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INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: NSW Pro-Choice Alliance

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NSW PRO-CHOICE ALLIANCE

Decriminalising abortion in New South Wales

Submission to the Legislative Council's Standing Committee on Social Issues' inquiry into the *Reproductive Health Care Reform Bill 2019*

13 August 2019

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1.0 About the NSW Pro-Choice Alliance

The NSW Pro-Choice Alliance, led by the Women's Electoral Lobby NSW (WEL) and supported by Family Planning NSW and Women's Health NSW, represents expert legal, health and community voices from across the state. We are campaigning to remove abortion from the NSW Crimes Act and to ensure that abortion is regulated like any other health procedure.

The Alliance originated as a Round Table on Abortion Decriminalisation in October of 2016. The Round Table, convened by WEL, was made up of peak medical and legal groups, and expert individuals. Expert participants identified the impacts on women and health practitioners of retention of abortion in the NSW Crimes Act. Following this initial meeting, participants took part in regular consultations with the aim of achieving expert consensus on the need, shape and process for achieving abortion law reform in NSW.

The WEL Round Table met regularly over 2017, 2018 and in the first part of 2019. Members arrived at a Framework for Reform which is reflected in the position statement of the NSW Pro-Choice Alliance and in the Reproductive Health Reform Bill as tabled on 1 August 2019 by Alex Greenwich MP.

The NSW Pro-Choice Alliance campaign launched on May 2 of this year with 60 supporting organisations - which has now increased to 73.[1]

1.1 Aims of the NSW Pro-Choice Alliance

The NSW Pro-Choice Alliance recommends the repeal of sections 82-84 of the NSW Crimes Act 1900 and the implementation of legislation similar to Queensland's Termination of Pregnancy Act 2018 and Victoria's Abortion Law Reform Act 2008.

We seek changes to the law that:

- Regulate abortion as a health procedure;
- Ensure consistency with contemporary clinical practice, and public health standards;
- Empower women with the right to choose what happens to their own bodies;
- Guarantee equal access to safe, high quality healthcare, and;
- Align with international human rights obligations.

[1] Han, Esther. 2019. "Sixty groups fighting to overturn NSW's archaic abortion laws", *Sydney Morning Herald*, 2 May. Online at: https://www.smh.com.au/politics/nsw/sixty-groups-fighting-to-overturn-nsw-s-archaic-abortion-laws-20190501-p51j23.html

1.2 NSW Pro-Choice Alliance supporting organisations

73 organisations that lead their respective fields in health, law and community services support our campaign's aim and goal to decriminalise abortion in New South Wales:

1. Australasian Sexual Health and HIV Nurses Association
2. Australian Association of Social Workers
3. Australian College of Nursing
4. Australian Lawyers Alliance
5. Australian Lawyers for Human Rights
6. Australian Medical Students Association
7. Australian Women's Health Network
8. Bankstown Women's Health Centre
9. Blacktown Women's Health Centre
10. Blue Mountains Women's Health Centre
11. Central Coast Women's Health Centre
12. Children by Choice
13. Clinic 66
14. Coffs Harbour Women's Health Centre
15. Community Legal Centres NSW
16. Cumberland Women's Health Centre
17. Domestic Violence NSW
18. Emily's List Australia
19. Fair Agenda
20. Family Planning Alliance Australia
21. Family Planning and Welfare NT
22. Family Planning NSW
23. Family Planning Tasmania
24. Family Planning Victoria
25. fEMPOWER Workshops
26. Full Stop Foundation
27. Human Rights Law Centre
28. Hunter Women's Health Centre
29. Illawarra Women's Health Centre
30. International Planned Parenthood Federation (IPPF)
31. Kingsford Legal Centre
32. Lismore Women's Health Centre
33. Liverpool Women's Health Centre
34. Marie Stopes Australia
35. Marie Stopes International Australia
36. Maurice Blackburn
37. Mudgin-Gal Aboriginal Corporation
38. National Foundation for Australian Women
39. No To Violence
40. NSW Council of Civil Liberties
41. NSW Council of Social Services (NCOSS)
42. NSW Nurses and Midwives Association
43. NSW Women's Alliance
44. Our Bodies Our Choices
45. Penrith Women's Health Centre
46. Pro-Choice NSW
47. Public Health Association Australia - NSW Branch
48. Public Interest Advocacy Centre
49. Rape and Domestic Violence Services Australia
50. Reproductive Choice Australia
51. Royal Australian and New Zealand College of Obstetricians and Gynecologists (RANZCOG)
52. Sexual Health and Family Planning ACT
53. Sexual Health Quarters (Family Planning Western Australia)
54. SHINE (Family Planning South Australia)
55. Shoalhaven Women's Health Centre
56. Sydney Women's Counselling Centre
57. True Relationships and Reproductive Health (Family Planning QLD)
58. Wagga Women's Health Centre
59. Waminda South Coast Women's Health and Welfare Aboriginal Corporation
60. White Ribbon Australia

61. Wirringa Baiya Aboriginal Women's Legal Centre
62. WILMA Campbelltown Women's Health Centre
63. Women's Abortion Action Campaign
64. Women Barristers Forum
65. Women's Centre for Health and Well Being (Albury-Wodonga)
66. Women's Electoral Lobby
67. Women's Health NSW
68. Women Lawyers' Association of NSW
69. Women's Legal NSW
70. Women's March Sydney
71. Women's Safety NSW (formerly WDVCAS NSW)
72. Young Women's Christian Association Australia (YWCA)
73. Youth Action NSW

2.0 Executive Summary

The NSW Pro-Choice Alliance is pleased to make this submission to the NSW Parliament Legislative Council's Standing Committee on Social Issues' inquiry into the *Reproductive Health Care Reform Bill 2019*.

This submission recommends that the NSW Legislative Council pass the *Reproductive Health Care Reform Bill 2019* in its current form.

The Alliance has concerns about some of the newly amended components of the bill. Nevertheless, we support the bill in its current form and consider it crucial that it be passed, and abortion decriminalised, without further delay. The concerns are addressed in our submission below, and our supporting organisations will work with other stakeholders and NSW Health to ensure that the bill as a whole can be practically implemented in health settings and guarantee certainty for health workers and their patients.

The *Crimes Act* statutes on abortion are outdated, unclear, and out of step with contemporary clinical practice and community expectation. No other health procedure is regulated like abortion despite its clear grounding in clinical settings and that it is considered a health issue by all major medical colleges and peak health bodies.

Women and health practitioners can only rely on case law to protect them from prosecution. As the *Crimes Act* does not stipulate what is considered a lawful abortion procedure, women, health practitioners and health facilities must rely on the common law precedent, namely the Levine ruling of 1971 for guidance as to what lawful abortion is to avoid criminal prosecution.[2] This is unacceptable and discriminates against women.

In 2016, the Australian Electoral Study undertaken by the Australian National University found that almost 70 per cent of Australians agreed that women should be able to obtain abortions readily.[3] In 2018, a study published by the Australian and New Zealand Journal of Public Health found that 73 per cent of NSW residents agreed with decriminalisation and believed abortion should be regulated as a healthcare service.[4]

Accessing abortion in NSW while it remains a crime is expensive, time consuming, stressful and in some cases almost impossible, especially in rural areas. The current laws contribute to problems with access, generating stigma, confusion and a fear of prosecution that can

[2] Abortion law: a national perspective", NSW Parliamentary Service. 2017. Online at: https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf

[3] Cameron S, McAllister I. Trends in Australian Political Opinion, Results from the Australian Election Study 1987-2016, Australian National University. Available from: https://australianelectionstudy.org/publications/

[4] Barratt AL et al. 2019. "Knowledge of current abortion law and views on abortion law reform: a community survey of NSW residents". *Australian and New Zealand Journal of Public Health* Vol 43(1): February 2019.

discourage doctors and facilities from providing a full range of reproductive health services, and make it difficult for women to access the healthcare they need.

Criminalisation has a particularly devastating impact on women from disadvantaged or rural and remote communities who lack the financial means to pay for an abortion or who need to travel long distances to access one. Women facing domestic violence or homelessness often need to seek urgent funding from charities, friends or family to access an abortion in NSW, and this funding can often be unavailable. Costs currently range from hundreds to thousands of dollars. Women in rural and remote communities often need to travel hundreds or thousands of kilometres or even interstate in order to access an abortion.

Our submission will consider the legislation and offer key evidence that supports the inclusion of each major component within the bill.

3.0 Consideration of the bill in detail

3.1 Termination by medical practitioners at not more than 22 weeks

Clause 5 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.*

Part 1 of Clause 5 of the *Reproductive Health Care Reform Bill 2019* is consistent with the Alliance's aims, and as such, we support it.

A gestational period of 22 weeks is appropriate. Ultrasound screening for fetal health is routinely recommended around midway through pregnancy at 18-20 weeks gestation, and many anomalies are not diagnosed until this time or later if repeat scans are required. Implicit in this practice is that if those tests return a devastating diagnosis, women and couples will be supported to understand the implications of the abnormalities and make a decision regarding the pregnancy given the knowledge afforded to them.

Many NSW residents are shocked to discover that this decision is currently not theirs to make. In fact, there is no explicit legal protection for those women and doctors that decide to terminate a pregnancy on the basis of fetal abnormality - in either statute or case law.

Legislating for a 22 week gestational limit will mean that women in such difficult circumstances will be afforded more time to make a decision regarding the pregnancy. These decisions can be made without the barrier that they will then have to seek the approval of two medical professionals specifically qualified in terminations of pregnancy - something especially crucial for those in regional and remote areas of the state.

These are genuinely stressful and painful weeks for any pregnant woman, and they shouldn't be burdened with the uncertainty of waiting for medical professionals to make a decision that should be theirs to make.

3.1.1 Additional note

Terminations of pregnancy performed after the 22 week mark are very rare, with fewer than 1% occurring after this point.[5] These terminations are for complicated, multi-faceted and heart-breaking reasons that can include a fatal fetal abnormality or a serious threat to the pregnant woman's life.

[5] N Grayson, J Hargreaves & EA Sullivan. 2005. "Use of Routinely collected national data sets for reporting on induced abortion in Australia", Australian Institute of Health and Welfare: Sydney. Available from: https://www.aihw.gov.au/reports/mothers-babies/use-national-data-sets-reporting-induced-abortion/contents/table-of-contents.

Contrary to recent media reporting, it is expected that the decriminalisation of abortion will result in women accessing reproductive healthcare earlier in pregnancy and therefore abortions taking place at earlier gestations. There is no evidence to suggest that decriminalisation will lead to an increase rate of abortions in NSW. In fact, in Victoria the evidence suggests the opposite.

Correspondence from the Victorian Health Minister, Jenny Mikakos, shows the rate of terminations in Victoria has gone from 16.8 per 1,000 women in 2008 (the year the state parliament decriminalised abortion) to 12.2 per 1,000 women in 2017.[6] In the Northern Territory, 99.33% terminations occurred before 14 weeks gestation in 2017, their first year since abortion law reform.[7] Publicly available data through Medicare shows there were no spikes in the number of abortions carried out in Tasmania following their law reform exercise in 2013.[8]

In Victoria, the number of terminations post 20 weeks have remained static since abortion law reform despite a substantial population increase of 1 million people over the last decade. Victoria's 2008 report from The Consultative Council on Obstetric and Paediatric Mortality and Morbidity advised that there were 328 terminations of pregnancy after 20 weeks.[9] The latest report from 2017 advised that there were 324 terminations of pregnancy after 20 weeks.[10] Due to the population increase in Victoria, these figures would represent a reduction in the rate of terminations at a later gestation in the state post abortion law reform.

3.2 Informed consent in Clauses 5 and 6

Clause 5 Termination by medical practitioners at not more than 22 weeks

2. *The medical practitioner may perform the termination only if the person has given informed consent to the termination.*

The Alliance notes Part 2 of Clause 5 and Part 1(c) of Clause 6 of the proposed legislation, which were inserted into the bill through amendment and which create a statutory definition of

[6] New South Wales Hansard. 2019. Legislative Assembly - 8 August, 1pm. Online at: https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-106734/HANSARD-1323879322-106732

[7] Northern Territory Department of Health. 2019. "NT Termination of Pregnancy Law Reform 12 month interpretative report 1 July 2017 - 30 June 2018". Online at: https://health.nt.gov.au/professionals/termination-of-pregnancy-abortion and https://digitallibrary.health.nt.gov.au/prodjspui/handle/10137/7327

[8] Australian Department of Human Services. 2018. 'Medicare items 35643 processed from July 2006 to June 2017', Medicare. Online at: http://medicarestatistics.humanservices.gov.au/statistics/do.jsp?_PROGRAM=%2Fstatistics%2Fmbs_

[9] Victoria Health. 2014. "CCOPMM Annual Report for the year 2008". Online at: https://www2.health.vic.gov.au/about/publications/researchandreports/Annual%20Report%20for%20the%20year%202008

[10] Victoria Health. 2019. "Victoria's Mothers, Babies and Children report 2017". Online at: https://www.bettersafercare.vic.gov.au/sites/default/files/2019-05/Mother%27s%20Babies%20and%20Children%20Report%202017_FINAL-WEB.pdf

informed consent linked to undefined guidelines. Informed consent is already a legal requirement for all medical procedures, including abortion.[11]

The objective of the bill is to remove abortion from the *Crimes Act* and regulate it as the health procedure it is. This amendment, in itself redundant, may create confusion for medical and health practitioners, and could create additional and unnecessary delays for women. Should the bill find successful passage through the Legislative Council, the Alliance recommends that NSW Health work with stakeholders in order to ameliorate the concerns held.

3.3 Termination by medical practitioner after 22 weeks

6 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*

This section of the clause, as it currently stands, moves away from its original intent. The original clause in the *Reproductive Health Care Reform Bill 2019* was drafted with the intent that the second medical practitioner considering the termination of pregnancy could have a specialty in a number of fields as is appropriate with the complications that may present themselves during a pregnancy: genetics, cardiology, neurology, oncology, to name a few.[12]

Should the bill find successful passage through the legislative council, the Alliance recommends that NSW Health work with stakeholders to define the requirements for “specialist medical practitioners” as it related to this legislation.

3.4 Approval of health facilities for terminations after 22 weeks

6 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—*
    d. *the termination is performed at—*

[11] McGowan, Michael. 2019. “NSW abortion law: informed consent requirement confusing, says AMA”. *The Guardian* 8 August. Online at: https://www.theguardian.com/australia-news/2019/aug/08/nsw-abortion-law-plan-to-increase-restrictions-on-terminations-after-22-weeks-scrapped

[12] Queensland Law Reform Commission. 2018. “Termination of Pregnancy Laws Report”. P.102. Online at: https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf

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.*

All terminations post 22-weeks occur at tertiary level facilities in NSW - university hospitals, both private and public. NSW Health's *Guide to Role Delineation of Clinical Services* already provides a framework that describes the minimum support services, workforce and other requirements for clinical services to be delivered safely.[13]

While there is no need for this to be stipulated in legislation as it reflects current practice, the Alliance is supportive of Part 3 of Clause 6.

3.5 Circumstances to consider by a medical practitioner for a termination after 22 weeks

6 Termination by medical practitioner after 22 weeks

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*

The Alliance supports Clause 6(3) in its current form. Terminations at this stage are complex; they can occur for a multitude of reasons and the considerations are compelling and medically necessary.

3.6 Requirement for information about counselling

7 Requirement for information about counselling

1. *Before performing a termination on a person under section 5 or 6, a medical practitioner must—*
    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.*

[13] NSW Health. 2018. "NSW Health Guide to the Role Delineation of Clinical Services". Online at: https://www.health.nsw.gov.au/services/Publications/role-delineation-of-clinical-services.PDF

2. *A medical practitioner may, in an emergency, perform a termination on a person without complying with subsection (1).*

The Victorian and Queensland Law Reform Commissions both concluded that neither counselling nor referral to counselling should be mandated. Both Commissions recommended that professional, accurate, unbiased, confidential and non-judgmental counselling should be available and accessible to those who request it, and that this should be governed by clinical practice.[14,15]

NSW Health's current Framework for Terminations in New South Wales Public Health Organisations, implemented in 2014, includes a requirement for all clinicians in the state's maternity services to offer counselling: "evidence of pre-termination counselling from an appropriately qualified health care professional must be documented as having been offered and a copy of the counsellor's report provided to the treating medical practitioner."[16] This framework is also distributed to private hospitals and day procedure centres, and divisions of general practice.

The Alliance notes that this section of the bill only applies to medical practitioners carrying out a termination of pregnancy procedure. As such, the Alliance stresses that this section should not be used by conscientious objectors to impede or delay the referral of care of their patients to a medical practitioner without such an objection.

3.7 Registered health practitioners who may assist

8 Registered health practitioners who may assist

1. *A person who is a medical practitioner, nurse, midwife, pharmacist or Aboriginal and Torres Strait Islander health practitioner, or another registered health practitioner prescribed by the regulations, may, in the practice of the person's health profession, assist in the performance of a termination on a person by a medical practitioner.*
2. *However, subsection (1) does not apply in relation to a termination that the assisting registered health practitioner knows, or ought reasonably to know, is being performed other than as authorised under section 5 or 6.*
3. *A reference in this section to assisting in the performance of a termination includes dispensing, supplying or administering a termination drug on the instruction of the medical practitioner*

[14] Victoria Law Reform Commission. 2008. "Law of Abortion Final Report", p.123.
[15] Queensland Law Reform Commission. 2018. "Termination of Pregnancy Laws Report", p.194. Online at: https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf
[16] Ministry of Health, NSW. 2014. "Pregnancy - Framework for Terminations in New South Wales Public Health Organisations", p.4.

Nurses and midwives, Aboriginal and Torres Strait Islander health practitioners, and pharmacists all currently assist in performing terminations of pregnancy. Legislating for registered medical practitioners to provide and health practitioners to assist in providing lawful terminations of pregnancy is reasonable. Such an approach to the regulation of termination of pregnancy procedures is consistent with modern clinical practice and would harmonise NSW's laws with those in other Australian jurisdictions. The Alliance supports Section 8 of the bill in full.

3.8 Registered health practitioner with conscientious objection

9 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.*
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.*

The Alliance supports the position that individual clinical practitioners should be legally able to conscientiously object to performing terminations of pregnancy.

Part 3 of this clause is crucial - women must be able to access the services they require without discrimination or delay. Pregnancies are time sensitive and impeding a patient's access to their full suite of options is unconscionable. As per RANZCOG's statement on the bill:

> The College emphasises that health practitioners owe a duty of care and must *refer* the patient to other health practitioners or health services where a woman is able to receive the health care she needs.[17]

Peak bodies for health practitioners, including the Australian Medical Association, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the Australian Nursing and Midwifery Foundation, the Pharmacy Board of Australia, and the Medical Board of Australia all have policies and codes of conduct consistent with the measures relating to conscientious objection in the bill.[18]

The approach would be consistent with legislation relating to termination of pregnancy in other Australian jurisdictions, including Victoria, Queensland, Tasmania, the Northern Territory, and South Australia.[19]

3.9 Professional conduct or performance

10 Professional conduct or performance

1. *In considering a matter under an Act about a registered health practitioner's professional conduct or performance, regard may be had to whether the practitioner—*
    a. *performs a termination on a person other than as authorised under section 5 or 6, or*
    b. *assists in the termination on a person other than as authorised under section 8, or*
    c. *contravenes section 9.*
2. *The matters to which subsection (1) applies include matters arising in—*
    a. *a notification under the Health Practitioner Regulation National Law (NSW), or*
    b. *a complaint under the Health Care Complaints Act 1993.*
3. *This Act does not limit any duty a registered health practitioner has to comply with professional standards or guidelines that apply to health practitioners.*

The Alliance supports Clause 10 in its current form.

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[17] RANZCOG. 2019. "Statement on the Reproductive Health Care Reform Bill 2019". Online at: https://ranzcog.edu.au/news/Reproductive-Health-Care-Reform-Bill-2019

[18] Queensland Law Reform Commission. 2018. "Termination of Pregnancy Laws Report", pp.115-152. Online at: https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf

[19] Abortion law: a national perspective", NSW Parliamentary Service. 2017. Online at: https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf

3.10 Protection from criminal responsibility

11 Person does not commit offence for termination on themselves
Despite any other Act, a person who consents to, assists in, or performs a termination on themselves does not commit an offence.

A woman should never be criminalised for accessing a termination of pregnancy, or consenting to one. Both the Victorian and Queensland Law Reform Commissions considered this point and both came to the conclusion that a woman should not be held criminally liable for having a termination of pregnancy. As per the QLRC:

> ..a termination should be treated as a health issue, not a criminal matter. As a matter of principle, the draft legislation should not only protect a medical practitioner who performs a termination (and a health practitioner who assists in that performance) under the legislation from criminal responsibility for the termination of a woman's pregnancy, but also the woman. This protection, together with the clarification under the draft legislation as to the circumstances in which a woman's pregnancy may be terminated, are intended to increase women's access to safe and lawful termination.[20]

Continuing to impose criminality over women for accessing this procedure will not stop them from having an abortion, but it may push them to consider unsafe options. The Alliance supports Clause 11 in its current form.

3.11 Guidelines about performance of terminations at approved health facilities

13 Guidelines about performance of terminations at approved health facilities

1. *The Secretary of the Ministry of Health may issue guidelines about the performance of terminations at approved health facilities.*
2. *If the Secretary issues guidelines under subsection (1), a registered health practitioner performing a termination, or assisting in the performance of a termination, must perform the termination in accordance with the guidelines.*

While there is no need for this to be stipulated in legislation as it reflects current practice, the Alliance is supportive of Clause 13.

[20] Queensland Law Reform Commission. 2018. "Termination of Pregnancy Laws Report", p.109. Online at: https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf

3.12 Review in relation to gender selection

14 Review in relation to gender selection

1. *The Secretary of the Ministry of Health must, within 12 months after the commencement of this section—*
    a. *conduct a review of the issue of whether or not terminations are being performed for the purposes of gender selection, and*
    b. *prepare, and give to the Minister, a report about the review.*

There is no evidence to support the assertion that sex-selective abortions occur, or a problem, in Australia. The most recent study considering sex ratios in Australian populations, published in 2018 by La Trobe University, specifically noted that there can be no conclusions drawn as to whether sex-selective abortions occur.[21] The same study recommended that the most effective way to address the concern was to "...reinforce social policies to tackle gender discrimination in all its forms".[22]

Given this lack of evidence, the Alliance is supportive of Clause 14 and supports a review by the Ministry of Health after 12 months of the commencement of the legislation.

3.12.1 Additional note

The Alliance would like to comment on why a ban on sex-selective abortions would not be effective and could cause harm, should a similar amendment arise in the Legislative Council when the chamber considers the *Reproductive Health Care Reform Bill 2019*.

The World Health Organisation and United Nations agencies have found that imposing restrictions or prohibitions on access to health services like abortion for sex-selective reasons is more likely to have harmful impacts on women and "may put their health and lives in jeopardy.[23]

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.

While nominally aimed at combatting gender and racial discrimination, an amendment 'banning sex selection abortion' could make abortion less accessible by causing some women to fear

[21] K Edvardsson. 2018. "Male-biased sex ratios in Australian migrant populations: a population-based study of 1 191 250 births 1999–2015". *La Trobe University*. Online at: https://academic.oup.com/ije/article/47/6/2025/5057663
[22] Ibid.
[23] Office of the High Commissioner for Human Rights, UN Population Fund, UN Children's Fund, UN Entity for Gender Equality and the Empowerment of Women, World Health Organization, Preventing Gender- Biased Sex Selection: An Interagency Statement OHCHR, UNFPA, UNICEF, UN Women, WHO' (World Health Organization, 2011) 6.

they will be suspected of seeking a sex- or race-selective abortion; as a result, these patients may withhold information from providers or not feel they can seek care at all. This would also put health practitioners in the position of having to interrogate women about their reason for wanting an abortion in order to be able to exclude sex selection.

A ban would risk all these harms; in a context where there is no evidence to support the assertion that terminations of pregnancy on the grounds of sex selection are occurring in Australia.

3.13 Termination of pregnancies by unqualified persons

The Alliance supports the creation and insertion of a clause in the *Crimes Act 1900* for termination of pregnancies by unqualified persons.