holds specialist registration in obstetrics and gynaecology, or (b) a medical practitioner who has other expertise that is relevant to the performance of the termination, including, for example, a general practitioner who has additional experience or qualifications in obstetrics.<sup>143</sup>
- include the requirement for a medical practitioner to obtain the person's informed consent to the termination, the same as for terminations at not more than 22 weeks,<sup>144</sup>

<sup>140</sup> *Hansard*, NSW Legislative Assembly, 1 August 2019, p 4.

<sup>141</sup> *Termination of Pregnancy Act 2018* (Qld), s 6.

<sup>142</sup> Queensland Law Reform Committee, *Review of termination of pregnancy laws*, Report No 76, June 2018, p 101.

<sup>143</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 246.

<sup>144</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 245.

- include the requirement that the termination be performed at a hospital within the meaning of the *Health Services Act 1997* or approved health facility,<sup>145</sup>
- provide that the Secretary of the Ministry of Health may approve a hospital or other facility as a facility at which terminations may be performed on persons who are more than 22 weeks pregnant, and may issue guidelines about the performance of terminations at health facilities,<sup>146</sup>
- provide that ancillary services to a termination, such as scans and follow-up care, do not need to be carried out only at the hospital or approved health facility at which the termination is, or is to be, performed.<sup>147</sup>

**3.53** However, an amendment from the Member for Mulgoa, Mrs Tanya Davies, to clause 6 to restrict terminations after 20 weeks to circumstances where the medical practitioner considers the termination is necessary to save the person's life or the life of another foetus was negated on division, 31 votes to 57. The amendment also provided that as far as is compatible with saving the person's life or the life of another foetus, every effort is to be made to deliver the foetus alive, and if a live child is born, that the child is given the same level of neonatal care as would be given to any other child born at the same stage of pregnancy in the same medical condition.<sup>148</sup>

#### Stakeholders' views

**3.54** During the inquiry, various parties expressed concern that the provisions of clause 6 provide no meaningful limit on late-term abortions, and that the bill effectively 'opens the door for the practice to increase'.

**3.55** For example, the submission of the Catholic Bishops of New South Wales argued that the provisions of clause 6 go far beyond the common law as developed by Judge Levine in *R v Wald*.<sup>149</sup> The submission of the Social Issues Committee of the Anglican Church Diocese of Sydney argued that the wording of clause 6 is so broad that it is difficult to see how two doctors could justify not performing an abortion.<sup>150</sup> Other parties also put such concerns to the committee.<sup>151</sup> In his evidence, Reverend Azize, Priest of the Maronite Eparchy of Australia, submitted:

Clause 6 would allow the taking of lives, which in many cases would be viable outside the mother's womb. This is simply wrong. There is no reason why, even if the woman wishes to terminate the pregnancy, the life should be killed. Why not allow for the life

<sup>145</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 248-249.

<sup>146</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 248-249.

<sup>147</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 248-249.

<sup>148</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 246-247.

<sup>149</sup> Submission 20, Catholic Bishops of New South Wales, p 9.

<sup>150</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, p 4.

<sup>151</sup> Evidence, Mr Michael McAuley, President, St Thomas More Society, 14 August 2019, uncorrected transcript, p 60.

of the child to be kept and the child put out for adoption or something like that? But this bill does not even contemplate that.<sup>152</sup>

**3.56** However, the committee notes that this evidence must be weighed against the consideration that currently at common law there are no restriction on the performance of abortions after 22 weeks, other than that the termination must be 'lawful' in accordance with the judgement of Judge Levine in *R v Wald*. This was addressed by Mr Timothy Game QC, President of the Bar Association, in evidence:

... this legislation creates a special regime with respect to terminations over 22 weeks. It is a far more stringent and rigorous set of criteria that will define the relationship particularly between the medical practitioner and the patient.<sup>153</sup>

**3.57** In its written submission, the Australian Christian Lobby cited data that the change to abortion law in Victoria has led to an increase in late-term abortions.<sup>154</sup> Other parties adopted similar positions.<sup>155</sup>

**3.58** By contrast, other parties to the inquiry argued that there is no evidence that the provisions of clause 6 will result in more late-term abortions.<sup>156</sup> The NSW Pro-Choice Alliance cited a study that less than 1 per cent of terminations are performed after 22 weeks, and pointed to statistical data from other states in support.<sup>157</sup> This evidence was reiterated by Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW in evidence.<sup>158</sup> The submission of Marie Stopes Australia noted that the ACT has no gestational limits and this has not increased the number of terminations at later gestations.<sup>159</sup>

**3.59** It was submitted that termination after 22 weeks are often driven by factors such as the diagnosis of a severe foetal abnormality or a fatal foetal condition, or the woman being diagnosed with a life-threatening illness such as cancer where the continuation of the pregnancy threatens her access to treatment.<sup>160</sup> The committee notes the following evidence from Ms Sinead Canning, Campaign Manager, NSW Pro-Choice Alliance:

There are women and families in New South Wales that have had terminations of pregnancy at a later gestation. These are not easy decisions. Their decisions were considered, their decisions were thoughtful, their decisions were compassionate and their decisions were made in consultation with their doctors, who found these

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<sup>152</sup> Evidence, Reverend Azize, Maronite Eparchy of Australia, 14 August 2019, uncorrected transcript, p 14.

<sup>153</sup> Evidence, Mr Timothy Game QC, President, Bar Association, 14 August 2019, uncorrected transcript, p 71.

<sup>154</sup> Submission 33, Australian Christian Lobby, pp 9-10.

<sup>155</sup> Submission 13, Right to Life NSW, p 9; Submission 36, Women and Babies Support (WOMBS), p 3.

<sup>156</sup> Submission 32, Women's Legal Service NSW, pp 3-4.

<sup>157</sup> Submission 26, NSW Pro-Choice Alliance, p 7.

<sup>158</sup> Evidence, Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW, 15 August 2019, uncorrected transcript, p 4.

<sup>159</sup> Submission, 14, Marie Stopes Australia, p 4. See also Evidence, Dr Philip Goldstone, Marie Stopes Australia, 14 August 2019, uncorrected transcript, p 51.

<sup>160</sup> Submission 30, NSW Pro-Choice, pp 1-2; Submission 15, Family Planning NSW, p 6.

procedures medically appropriate. There is going to be no difference if this bill is successful. Those who would condemn people for making such a decision are purposefully ignorant of the circumstances surrounding the choice to not continue with a pregnancy at a later gestation. Women are not making these decisions on the fly. They are not making them flippantly and to suggest so is highly insulting to women everywhere.<sup>161</sup>

**3.60** In his evidence, the Revd Dr Peter Stuart, Anglican Bishop of Newcastle, presented the following perspective:

Anglicans have often learnt through pastoral conversation about the experience of women who, late in pregnancy, received news that devastates them: news about what is occurring within their body around a child for which they have longed. The understanding that in these circumstances a termination of that pregnancy may be the best available moral outcome means that any law regulating termination must provide a framework for those decisions. Again, such framework should be outside the criminal code.<sup>162</sup>

**3.61** Questions also arose during the inquiry in relation to the amendment adopted in the Legislative Assembly requiring that only specialist medical practitioners may perform terminations after 22 weeks.

**3.62** In its written submission, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists supported the involvement of at least two doctors in abortions after 22 weeks as reasonable, and noted that in public hospital settings, a multidisciplinary team would usually be in place to support a women in such circumstances, including feto-maternal medicine specialists, neonatologists, geneticists, social workers and mental health specialists.<sup>163</sup> RANZCOG included in its submission links to its current statements concerning late term abortions.<sup>164</sup>

**3.63** However, other parties to the inquiry such as the Women's Legal Service NSW and the Human Rights Law Centre submitted that this requirement places an unnecessary burden on women in distressing and vulnerable medical, psychological and social circumstances, creates additional barriers, costs and delays in accessing abortions. They did not support the amendments adopted in the Legislative Assembly, preferring the bill in its original form.<sup>165</sup>

**3.64** Separately, concerns were also expressed during the inquiry about the potential for babies to be born alive as a result of later-term abortions and not provided with life sustaining support and care.

<sup>161</sup> Evidence, Ms Sinead Canning, Campaign Manager, NSW Pro-Choice Alliance, 15 August 2019, uncorrected transcript, p 6.

<sup>162</sup> Evidence, Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, p 61. See also page 69.

<sup>163</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 1.

<sup>164</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 2.

<sup>165</sup> Submission 32, Women's Legal Service NSW, pp 5-6, Submission 25, Human Rights Law Centre, pp 10-11; Submission 14, Marie Stopes Australia, p 4.

In their submissions and evidence, the Australian Christian Lobby and Right to Life NSW cited evidence from Victoria of babies being born alive following abortions.<sup>166</sup> Various parties in turn questioned whether such babies would receive appropriate neonatal care under the new laws.<sup>167</sup> Parties advocated adoption of the amendment moved by the Member for Mulgoa in the Legislative Assembly that a child born alive following an abortion is given the same level of neonatal care as would be given to any other child.<sup>168</sup>

- 3.65** The current NSW Ministry of Health policy directive requires that where there is a likelihood that treatment will be of a benefit to the child born alive, in any circumstance, there is an obligation to render life-saving medical treatment to that child. The NSW Health *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations* provides at paragraph 2.3.2:

For the purposes of this section "child" refers to a child who has been expelled or removed from the mother's womb alive. It should be noted that a fetus in utero is not recognised as a separate legal entity. However, once a fetus has been expelled or removed from the mother's womb, and is born alive, the child has the legal status of a person whose rights exist independently of the rights of the parents.

Where a child is born alive and a responsible body of medical opinion considers that the burden of medical treatment is such that it would not benefit the child, because of previability of the child, prematurity, or the effect of a disease or condition - then a medical practitioner is under no duty to render overburdensome treatment. Healthcare professionals have an obligation to work together with families to make compassionate decisions. Conversely, where the likelihood of treatment will be of benefit, there is an obligation to render life-saving medical treatment.

- 3.66** It was submitted that this provision should be included in the bill.<sup>169</sup>

## Requirement for information about counselling

- 3.67** During the passage of the Reproductive Health Care Reform Bill 2019 through the Legislative Assembly, the Legislative Assembly inserted a new clause 7 into the bill in relation to information about counselling. The clause provides:

### Requirement for information about counselling

- (1) Before performing a termination on a person under section 5 or 6, a medical practitioner must—

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<sup>166</sup> Submission 33, Australian Christian Lobby, p 10; Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, p 23; Submission 13, Right to Life NSW, p 9.

<sup>167</sup> Submission 33, Australian Christian Lobby, p 5; Submission 35, The Australian Family Association, p 5; Submission 46, Women's Forum, p 31; Evidence, Dr Rachel Carling, CEO, Right to Life NSW, 14 August 2019, uncorrected transcript, p 28, Dr John Whitehall, Chairman, Christian Medical and Dental Fellowship, 15 August 2019, p74.

<sup>168</sup> Submission 20, Catholic Bishops of New South Wales, p 16; Submission 21, Prof Anna Walsh, p 4.

<sup>169</sup> Submission 13, Right to Life NSW, pp 10-11.

- (a) assess whether or not it would be beneficial to discuss with the person accessing counselling about the proposed termination, and
  - (b) if, in the medical practitioner's assessment, it would be beneficial and the person is interested in accessing counselling, provide all necessary information to the person about access to counselling, including publicly-funded counselling.
- (2) A medical practitioner may, in an emergency, perform a termination on a person without complying with subsection (1).

**3.68** The mover of the amendment in the Legislative Assembly, the Member for Ku-ring-gai, Mr Alistair Hensken, observed:

This amendment places an obligation on the medical practitioner who is to provide a termination to consider the provision of information about counselling after an assessment by the medical practitioner that such a discussion would be a benefit, not a detriment, to the patient .... I am told government-funded counselling can be made available and my inclusion of that language in the amendment is to ensure that the persons concerned are aware that there is no financial barrier to them having counselling. I think that is an important social equity consideration. The counselling is not mandatory, it is simply a requirement on a medical practitioner to turn their mind to the issue of counselling and to provide information to the patient as to its availability.<sup>170</sup>

**3.69** An alternative amendment from the Member for Mulgoa, Mrs Tanya Davies, providing that a medical practitioner must, before performing a termination on a person, ensure that the person has been offered the opportunity to receive counselling (except where compliance is not practicable in an emergency) was negated on division, 36 votes to 53.<sup>171</sup>

### Stakeholders' views

**3.70** During the inquiry, various parties expressed concern that the requirements of clause 7 relating to counselling of women seeking abortions are very limited, in that they only require medical professionals to offering counselling to women if the medical professional first determines that a discussion about counselling would be beneficial.<sup>172</sup> When asked to comment on these provisions, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, observed:

The concern I am expressing here is that it does not require that counselling be offered; it requires the medical practitioner to make a judgement whether it should be offered. If you are part of the abortion industry, you are probably going to form a view that that is rarely needed. ... At the moment the amendment is, I agree with you, an improvement on the original bill but it still leaves it with the medical practitioner or possibly the abortionist to decide whether to offer the counselling or not.<sup>173</sup>

<sup>170</sup> *Hansard*, NSW Legislative Assembly, 8 August 2019, p 54.

<sup>171</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 251-252.

<sup>172</sup> Submission 20, Catholic Bishops of New South Wales, p 9.

<sup>173</sup> Evidence, Archbishop Anthony Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 7.

- 3.71** Archbishop Glenn Davies, the Anglican Archbishop of Sydney, agreed in his evidence that the insertion of this clause was a modest improvement to the bill, but raised concerns as to when counselling would be offered, and when it would be considered not to be beneficial.<sup>174</sup>
- 3.72** In its written submission, the Australian Christian Lobby argued that pre-abortion counselling should be provided to all women seeking abortions, and that any such a process should allow a minimum of 72 hours between counselling and termination of a pregnancy.<sup>175</sup> The written submission of Prof Somerville also noted that some jurisdictions overseas require women to be shown an up-to-date ultrasound of the foetus before proceeding with an abortion.<sup>176</sup> Newcastle Pregnancy Help Inc submitted:
- It is our experience that pregnant women, if given the opportunity to reflect on it, are generally delighted with the prospect of becoming a mother. When they state that they are considering an abortion, it is our experience that this decision is primarily based on their economic situation and/or the emotional and psychological pressure exerted by others on them (67% of our clients). It is of particular concern to Newcastle Pregnancy Help Inc. that in this country of such affluence, so many will consider abortion over parenting due to economic considerations.<sup>177</sup>
- 3.73** The submission from Women and Babies Support (WOMBS) argued that clause 7 should be amended to provide that a medical practitioner performing an abortion must have evidence that the person has received non-directive counselling or has been offered this counselling.<sup>178</sup>
- 3.74** However, the committee also notes that the insertion of clause 7 into the bill was the subject of considerable criticism during the inquiry.
- 3.75** From a legal perspective, the Women's Legal Services NSW argued that it is not clear what is meant by the phrase 'assess whether or not it would be beneficial to discuss with the person accessing counselling about the proposed termination'. The Service argued that counselling is already addressed by NSW Health Guidelines which state 'All women seeking a termination of pregnancy are to be offered counselling'.<sup>179</sup> The Human Rights Law Centre submission cited the Victorian and Queensland Law Reform Commission inquiries into abortion as concluding that counselling is a clinical matter best left to professional judgement based on a woman's circumstances.<sup>180</sup>
- 3.76** From the point of view of women seeking an abortion it was submitted that the clause is unnecessary and unfair to women, on the basis that invariably women have already considered the decision to get an abortion at length, including discussions with family and friends, and that the provision of further counselling is of no assistance in their decision to proceed to an

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<sup>174</sup> Evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 21.

<sup>175</sup> Submission 33, Australian Christian Lobby, pp 11-12. See also submission 21, Prof Anna Walsh, p 2.

<sup>176</sup> Submission 24, Prof Margaret Somerville, p 4.

<sup>177</sup> Submission 37, Newcastle Pregnancy Help Inc, p 1.

<sup>178</sup> Submission 36, Women and Babies Support (WOMBS), p 8.

<sup>179</sup> NSW Health, *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations*, Para 3.1. Submission 32, Women's Legal Service NSW, p 6.

<sup>180</sup> Submission 25, Human Rights Law Centre, p 9.

abortion.<sup>181</sup> In evidence, Ms Wendy McCarthy, Campaign Chair, NSW Pro-choice alliance submitted:

... I cannot think of any other health procedure that requires mandated counselling or counselling. I would also comment that in my long experience, that people offered counselling at the institutional base mostly do not want it. They have taken counsel from their most intimate friends. This is a deeply intimate matter to women.<sup>182</sup>

Similarly, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, stated:

How do you mandate counselling? How do you do that? Is there such a thing? Women know whether they need advice and support about the decision making that they go through. Women, by the time they come to the decision that they want an abortion, have by and large been through that process. You cannot add anything to that process except fear and concern by having mandatory counselling.<sup>183</sup>

**3.77** Prof Brassil subsequently cited the example of a woman who carried a foetus to later term even though it was discovered to have no lungs:

These are heartbreaking cases. This is what we are talking about from 22 weeks. ... Women are responsible, caring, empathic human beings going through awful situations that are devastating and this is what they are trying to deal with. It should be their decision whether they carry that baby to term and have a "live birth" which is not interfered with from a neonatal perspective or whether they terminate that pregnancy in utero. That is a deeply, deeply personal issue for them and their family.<sup>184</sup>

**3.78** Reverend Simon Hansford, Moderator of the Synod of NSW and the ACT, Uniting Church of Australia, expressed the following perspective:

The Uniting Church is disturbed that recent comments could imply that women make the decision to have an abortion without proper consideration. Most women who have abortions do so only after a great deal of searching and thought and anguish. There are a range of well-informed spiritual, medical and emotional support services available to women and it is offensive to imply that these decisions are made lightly or without access to suitable consultation. The decision to have an abortion is not just a moral issue but a social one. While some aspect of the current debate attempt to pass moral judgement on the act itself, it ignores the many emotional, physical, financial and social issues that often create a situation where a woman is forced to consider an abortion.<sup>185</sup>

**3.79** From the point of view of medical practitioners, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists submitted that good clinical practice requires every medical practitioner to consider the patient's health care needs and suggest additional treatments, such

<sup>181</sup> Submission 15, Family Planning NSW, p 8.

<sup>182</sup> Evidence, Ms Wendy McCarthy, Campaign Chair of the NSW Pro-choice Alliance, 15 August 2019, uncorrected transcript, p 9.

<sup>183</sup> Evidence, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, 15 August 2019, uncorrected transcript, pp 17-18.

<sup>184</sup> Evidence, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, 15 August 2019, uncorrected transcript, pp 17-18, 19.

<sup>185</sup> Evidence, Reverend Simon Hansford, Moderator, Synod of NSW and the ACT, Uniting Church of Australia, 15 August 2019, Uncorrected transcript, p 60.

as counselling, where clinically appropriate. Therefore, while not opposed to clause 7 in its current form, RANZCOG suggested that there is no need for any specific legislative requirement concerning counselling.<sup>186</sup>

**3.80** In turn, Dr Danielle McMullen, Vice President of the Australian Medical Association (NSW), submitted:

To enforce that women who already have a clear decision in mind and have weighed up the risks and benefits, because with any medical procedure there are risks and we need to make sure women are aware of these if they are undertaking a procedure. But if they are aware of all that forcing them into long and painful discussions about what is already a difficult issue that they have spent many hours and days and weeks considering would be unfair to women, and also to the rest of their family and their healthcare team.<sup>187</sup>

**3.81** Dr Philip Goldstone, representing Marie Stopes Australia, one of the largest abortion providers in New South Wales, observed:

Firstly, when women are accessing our services, very often that is the end of their decision-making journey. They very often come having already spoken to their general practitioner. They have had discussions with their GP and conversations with their support network and have sometimes sought counselling themselves prior to coming to see us. Nevertheless, when women make an appointment with us they are offered the option of having decision-making counselling, if they feel they need it.<sup>188</sup>

**3.82** For the same reasons, a number of parties to the inquiry argued that a 72-hour cooling off would be very unfair to women, especially women in regional areas, or women escaping domestic and family violence, who often seek an abortion at the end of their decision making process. Those making the argument included Ms Loughmann representing the Women's Legal Service NSW, Ms Canning, Campaign Manager for the NSW Pro-choice Alliance and Adjunct Prof Ann Brassil from Family Planning NSW.<sup>189</sup>

**3.83** The committee also notes the evidence of the Revd Dr Peter Stuart, Anglican Bishop of Newcastle:

Parliament needs to be alert to some of the United States [US] experience where informed consent and counselling have been implemented in ways which have caused manifest distress to the woman.<sup>190</sup>

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<sup>186</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 2.

<sup>187</sup> Evidence, Dr Danielle McMullen, Vice President, Australian Medical Association (NSW), 15 August 2019, uncorrected transcript, p 29.

<sup>188</sup> Evidence, Dr Philip Goldstone, Marie Stopes Australia, 14 August 2019, uncorrected transcript, p 49.

<sup>189</sup> Evidence, Ms Janet Loughmann, Women's Legal Service NSW, 14 August 2019, uncorrected transcript, p 53; Evidence, Ms Melanie Fernandez, Co-convenor, Pro-Choice NSW, 15 August 2019, uncorrected transcript, p 8; Evidence, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, 15 August 2019, uncorrected transcript, pp 19. See also Evidence, Adjunct Prof Deborah Bateson, Medical Director, Family Planning NSW, 15 August 2019, uncorrected transcript, p 19; Evidence, Ms Karen Willis OAM, Executive Office, Rape and Domestic Violence Services Australia, 15 August 2019, uncorrected transcript, p 19.

<sup>190</sup> Evidence, Revd Dr Peter Stuart, Anglican Bishop of Newcastle, 15 August 2019, uncorrected transcript, p 61.

- 3.84** Separately, some parties to the inquiry also argued for a separation between the provision of counselling and abortion services.<sup>191</sup> Of note, the submission from the Plunkett Centre for Ethics argued that the professional knowledge and skills of medical practitioners is in medically required treatment of the promotion and maintenance of health, and that in the main, doctors have no special training in, or expertise in, the psychology or social circumstances of their patients.<sup>192</sup> Other parties also referred to a possible financial disincentive for an abortion provider in providing counselling.<sup>193</sup>

### Conscientious objection by registered health practitioners

- 3.85** Clause 9 of the Reproductive Health Care Reform Bill 2019 provides that a registered health practitioner who has a conscientious objection to the performance of a termination may abstain from performing the termination or assisting in the performance of a termination, provided he or she complies with certain requirements. First, the registered health practitioner must inform the person seeking the termination of this fact as soon as practical after the request. Second, the registered health practitioner must, without delay, give information to the person about how to locate or contact a medical practitioner who, in the first practitioner's belief, does not have a conscientious objection to the performance of the termination, or transfer the person's care to (a) another registered health practitioner, who in the first practitioner's reasonable belief, can provide the requested service, or (b), a health service provider at which, in the first practitioner's reasonable belief, the requested service can be provided. The full terms of Clause 9 are as follows:

#### Registered health practitioner with conscientious objection

- (1) This section applies if—
  - (a) a person (the *first person*) asks a registered health practitioner to—
    - (i) perform a termination on another person, or
    - (ii) assist in the performance of a termination on another person, or
    - (iii) make a decision under section 6 whether a termination on another person should be performed, or
    - (iv) advise the first person about the performance of a termination on another person, and
  - (b) the practitioner has a conscientious objection to the performance of the termination.
- (2) The registered health practitioner must, as soon as practicable after the first person makes the request, disclose the practitioner's conscientious objection to the first person.

<sup>191</sup> Submission 35, The Australian Family Association, p 4; Submission 24, Prof Margaret Somerville, p 4.

<sup>192</sup> Submission 41, Plunket Centre for Ethics, p 1.

<sup>193</sup> Submission 24, Prof Margaret Somerville, pp 5-6.

- (3) If the request by a person is for the registered health practitioner (the *first practitioner*) to perform a termination on the person, or to advise the person about the performance of a termination on the person, the practitioner must, without delay—
- (a) give information to the person on how to locate or contact a medical practitioner who, in the first practitioner's reasonable belief, does not have a conscientious objection to the performance of the termination, or
  - (b) transfer the person's care to—
    - (i) another registered health practitioner who, in the first practitioner's reasonable belief, can provide the requested service and does not have a conscientious objection to the performance of the termination, or
    - (ii) a health service provider at which, in the first practitioner's reasonable belief, the requested service can be provided by another registered health practitioner who does not have a conscientious objection to the performance of the termination.
- (4) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

**3.86** In his second reading speech, Mr Greenwich provided the following comments on the provisions of what was originally clause 8 of the bill as introduced in the Legislative Assembly:

As is currently the case, doctors will not be forced to perform or participate in terminations if doing so would conflict with their values or personal beliefs, except in life-threatening emergencies. The right to conscientious objection is already provided for in a number of Australian codes of conduct and ethical standards for health practitioners and these standards are reflected in this bill. The bill recognises the right of doctors to practice in accordance with their values while providing provisions to ensure that women's health care is not impeded.<sup>194</sup>

**3.87** Nevertheless, the issue of conscientious objection was a matter of considerable controversy during the bill's consideration in the Legislative Assembly. As originally drafted, clause 8 obligated a registered health practitioner with a conscientious objection to the performance of a termination to transfer the person's care to (a) another registered health practitioner who, in the first practitioner's reasonable belief, could provide the requested service, or (b), a health service provider at which, in the first practitioner's reasonable belief, the requested service could be provided. The alternative option for a registered health practitioner simply to give information to the person on how to locate or contact a medical practitioner who, in the health practitioner's reasonable belief, does not have a conscientious objection to the performance of the termination (Clause 9(3)(a) as cited above) was inserted by the Legislative Assembly during its consideration of the bill.<sup>195</sup>

**3.88** Other amendments moved in the Legislative Assembly concerning conscientious objection were not agreed to. An amendment moved by the Member for Mulgoa, Mrs Tanya Davies, to

<sup>194</sup> *Hansard*, NSW Legislative Assembly, 1 August 2019, pp 4-5.

<sup>195</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 255.

provide that a registered health practitioner who has a conscientious objection to the performance of a termination may refuse to assist in or otherwise facilitate the performance of a termination was negated on division, 36 votes to 56.<sup>196</sup> An amendment moved by the Attorney General, the Hon Mark Speakman, to provide that the requirement to refer a person does not apply when a person is not more than 22 weeks pregnant and the registered medical practitioner reasonably believes that it would not be difficult for the person to find another registered health practitioner who does not have a conscientious objection to the performance of a termination was also negated, 36 votes to 53.<sup>197</sup>

### Stakeholders' views

**3.89** During the inquiry, various parties expressed concern that the bill is gravely unjust in relation to medical practitioners with a conscientious objection to providing abortions. For example, the submission of the Social Issues Committee of the Anglican Church Diocese argued that at a minimum, doctors should have the right to refuse to provide referrals to women seeking abortions.<sup>198</sup>

**3.90** The submission of the Catholic Bishops of New South Wales argued that requiring medical professionals to have any role in assisting with an abortion if they believe it to be gravely immoral is an unjust imposition on the freedom of thought, conscience and belief.<sup>199</sup> In evidence, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, observed:

one [provision of the bill] that jumps out is the attack on the consciences of healthcare workers and healthcare providers—the notion that we all have to either do abortions or hand out information on who will. I think if you compared that with other areas of life or medical practice we would recognise that, if you have a serious conscience problem with a procedure, you cannot be asked to enable it by giving people information on where else they might be able to get it. I look to our upper House to correct that problem with the present bill.<sup>200</sup>

**3.91** Rabbi Schapiro, President of the Rabbinical Council of Australia adopted a similar position in his evidence to the committee, arguing that the bill forces conscientious objectors to refer a woman to another doctor who will perform an abortion, even if it is against the medical practitioner's religion or values.<sup>201</sup> A similar position was adopted by Reverend Azize, Priest of the Maronite Eparchy of Australia<sup>202</sup>, and a number of other parties contributing to the inquiry.<sup>203</sup>

<sup>196</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 253-254.

<sup>197</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 255-256.

<sup>198</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, p 6.

<sup>199</sup> Submission 2, Catholic Bishops of New South Wales, p 11.

<sup>200</sup> Evidence, Archbishop Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 7.

<sup>201</sup> Evidence, Rabbi Schapiro, President, Rabbinical Council of Australia, 14 August 2019, uncorrected transcript, p 4.

<sup>202</sup> Evidence, Reverend Azize, Maronite Eparchy of Australia, 14 August 2019, uncorrected transcript, pp 14-15.

<sup>203</sup> Submission 33, Australian Christian Lobby, p 12; Submission 13, Right to Life NSW, p 12; Submission 35, The Australian Family Association, p 5; Submission 37, Newcastle Pregnancy Help

**3.92** In his submission to the inquiry, Mr Rocco Mimmo, Chairman, Ambrose Centre for Religious Liberty, stated:

The health practitioner who has a genuine conscientious belief that a termination in circumstances save for an emergency or a serious threat to the woman's life in the absence of a termination, is wrong, should not be coerced by law to either facilitate or be a pathway for the termination. Referring a woman may be held by the health practitioner to be an act of facilitation or indirect participation in the termination. The requirement to put aside such a belief and subsequently defy the conscientious belief is not only unreasonable but coercive.<sup>204</sup>

**3.93** However, the Committee also heard considerable evidence which argued that conscientious objection must not be allowed to impede access to reproductive healthcare for women.

**3.94** From a legal perspective, the Women's Legal Service submitted that Clause 9(3)(a), as inserted into the bill in the Legislative Assembly, is vague and does not require referral to an accessible provider capable and willing to provide the service being sought.<sup>205</sup>

**3.95** From the point of view of medical practitioners, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists indicate that it respects the personal position of all its members, and recognises the right to conscientious objection in relation to abortion. However, it also stated that health practitioners have a duty of care and must transfer care of patients to other health practitioners where they are able to receive the health care they need.<sup>206</sup> This was reiterated by Dr Vijay Roach, President of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, in evidence:

In choosing to be doctors we have a duty of care to the patient and if the patient seeks our care and we are unable to deliver that care, and there are other reasons why we cannot deliver it, we might not have experience in that area, we might not have a skill in that area. If we are unable to provide that care, and it may be because of conscientious objection, then it is our duty, and I think a better term would be transferring the care or providing information to the patient so that she is then able to access the care that she seeks. The other part of that is that we have no right to impede that woman from receiving care as well.<sup>207</sup>

**3.96** Evidence was also presented to the committee by the Human Rights Law Centre about the delays that may be encountered by women as a result of encountering medical practitioners with a conscientious objection to abortions, which can in turn imperil a woman's health. The Human Rights Law Centre submitted that the right of health practitioners to freedom of conscience must be balanced against the rights of women to life, health, autonomy and non-

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Inc, p 1; Submission 36, Women and Babies Support (WOMBS), pp 3, 11; Submission 21, Prof Anna Walsh, p 6; Evidence, Dr John Whitehall, Chairman, Christian Medical and Dental Fellowship, 15 August 2019, uncorrected transcript, p 79.

<sup>204</sup> Submission 40, Mr Rocco Mimmo, Chairman, Ambrose Centre for Religious Liberty, p 3.

<sup>205</sup> Submission 32, Women's Legal Service NSW, p 8.

<sup>206</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 2.

<sup>207</sup> Evidence, Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 15 August 2019, Uncorrected transcript, p 29.

discrimination.<sup>208</sup> This was addressed by Mr Edwina MacDonald, Legal Director of the Human Rights Law Centre, in evidence:

... we hear a lot about the rights of the doctors for their right of freedom of conscience and religion, but we are also balancing that with the woman's right to life, health, autonomy and non-discrimination. We at the Human Rights Law Centre really believe that it is essential that we maintain this current provision as it is in the bill at the moment in order to strike that balance. We would certainly caution about any further amendment to that provision.<sup>209</sup>

**3.97** The Committee notes that the matter of conscientious objection to the performance of a termination is also covered in paragraph 4.3 of NSW Health's *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations*. It provides:

Any medical practitioner who is asked to advise a woman about termination of pregnancy, or perform, direct, authorise or supervise a termination of pregnancy, and who has a conscientious objection to termination of pregnancy must:

1. Inform the woman that they have a conscientious objection and that other practitioners may be prepared to provide the health service she seeks; and
2. Take every reasonable step to direct the woman to another health practitioner, in the same profession, who the practitioner reasonably believes does not have a conscientious objection to termination of pregnancy.

The term 'direct' is to be understood in its ordinary sense, that is, to direct or point to another source, rather than the requirement of a written referral as part of an ongoing working relationship. It may be as simple as directing the woman to another practitioner who they know has no such objection. This is to ensure that women receive timely, accurate information from a professional who does not hold an objection to the health service she seeks.

**3.98** The Committee received evidence that conscientious objection is currently respected in hospitals and the bill would not change this:

I can give you a very clear answer to that because I work in hospitals and we definitely have situations in which the staff, be they medical staff, nursing staff, clerical staff, who have a conscientious objection to abortion and absolutely that is respected. And we have sufficient staff in order to allow them to step out of the situation and not be involved. We would never ask or coerce a staff member, nursing or medical, to be involved in a procedure that they considered to be wrong for whatever reasons they did. but we would also not allow that fact to impede the care of that woman.<sup>210</sup>

<sup>208</sup> Submission 25, Human Rights Law Centre, p 12.

<sup>209</sup> Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 7.

<sup>210</sup> Evidence, Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 15 August 2019, uncorrected transcript, p31.

- 3.99** Witnesses representing nurses also indicated that conscientious objection of nursing staff was had to be respected, and this was included in policy documents of nursing associations.<sup>211</sup>

## Gender selection

- 3.100** During passage of the Reproductive Health Care Reform Bill 2019 through the Legislative Assembly, the Legislative Assembly inserted new clauses 14 and 15 into the bill in relation to gender selection. Clause 14 requires the Secretary of the Ministry of Health, within 12 months of the commencement of the section,<sup>212</sup> to conduct a review of the issue of whether or not terminations are being performed for the purpose of gender selection, with the review to be given to the Minister and provided to the Presiding Officers for tabling in each House of Parliament. Clause 15 states the opposition of the Legislative Assembly to terminations for the sole purpose of gender selection.<sup>213</sup> The amendments were moved by the Member for Port Macquarie, Mrs Leslie Williams. In moving the amendments, she observed:

We need to be very clear that we do not support gender selection in New South Wales. I am confident that there is not one member in this Chamber who would support gender selection as a reason for termination. However, we hear the issue that those who support the member for Mulgoa's amendment have raised, whilst we do not believe that it is an issue in New South Wales, and that is why I have proposed this amendment, which is currently being circulated. What we want in New South Wales is good clinical practice and a duty of care for medical professionals to always put the best interests of their patients first and foremost.<sup>214</sup>

- 3.101** An amendment moved by the member for Mulgoa, Mrs Tanya Davies, to specifically provide that terminations may not be used for the purposes of gender selection was not supported by the Legislative Assembly.<sup>215</sup>

## Stakeholders' views

- 3.102** The issue of gender or sex selection was a matter of particular controversy during the conduct of the committee's inquiry.
- 3.103** A number of parties to the inquiry raised concerns that abortions could be used for the purposes of gender selection of children, with a preference for boys over girls.<sup>216</sup> Some of this evidence referred to gender selection in certain other countries, with some parties also drawing a link to

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<sup>211</sup> Evidence, Ms Judith Keidja, Assistant General Secretary, New South Wales Nurses and Midwives' Association, 15 August 2019, uncorrected transcript, p31.

<sup>212</sup> Clause 14 of the bill will become section 14 of the *Reproductive Health Care Reform Act 2019* if the bill is enacted.

<sup>213</sup> *Notes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 260.

<sup>214</sup> *Hansard*, NSW Legislative Assembly, 8 August 2019, p 88.

<sup>215</sup> *Notes and Proceedings*, NSW Legislative Assembly, 8 August 2019, pp 259-260.

<sup>216</sup> Submission 20, Catholic Bishops of New South Wales, p 8; Submission 33, Australian Christian Lobby, p 7; Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, pp 24, 26-27; Submission 13, Right to Life NSW, pp 13-15; Submission 37, Newcastle Pregnancy Help Inc, p 4; Submission 36, Women and Babies Support (WOMBS), p 3; Submission 24, Prof Margaret Somerville, p 4.

the possibility of gender selection occurring in Australia, based primarily on a study published by academics at La Trobe University.<sup>217</sup> In evidence, Mr Dan Flynn, Chief Political Officer of the Australian Christian Lobby, stated:

One of the elements that was helpfully said in the amended bill is that the Legislative Assembly does not support sex selection abortion. What I would say is that if that is so this House ought to legislate to prevent sex selection abortion. We know it does happen among particular cultural communities in Australia. There is a study that is referenced in our submissions conducted by La Trobe University that indicated that fewer girls were born into certain ethnic communities in Australia. ... This issue is alive and well in certain communities. There is a report that there is an area of India covering 132 villages where there have been no girls born for three months. That is a very concerning report. Sex selection abortions do happen. There is a token acknowledgement of that in the lower House that ought to be legislated in the upper House. That would greatly improve the bill.<sup>218</sup>

- 3.104** The submission of the Catholic Bishops of New South Wales argued that it is incongruous that assisted reproductive technologies are not permitted to be used for sex selection, but that sex selection may occur by reason of abortion.<sup>219</sup>
- 3.105** Support was also expressed for the amendment moved unsuccessfully in the Legislative Assembly by the member for Mulgoa, Mrs Tanya Davies, to specifically provide that terminations may not be used for the purposes of gender selection.<sup>220</sup>
- 3.106** However, other parties to the inquiry submitted that there is no evidence of gender selection occurring in Australia.<sup>221</sup> In its submission, *Our Bodies, Our Choices* argued that the La Trobe study found that while there may be skewed gender ratios in births of first generation mother from certain backgrounds, this problem does not persist into further generations in migrant communities. In addition, it was submitted that prenatal gender selection need not mean only abortions. It may also be achieved by gender selection through IVF, which is permitted in certain countries overseas.<sup>222</sup> Indeed Ms Claire Pullen, Chair, *Our Bodies, Our Choices*, suggested in evidence that there is some evidence of IVF being used to gender select for girls over boys.<sup>223</sup>

<sup>217</sup> K.Edvardsson., A.Axmon,, R.Powell and M of 1 191 250 births 1999–2015', *International Journal of Epidemiology*, 2018, 47(6), pp 2025-2037.Davey, 'Male-biased sex ratios in Australian migrant populations: a population-based study of 1 191 250 births 1999–2015', *International Journal of Epidemiology*, 2018, 47(6), pp 2025-2037; Evidence, Professor Margaret Somerville, University of Notre Dame, 14 August 2019, p 60; Evidence, Ms Rachel Wong, Managing Director, Women's Forum Australia, 15 August 2019, uncorrected transcript, p 50.

<sup>218</sup> Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, p 24.

<sup>219</sup> Submission 20, Catholic Bishops of New South Wales, p 8.

<sup>220</sup> Submission 13, Right to Life NSW, pp 13-15; Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, p 24.

<sup>221</sup> Submission 32, Women's Legal Service NSW, p 8.

<sup>222</sup> Submission 28, *Our Bodies, Our Choices*, pp 12-14. See also Evidence, Ms Claire Pullen, Chair, *Our Bodies, Our Choice*, 15 August 2019, uncorrected transcript, pp 9-10.

<sup>223</sup> See also Evidence, Ms Claire Pullen, Chair, *Our Bodies, Our Choice*, 15 August 2019, uncorrected transcript, p 10.

- 3.107** The submission of NSW Pro-Choice Alliance also cited the La Trobe University study as concluding that there can be no conclusions drawn as to whether sex-selective abortions occur.<sup>224</sup>
- 3.108** Reference was also made to the 2013 report of the Senate Public Finance and Administration Legislation Committee on the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013 which did not find any evidence of sex-selection of children in Australia.<sup>225</sup>
- 3.109** From the perspective of medical practitioners, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists argued that current medical practice and ethics frameworks would make it highly unlikely that doctors would agree to perform a termination solely on the basis of gender.<sup>226</sup> This was reiterated in evidence by Dr Vijay Roach, President of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists:

... one of my great concerns when I listened to the discussion and debate in the lower House around the issue of gender selection was that there was a huge reference to overseas populations in their own countries and in New South Wales. One of the things I found very concerning was that the discussion around the amendments effectively suggested we should concentrate on gender in a way that would end up with racial profiling. Frankly, that is offensive. It was interesting because in the discussion around gender selection the word "offensive" was thrown around all the time and when we talk about abortion we talk about the term "offensive". I think we should add in the fact that racial profiling is absolutely offensive and is not something that this country or Parliament should accept. This would end up precluding people from seeking care.<sup>227</sup>

- 3.110** In its written submission, the Australian Medical Association (NSW) noted that with advances in technology, it is now possible to identify the sex of a foetus from as early as 9-10 weeks gestation. However with this, the AMA suggested that if prohibitions on gender selection are built into the bill, it would make any request of an abortion after that point suspect.<sup>228</sup> This was reiterated in evidence by Dr Danielle McMullen, Vice President of the Australian Medical Association (NSW):

If such amendments were to pass it would potentially make any doctor providing abortion services after nine weeks party to a crime. That is because we can now, with technological advances, find out foetal sex from about nine weeks gestation and that this is becoming relatively common practice. Therefore, if a women seeks termination of pregnancy after this point, any laws prohibiting gender selection as a reason would require doctors to be mind-readers of sorts to ensure no crime was being committed. This would have the effect of delaying or preventing the delivery of care.<sup>229</sup>

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<sup>224</sup> Submission 26, NSW Pro-Choice Alliance, p 15.

<sup>225</sup> Senate Finance and Public Administration Legislation Committee, *Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013*, June 2013.

<sup>226</sup> Submission 39, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, p 3.

<sup>227</sup> Evidence, Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 15 August 2019, uncorrected transcript, p 29.

<sup>228</sup> Submission 45, Australian Medical Association (NSW), p 2...

<sup>229</sup> Evidence, Dr Danielle McMullen, Vice President, Australian Medical Association (NSW), 15 August 2019, uncorrected transcript, p 25. See also page 28.

**3.111** Dr Philip Goldstone, representing Marie Stopes Australia, observed:

There is a view that decriminalising abortion will lead to sex selective abortions and I want to dispel that myth. As a doctor with more than 20 years of experience in providing abortions, I can tell you that gender is rarely an issue that is raised. In fact, the vast majority of abortions occur before gender can be readily determined. I believe that if we are to talk about sex selection, it must be grounded in evidence and some of the discussion I have heard on this issue this week unfairly discriminates and targets women from certain multicultural communities who may already face barriers to accessing abortion care.<sup>230</sup>

**3.112** The committee also notes the position put by representatives of the Uniting and Anglican Churches that addressing sex selection is as much a societal issue as a legal one. Dr Margaret Mayman, representing the Pitt Street Uniting Church, observed in evidence:

Concerns about sex selective abortion is not going to be solved by additional amendments to the legislation. Social scientific research indicates that the preference of couples for boy children is directly linked to ideologies of gender inequality. Limiting its appeal is best achieved by social changes to end discrimination in all aspects of social and family life.<sup>231</sup>

**3.113** It was also submitted that public debate and amendments on this issue have the potential to discriminate against multicultural and diverse communities in Australia and would unfairly target people who already face barriers in accessing abortions.<sup>232</sup> For example, the Human Rights Law Centre submission stated:

Bans on sex-selective abortions will have unintended consequences that hurt women and block timely access to health care. ... There are hundreds of sex-linked conditions that vary in severity and can present devastating diagnoses. In application, a ban on sex-selective abortions would place a burden on providers to scrutinise a patient's pregnancy choices and second-guess patients' reasons for seeking an abortion, thus discouraging honest, confidential conversations and interfering in the provider-patient relationship.<sup>233</sup>

## Informed consent

**3.114** As noted previously, clauses 5 and 6 of the bill were amended during passage of the bill through the Legislative Assembly to require a person seeking an abortion to give informed consent. Informed consent is defined in Schedule 1 to the bill as meaning

*informed consent*, in relation to a termination performed by a medical practitioner, means consent to the termination given—

<sup>230</sup> Evidence, Dr Philip Goldstone, Marie Stopes Australia, 14 August 2019, uncorrected transcript, p 49.

<sup>231</sup> Submission 47, Dr Margaret Mayman, Pitt Street Uniting Church, p 1. Similar evidence was provided by Dr Peter Stuart, Anglican Bishop of Newcastle: Evidence 15 August 2019, uncorrected transcript p65.

<sup>232</sup> Submission 14, Marie Stopes Australia, p 5.

<sup>233</sup> Submission 25, Human Rights Law Centre, p 14. See also Evidence, Ms Edwina MacDonald, Legal Director, Human Rights Law Centre, 15 August 2019, uncorrected evidence, p 10.

- (a) freely and voluntarily, and
- (b) in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination.

### Stakeholders' views

**3.115** During the inquiry, the committee received evidence from parties from across the spectrum of debate on abortion expressing dissatisfaction with this provision.

**3.116** From a legal perspective, the Women's Legal Service NSW submitted that medical practitioners are already required to obtain a patient's informed consent for a medical procedure, and that as such, inclusion of this provision in the bill is unnecessary and potentially confusing.<sup>234</sup> The NSW Bar Association elaborated on this in its submission, arguing that at law, 'informed consent'

is a "somewhat 'amorphous phrase'" and a phrase that is "apt to mislead as it suggests a test of the validity of the patient's consent": cf *Rogers v Whittaker* (1992) 175 CLR 490. The starting point is that, except in cases of emergency, all medical treatment is proceeded by the choice to undergo it, upon advice in broad terms of the nature of the procedure to be adopted. Medical practitioners are trained in their duties to patients of disclosure and advice, which are subject to the therapeutic privilege.<sup>235</sup>

**3.117** In its submission, the Human Rights Law Centre argued that the amendment creates legal uncertainties about the obligations of doctors towards their patients, and how the provision should operate alongside the existing common law. In particular, it raised concerns about the inclusion in part (b) of the definition the phrase 'any guidelines applicable to the medical practitioner in relation to the performance of the termination', which it argued does not limit which guidelines apply and who is responsible for their development.<sup>236</sup>

**3.118** Other parties also raised concerns about the clause. In his submission, Mr Michael McAuley, President of the St Thomas More Society, asserted that the legislation does not indicate what information is required to be given to women seeking an abortion, and noted there are no criteria indicated as to the grounds for an abortion, for instance physical or mental health of the mother. Nor is there any distinction based on the trimester in which the abortion is sought to be performed.<sup>237</sup>

**3.119** In her submission to the inquiry, Ms Anna Walsh, School of Law, University of Notre Dame, stated:

The law on informed consent for medical services is well established in Australia. Doctors have a general duty to act with reasonable care and skill when providing services and when warning patients about the risks of the service. When it comes to performing termination, guide lines exist regarding the technical aspects of performing the service, but there is less clarity around the content of any warning the doctor must

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<sup>234</sup> Submission 32, Women's Legal Service NSW, p 4; See also submission 25, Human Rights Law Centre, pp 7-8.

<sup>235</sup> Submission 19, NSW Bar Association, p 2

<sup>236</sup> Submission 25, Human Rights Law Centre, p 8.

<sup>237</sup> Submission 16, Mr Michael McAuley, President, St Thomas More Society, p 15.

give that goes beyond the physical risks of termination, and extends to the psychological and mental health risks that termination may have on the particular patient. This is worthy of debate and discussion.<sup>238</sup>

**3.120** NSW Pro-Choice Alliance simply submitted that the amendment is redundant.<sup>239</sup>

**3.121** From a practitioner's perspective, Dr Philip Goldstone, representing Marie Stopes Australia, observed:

There has been considerable commentary on informed consent. Any doctor will tell you is that any medical treatment already requires informed consent. It is enshrined in clinical guidelines and it is standard practice for medical professionals and it is unfortunate that it has been found necessary to be legislated in this particular bill.<sup>240</sup>

## Other matters

**3.122** Although not directly contained in the provisions of the bill, a number of other matters were raised with the committee during the inquiry which the committee addresses below.

### Women in regional and remote parts of New South Wales

**3.123** The committee notes evidence during the inquiry that women in rural and remote parts of New South Wales face additional barriers in accessing health services in general, and abortion services in particular, when compared to women in Sydney and other urban centres. It was submitted that surgical abortion services in New South Wales are predominantly provided by private clinics which are mostly situated along the east coast going inland only as far as Bathurst.<sup>241</sup>

**3.124** The submission from the NSW Pro-Choice Alliance argued that women in rural and remote communities often lack the financial means to pay for an abortion, and often have to travel long distances to access one. Costs currently range from hundreds to thousands of dollars.<sup>242</sup> These issues were reiterated in evidence by Ms Wendy McCarthy, Campaign Chair of the NSW Pro-choice Alliance and Ms Melanie Fernandez, Co-Convenor, NSW Pro-Choice Alliance.<sup>243</sup> Ms Fernandez submitted:

We know that women in Wagga Wagga ... are travelling for up to 500 kilometres to access the reproductive health care that they need. Women are travelling across the border to the Australian Capital Territory or Victoria to access that comprehensive health care.<sup>244</sup>

<sup>238</sup> Submission 21, Prof Anna Walsh, p 2.

<sup>239</sup> Submission 26, NSW Pro-Choice Alliance, p 69.

<sup>240</sup> Evidence, Dr Philip Goldstone, Marie Stopes Australia, 14 August 2019, uncorrected transcript, p 49.

<sup>241</sup> Submission 31, Women's Health NSW, p 4.

<sup>242</sup> Submission 26, NSW Pro-Choice Alliance, p 6.

<sup>243</sup> Evidence, Ms Wendy McCarthy, Campaign Chair, NSW Pro-choice Alliance, 15 August 2019, uncorrected transcript, pp 2-3.

<sup>244</sup> Evidence, Ms Melanie Fernandez, Co-convenor, NSW Pro-Choice Alliance, 15 August 2019, uncorrected transcript, p 6.

- 3.125** Similarly, the submission from Our Bodies, Our Choices noted that access to abortion across New South Wales is uneven and concentrated in the cities, and argued that the ability of health practitioners in rural and remote areas to refuse service to patients should not be used to impose a *de facto* ban on abortions in places where they may be the only medical practitioners available.<sup>245</sup> Other parties also noted the disadvantage faced by women in rural and remote areas in accessing abortion services.<sup>246</sup>

### **Abortion performed on a child under the age of 16**

- 3.126** The committee notes that some parties to the inquiry expressed concern that the bill allows young women under the age of 16 to have an abortion without their parents' consent.<sup>247</sup>
- 3.127** Various parties to the inquiry also argued that the bill should make provision for investigating any pregnancy in a child under the age of 16 for possible child sexual abuse.<sup>248</sup>
- 3.128** The committee notes that an amendment to this effect was moved unsuccessfully by the Member for Mulgoa, Mrs Tanya Davies, during the passage of the bill through the Legislative Assembly.<sup>249</sup>

### **The emotional well-being of women after an abortion**

- 3.129** In its submission, the Social Issues Committee of the Anglican Church Diocese suggested that the bill should give further consideration to the emotional well-being of women who have an abortion through the provision of counselling and other support services.<sup>250</sup>
- 3.130** The submission of Dr Whitehall, Chairman of the Christian Medical and Dental Fellowship of Australia, also argued that abortion is consistently associated with elevated rates of mental illness compared to women without a history of abortions.<sup>251</sup> Similar concerns were also raised by Ms Terri Kelleher, National Vice President, Australian Family Association in her evidence.<sup>252</sup>
- 3.131** However, other parties to the inquiry disputed this evidence, arguing that there is no evidence of any ongoing adverse mental health outcomes from abortions.<sup>253</sup>

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<sup>245</sup> Submission 28, Our Bodies, Our Choices, p 17

<sup>246</sup> Submission 15, Family Planning NSW, pp 4-5; Submission 38, Rape and Domestic Violence Services Australia, p 9.

<sup>247</sup> Submission 37, Newcastle Pregnancy Help Inc, p 2.

<sup>248</sup> Submission 33, Australian Christian Lobby, p 15.

<sup>249</sup> *Votes and Proceedings*, NSW Legislative Assembly, 8 August 2019, p 249.

<sup>250</sup> Submission 34, Social Issues Committee of the Anglican Church Diocese, p 5.

<sup>251</sup> Submission 17, Dr Whitehall, Chairman of the Christian Medical and Dental Fellowship, p 4.

<sup>252</sup> Evidence, Ms Terri Kelleher, National Vice President, Australian Family Association, 14 August 2019, uncorrected transcript, p 24.

<sup>253</sup> Submission 15, Family Planning NSW, p 5.

### Informed consent and disability

- 3.132** The committee notes that in both submissions and oral evidence to the inquiry, concerns were expressed by some regarding the issue of terminating a pregnancy where an embryo or foetus may have a disability. In his evidence to the inquiry Dr Simon McCaffrey, obstetrician and gynaecologist and President of Right to Life NSW stated:

I will try to answer it. As I read it, I take that you mean that, as politicians, you will be creating and enacting laws which will affect social policy to such an extent that it will reflect what our society is going to look like in 10, 20, 30 years' time—in other words, our children and our children's children, what sort of society they are going to be born into. You have an enormous responsibility and it is why we respect your position and your vocation to create social policies which will produce better societies. I would worry that a society which does not understand that disabled people actually make our society better, disabled people help us understand our vulnerabilities. Their vulnerabilities are no different to our vulnerabilities. If we remove them from our society, we will be poorer for it. The same applies to termination.<sup>254</sup>

- 3.133** The committee notes that in evidence to the committee in response to a question from the Hon Greg Donnelly, Mr McCaffrey indicated that he was giving evidence as an obstetrician and gynaecologist with over 40 years of experience in the public and private sector, not in any other capacity.<sup>255</sup>

### The consultation period on the bill

- 3.134** The committee notes that the introduction and consultation period on this bill was the subject of significant comment during the inquiry.
- 3.135** As indicated previously in Chapter 1 (Introduction), the bill was introduced into the Legislative Assembly on 1 August 2019. It passed that House on 8 August 2019, and was sent to the Legislative Council on 9 August 2019. This inquiry effectively commenced the same day before the committee reports on 20 August 2019. The bill is then anticipated to be debated by the Legislative Council.
- 3.136** A number of parties to the inquiry gave evidence that this timetable effectively amounted to the bill being rushed through the Parliament, possibly in an attempt to limit public debate.<sup>256</sup> Comparisons were made with the passage of the Queensland *Termination of Pregnancy Act 2018* following a detailed inquiry by the Queensland Law Reform Commission.<sup>257</sup>

<sup>254</sup> Evidence, Dr Simon McCaffrey, 15 August 2019, uncorrected transcript, p 82.

<sup>255</sup> Evidence, Dr Simon McCaffrey, 15 August 2019, uncorrected transcript, p 80.

<sup>256</sup> See for example Tabled document, Bishop Daniel, 14 August 2019, p 1; Evidence, Archbishop Anthony Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 3; Submission 34, Social Issues Committee of the Anglican Church Diocese of Sydney, p 1; Evidence, Archbishop Glenn Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, pp 13, 19; Submission 36, Women and Babies Support (WOMBS), p 2; Submission 16, Mr Michael McAuley, President, St Thomas More Society, p 26; Evidence, Ms Rachel Wong, Managing Director, Women's Forum Australia, 15 August 2019, uncorrected transcript, p 48.

<sup>257</sup> Evidence, Bishop Daniel, Bishop for the Coptic Orthodox Church, 14 August 2019, uncorrected transcript, p 3.

- 3.137** A number of parties to the inquiry also gave evidence that they were not consulted in relation to the provisions of the bill.<sup>258</sup>
- 3.138** It was suggested by various parties to the inquiry that a six-month inquiry by this committee would be more appropriate to allow detailed inquiry into the provisions of the bill.<sup>259</sup> In speaking to the matter, Archbishop Anthony Fisher, the Catholic Archbishop of Sydney, observed:

It seems very strange to me that other States could allow several months of discussion—even years of discussion—with public inquiries and serious opportunities to make submissions. As I understand it, in the two days we were allowed to make submissions to this Committee the website crashed from the sheer bulk so some people did not get to make submissions at all. Others States allowed months for this process. I do not know why we are different or why we think we do not need an open and free discussion of the issues. At the very least, whatever your views on this topic, we all recognise that it is a very serious matter, morally, socially and spiritually, and therefore deserves a serious community discussion. It needs to be a discussion not just at a general level of principle but also on the particularities of the proposed bill. That really has not been allowed in this State while it has been in others.<sup>260</sup>

- 3.139** Bishop Daniel, Bishop for the Coptic Orthodox Church, similarly said in evidence:

I am disappointed that such a significant public-interest matter is potentially going to pass through Parliament in just a couple of weeks without adequate time afforded to this highly important issue, which has caused so much public division and anger. As Bishop of the Coptic Orthodox Church dioceses for Sydney and affiliated regions in New South Wales, Queensland and the Northern Territory, I represent a congregation of more than 70,000 people who have not been offered enough time to digest and understand how this bill will affect them, even according to our culture. My objection to this bill has been detailed in an open letter from Christian and Muslim religious leaders dated 3 August 2019, which was sent to Legislative Assembly members. ...

On Sunday 11 August 2019 I attended a meeting with religious leaders from many denominations to discuss our response to this rushed bill. ... In our meeting on 11 August we resolved that we would ask the Committee to postpone voting on the bill for a period of six months to allow an adequate consultative process to take place.<sup>261</sup>

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<sup>258</sup> Evidence, Archbishop Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 9; Evidence, Rabbi Schapiro, President, Rabbinical Council of Australia, 14 August 2019, uncorrected transcript, p 9; Evidence, Bishop Daniel, Bishop for the Coptic Orthodox Church, 14 August 2019, uncorrected transcript, p 9; Evidence, Archbishop Davies, Anglican Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 18; Evidence, Dr Rachel Carling, CEO, Right to Life NSW, 14 August 2019, uncorrected transcript, p 28; Evidence, Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby, 14 August 2019, uncorrected transcript, p 28; Evidence, Ms Terri Kelleher, National Vice President, Australian Family Association, 14 August 2019, uncorrected transcript, p 28.

<sup>259</sup> Submission 20, Catholic Bishops of New South Wales, covering letter; Evidence, Bishop Daniel, Bishop for the Coptic Orthodox Church, 14 August 2019, uncorrected transcript, p 9; Evidence, Imam Hassan Elsetohy, President, Australian National Imams Council NSW, 16 August 2019, uncorrected transcript, p 3.

<sup>260</sup> Evidence, Archbishop Fisher, Catholic Archbishop of Sydney, 14 August 2019, uncorrected transcript, p 3.

<sup>261</sup> Evidence, Bishop Daniel, Bishop for the Coptic Orthodox Church, 14 August 2019, uncorrected transcript, p 3.

- 3.140** By contrast, a number of other parties to the inquiry argued that the issue of abortion has been before the Parliament for many years, including the recent "Faruqi bill" in 2017, and that the issues surrounding abortion in New South Wales are little different to the detailed consideration given by the Queensland and Victorian Law Reform Commissions as part of their reviews of the law in those states.<sup>262</sup>

### Data collection

- 3.141** The committee notes that there was consensus during the inquiry about the need for better data collection on pregnancy terminations in New South Wales, but that not all parties to the inquiry believe that this should be implemented through the bill.
- 3.142** Women's Forum Australia explained the deficiencies of abortion data collection in Australia, citing South Australia and Western Australia as the only two states that collect comprehensive date on abortions.<sup>263</sup> The submission continued:

It should be noted that other scheduled medical conditions included in Schedule 1 are birth, perinatal death, pregnancy with a child having a congenital malformation and Sudden Infant Death Syndrome. If there is anywhere in legislation that a notification regime for abortion statistics could fit, this appears to be the most suitable. However, if a separate regime is required to ensure data is collected, Women's Forum Australia would support it.<sup>264</sup>

- 3.143** Similarly, Ms Anna Walsh, School of Law, University of Notre Dame, stated in her submission:

If abortion is to be made lawful healthcare, and the Act is to be reviewed 5 years after it commences, it is imperative that any legislation make provision for the collection of data on abortions occurring in New South Wales. This is because without it, the state cannot make an informed judgment about the impact of this Act, the cost to the state, the geographical demand for services, and any social and health issues that arise from trends in the data.<sup>265</sup>

- 3.144** However, the committee notes that when asked whether the bill should be amended to insert a provision concerning the accurate reporting of pregnancy terminations in New South Wales, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, observed:

My answer to you is that I think it is the wrong place to do it. It is not the business of the legal system to dictate parameters around the items, data definitions and data collection processes. If it is within the legislation it is likely to be fraught, because it is not relying on the right groups. I am an advocate for good information collection

<sup>262</sup> Evidence, Mr Timothy Game QC, President, Bar Association, 14 August 2019, uncorrected transcript, pp 74-75, Ms Tiana Legge, CEO, Women and Babies Support (WOMBS), 14 August 2019, uncorrected transcript, pp 35-36, although in Ms Legge's case being very critical of the lack of time for consultation in New South Wales.

<sup>263</sup> Submission 45, Women's Forum, pp 26-27.

<sup>264</sup> Submission 45, Women's Forum, p 28.

<sup>265</sup> Submission 21, Prof Anna Walsh, p 5.

through the right bodies. We should refer this to the health Ministry and its bureau of data and information.<sup>266</sup>

## Committee comment

- 3.145** The committee has attempted in this report to set out the background and key provisions of the Reproductive Health Care Reform Bill 2019 and to note the wide-range of evidence from a representative group of parties on those provisions that it received during this inquiry.
- 3.146** However, the committee notes that there is no consensus amongst stakeholders to the inquiry as to the overall merits of the Reproductive Health Care Reform Bill 2019. Nor is there consensus on the committee.
- 3.147** In those circumstances, the committee refers the bill back to the House for further consideration, including consideration of any amendments in the committee stage that address stakeholder concerns raised in this inquiry.

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### Recommendation 1

That the Legislative Council proceed to consider the Reproductive Health Care Reform Bill 2019, including any amendments in the committee stage that address stakeholder concerns raised during this inquiry.

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<sup>266</sup> Adjunct Prof Ann Brassil, CEO, Family Planning NSW, 15 August 2019, uncorrected transcript, pp 17-18.

## Appendix 1 Submissions

No.	Author
1	Rabbinical Council of NSW
2	Come to Jesus Church
3	Institute for Ethics and Society, University of Notre Dame Australia
4	Name suppressed
5	The Church in Liverpool
6	St. Stephen's Anglican Church, Normanhurst
7	Solidarityau
8	Name suppressed
9	Pregnancy Help Australia Ltd
10	Name suppressed
11	Public Interest Advocacy Centre (PIAC)
12	Real Choices Australia
13	Right to Life NSW
14	Marie Stopes Australia
15	Family Planning NSW
16	St Thomas More Society
17	Christian Medical and Dental Fellowship of Australia
18	The Hon. Greg Donnelly MLC
19	New South Wales Bar Association
20	Catholic Bishops of New South Wales
21	School of Law, University of Notre Dame Australia
22	Maronite Catholic Eparchy of Australia
23	New South Wales Nurses and Midwives' Association
24	University of Notre Dame Australia
25	Australian Human Rights Centre
26	NSW Pro-Choice Alliance
27	Name suppressed
28	Our Bodies Our Choices
29	Central Coast Community Women's Health Centre
30	NSW Pro-Choice
31	Women's Health NSW
32	Women's Legal Service NSW

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<b>No.</b>	<b>Author</b>
33	Australian Christian Lobby
34	Anglican Church Diocese of Sydney
35	The Australian Family Association
36	Women and Babies Support (WOMBS)
37	Newcastle Pregnancy Help Inc
38	Rape and Domestic Violence Services Australia
39	Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG)
40	Ambrose Centre for Religious Liberty
41	Plunkett Centre for Ethics
42	New South Wales Council for Civil Liberties (NSWCCL)
43	Dr Simon McCaffrey
44	NSW Council of Social Service (NCOSS)
45	Australian Medical Association (NSW)
46	Women's Forum Australia
47	Rev Dr Margaret Mayman
48	Greek Orthodox Church of Australia
49	Women's Bioethics Alliance

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## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Wednesday, 14 August 2019 Macquarie Room, Parliament House, Sydney</b>	Archbishop Anthony Fisher OP	Catholic Archbishop of Sydney
	Bishop Daniel	Bishop for the Coptic Orthodox Church – Diocese of Sydney
	Rabbi Nochum Schapiro	President, Rabbinical Council of Australia
	Archbishop Glenn Davies	Anglican Archbishop of Sydney
	Reverend Joseph Azize	Maronite Eparchy of Australia
	Mr Daniel Flynn	Chief Political Officer, The Australian Christian Lobby
	Dr Rachel Carling	CEO, Right to Life NSW
	Ms Terri Kelleher	National Vice President, Australian Family Association
	Ms Bronwyn Melville	Honorary Secretary, Newcastle Pregnancy Help
	Ms Tiana Legge	CEO, Women and Babies Support (WOMBS)
	Ms Elizabeth Espinosa	President, Law Society of NSW
	Ms Janet Loughmann	Women's Legal Service NSW
	Mr Nicholas Cowdery AM QC	Adjunct Professor of Law (University of Sydney) The Council for Civil Liberties and former DPP
	Dr Philip Goldstone	Marie Stopes Australia
	Ms Anna Walsh	School of Law, University of Notre Dame, Sydney
	Professor Margaret Somerville	School of Medicine, University of Notre Dame, Sydney
Mr Michael McAuley	President, St Thomas More Society	
Mr Tim Game SC	President, Bar Association	
Ms Gabrielle Bashir SC	Junior Vice-President, Bar Association	
<b>Thursday, 15 August 2019 Macquarie Room, Parliament House, Sydney</b>	Ms Wendy McCarthy AO	Campaign Chair, NSW Pro-choice Alliance
	Ms Sinead Canning	Campaign Manager, NSW Pro-choice Alliance
	Ms Edwina MacDonald	Legal Director, Human Rights Law Centre
	Ms Claire Pullen	Chair, Our Bodies, Our Choice

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Melanie Fernandez	Co-Convenor, Pro-Choice NSW
	Adjunct Professor Ann Brassil	CEO, Family Planning NSW
	Adjunct Professor Dr Deborah Bateson	Medical Director, Family Planning NSW
	Ms Denele Crozier	CEO, Women's Health NSW
	Ms Karen Willis OAM	Executive Officer, Rape and Domestic Violence Services Australia
	Dr Danielle McMullen	Vice President, Australian Medical Association (NSW Branch)
	Dr Vijay Roach	President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists
	Ms Judith Kiejda	Assistant General Secretary, The NSW Nurses and Midwives Association
	Adjunct Professor Kylie Ward	CEO, Australian College of Nursing
	Ms Sally Jope	Board Director, Central Coast Community Women's Health Centre
	Mr Rocky Mimmo	Chairman, Ambrose Centre for Religious Liberty
	Professor Bernadette Tobin	Director, Plunket Centre for Ethics
	Ms Rachel Wong	Managing Director, Women's Forum Australia
	Reverend Dr Peter Stuart	Anglican Bishop of Newcastle
	Reverend Simon Hansford	Moderator, Synod of NSW and the ACT, Uniting Church in Australia.
	Reverend Dr Margaret Mayman	Pitt Street Uniting Church
	Dr Simon McCaffrey	Obstetrician and Gynaecologist
	Dr John Whitehall	President, Christian Medical and Dental Fellowship
<b>Friday, 16 August 2019 Preston Stanley Room, Parliament House, Sydney</b>	His Eminence Archbishop Haigazoun Najarian	Primate Diocese of the Armenian Church of Australia and New Zealand
	Metropolitan Basilio Kodseic	Antiochian Orthodox Archdiocese of Australia
	Imam Hassan Elsetohy	President, Australian National Imams Council NSW

## Appendix 3 Minutes

### Minutes No. 5

Wednesday 7 August 2019

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney, 10.33 am.

#### 1. Members present

Mr Mallard, *Chair*

Ms Boyd

Mr Donnelly (*substituting for Mr Mookhey for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Jackson (*from 10.36 am*)

Mr Martin

Mrs Ward

#### 2. Substitutions

Mr Donnelly for Mr Mookhey

Mr Khan for Mr Franklin

#### 3. Apologies

Revd Mr Nile

#### 4. Draft minutes

Resolved, on the motion of Ms Jackson: That consideration of draft minutes no. 4 be deferred until the next meeting of the committee at which it considers the inquiry into the *Modern Slavery Act 2018* and associated matters.

#### 5. Correspondence

The committee noted the following items of correspondence:

##### *Received:*

- 7 August 2019 – Letter from the Hon Natasha Maclaren-Jones, Government whip, substituting the Hon Trevor Khan for the Hon Ben Franklin for the purposes of the inquiry into the Reproductive Health Care Reform Bill 2019.
- 7 August 2019 – Email from the Hon Mark Buttegieg, Opposition whip, substituting the Hon Greg Donnelly for the Hon Daniel Mookhey for the purposes of the inquiry into the Reproductive Health Care Reform Bill 2019.

#### 6. Inquiry into the Reproductive Health Care Reform Bill 2019

##### 6.1 Terms of reference

The committee noted the referral on 6 August 2019 of the following terms of reference: That:

- (a) the provisions of the Reproductive Health Care Reform Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by 20 August 2019.

The committee noted the short timeframe for the inquiry.

## 6.2 Proposed timeline

The committee discussed the anticipated receipt of the bill from the Legislative Assembly, with the possibility of amendments, and the appropriate time for the committee to advertise for submissions.

Resolved, on the motion of Ms Ward: That the committee Chair and secretariat investigate provision on the committee website of a discussion of the current law relating to abortion, but that any such discussion be provided to the committee before potentially being made public.

Resolved, on the motion of Ms Ward: That a link to the NSW Parliamentary Library issues paper on the bill be provided on the committee's website.

Resolved, on the motion of Mr Khan: That the secretariat seek advice from the Security Manager of any security issues or advice in relation to public hearings of the committee as part of the inquiry.

Resolved, on the motion of Mr Khan: That the committee adopt the following timeline for the administration of the inquiry:

- Friday 9 August 2019 (or sooner if the bill passes the Legislative Assembly sooner) – Committee advertises for submissions by COB Tuesday 13 August 2019
- Wednesday 14 August 2019 – Full day public hearing
- Thursday 15 August 2019 – Reserve public hearing
- Monday 19 August 2019 (early morning) – Chair's draft report circulated to committee
- Monday 19 August 2019 (5.00 pm) – Report deliberative
- Tuesday 20 August 2019 (9.00 am) – Report tabled.

## 6.3 Stakeholder and witness list

The Committee noted the proposed stakeholder list from the Selection of Bills Committee:

- Australian Medical Association (NSW Branch)
- Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- NSW Pro-choice Alliance
- Human Rights Law Centre
- Our Bodies, Our Choice
- Law Society of NSW
- NSW Bar Association
- Archbishop Makarios, Primate of the Greek Orthodox Church of Australia
- The Most Revd Dr Glenn Davies, Anglican Archbishop of Sydney
- The Most Revd Anthony Fisher OP, Catholic Archbishop of Sydney
- Right to Life

Resolved, on the motion of Mr Khan: That:

- committee members have until COB on Wednesday 7 August 2019 to suggest additional stakeholders to the secretariat, and
- that the list of stakeholders be invited to make a submission to the inquiry.

## 6.4 Questions on notice

Resolved, on the motion of Mr Khan: That there be no questions on notice taken at the public hearing to be held on Wednesday 14 August 2019 and any supplementary hearing, and that there also be no supplementary questions from members.

## 7. Adjournment

The committee adjourned at 11.00 am, until Wednesday 14 August 2019, public hearing.

Stephen Frappell  
Committee Clerk

**Draft minutes no. 6**

Wednesday, 14 August 2019

Standing Committee on Social Issues

Macquarie Room, Parliament House, 9.16 am

**1. Members present**

Mr Mallard, *Chair*

Mr Blair (*substituting for Mrs Ward for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Boyd

Mr Donnelly (*substituting for Mr Mookhey for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Mrs Maclaren-Jones (*substituting for Mr Martin*)

Ms Jackson

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Revd Nile

**2. Previous minutes**

Resolved, on the motion of Khan: That draft minutes no. 5 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 8 August 2019 – Email from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that she will be substituting for the Hon Taylor Martin MLC at the hearings on 14 and 15 August 2019
- 8 August 2019 – Email from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Niall Blair MLC will be substituting for the Hon Natalie Ward MLC at the hearings on 14 and 15 August 2019.

Mr Donnelly tabled a letter from the Hon Greg Donnelly, the Hon Natasha Maclaren-Jones and Revd the Hon Fred Nile to the Premier in relation to the Parliament's consideration of the Reproductive Health Care Reform Bill 2019.

**4. Inquiry into the Reproductive Health Care Reform Bill 2019****4.1 Submissions**

Submissions 1, 13, 14, 16, 19, 20, 21, 22, 24 having been distributed to the Committee:

Resolved, on the motion of Ms Jackson: That submission nos 1, 13, 14, 16, 19, 20, 21, 22, 24 be published.

Resolved, on the motion of Revd Nile: That the lodgement of submissions be re-opened until midnight, Thursday 15 August and that the Chair distribute a media release announcing this extension.

**4.2 Questions on notice**

The Committee noted that it had previously resolved that no questions be taken on notice and that no supplementary questions be requested by members following the hearing.

**4.3 Time for questions**

Revd Mr Nile moved: That members be given 5 minutes for questions, but that the Chair manage the allocation of questions throughout the day.

Mr Khan declared his role on the working group that prepared the bill.

Ms Boyd also declared that she was a co-sponsor of the bill.

#### 4.4 Witness list

Mr Donnelly raised concerns about the unavailability of certain witnesses, notably religious leaders, to attend due to the tight timeframe for the inquiry.

Mr Donnelly flagged a motion for an additional half-day hearing on Friday 16 August 2019.

#### 4.5 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Archbishop Anthony Fisher OP, Catholic Archbishop of Sydney
- Bishop Daniel, Bishop for the Coptic Orthodox Church – Diocese of Sydney
- Rabbi Nochum Schapiro, President, Rabbinical Council of Australia

Bishop Daniel tendered the following documents:

- Opening statement to the Standing Committee on Social Issues

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Archbishop Glenn Davies, Anglican Archbishop of Sydney
- Reverend Joseph Azize, Maronite Eparchy of Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Daniel Flynn, Chief Political Officer, The Australian Christian Lobby
- Dr Rachel Carling, CEO, Right to Life NSW
- Ms Terri Kelleher, National Vice President, Australian Family Association (via teleconference)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Bronwyn Melville, Honorary Secretary, Newcastle Pregnancy Help
- Ms Tiana Legge, CEO, Women and Babies Support (WOMBS)

The evidence concluded and the witnesses withdrew.

#### 4.6 Deliberative meeting

Resolved, on the motion of Mr Donnelly: That:

- submissions emailed to the inquiry be available for viewing by committee members and their staff via a laptop in the Clerk's Office
- emailed submissions otherwise remain confidential.

Resolved, on the motion of Mr Khan: That that a further half day hearing be held on Friday 16 August 2019 with religious leaders and other stakeholders who had been unable to attend the hearings on 14 and 15 August invited to attend.

Resolved, on the motion of Revd Nile: That the secretariat circulate the list of witnesses that have been contacted to appear at a hearing on Friday 16 August 2019.

#### 4.7 Public hearings

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Elizabeth Espinosa, President, Law Society of NSW
- Ms Janet Loughmann, Women's Legal Service NSW
- Mr Nicholas Cowdery AO QC, Adjunct Professor of Law (University of Sydney), The Council for Civil Liberties and former DPP
- Dr Philip Goldstone, Marie Stopes Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Professor Anna Walsh, School of Law, University of Notre Dame, Sydney
- Professor Margaret Somerville, School of Medicine, University of Notre Dame, Sydney
- Mr Michael McAuley, President, St Thomas More Society.

Mr Donnelly tabled NSW Health Policy Directive entitled "Pregnancy - Framework for Terminations in New South Wales Public Health Organisations."

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tim Game SC, President, Bar Association
- Ms Gabrielle Bashir SC, Junior Vice-President, Bar Association.

The public hearing concluded at 5:35 pm.

The public and media withdrew.

#### **4.8 Deliberative meeting**

Resolved, on the motion of Mr Blair: That the committee accept and publish the following documents tendered during the public hearing:

- Opening statement tendered by Bishop Daniel, Bishop for the Coptic Orthodox Church – Diocese of Sydney.
- "Pregnancy - Framework for Terminations in New South Wales Public Health Organisations" tendered by Mr Donnelly.

Resolved, on the motion of Mr Donnelly: That the folder of submissions received from constituents in Mr Hugh McDermott MP's electorate be available for viewing by committee members in the Clerk's Office but otherwise remain confidential, with publication of Mr McDermott's covering submission deferred.

Resolved, on the motion of Mrs Maclaren-Jones: That submissions 34, 35, 36, 37 and 42 be published, with necessary redactions of names and contact numbers and that the Chair update the committee on the availability of Hansard from the day's hearing and the availability of submissions for the next sitting day.

## **5. Adjournment**

The committee adjourned at 5.45 pm, until Thursday 15 August 2019, 8.40 am, Macquarie Room, Parliament House (public hearing).

Stephen Frappell  
**Clerk to the Committee**

**Draft minutes no. 7**

Thursday 15 August 2019

Standing Committee on Social Issues

Macquarie Room, Parliament House, 8.44 am

**1. Members present**Mr Mallard, *Chair*Mr Blair (*substituting for Mrs Ward for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)  
(from 8.45 am to 4.41 pm)

Ms Boyd (from 8.51 am)

Mr Donnelly (*substituting for Mr Mookbey for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Jackson (to 2:18 pm)

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)Mrs Maclaren-Jones (*substituting for Mr Martin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Revd Mr Nile

**2. Correspondence**

The committee noted the following item of correspondence:

***Received***

- 14 August 2019 – Email from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that she will be substituting for the Hon Taylor Martin MLC for the duration of the inquiry.

**3. Inquiry into the Reproductive Health Care Reform Bill 2019****3.1 Submissions**

Submissions 15, 17, 23, 25, 26, 28, 29, 30, 31, 32, 38, 39, 40, 41 and 45 having been distributed to the Committee:

Resolved, on the motion of Mr Donnelly: That submission nos 15, 17, 23, 25, 26, 28, 29, 30, 31, 38, 39, 40, 41 and 45 be published.

**3.1 Questions on notice**

The Committee noted that it had previously resolved that no questions be taken on notice and that no supplementary questions be requested by members following the hearing.

**3.2 Allocation of questioning**

The Committee noted that it had previously resolved that members be given 5 minutes for questions, but that the Chair manage the allocation of questions throughout the day.

**3.3 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Wendy McCarthy AO, Campaign Chair, NSW Pro-choice Alliance
- Ms Sinead Canning, Campaign Manager, NSW Pro-choice Alliance
- Ms Edwina MacDonald, Legal Director, Human Rights Law Centre
- Ms Claire Pullen, Chair, Our Bodies, Our Choice
- Ms Melanie Fernandez, Co-Convenor, Pro-Choice NSW.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

**3.4 Deliberative meeting**

Resolved, on the motion of Mr Blair:

- That a redacted version of submission no. 43 be published, removing identifying information.
- That a witness be invited to appear *in camera* from 4.45 pm to 5.15 pm this day.

**3.5 Public hearing resumed**

Witnesses, the public and the media were readmitted.

The following witnesses were sworn and examined:

- Adjunct Professor Ann Brassil AO, CEO, Family Planning NSW
- Adjunct Professor Dr Deborah Bateson, Medical Director, Family Planning NSW
- Ms Denele Crozier, CEO, Women's Health NSW
- Ms Karen Willis OAM, Executive Officer, Rape and Domestic Violence Services Australia.

The evidence concluded and the witnesses withdrew.

**3.6 Deliberative meeting**

Resolved, on the motion of Mr Khan:

- That the motion of Mr Blair, resolved this day, regarding submission no. 43 and *in camera* evidence be rescinded.
- That submission no. 43 be published, with contact details removed.

**3.7 Public hearing resumed**

The following witnesses were sworn and examined:

- Dr Danielle McMullen, Vice President, Australian Medical Association (NSW Branch)
- Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- Ms Judith Kiejda, Assistant General Secretary, The NSW Nurses and Midwives Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Adjunct Professor Kylie Ward FACN, CEO, Australian College of Nursing
- Ms Sally Jope, Board Director, Central Coast Community Women's Health Centre.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Rocky Mimmo, Chairman, Ambrose Centre for Religious Liberty
- Professor Bernadette Tobin, Director, Plunket Centre for Ethics
- Ms Rachel Wong, Managing Director, Women's Forum Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Reverend Dr Peter Stuart, Anglican Bishop of Newcastle
- Reverend Simon Hansford, Moderator, Synod of NSW and the ACT, Uniting Church in Australia
- Reverend Dr Margaret Mayman, Pitt Street Uniting Church.

Resolved, on the motion of Revd Mr Nile: That the time for the current witnesses be extended.

Mr Donnelly made a personal explanation concerning a point of order he had taken regarding the time for questioning the current witnesses.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Simon McCaffrey, Obstetrician and Gynaecologist
- Dr John Whitehall, President, Christian Medical and Dental Fellowship.

Dr Whitehall tabled the following document:

- Dr John Whitehall, The Power of 13, The Medical Journal of Australia, 16 December 2013.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5:29 pm.

The public and media withdrew.

### **3.8 Deliberative meeting**

Resolved, on the motion of Mrs Maclaren-Jones: That submission nos 46 and 47 be published.

Resolved, on the motion of Revd Mr Nile: That a PDF combining 100 randomly selected submissions be published with any adverse mentions and personal details removed.

Resolved, on the motion of Mr Donnelly: That draft minutes no. 6 be confirmed.

Resolved, on the motion of Mr Donnelly: That the hearing schedule for tomorrow be adopted.

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents tendered during the public hearing:

- Dr John Whitehall, The Power of 13, The Medical Journal of Australia, 16 December 2013.

Mr Donnelly provided members with copies of two submissions for the committee's consideration.

## **4. Adjournment**

The committee adjourned at 5.39 pm, until Friday 16 August 2019, 9.30 am, Preston Stanley Room, Parliament House (public hearing).

Stephen Frappell  
**Committee Clerk**

## **Minutes no. 8**

Friday, 16 August 2019

Standing Committee on Social Issues

Preston-Stanley Room, Parliament House, 9:33 am

### **1. Members present**

Mr Mallard, *Chair*

Mr Blair (*substituting for Mrs Ward for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Boyd

Mr Donnelly (*substituting for Mr Mookbey for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Mrs Maclaren-Jones (*substituting for Mr Martin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*) (from 9:38 am)

Revd Mr Nile

Ms Sharpe (participating from 10.58 am and substituting for Ms Jackson from 11.04 am)

## 2. Apologies

Ms Jackson

## 3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

## 4. Correspondence

The committee noted the following item of correspondence:

### *Received*

- 15 August 2019 – Email from Archbishop Makarios, Primate of the Greek Orthodox Church of Australia to Secretariat, advising he cannot attend and give evidence at the public hearing on 16 August 2019.

## 5. Inquiry into Reproductive Health Care Reform Bill 2019

### 5.1 Questions on notice

The committee has previously resolved that no questions be taken on notice at the hearings on 14 and 15 August 2019 and that no supplementary questions be requested by members following the hearings.

### 5.2 Allocation of questioning

The committee noted that it had previously resolved that members be given 5 minutes for questions, but that the Chair manage the allocation of questions throughout the day.

### 5.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- His Eminence Archbishop Haigazoun Najarian, Primate Diocese of the Armenian Church of Australia and New Zealand
- Metropolitan Basilios Kodseie, Antiochian Orthodox Archdiocese of Australia
- Imam Hassan Elsetohy, President, Australian National Imams Council NSW.

Mr Blair took a point of order regarding the relevance of a question asked by Mr Donnelly.

The Chair upheld the point of order and ruled the question out of order.

Mr Donnelly moved: That the committee dissent from the ruling of the Chair.

Witnesses, media and the public withdrew.

Mr Donnelly stated his grounds for dissent.

Question put: That the committee dissent from the ruling of the Chair.

The committee divided.

Ayes: Mr Donnelly, Revd Mr Nile

Noes: Mr Blair, Mr Boyd, Mr Khan, Mr Mallard, Mrs Maclaren-Jones.

Question resolved in the negative.

Witnesses, the public and the media were re-admitted.

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The evidence concluded and the witnesses withdrew.

The public hearing concluded at 10.47 am.

The public and media withdrew.

#### **5.4 Deliberative meeting**

Mr Donnelly moved:

1. That the Minister for Health, The Hon Brad Hazzard, and the NSW Chief Obstetrician and Gynaecologist be invited to a further hearing of the committee on Monday 19 August 2019.
  2. That the Hon Brad Hazzard be invited to appear for one hour from 10.00 am to 11.00 am and the NSW Chief Obstetrician and Gynaecologist be invited to appear for one hour from 11.00 am to 12.00 noon.
- 

#### **Correspondence**

The committee noted the following item of correspondence:

##### ***Received***

- 16 August 2019 – Email from the Opposition Whip to the secretariat advising that Ms Sharpe will be substituting for Ms Jackson this day.

#### **Personal explanation**

Ms Sharpe made a personal explanation concerning her attendance at the meeting.

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Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Mr Nile

Noes: Mr Blair, Mr Boyd, Mr Khan, Mr Mallard, Mrs Maclaren-Jones, Ms Sharpe.

Question resolved in the negative.

### **6. Adjournment**

The committee adjourned at 11.15 am, until Monday 19 August 2019, 5.00 pm, Macquarie Room, Parliament House (report deliberative).

Steven Reynolds

**Clerk to the Committee**

#### **Draft minutes no. 9**

Monday, 19 August 2019

Standing Committee on Social Issues

Room 1254, Parliament House, Sydney at 5.01 pm

#### **1. Members present**

Mr Mallard, *Chair*

Mr Blair (*substituting for Mrs Ward for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Boyd

Mr Donnelly (*substituting for Mr Mookbey for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Ms Jackson

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*)

Mrs Maclaren-Jones (*substituting for Mr Martin for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019*) (from 5.02 pm)

Revd Mr Nile

## 2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 8 be confirmed.

## 3. Correspondence

The Committee noted the following items of correspondence:

### *Received*

- 16 August 2019 – Email from The Most Revd Dr Glenn Davies, Archbishop of Sydney to the Chair congratulating him for his management of the inquiry.
- 19 August 2019 – Email from the Hon Natasha Maclaren-Jones to the secretariat, advising that the Hon Niall Blair will be substituting the Hon Natalie Ward for the duration of the inquiry into the Reproductive Health Care Reform Bill 2019.

## 4. Inquiry into the Reproductive Health Care Reform Bill 2019

### 4.1 Public submissions

Resolved, on the motion of Revd Mr Nile: That the committee authorise the publication of submission nos. 2, 3, 5, 6, 7, 9, 11, 12, 18, 44 and 48.

Resolved, on the motion of Revd Mr Nile: That the committee authorise the publication of the cover letter from Mr Hugh McDermott forwarding correspondence he received in relation to the Reproductive Health Care Reform Bill 2019.

### 4.2 Partially confidential submissions

Resolved, on the motion of Ms Jackson: That the committee authorise the publication of submission nos. 4, 8, 10 and 27, with the exception of identifying information which are to remain confidential, as per the request of the author.

Resolved, on the motion of Ms Jackson: That a PDF combining 40 randomly selected submissions received by email in the Social Issues Committee inbox be published with any adverse mentions and personal details removed.

### 4.3 Consideration of Chair's draft report

The Chair submitted his draft report, entitled *Reproductive Health Care Reform Bill 2019*, which, having been previously circulated was taken as being read.

Resolved, on the motion of Ms Boyd: That paragraph 1.11 be amended by omitting 'women's rights groups and medical associations' and inserting instead 'women's rights groups, medical associations and reproductive and sexual health services'.

Resolved, on the motion of Mrs Maclaren-Jones: That the heading before paragraph 2.7 be amended by omitting 'Recent Queensland and Victorian legislation' and inserting instead 'Legislation in other jurisdictions'.

Resolved, on the motion of Mrs Maclaren-Jones: That:

- (a) the following new paragraph be inserted before 2.7:

The NSW Parliamentary Library released an Issues Backgrounder prior to the conduct of this inquiry that compared abortion law in all Australian states and territories as at 5 August 2019, which the committee reproduces below. All states and territories have different dates for the cut-off for gestation for abortion on request as summarised in the table.', and

- (b) the chart, 'Abortions performed with consent on a woman by a medical practitioner' from the Issues Backgrounder titled *Abortion law and the Reproductive Health Care Reform Bill 2019* be inserted after the new paragraph 2.7.

Resolved, on the motion of Mr Donnelly: That paragraph 2.12 be amended by omitting 'make available more reliable data' and inserting instead 'publish on a regular basis accurate data'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.15 be amended by inserting 'very' before 'limited circumstances in which abortions can be justified'.

Resolved, on the motion of Ms Boyd: That paragraph 2.27 be amended by omitting "'Pro-choice" advocates also dispute' and inserting instead 'Those adopting the "pro-choice" perspective also dispute'.

Resolved, on the motion of Ms Boyd: That the heading before paragraph 2.28 be amended by omitting 'The religious perspective on the bill' and inserting instead 'The perspective of religious leaders on the bill'.

Resolved, on the motion of Ms Boyd: That paragraph 2.28 be amended by omitting two references to 'religious leaders and the major faiths' and inserting instead 'religious leaders'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 2.34:

'Archbishop Makarios, Primate of the Greek Orthodox Church of Australia explained in his submission:

The Orthodox Christian Faith and Tradition unequivocally teach that life begins from the first time of the conception, that the life of the unborn is sacred and infinitely valued by God, and therefore must be considered with the same dignity and worth we enjoy ourselves.' [FOOTNOTE: Submission 48, Greek Orthodox Church of Australia, p 1.]

Resolved, on the motion of Ms Boyd: That paragraph 2.38 be amended by:

- (a) omitting in the second dot point 'Peak medical organisations and abortion providers' and inserting instead 'Peak medical organisations and reproductive and sexual healthcare providers',
- (b) inserting in the second dot point 'Family Planning NSW<sup>61</sup>, Rape and Domestic Violence Services Australia<sup>62</sup>, Women's Health NSW<sup>63</sup>' after 'the Australian College of Nursing', and
- (c) omitting in the third dot point 'Family Planning NSW<sup>61</sup>, Rape and Domestic Violence Services Australia<sup>62</sup> and Women's Health NSW.<sup>63</sup>

Resolved, on the motion of Mr Donnelly: That paragraph 2.39 be amended by:

- (a) inserting in the first dot point 'Rabbi Nochum Schapiro, President, Rabbinical Council of Australia, Iman Hassan Elsetohy, President, Australian National Imams Council NSW' after 'Anglican Archbishop of Sydney' after 'Archbishop Glenn Davies, Anglican Archbishop of Sydney',
- (b) inserting in the second dot point 'Newcastle Pregnancy Help Inc.<sup>371</sup> after 'Women and Babies Support (WOMBS)<sup>69</sup>, and
- (c) inserting in the third dot point 'and specialists' after 'Individual medical practitioners'.

Resolved, on the motion of Ms Boyd: That paragraph 2.39 be amended by omitting 'and churches' after 'together with many other religious leaders'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.27 be amended by inserting 'some' after 'Finally'.

Resolved, on the motion of Mrs Maclaren-Jones: That paragraph 3.28 be omitted and the following new paragraphs inserted:

'The committee also notes that some witnesses supported removing section 82 which criminalises women from the Crimes Act 1900, while arguing that section 83 or a similar offence should be retained to act as a deterrent in cases where coercion was used by a partner

to encourage a woman to have an abortion. Other witnesses believed it would also act to restrain medical practitioners from performing unlawful abortions and to protect women. In its submission, Women's Bioethical Alliance stated

... it concerns us that if a doctor performs a termination outside the new law, for example by failing to consult a second doctor before performing a termination after 22 weeks, then no criminal penalty applies.

We ask that a penalty for doctors performing termination of pregnancy outside the provisions of the law remains in the Crimes Act 1900 so as to provide protection to women and children. We support the removal of any penalty against a women in relation to her own termination from the Crimes Act 1900. This could be done by a simple amendment to the Crimes Act 1900 while avoiding the many defects we have identified in the current Bill. [FOOTNOTE: Submission 49, Women's Bioethical Alliance, p. 8.]'

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.32:

'In their submission to the inquiry Pregnancy Help Newcastle Inc. stated:

If a women has experienced domestic violence, her needs may be much greater, and she will also generally be more susceptible to coercion. In fact, 95 per cent of the women who contact our centre for assistance and are seeking abortions, state that they do so because their partner is not supportive or is threatening to leave them if they do not have an abortion. We note that 100 per cent of women contacting the 1300 helpline run by Sydney Pregnancy Help Inc. for post-abortion counselling state that they had no pre-abortion counselling; 95 per cent stated that they had been pressured into having an abortion. [FOOTNOTE: Submission 37, Newcastle Pregnancy Help Inc, p. 2.]'

Resolved, on the motion of Mr Donnelly: That paragraph 3.46 be amended by inserting 'and gynaecologist' after 'highly experienced obstetrician'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.63 be amended by inserting 'and not provided with life sustaining support and care' after 'later-term abortions'.

- 4.4 Resolved, on the motion of Mr Khan: That paragraph 3.64 be amended by inserting at the end: 'The NSW Health *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations* provides at paragraph 5.2.1:

Any child born with signs of life as a result of a termination of pregnancy, irrespective of gestation or condition, must be afforded the right of dignity, maintenance of privacy and physical comfort whilst signs of life exist. Parents should be encouraged to be part of this care.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.89:

'In his submission to the inquiry, Mr Rocco Mimmo, Chairman, Ambrose Centre for Religious Liberty, stated:

The health practitioner who has a genuine conscientious belief that a termination in circumstances save for an emergency or a serious threat to the woman's life in the absence of a termination, is wrong, should not be coerced by law to either facilitate or be a pathway for the termination. Referring a woman may be held by the health practitioner to be an act of facilitation or indirect participation in the termination. The requirement to put aside such a belief and subsequently defy the conscientious belief is not only unreasonable but coercive. [FOOTNOTE: Submission 40, Ambrose Centre for Religious Liberty, p. 3.]'

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.115:

'In her submission to the inquiry, Ms Anna Walsh, School of Law, University of Notre Dame, stated:

The law on informed consent for medical services is well established in Australia. Doctors have a general duty to act with reasonable care and skill when providing services and when warning patients about the risks of the service. 'When it comes to performing termination, guide lines exist regarding the (technical aspects of performing the service, but there is less clarity around the content of any warning the doctor must give that goes beyond the physical risks of termination, and extends to the psychological and mental health risks that termination may have on the particular patient. This is worthy of debate and discussion. [FOOTNOTE: School of Law, University of Notre Dame Australia, p 2.]'

Mr Donnelly moved: That the following new heading and paragraph be inserted after paragraph 3.127:

**'Informed consent and disability**

The committee notes that in both submissions and oral evidence to the inquiry, concerns were expressed by some regarding the issue of terminating a pregnancy where an embryo or foetus may have a disability. In his evidence to the inquiry Dr Simon McCaffrey, obstetrician and gynaecologist stated:

I will try to answer it. As I read it, I take that you mean that, as politicians, you will be creating and enacting laws which will affect social policy to such an extent that it will reflect what our society is going to look like in 10, 20, 30 years' time—in other words, our children and our children's children, what sort of society they are going to be born into. You have an enormous responsibility and it is why we respect your position and your vocation to create social policies which will produce better societies. I would worry that a society which does not understand that disabled people actually make our society better, disabled people help us understand our vulnerabilities. Their vulnerabilities are no different to our vulnerabilities. If we remove them from our society, we will be poorer for it. The same applies to termination. [FOOTNOTE: Evidence, Dr McCaffrey, 15 August 2019, p 82.]'

Mr Khan moved: That the motion of Mr Donnelly be amended by inserting 'and President of Right to Life NSW' after 'Dr Simon McCaffrey, obstetrician and gynaecologist'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Blair, Mr Boyd, Ms Jackson, Mr Khan, Mr Mallard.

Noes: Mr Donnelly, Mrs Maclaren-Jones, Revd Mr Nile.

Question resolved in the affirmative.

Amendment agreed to.

Original question, as amended—put and passed.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after the preceding amendment:

'The committee notes that in evidence to the committee in response to a question from the Hon Greg Donnelly, Mr McCaffrey indicated that he was giving evidence as an obstetrician

and gynaecologist with over 40 years of experience in the public and private sector, not in any other capacity.' [FOOTNOTE: Evidence, Dr McCaffrey, 15 August 2019, p 80.]

Resolved, on the motion of Mrs Maclaren-Jones: That the following new paragraph be inserted after paragraph 3.132:

'Bishop Daniel, Bishop for the Coptic Orthodox Church, Diocese of Sydney, Queensland and Northern Territory said in evidence:

'I am disappointed that such a significant public-interest matter is potentially going to pass through Parliament in just a couple of weeks without adequate time afforded to this highly important issue, which has caused so much public division and anger. As Bishop of the Coptic Orthodox Church dioceses for Sydney and affiliated regions in New South Wales, Queensland and the Northern Territory, I represent a congregation of more than 70,000 people who have not been offered enough time to digest and understand how this bill will affect them, even according to our culture. My objection to this bill has been detailed in an open letter from Christian and Muslim religious leaders dated 3 August 2019, which was sent to Legislative Assembly members. ...

On Sunday 11 August 2019 I attended a meeting with religious leaders from many denominations to discuss our response to this rushed bill. In our meeting on 11 August we resolved that we would ask the Committee to postpone voting on the bill for a period of six months to allow an adequate consultative process to take place.' [FOOTNOTE: Evidence, Bishop Daniel, Bishop Daniel, Bishop for the Coptic Orthodox Church, Diocese of Sydney, Queensland and Northern Territory, 14 August 2019, p 3.]

Mrs Maclaren-Jones moved: That the following new paragraphs be inserted after paragraph 3.133 under a new heading, 'Data collection':

' The committee notes that there was consensus during the inquiry about the need for better data collection on pregnancy terminations in New South Wales, but that not all parties to the inquiry believe that this should be implemented through the bill.

Women's Forum Australia explained the deficiencies of abortion data collection in Australia, citing South Australia and Western Australia as the only two states that collect comprehensive data on abortions. The submission continued:

'It should be noted that other scheduled medical conditions included in Schedule 1 are birth, perinatal death, pregnancy with a child having a congenital malformation and Sudden Infant Death Syndrome. If there is anywhere in legislation that a notification regime for abortion statistics could fit, this appears to be the most suitable. However, if a separate regime is required to ensure data is collected, Women's Forum Australia would support it.' [FOOTNOTE: Submission 46, Women's Forum Australia, p 28.]

Similarly, Ms Anna Walsh, School of Law, University of Notre Dame, stated in her submission::

'If abortion is to be made lawful healthcare, and the Act is to be reviewed 5 years after it commences, it is imperative that any legislation make provision for the collection of data on abortions occurring in New South Wales. This is because without it, the state cannot make an informed judgment about the impact of this Act, the cost to the state, the geographical demand for services, and any social and health issues that arise from trends in the data.' [FOOTNOTE: Submission 21, School of Law, University of Notre Dame Australia, p 5.]

Mr Khan moved: That the motion of Mrs Maclaren-Jones be amended by inserting the following new paragraph at the end:

'However, the committee notes that when asked whether the bill should be amended to insert a provision concerning the accurate reporting of pregnancy terminations in New South Wales, Adjunct Prof Ann Brassil, CEO, Family Planning NSW, observed:

My answer to you is that I think it is the wrong place to do it. It is not the business of the legal system to dictate parameters around the items, data definitions and data collection processes. If it is within the legislation it is likely to be fraught, because it is not relying on the right groups. I am an advocate for good information collection through the right bodies. We should refer this to the health Ministry and its bureau of data and information.' [FOOTNOTE: Evidence, Adjunct Professor Ann Brassil, CEO, Family Planning NSW, 15 August 2019, p 23.]

Resolved, on the motion of Mr Donnelly: That paragraph 3.134 be amended by inserting 'a representative group of' before 'parties on those provisions'.

Resolved, on the motion of Ms Boyd: That paragraph 3.136 be amended by inserting 'any' before 'amendments in the committee stage'.

Mr Donnelly moved: That paragraph 3.136 and Recommendation 1 be omitted and the following new paragraph and recommendation be inserted:

'In those circumstances, the committee recommends the Legislative Council seek the concurrence of the Legislative Assembly in the appointment of a joint committee of the two Houses to consider further the Reproductive Health Care Reform Bill 2019 in detail and that the committee report no later than the last sitting day in 2020.

#### **Recommendation 1**

That the Legislative Council seek the concurrence of the Legislative Assembly in the appointment of a joint committee of the two Houses to consider further the Reproductive Health Care Reform Bill 2019 in detail and that the committee report no later than the last sitting day in 2020.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mrs Maclaren Jones and Revd Mr Nile.

Noes: Mr Blair, Ms Boyd, Ms Jackson, Mr Khan, and Mr Mallard.

Question resolved in the negative.

Amendment negatived.

Revd Mr Nile moved: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

- Dissenting statements be provided to the secretariat by 10.00 am, Tuesday 20 August 2019;
- That the report be tabled on Tuesday 20 August 2019.

Question put.

The committee divided.

Ayes: Mr Blair, Ms Boyd, Ms Jackson, Mr Khan, Mrs Maclaren-Jones, Mr Mallard and Revd Mr Nile.

Noes: Mr Donnelly.

Question resolved in the affirmative.

**5. Other business**

Committee members thanked the Chair and the secretariat for their management of the inquiry into Reproductive Health Care Reform Bill 2019.

**6. Adjournment**

The committee adjourned at 6.38 pm, *sine die*.

Stephen Frappell

**Clerk to the Committee**

## Appendix 4 Dissenting statements

### The Hon Greg Donnelly MLC, Australian Labor Party

A person who is fortunate enough to be given the honour and privilege to serve in the Parliament of New South Wales takes an oath of office at the time of being sworn in. That oath says:

“Under God, I pledge my loyalty to Australia and to the people of New South Wales.”

With respect to the power to make laws the first paragraph of section 5 of the NSW *Constitution Act 1902* it says:

“The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever.”

I have commenced my Dissenting Statement to this report of the Standing Committee on Social Issues on the *Reproductive Health Care Reform Bill 2019* as I have above for these reasons. I believe that both those behind sponsoring the bill, in particular the five principle sponsors and the Government have created circumstances such that MLAs and MLCs, despite their sincerity and best endeavours can not uphold their oath of office or act in a way, individually or collectively to create this new law that is for the “peace, welfare, and good government of New South Wales”.

When the full account of what has transpired over the last three weeks, and will transpire over the next week or so, or whatever time it takes for the bill to pass the Legislative Council, it will be shown in the cold, hard light of day that this has been one of the, if not the most morally, intellectually and politically bankrupt episodes in the history of the Parliament of New South Wales.

The question that there are some MLAs and MLCs, along with some citizens who want the references to abortion removed from the *Crimes Act 1900* is not in doubt. However, what the Parliament of New South Wales is also considering is, I would argue, if not at least as significant, perhaps more significant; namely the creation of a standalone statute that is going to legally regulate the practice of abortion in this state for many years into the future.

It is a matter of fact that the Government gave stakeholders and the citizens of this state, once the bill that passed the Legislative Assembly became publically available, just 96 hours to consult, research, draft, proof and finalise their submissions to this inquiry. Two of those days were weekend days, therefore effectively giving stakeholders and citizens just 48 hours to get their submissions in. In the lead-up to the cut-off time of COB on Tuesday, 13th August the inquiry’s portal that was receiving submissions unsurprisingly crashed. I understand it was receiving submissions at the rate of between three and four per minute. Stakeholders and citizens panicked by not being able to lodge their submissions via the portal. They were both very angry and emotionally distraught thinking that they had missed the cut-off deadline. Exact numbers are still being finalised but it appears that north of 13,000 submissions via the portal and by email have been received by the committee secretariat. It goes without saying that it has not been possible for the committee secretariat, let alone the committee members to work their way thoroughly through the submissions.

Regarding the public hearings held across two and one half days last week, I wish to make the following observations. In terms of the witnesses to the hearings, the amount of time individual committee members had to ask them questions was absurdly short. On some panels, committee members literally had three or four minutes to ask questions and receive answers from the witnesses. This was grossly insulting not just to the committee members but in particular to those who appeared before the inquiry. The fact of the matter was that there was just no time to have the proper engagement with the majority of witnesses through the usual process of questioning and answering.

It goes without saying that a number of stakeholders and witnesses who would have wanted to appear at this important inquiry, did not get a chance. Some have contacted me directly and angrily expressed their dismay at not being considered as possible witnesses for the inquiry.

On the matter of witnesses or perhaps more correctly non-witnesses, I wish to make the following point. By sheer coincidence last week a public hearing (Friday, 16<sup>th</sup> August) was held by an upper house committee inquiring into koala populations and habitat in NSW. With respect to that hearing the NSW Government and its agencies provided nine witnesses that gave evidence from 9:50am to 12 noon. Regarding this inquiry into the bill, the NSW Government provided no, I repeat no witnesses. Why this was so, I have no idea. I am, along with some other committee members, completely dumbfounded by this. You would have thought at the very least the NSW Chief Obstetrician/Gynaecologist would have made an appearance. He, and it is a he, is no less than the most senior person in NSW Health responsible for mothers and babies in this state.

For the reasons I have outlined in this Dissenting Statement, I sought to move a motion at the committee meeting to finalise this report to delete the proposed Recommendation 1 and replace it. My proposed Recommendation 1 read as follows:

“That the Legislative Council seek the concurrence of the Legislative Assembly in the appointment of a joint committee of the two Houses to consider further the *Reproductive Health Care Reform Bill 2019* in detail and that the committee report no later than the last sitting day in 2020.”

The motion was put to the meeting and voted on. The committee divided:

Ayes: Mr Donnelly, Mrs Maclaren Jones and Revd Mr Nile

Noes: Mr Blair, Ms Boyd, Ms Jackson, Mr Khan, and Mr Mallard

The amendment was defeated.

I stand by my amendment.

**Revd The Hon Fred Nile MLC, Christian Democratic Party**

I wish to put on the record that I wholeheartedly endorse and support the drafted Dissenting Statement of my colleague Hon. Greg Donnelly.

I further note that the Committee received over ten thousand submissions from the public in the extremely short period of time that it consulted with the public, and that an overwhelming majority of those submissions opposed the Bill.

Due to the voluminous quantity of the submissions received, the Committee has had to take a representative sample of those submissions; I understand that this translates into 4 submissions in favour of the Bill and 36 against.

The community outcry against this Bill is clear and unambiguous; it is incumbent on the Legislative Council, as a House of Review, to be guided by this outcry. Accordingly, I fully support the motion proposed by Mr Donnelly that:

“That the Legislative Council seek the concurrence of the Legislative Assembly in the appointment of a joint committee of the two Houses to consider further the Reproductive Health Care Reform Bill 2019 in detail and that the committee report no later than the last day in 2020.”



