

INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: Rape and Domestic Violence Services Australia

Date Received: 13 August 2019

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The Honourable Shayne Mallard MLC
Chair
NSW Legislative Council Standing Committee on Social Issues
NSW Parliament
6 Macquarie Street
Sydney NSW 2000

By email: committee.socialissues@parliament.nsw.gov.au

Dear The Honourable Shayne Mallard MLC,

Re: Submission to the Inquiry into the *Reproductive Health Care Reform Bill 2019*

Thank you for the opportunity to provide a submission to the Inquiry into the *Reproductive Health Care Reform Bill 2019*.

Please find enclosed submission on behalf of Rape & Domestic Violence Services Australia.

Yours faithfully,

Rape and Domestic Violence Services Australia

Karen Willis

Executive Officer

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Funded by NSW Health, the Commonwealth Bank,
and the Australian Government Department of
Social Services.

ABN 58 023 656 939

Counselling Services

24/7 NSW Rape Crisis 1800 424 017

CBA Domestic &

Family Violence Line 1800 222 387

Sexual Assault

Counselling Australia 1800 211 028

rape-dvservices.org.au

**Submission to NSW Legislative Council's Standing
Committee on Social Issues**

**Reproductive Health Care
Reform Bill 2019.**

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Summary of recommendations

Recommendation 1: That the Committee consider abortion as a healthcare issue, rather than a criminal offence.

Recommendation 2: That the Committee recommend the decriminalisation of abortion in NSW in line with the provisions as set out in the *Reproductive Health Care Reform Bill 2019*.

Recommendation 3: That the Committee recommend the decriminalisation of abortion in NSW in line with current community expectations.

Recommendation 4: That the Committee recommend the provisions in the *Reproductive Health Care Reform Bill 2019* include “not more than 22 weeks” and “after 22 weeks” rather than 20 weeks gestation.

Recommendation 5: That the Committee recommend any review of gender selection conducted by the NSW Ministry of Health occur within a broader review of gender inequality.

1. Background

- 1.1 Rape & Domestic Violence Services Australia welcome the opportunity to contribute to the NSW Legislative Council's Standing Committee on Social Issues' ('the Committee') Inquiry into the *Reproductive Health Care Reform Bill 2019* ('the Bill').
- 1.2 Rape & Domestic Violence Services Australia is a non-government organisation that provides a range of trauma specialist counselling services to people who have been impacted by sexual, domestic or family violence and their supporters. Our services include the NSW Rape Crisis counselling service for people in NSW who have been impacted by sexual violence and their professional or non-professional supporters; Sexual Assault Counselling Australia for people accessing the Redress Scheme resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse; and the Domestic and Family Violence Counselling Service for Commonwealth Bank of Australia customers and staff who are seeking to escape domestic or family violence.

2. Language and Terminology

- 2.1 In this submission, Rape & Domestic Violence Services Australia use the term *sexual violence* as a broad descriptor for any unwanted acts of a sexual nature perpetrated by one or more persons against another. This term is designed to emphasise the violent nature of all sexual offences and is not limited to those offences that involve physical force and/or injury.
- 2.2 Rape & Domestic Violence Services Australia use the term *people who have experienced sexual assault/violence and/or domestic and family violence* to describe individuals who have suffered this type of violence, rather than the terms survivors or victims. This language acknowledges that, although experiences of violence are often very significant in a person's life, they nevertheless do not define that person. Moreover, the process of recovery from trauma is complex, multifaceted and non-linear and will often involve experiences of survival in combination with experiences of victimisation.
- 2.3 Rape & Domestic Violence Services Australia use gendered language when discussing sexual, family and domestic violence. This reflects the fact that sexual, family and domestic violence are predominantly perpetrated by men against women. However, we acknowledge that gendered language can exclude the experiences of some people impacted by sexual, domestic and family violence. We acknowledge that:
 - 2.3.1 Women can also be perpetrators of sexual, domestic and family violence.

2.3.2 Sexual violence occurs within LGBTIQ+ relationships at a similar rate to sexual violence within heterosexual relationships.¹

2.3.3 Sexual violence is perpetrated against transgender and gender-diverse people at a higher rate than against cis gender people.²

3. Introduction

3.1 Rape & Domestic Violence Services Australia are encouraged that the Committee are currently reviewing the *Reproductive Health Care Reform Bill 2019*. There is a strong need for abortion to be removed from the *Crimes Act 1900* (NSW) as it should be treated as a healthcare issue, rather than a criminal offence.

3.2 Rape & Domestic Violence Services Australia as an organisation who provides trauma specialist counselling services strongly support the *Reproductive Health Care Reform Bill 2019* being enacted into legislation in NSW.

3.3 The law should be supportive of a woman's choice to decide what makes sense for her own health, body and future. The Committee should always keep this in mind when debating this Reform Bill.

3.4 The current provisions regarding abortion in the *Crimes Act 1900* (NSW) are outdated and no reform to these provisions has occurred in 119 years.

3.5 The continued criminalisation of abortion in NSW to date, does not represent current community expectations, and its criminalisation continues to affect women and health care providers in NSW.

3.6 Further, the criminalisation of abortion continues to disproportionately impact women experiencing disadvantage or women living in rural or remote communities, and this must be addressed.

Recommendation 1: That the Committee consider abortion as a healthcare issue, rather than a criminal offence.

4. Abortion should not be a crime in NSW

4.1 The offence of abortion is currently contained in Sections 82 to 84 of the *Crimes Act 1900* (NSW). This currently means that women in NSW, as well as their medical professionals can be prosecuted for accessing or providing abortions.

4.2 The law regarding abortion has not changed in 119 years, and Rape & Domestic Violence Services Australia urge the Committee to drive the *Reproductive Health Care Reform Bill 2019* through the Legislative Council to bring NSW in line with

¹ B. Fileborn 'Accounting for space, place and identity: GLBTIQ young adults' experiences and understandings of unwanted sexual attention in clubs and pubs' (2013) 22(1) *Critical Criminology* 81.

² K. O'Halloran, 'Family Violence in an LGBTIQ context' (2015) 2 *Royal Commission In Brief*, <https://www.dvrcv.org.au/sites/default/files/Family-violence-in-an-LGBTIQ-context-Kate-OHalloran.pdf>;

other Australian state and territory jurisdictions on this issue. Victoria decriminalised abortion in 2008,³ with Queensland achieving decriminalisation in 2018.⁴

- 4.3 In most law reform and policy issues, NSW are commonly a proactive leader in Australia in making systematic changes to legal processes and systems that create barriers for the community. Rape & Domestic Violence Services Australia argue that the current criminalisation of abortion has created several barriers for women, especially women experiencing disadvantage or women living in rural or regional communities accessing their healthcare needs.
- 4.4 Rape & Domestic Violence Services Australia urge the Committee to decriminalise abortion, as it is, and has always been a healthcare issue, rather than a criminal offence.

Recommendation 2: That the Committee recommend the decriminalisation of abortion in NSW in line with the provisions as set out in the *Reproductive Health Care Reform Bill 2019*.

5. The Key Statistics

- 5.1 Rape & Domestic Violence Services Australia urge the Committee to remember when debating this Bill that statistics show that up to 36,000 abortions may have occurred in NSW in 2018. This statistic is relied upon from a study on abortion rates in 2005 conducted by the *Australian Institute of Health and Welfare*. This study indicated that there were 22.3 abortions per 1,000 women aged between 15-44 years in NSW in 2003.⁵
- 5.2 Current data on abortion rates in NSW is not readily available, and Rape & Domestic Violence Services Australia argue that if abortion was decriminalised, statistics may be more easily sourced.
- 5.3 Rape & Domestic Violence Services Australia do comment that based on the study conducted by the *Australian Institute of Health and Welfare* in 2005 that most abortions (91.2% to 95%) occur before 14 weeks gestation.⁶
- 5.4 Only 0.7% to 2.8% of abortions occur after 20 weeks gestation, and this is a relatively small number of abortions, as compared to the number of abortions occurring before 14 weeks gestation. The abortions occurring after 20 weeks gestation, usually occur as a result of medical concerns; with the procedure almost

³ *Abortion Law Reform Act 2008* (Vic).

⁴ *Termination of Pregnancy Act 2018* (Qld).

⁵ Australian Institute of Health and Welfare. *Use of Routinely collected national data sets for reporting on induced abortion in Australia*. 2005. Available from: <https://www.aihw.gov.au/reports/mothers-babies/use-national-data-sets-reporting-induced-abortion/contents/table-of-contents>. Note that this figure includes some other procedures. See also SA Health. *Pregnancy Outcome in South Australia*. 2016. Available from: <https://www.sahealth.sa.gov.au/wps/wcm/connect/4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1/Pregnancy+Outcome+in+South+Australia+2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-4ccbba85-14c6-4b39-a19e-4e8cd54e9ea1-mAT252p>.

⁶ *Ibid*.

always carried out in a hospital setting.⁷ Rape & Domestic Violence Services Australia make further submissions below regarding the 20 weeks versus 22 weeks debate for the purposes of this Reform Bill.

6. Societal expectations

- 6.1 In 2016, an Australian Election Study conducted by academics within the *School of Politics & International Relations at the Australian National University* concluded that almost 70% of Australians believe that women should be able to access an abortion. This has changed significantly over time as only 45% of Australians thought women should be able to access an abortion in 1979.⁸
- 6.2 The above data illustrates that the laws regarding abortion should be amended, in keeping with changing community standards and expectations. Rape & Domestic Violence Services Australia again urge the Committee to consider the Reform Bill on the basis of abortion being treated as a healthcare issue, rather than a criminal offence.

Recommendation 3: That the Committee recommend the decriminalisation of abortion in NSW in line with current community expectations.

7. 20 weeks versus 22 weeks debate

- 7.1 Rape & Domestic Violence Services Australia understand that during the reading of this Bill in the NSW Legislative Assembly, there was much debate as to whether provisions in the Bill should state 20 weeks as compared to 22 weeks (as currently contained in the Bill).
- 7.2 Rape & Domestic Violence Services Australia ask that the Committee consider the practical ramifications of the medical tests and procedures that occur during gestation. There are significant tests that occur at 18 weeks gestation, when some medical conditions of a foetus are more readily diagnosed; and at which point women may have to make difficult decisions as to the viability of the pregnancy.
- 7.3 Given the above, Rape & Domestic Violence Services Australia state that it is appropriate to legislate that medical professionals do not have to consult with another medical professional if the gestation is 22 weeks and under. As significant tests occur at 18 weeks gestation, and then time may be required for medical results to be received and reviewed, prior to the difficult decision to access an abortion being made. This process could more appropriately occur within 4 weeks taking gestation to 22 weeks; as opposed to 2 weeks taking gestation to 20 weeks.

⁷ Ibid.

⁸ 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/>

Recommendation 4: That the Committee recommend the provisions in the *Reproductive Health Care Reform Bill 2019* include “not more than 22 weeks” and “after 22 weeks” rather than 20 weeks gestation.

8. Gender Selection

- 8.1 Rape & Domestic Violence Services Australia also note that during the reading of this Bill in the NSW Legislative Assembly, there was debate regarding abortion being utilised as a way of ‘gender selection.’
- 8.2 Rape & Domestic Violence Services Australia state that since our organisation’s formal establishment in 1974 as a women’s collective providing trauma specialist counselling services for those who have experienced sexual, domestic and family violence, we have not heard from a client that used abortion as a way of gender selection. Nor has our organisation come across any research suggesting gender selection as a factor when women consider accessing an abortion.
- 8.3 Rape & Domestic Violence Services Australia have heard from those who have experienced sexual, domestic and family violence seeking out access to an abortion. This is often within dire circumstances and/or while experiencing trauma impacts resulting from the crime inflicted on them. Examples include, experiencing sexually assault, or reproductive coercion within a domestic and family violence context, or women seeking support in making the difficult choice to have an abortion. The decision to have an abortion is not made lightly, nor without careful consideration of all possible options.
- 8.4 Rape & Domestic Violence Services Australia reiterate that this is a healthcare issue, rather than a criminal offence.
- 8.5 Rape & Domestic Violence Services Australia understand that there has been some discussion as to gender selection being part of a more systematic issue leading to further gender inequality. In *Part 4: Miscellaneous* on page 7 of the Reform Bill, there is suggestion that the Secretary of the Ministry of Health conduct a review into gender selection within 12 months of the commencement of this legislation. Rape & Domestic Violence Services Australia argue that this review should be conducted in considering the impact of gender inequality more broadly.

Recommendation 5: That the Committee recommend any review of gender selection conducted by the NSW Ministry of Health occur within a broader review of gender inequality.

9. Criminalisation leads to women experiencing disadvantage or women living in rural or regional communities being disproportionately impacted

- 9.1 Rape & Domestic Violence Services Australia also note the harmful impact that the criminalisation of abortion continues to have on women experiencing disadvantage and/or women living in rural or regional communities.
- 9.2 Women experiencing disadvantage or living in rural or regional communities who may lack the financial resources to pay for an abortion or who may need to travel long distances to access an abortion will benefit from the enactment of this Reform Bill.
- 9.3 Again, Rape & Domestic Violence Services Australia urge the Committee to consider the practical ramifications of the criminalisation of abortion. For example, a woman living in a rural or regional community, who may need to travel into an urban town centre to access an abortion, who may also need to take time off work or organise childcare etc. If access to an abortion was decriminalised, these barriers may not be as evidently present.

10. Conclusion

- 10.1 Rape & Domestic Violence Services Australia strongly urge the Committee to consider this Bill on the basis of a healthcare reform, rather than a reform to criminal law. Abortion in NSW should not be considered a criminal offence under the *Crimes Act 1900* (NSW).
- 10.2 Further, the Committee should be encouraged to note that after the decriminalisation of abortion in Victoria in 2008, there was no spike in the number of abortions occurring.⁹
- 10.3 Rape & Domestic Violence Services Australia would not expect the number of abortions in NSW to increase if abortion was decriminalised. There is international evidence to support this view as a study was published in 2018 concluding that there was no direct link between abortion being a legally available option and the number of abortions occurring.¹⁰

⁹ NSW Pro-Choice Alliance, *FAQ*, 2019, <https://www.nswprochoicealliance.org.au/faq>, citing Family Planning NSW analysis of publicly available Medicare Benefits Schedule, Pharmaceutical Benefits Scheme and Therapeutic Goods Administration data from 2006-2018. Note there are some challenges with this data e.g. Victorian data on medical abortion is combined with data from Tasmania. In addition, while MBS data for surgical abortion may include a small number of procedures for purposes other than termination of pregnancy, MBS and PBS both fail to capture data for those people seeking abortions who are not eligible for government rebates.

¹⁰ Starrs A, Ezech A, Barker G, Basu A, Bertrand J, Blum R, Coll-Seck A, Grover A, Laski L, Roa M, Sathar Z, Say L, Serour G, Singh S, Stenberg K, Temmerman M, Biddlecom A, Popinchalk A, Summers, C, Ashford L. Accelerate progress – sexual and reproductive health and rights for all: report of the Guttmacher-Lancet Commission. *Lancet*. 2018; 391: 2661. DOI: [https://doi.org/10.1016/S0140-6736\(18\)30293-9](https://doi.org/10.1016/S0140-6736(18)30293-9).

- 10.4 Rape & Domestic Violence Services Australia urge the Committee to recommend that this Bill be passed in its entirety to bring NSW in line with other Australian states and territories; and decriminalise a healthcare issue that should never have been a criminal offence in NSW.