

**Submission
No 14**

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

Organisation: Marie Stopes Australia

Date Received: 13 August 2019



The Standing Committee on Social Issues
New South Wales Legislative Council

Submitted electronically via committee.socialissues@parliament.nsw.gov.au.

12 August 2019

To the Honourable Members of the Standing Committee on Social Issues,

Re: Submission to the Committee on the draft Reproductive Health Care Reform Bill 2019

Marie Stopes Australia provides sexual and reproductive health services to Australians through 17 locations, regional and remote telehealth services, and statewide clinical education and health professional capacity building.

Marie Stopes Australia is very supportive of termination of pregnancy law reform in New South Wales. We believe that Australians should have a right to access safe, affordable and legal abortion care services in the place where they live, surrounded by their support network.

The criminality of abortion in Australia leads to the ongoing stigma and shame that many patients feel when accessing the service.

Please note that we are happy for this submission to be made public and I am available to be a witness at the Standing Committee Hearing on Wednesday 14 August.

For any further information please contact Jacquie O'Brien, Director of Public Affairs & Policy on 0428 396 391 or at jacquie.obrien@mariestopes.org.au.

Sincerely,

Dr Philip Goldstone
Medical Director

Draft Reproductive Health Care Reform Bill 2019 Submission

August 2019

About Marie Stopes Australia

We are a national not-for-profit organisation that provides specialist care in termination of pregnancy, contraception and sexual health services. Our services include abortion care, decision-based counselling, Long Acting Reversible Contraception, Vasectomy, Sexual Health screening and advocacy to increase access to services.

We have provided services to the people of New South Wales (NSW) for more than 15 years with clinics located in Newcastle, Sydney, Westmead and Penrith. We also provide specialist services for people accessing terminations at a later gestation through our specialist clinic located in Victoria.

We have set up the 'Safe Abortion and Contraception Choice Fund' (the Choice Fund) for women and pregnant people in Australia who are experiencing financial hardship and other healthcare barriers. Every dollar donated goes directly towards abortion and contraception provision.

Of our Choice Fund recipients in the 2017/2018 financial year:

- 100% were experiencing financial hardship
- 38% were living in coercive contexts including family, domestic or sexual violence
- 10% were Aboriginal and Torres Strait Islander
- 10% were experiencing homelessness
- 5% were living with addiction

In the past year, 65% of financial bursaries have gone to NSW clients who are experiencing coercion, disparities and financial hardships. Of national clients seeking bursaries in order to access abortion, NSW has some of the highest rates of family, domestic and sexual violence.

MS Health is the only not-for-profit pharmaceutical company operating in Australia and is also under the Marie Stopes International umbrella. MS Health was the sponsor of the early medical abortion drug, MS2-Step. Clinical education on medical

abortion is available for health professionals nationwide via an online learning management system, and face to face education is provided at local conferences and events.

Support for the Reproductive Health Care Bill 2019

Marie Stopes Australia is supportive of the Reproductive Health Care Bill 2019 (the Bill) that has passed the NSW Legislative Assembly and is currently being considered by the Standing Committee on Social Issues.

Given our experience in NSW, we believe that the Standing Committee and Members of the Legislative Council may benefit from specialist insight in to how the draft Bill would work in practice.

The need to decriminalise abortion in NSW

NSW is one of the last States in Australia where abortion remains in the Criminal Code. Most laws pertaining to abortion in the Criminal Code were written up to and over 100 years ago. As a society, we have progressed a great deal socially, economically and politically. We have also seen dramatic improvements in medical science and practice.

Control of one's sexual and reproductive health is fundamental to a range of human rights and provides for both individual and community-wide health and wellbeing.ⁱ

Criminalisation of abortion prevents a person from exercising their reproductive rights and is an outdated, draconian response to an issue that has long since evolved with 21st century ethics and morality.ⁱⁱ Further, data from the Australian Election Study has shown that Australians increasingly believe that abortions should be readily accessible.ⁱⁱⁱ

The removal of abortion from the NSW Criminal Code is well overdue and will provide safety and certainty for people seeking a termination of pregnancy and safety and certainty for health care professionals.

Safety and certainty for people seeking a termination

It is unacceptable that a person could be held criminally responsible for accessing a health service that is covered by Medicare or the PBS and therefore recognised as a legal health service or an approved pharmaceutical product in Australia.

Criminalising abortion increases the risk of a person accessing an abortion in an unsafe way. Where there are few restrictions on access to abortion, abortion-related mortality and morbidity are reduced.^{iv}

It is also important to note that making a person criminally responsible for the termination of their own pregnancy based on where they live is unnecessary and discriminatory. In Victoria, the Northern Territory, Western Australia, Tasmania, Queensland and the Australian Capital Territory, people can legally access termination of pregnancy services without fear of prosecution. There is no reason why the same rights should not apply in NSW.^v

Safety and certainty for health care professionals

We are aware that the current legal status of abortions in NSW is a deterrent to people in the health care profession providing or assisting with abortion care. This is particularly true for medical professionals. Where abortion has been decriminalised, data from MS Health indicates that decriminalisation encourages medical professionals to become Registered Prescribers (Fig. 1)

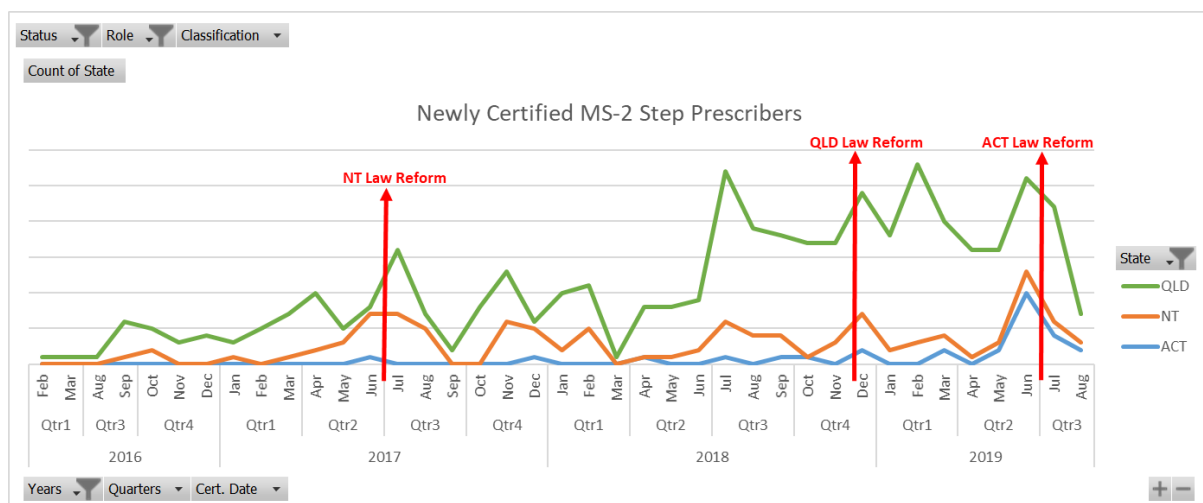


Fig. 1 Registered Prescriber trends pertaining to Law Reform for Medical Termination.

Registered Prescribers are able to provide medical termination in the community and this increases access and equity to abortion care at an early stage.

We also believe from conversations with medical professionals in the public and private hospital system in NSW, and experience in Queensland following law reform, that removing termination of pregnancy from the Crimes Act will encourage more hospitals to provide the service, particularly supporting vulnerable populations.

Gestational limits and medical practitioners

Gestational limits are not necessary.^{vi} Medical practitioners working within clinical guidelines already assess whether a procedure is medically safe and appropriate to perform and pregnancy termination should be no exception.^{vii}

There is no evidence to suggest that increased, or absence of, gestational limits result in more women seeking terminations at a later gestation. For instance, the Australian Capital Territory has no gestational limit and this has not increased the number of terminations at later gestations, in fact they are rare.

In other States and Territories where gestational limits are applied, access can be impaired and people can often be forced to travel to access the service elsewhere (mainly Victoria for gestations in excess of 20 weeks). This places significant stress on the patient and their support network.^{viii}

Two medical practitioners are not required to determine whether a termination should be provided. This creates additional barriers, costs and delays which can have adverse mental health impacts on the client and create unnecessary complications to a healthcare journey. Clinical guidelines, medical registration, clinical standards and clinical governance are adequate measures to oversee quality and safety in care without requiring a second medical practitioner.

However, if such limits and two medical practitioners are required, we support the gestation provisions outlined in the Bill as it currently stands.

Informed Consent

We note that in Part 2, Clause 5, Subsection 2, the Bill states that “The medical practitioner may perform the termination only if the person has given informed consent to the termination”.

The reference to ‘informed consent’ is unnecessary as informed consent is standard practice for medical professionals, governed by clinical guidelines. We strongly discourage any additional informed consent requirements, as these would lead to confusion for patients and doctors, would contradict legislation in the remainder of the country and would seek to further stigmatise what is a safe and common medical procedure.

Counselling

While we do not support mandatory counseling for people accessing termination of pregnancy services, we do strongly support the offering and availability of decision-based counseling that is all-options and trauma-informed.

In line with Part 2, Clause 7 subsection 1 (b) the reference to the ‘publicly-funded’ should also include the words ‘all options and non-judgmental decision-based counselling’. This would in practice, for instance, include the National Pregnancy Help Hotline operated by HealthDirect. This helpline is funded by the Federal Government to provide free, all options information, advice and referral.

Guidelines issued by the Secretary of the Ministry of Health

While we are supportive of the inclusion of the approved health facility clauses for terminations above 22 weeks gestation, we urge clarification of Part 4 Clause 13 regarding the Guidelines on Termination of Pregnancy issued by the Secretary of the Ministry of Health. Clinical guidelines are critical, developed by colleges and associations in consultation with clinical experts and informed by evidence.

Regulations may require clinical guidelines to exist, however they do not need to govern the content of the guidelines. Clinical guidelines need to be developed collaboratively within existing clinical governance systems and updated regularly as new evidence emerges.

This legislation may require the NSW Secretary of the Ministry of Health to ensure that clinical guidelines are available, implemented and regularly reviewed, however anything further would create inconsistencies and inefficiencies.

Review in Relation to Gender Selection

We note the considerable debate on the issue of 'gender selection' that took place in the Lower House as part of the debate on the Bill. We do not support the inclusion of gender selection in the Bill and we strongly caution against amendments to the legislation as the issue of gender selection and termination of pregnancy is not grounded in evidence. Further public debate or amendments on this issue has the potential to discriminate against multicultural and diverse communities in Australia and would unfairly target people who already face barriers in accessing abortion care.

ⁱ Starrs, AM et al. Accelerate Progress – sexual and reproductive health and rights for all: report of the Guttmacher-Lancet Commission. Published online 9 May 2018.

ⁱⁱ Sheldon, S. The Decriminalisation of Abortion: An Argument for Modernisation. *Oxford Journal of Legal Studies*, Vol. 36, No. 2 (2016), pp. 334-365.

ⁱⁱⁱ Cameron, SM. and McAllister, I. 2016. Trends in Australian Political Opinion: Results from the Australian Election Study 1987-2016. Canberra: The Australian National University.

^{iv} Guttmacher Institute. Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide. 2009.

^v De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015.

^{vi} Black, K., Douglas, H., De Costa, C., (2015), 'Women's access to abortion after 20 weeks' gestation for foetal chromosomal abnormalities: Views and experiences of doctors in New South Wales and Queensland', in *Australian and New Zealand Journal of Obstetrics and Gynaecology*, 55: 144-148;

^{vii} The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2013), Termination of Pregnancy College Statement (C-Gyn 17);

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), Late Termination of Pregnancy (C-Gyn 17a).

viii Goldstone, P. Thompson, M. The Tyranny of Distance for Australian Women Seeking Abortions. O&G Magazine, Vol. 20 No 2, Winter 2018.