REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

REPRODUCTIVE HEALTH CARE REFORM BILL 2019

UNCORRECTED

At Macquarie Room, Parliament House, Sydney on Wednesday, 14 August 2019

The Committee met at 9:45

PRESENT

The Hon. Shayne Mallard (Chair)
The Hon. Niall Blair
The Hon. Abigail Boyd
The Hon. Greg Donnelly
The Hon. Rose Jackson
The Hon. Trevor Khan
The Hon. Natasha Maclaren-Jones
Reverend the Hon. Fred Nile

The CHAIR: Good morning. Welcome to the Social Issues Committee inquiry into the Reproductive Health Care Reform Bill 2019. I am Shayne Mallard, the Chair of the Social Issues Committee. I will read out a statement of some of the rules of the meeting. Before I commence, I would like to acknowledge the Gadigal People who are the traditional custodians of this land. I would also like to pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present or viewing these hearings today. I welcome everyone to the hearing. We will hear today from panels of witnesses representing many churches, pro-life groups and finally two panels of legal experts. Tomorrow we will hear from panels of pro-choice groups, medical groups and others representing organisations and individual perspectives. I thank all witnesses for their flexibility in making themselves available at short notice.

The purpose of this inquiry is to assist the members of the Legislative Council with more information both from experts and the general community on the implications of the Reproductive Health Care Reform Bill 2019. This Committee has held similar short inquiries on bills prior to considering them in the House, and we have adopted the same approach for this bill as for previous inquiries into bills. On Tuesday, 20 August the members of the Legislative Council will begin debating the bill, and in doing this they will be assisted by the evidence gathered at these hearings, and the report that will be tabled next week. I would like to thank the thousands of people who have made submissions to this Committee since Friday. All members of this Committee acknowledge that there are very strong views in the community about this bill. As with other inquiries into bills that this and other Committees have conducted, it will not be possible to acknowledge all submissions made. We hope to make available on Parliament's website certain submissions prior to the debate on the bill in the Legislative Council next week.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing and so I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

Due to the short timeframe of the inquiry, there will be no questions taken on notice today. I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. Therefore, I request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems that have tele-coil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. I ask everyone to turn their mobile phones to silent.

I want to make a comment about order in the Committee room. I welcome the large attendance in the public gallery before swearing in our first panel of witnesses, I wish to say a few words to the many of you in the public galleries who have come today to watch proceedings. I would like to welcome you and hope you find today's hearing informative. I know this bill and the issues it deals with is extremely important to all of us here. You may have very strong feelings about statements that either witnesses and committee members make during this hearing. Whatever you think about what is said, though, you need to watch this hearing in silence. Absolutely no applause, jeering or any other gestures will be permitted.

Members of the public are also not to display signs or banners. As each witness leaves the hearing, you need to let them leave the room and the building without interference. Also, no photographs or filming are permitted, apart from media photographers authorised to do so; no mobile phone photographs are allowed. I want to emphasise as the Chair of the inquiry that if there is disregard for these hearing rules I will not hesitate to ask people to leave the gallery or temporarily adjourn the hearings. Throughout this hearing please follow any instructions by officers of the committee. Thank you all for you co-operation so we can all hear the evidence given today respectfully.

Before I swear in the witnesses, I ask Committee members if there are any issues they want to declare to the inquiry.

The Hon. TREVOR KHAN: For the benefit of witnesses, I make a declaration that I am a member of the working group that drew the Reproductive Health Care Reform Bill 2019, introduced into the Legislative Assembly.

BISHOP DANIEL, Bishop for the Coptic Orthodox Church, Diocese of Sydney, Queensland and Northern Territory, sworn and examined

ANTHONY FISHER, Catholic Archbishop of Sydney, sworn and examined

NOCHUM SCHAPIRO, President, Rabbinical Council of Australia, affirmed and examined

The CHAIR: I invite you to view, starting with Bishop Daniel to make an opening statement of up to five minutes to the Committee?

Bishop DANIEL: To the Hon. Shayne Mallard, MLC, and members of the Standing Committee on Social Issues, upper House of the New South Wales Parliament, Australia. I would like to thank Australia, the country for all, for hosting the Coptic Orthodox Church seculars and citizens since the 1960s, because this year we celebrate the golden jubilee of the Coptic Orthodox Church in Australia. I am happy to provide attachment 1 about the Coptic Orthodox Church. I would like to thank the Committee for giving me the opportunity to attend today to contribute to the Reproductive Health Care Reform Bill 2019. Rushing this matter is questionable and can only be interpreted as an opportunity to minimise public debate.

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. This is attachment 2.

On Sunday 11 August 2019 I attended a meeting with religious leaders from many denominations to discuss our response to this rushed bill. I am happy to give you a copy about the actions that we took as church leaders. This is attachment 3. 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. We also resolved other actions written in the minutes. I remind you and the Committee that Queensland has taken more than two years to consult with the public, allowing stakeholders to participate, yet New South Wales Parliament wants to rush this process in two weeks. Again, I would like to thank you for the opportunity to be here today. I pray that you will take our concerns into your consideration.

Archbishop FISHER: Chair and members, thank you for the opportunity to address the Committee this morning. If a civilisation is to be judged by how it treats the weakest, the passage of the extreme abortion bill through the other House last week was truly a low point for ours. The way the bill was introduced and rushed through the Legislative Assembly, and this Legislative Council inquiry curtailed, with almost no opportunity for community engagement, will only add to cynicism about Government today. It has made it very difficult for this State's 1.8 million Catholics to make their views known to their elected representatives. Those are the concerns I hope to articulate today, and via the submission of all the Catholic leaders of this State.

The Catholic Church believes 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. It is estimated that at least 30,000 abortions occur each year in this State—more than 80 a day. Whatever their views on abortion, most agree that that is too many. 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. Indeed, it allows late-term abortion up to and including day-of-birth abortions, despite very strong community opposition to this. It allows sex-selection abortion, despite overwhelming community opposition.

The bill coopts all medical professionals into the abortion industry by requiring them either to perform abortions themselves or to advertise for an abortion provider. This is grave coercion of the consciences of Catholic and other doctors, and of Catholic hospitals and other healthcare providers. Perhaps worst of all, this bill trivialises human life and provides unsupported pregnant women, who often feel they have no other option than abortion, with no alternatives, no support. Surely we can do better by the women and children of our State than this.

Rabbi SCHAPIRO: Thank you very much for giving me the opportunity to present to you today. Unfortunately, next month we are going to commemorate the eightieth anniversary of the beginning of the Second World War. It is in that light that we are grateful to the Australian Government and people for giving a safe haven for Jews, allowing us to worship according to our conscience and our religious beliefs. Australia is probably the only continent on earth where there has not been a persecution of the Jewish people in a broad sense, and we are

extremely grateful for that. 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 fetus.

The Family Planning website states:

> In New South Wales the law—

And I add, "As presently interpreted"—

> allows you to have a lawful abortion if the doctor believes your physical or mental health is in serious danger by continuing the pregnancy. The doctor takes your social/family situation, finances and health into consideration when making this decision.

Any bill should be viewed in light of the extremities to which it might be taken. The bill we are discussing today would allow abortion on demand for any reason that someone desires, because, as I just mentioned, for medical reasons the present law allows for abortions, for the life of the mother and so on. As I mentioned, the present bill will allow abortion for any reason desired—if it gets in the way of a person's education, career or, in extreme cases, if I do not like the gender or even the eye colour, if it were able to be known, and it soon will. If it does not suit me, I can abort. This will cause a flippant view of life in an age where we see a devaluation of life—as in yesterday's knife attack here in Sydney, these terrible mass murders in the United States, all expressing a lack of understanding and appreciation for life. We need to strengthen, not weaken, the sanctity of life.

The argument that a woman should have a right to choose is understandable from the perspective of the historic reality of many kind women being coerced into doing things against their will. That is true, that is acceptable. But that does not in any way allow the woman, for example, to rid herself of an actual born child, even if it is extremely difficult for her life. Many children are hard. Some children are extremely hard and really do make the life of their parents, especially their mother, extremely difficult. Nevertheless, no one would imagine us allowing to kill a baby because it is inconvenient or difficult for the mother, no matter how difficult it is.

The same should be seen with regard to killing the beginning of life, even if it is difficult. The reality is, because of the way the bill is written, it would be allowed to happen for whatever reason the parents want. Anyone would be appalled when you read a headline like I saw—a seven-month-old baby died after her parents allegedly left her alone for a week while they drank and played computer games. At the extremity, this bill would allow people to abort to be able to do things of that nature. That is unconscionable.

The CHAIR: I ask you to finish up, Rabbi. Do you wish to make a concluding sentence? We will come back for questions.

Rabbi SCHAPIRO: 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 all life. As a matter of fact, we have seen the slippery slope this can lead to, where we see people celebrating abortion—the governor of Virginia saying that even after a failed abortion, it can actually be kept alive till the mother and the physician decide what to do with it. If a woman absolutely feels she cannot handle the child, there are so many women who suffer from infertility that would love to adopt. Give the child to them, rather than terminating their life. I have another point which I could say in question time; but, in summation, leave the law as it presently stands and is interpreted and vote down the bill, which weakens the sanctity of life and does not fully take into account religious freedom.

The CHAIR: Thank you for your submissions. What we have agreed to do is to evenly divide questions for five minutes per member, subject to members wanting to ask questions, so that we can evenly ask questions. We are going to do that alphabetically—very democratic.

The Hon. GREG DONNELLY: Just a quick point: Bishop Daniel, we have not seen—or I have not seen—your submission.

The CHAIR: No, that is right.

The Hon. GREG DONNELLY: Thank you very much, Bishop Daniel, for coming along today. You made some very important points reflecting on your submission and particularly some attachments that you refer to. I have not seen your submission and I do not have the attachments to the submission. So I am wondering—not to interrupt this—could we get a copy of that?

The CHAIR: It was remiss of me not to ask that question. We have got submissions from Archbishop Fisher and from the rabbi—thank you for that—but we do not appear to have one from Bishop Daniel.

The Hon. NIALL BLAIR: I think the attachments were to the opening statement, rather than the submission.

The Hon. GREG DONNELLY: Let's be clear. Have you made a submission to the inquiry, Bishop Daniel? Was your opening statement all you have prepared and the attachments to your opening statement, just to be clear about that?

Bishop DANIEL: Thank you for your question, yes.

The Hon. GREG DONNELLY: There is no reflection on the fact if you have not done a submission, but it is a bit tight.

Bishop DANIEL: I give copy to the secretary from two important attachments. Our meeting with [Inaudible] we objected for four points about the abortion bill. Four points, and we have copy here. And there is another attachment which we made, as a church leader, on 11 August and I think you need to read that attachment. It is very important.

The CHAIR: Thank you, Bishop. We will take that as a tabled document and we will copy it and distribute it to the committee. Subject to that, we will probably publish it then. As I said, generally speaking, five minutes questions from each member.

The Hon. NIALL BLAIR: Thank you all for coming in this morning and your submissions. Just picking up on the final comments of the rabbi, where you said the bill should stay where it is—I guess this is a question to all of you: Do you think abortion should remain in the Crimes Act and remain as a crime in New South Wales? Would you like to start, Rabbi?

Rabbi SCHAPIRO: Pragmatically, as I mentioned earlier, the fact is that today abortions can be performed. As the Bishop mentioned, it is performed—80,000 abortions in New South Wales. So pragmatically it can be done in cases of absolute need. Of course, that is also obviously up for debate. But the reality is that is the case. We have to look at not the wording of something, but actually the practical impact of what is going to happen. Right now, if there is any medical emergency, abortion can be had. So if it is a crimes bill or not, whatever it is, the fact is it can be done. Changing this bill will allow abortion on demand for any purpose up to the moment of birth.

The Hon. NIALL BLAIR: I am sure we will get to tease out the contents of the bill. I guess I am trying to start at the top level. I think, Archbishop, you mentioned there were around 80 a day occurring in New South Wales. I guess I am interested in your church and your view is that whether—let's take away whether we should or should not have abortion; it is happening at the moment. We know it is happening at the moment for various reasons and we can debate those reasons later as well. Let us start at the very top and the very first principle: Should it be a crime and stay in the Crimes Act? This proposed bill is looking to move it out of the Crimes Act and put it into another Act. I am interested in your views on that. Archbishop?

Archbishop FISHER: 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.

The Hon. NIALL BLAIR: So it should stay as a crime but only enforced in certain circumstances?

Archbishop FISHER: I think that is the case with all our crimes: that there is discretion on the part of prosecutors and there is interpretation by our judges as to the limits and scope of that crime. I think that it is probably the case in this State we have got rather too used to abortion and so it is very rare indeed that we have a good look at what is going on, and so I would like the laws applied rather more than they have been. But the reality is these are not laws that are used against women in desperate situations.

The Hon. NIALL BLAIR: Applied more than they have been to whom?

Archbishop FISHER: For instance, do we examine the practices of our abortion industry in any systematic way? We do not even have accurate figures on what happens in this State in this area of abortion. We would be far from sure about what medical backup there is for the practices of some of our abortionists and so on. It is in those sorts of cases where the law has been invoked in the past, where there has been really terrible harm done.

Bishop DANIEL: I do agree with Archbishop Fisher, but I want to add one point because we cannot give permission for abortion for social issues. It is very dangerous, because even according to the Coptic Orthodox culture, like what the rabbi said, if the woman is pregnant and the baby was sick, she cannot give abortion to the baby because according to our culture, we need to look after him. So the words "social reasons" for abortion for the woman is so dangerous and very wide. So I do agree with the archbishop to be in the Crimes Act.

The CHAIR: Your statement has been distributed to the members now.

Bishop DANIEL: Thank you.

Ms ABIGAIL BOYD: Thank you very much for coming along today as representatives of your faith and your institutions. I have a question about whether, within your institutions, within your faith-based systems, you permit women to be in leadership and decision-making roles, for example as rabbis or bishops or any other kind of head position? If not, why not?

Archbishop FISHER: Is that for me?

Ms ABIGAIL BOYD: For all of you.

Archbishop FISHER: Perhaps I could lead off. In the Catholic Church, it is well-known that the ordination is restricted to men. Many of our leadership roles are, in fact, conducted by women—so in my own archdiocese, the leaders in comms, in our political advice, in ecumenism and interfaith, in vicars for religious and for other areas. So most of my departments or many of my departments are led by women. Likewise, where do people encounter the Catholic Church? It is through our parishes and schools, and most of our parishes are led by men and most of our schools are led by women. So I think, in fact, in leadership within the Catholic Church and therefore the people who are advising me on issues like the present one, there are at least equal numbers of women. In fact, I would think on this issue it is more women that are advising me.

Ms ABIGAIL BOYD: Why are women not allowed to be the head, the top?

Archbishop FISHER: I do not think issues about the ordination of priests within the Catholic Church are within the terms of reference—

The CHAIR: I am going to uphold—I was waiting for a point of order.

Ms ABIGAIL BOYD: I understand that. I guess what I am trying to get at is to whether part of your—

Archbishop FISHER: But the underlying concern would be whether women are informing my position. I really do believe I am speaking for Catholic women—

Ms ABIGAIL BOYD: I think at the heart of this issue is whether women can be trusted to make decisions about their own bodies. I guess I am questioning whether, from the perspective of institutions that do not trust women to actually be leaders of those institutions—

The Hon. GREG DONNELLY: Point of order: If one goes back—we will read what you have just said in *Hansard*—you are reflecting directly on the position of the Catholic Church, represented here today by the Archbishop of Sydney. You are entitled to ask questions in regard to the terms of reference—we all are, and we will have our fair crack at that—but we are not here today to reflect on him or on any other witness present at the table either presently or any other witnesses coming today.

Ms ABIGAIL BOYD: If I have done that, I do apologise.

The CHAIR: Order! Thank you for that. I just remind everyone that the terms of reference are pretty narrow. I will allow some latitude for questioning an organisation's representation but not to pursue that as a long-term discussion. It is the provision of the Reproductive Health Care Reform Bill 2019—it is the bill.

Ms ABIGAIL BOYD: That is fine. I am sorry. In particular, I was responding to comments that people would have abortions in order to play video games, for example. I do not think that is something that—

The Hon. GREG DONNELLY: Point of order: That is a direct suggestion, an implication, that either the Archbishop of Sydney, perhaps the other two gentlemen here or, indeed, other representatives here today, have said such a thing about video games and abortion. In terms of the implication that that is a position that they are asserting. They may be commenting on comments made in the media in a very ferocious public debate, but let's be clear—

Ms ABIGAIL BOYD: Okay, I will move off that point.

The CHAIR: I ask members to focus on the terms of reference of the inquiry. I do not want points of order occupying your five minutes all the time. Let's try and be respectful of each other and move on. If someone is offended, it is up to them to let that be known.

Ms ABIGAIL BOYD: I certainly meant no offence. I was trying to investigate the basis of the concerns.

The CHAIR: You have one minute left.

Ms ABIGAIL BOYD: In my one minute, I would like to direct a question to Archbishop Anthony Fisher. In relation to your statement that 95 per cent of women who have an abortion do so for mental health reasons, I wanted you to elaborate on that. In particular, the SA Health report you note. In South Australia, they still have a criminalised system, so doctors are the ones that fill out the reports and they have to put either medical or mental health—there is no other option.

Archbishop FISHER: Yes.

Ms ABIGAIL BOYD: Do you believe that is actually a valid study to represent the whole of Australian women having abortions?

Archbishop FISHER: If I could be very clear, what I state in the submission is that that is the official reason given in South Australia, because they have to give a reason such as medical or psychological health. I do not for a moment believe that 95 per cent of women who have abortions are having them for mental health reasons, but it surely raises the question: if a significant number are—whatever number there are—what are we doing by way of assuring appropriate counselling before such a move? It could be compounding the psychological problem, if there is one. But I think the 95 per cent figure in South Australia represents a cover-up or a medicalising of what are mostly other reasons that people are seeking abortions.

Rabbi SCHAPIRO: Can I clarify something that looks like it was taken the wrong way? I did not say that women decide to do abortions because of playing video games. I was reading a headline of something that was in the news just a couple of months ago about people who actually left their born baby to do so. What I am saying is that, at the extremities, if you allow something carte blanche, you will have people doing things that we are all appalled with. That is all I was saying.

The CHAIR: Thank you for the explanation.

The Hon. GREG DONNELLY: Thank you all, most sincerely, for coming along to provide very important testimony to add to your submissions. We have five minutes to cover an issue. Can I start, perhaps—not reflecting on any order—with the Archbishop of Sydney, Anthony Fisher. Can I please take you to your submission, specifically, page 5, your executive summary. In that executive summary you have listed a series of dot points. I will not read them, because that would simply bite into my five minutes. If we count them, there are 12 points that comment on what is your detailed submission. It is filed in detail for the executive summary. To elucidate on any one of those points would take the four minutes that I have left. I am just wondering, with respect to those matters that you have raised in those points—and I am not asking you to say that the others are less important by any stretch—but, with such limited time, are there any that you would like to particularly elucidate in terms of responding to your opportunity to give testimony to this inquiry?

Archbishop FISHER: I will make a general point and then a specific point. The general one is that, in a democracy, in a parliamentary system, you normally allow amendments and improvements. Part of why we have a house of review, part of why we have committees, part of why we have parliamentary debates at all is so that people can put up improvements to a bill, as they see it. In all of these areas that I have listed here, people have said, "We could make improvements", but there seems to be a dogmatic determination to allow no changes at all to the bill—very trivial ones only. I look to this House to exercise its role of reviewing and improving bills that are sent to it from the other place.

I would love to speak on all of them, as you say, but perhaps one 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.

The Hon. GREG DONNELLY: One minute each, sirs. Would you like to add any further reflections on either what Archbishop Fisher has had to say about his submission, or any other points in your opportunity to give testimony to this inquiry?

Bishop DANIEL: I think I need to add the dimension of identity of people. There are three factors that can affect any identity: religion, culture and the nature of man. In Australia there are many identities—Egyptian, Syrian, Iraqi and so on. We need to look after the culture of these identities. According to my culture, and the culture of other nations here in Australia, they cannot allow it. It depends upon their religion, which affects their identity, they totally do not allow abortion. They do believe in respecting the life of the child. You need to have the statistics and look to the future regarding this dangerous bill.

Rabbi SCHAPIRO: I echo something that was said by the Archbishop and I will add to it. This bill forces a conscientious objector to refer the woman to another doctor to perform the abortion. Even if it is against their religion or the values of a particular medical practitioner, he or she should not be forced to go against everything they believe in and be party to a procedure that is considered murder to them—even though it might not be to me. But they should not be forced to do so. And what of other hospital workers, such as nurses and other technicians—will they be able to legally abstain from this practice? Lastly, how about a doctor who will counsel someone not to have an abortion—will they be in legal jeopardy? Where will this lead?

The Hon. ROSE JACKSON: Thanks so much for coming along, giving your testimony and submitting your written submissions. Archbishop, I just want to follow up on your response to a question asked by my colleague the Hon. Greg Donnelly. When he asked you to talk about your primary concerns with this legislation you talked about your concern that there would be no time or opportunity for improvements and that amendments to the proposed legislation would not be or are not being properly contemplated or passed. Just to clarify, even if that were to happen and some or all of the amendments on issues that you have raised were adopted, you still would not give the passage of this legislation your blessing, would you? Because, as you indicated in response to my colleague the Hon. Niall Blair, you believe that the termination of pregnancy should remain in the Crimes Act.

Archbishop FISHER: Yes, honourable member. I was drawing attention to the list of improvements I have proposed and I was asked to pick one of those to say something about. But even if the bill was improved in those ways, I would still think it should be rejected. Part of your role as political leaders is to reject bad legislation and, when you cannot, to at least make it better. I am trying to advise on both. I think this bill should be rejected as a whole, but if not I think it should at least be made better.

The Hon. ROSE JACKSON: Thank you for clarifying. I just want to put a situation to any of you. If a young parishioner came to you pregnant but not wanting to be—it could be for any reason on the spectrum from sexual assault to a mistake she made—how would you advise that young women to reflect upon her circumstance? What advice would you give her?

Archbishop FISHER: My first concern would be with her safety. If, for instance, she was a victim of sexual assault, we would have to get her out of that situation. It does not solve that situation to send her to a clinic to deal with her pregnancy and then send her back to the place where she was assaulted. So we would have to get her to safety and then get her supported through her present situation. If it was something not as serious as that, but still serious for her, we would still want to make sure that she has every human and spiritual support possible. We would want to ensure that she has a sense that she is loved and that she has a sense of the preciousness of her own body and person, as well as the baby's. In those situations we are doing everything we can to support women and really love women. I think if you talk to any women who has been through this, so often they talk about having felt abandoned, unsupported, desperate and with no other option. It is not like people choose in these wonderful, free situations where they have many possibilities and just go for one arbitrarily. Often they are feeling quite desperate. We have to be there for them, giving every support we can.

The Hon. ROSE JACKSON: Rabbi or Bishop, would you agree that that is the framework within which you would a support a women who had an unwanted pregnancy?

Rabbi SCHAPIRO: I think it is too much of a general question. The reason that they want to abort would make a huge difference. Obviously if it was a health issue, whether it was physical or mental, and depending on the stage of the pregnancy, there would be a difference in how we would relate to that. Certainly we would be there to listen to them and to have them feel heard and listened to. Then we would advise them based on their circumstances on what we might think is the best way for them going forward. We would explain to them in the nicest possible way what is actually happening within her—that there is an actual life being formed and that she is the custodian of that life and that God has blessed with the ability to be God-like in creating life—and then we would discuss with her the possibility of having the foetus be born and then given up for adoption. If necessary, we would offer all forms of possible counselling to help her through her circumstances. It depends on the circumstances and the situation.

The Hon. ROSE JACKSON: Just to clarify, the framework that you would use would be spiritual, moral and philosophical, but it would not be legal—you would not ask her to contemplate the law or refer her to law enforcement?

Archbishop FISHER: When you are giving spiritual or pastoral counselling to people the law may be in the background—certain things are crimes and certain things are bad from the point of view of our whole community—but you are very much focused on that person in that situation and how you can support them in every possible way, freeing them and loving them. You would not be referring to laws, generally speaking, in those situations. But it is in the background. What the community thinks is acceptable or not is part of the context of how you counsel people.

The Hon. NATASHA MACLAREN-JONES: The mover of this legislation has previously said that he consulted quite widely in the drafting of this bill. I am interested to know at what stage any of you were approached for your opinions on this legislation and what you provided.

Archbishop FISHER: Not at all and I do not believe that any of the bishops in New South Wales were consulted.

Rabbi SCHAPIRO: I certainly was not consulted.

Bishop DANIEL: No, we did not consult.

The Hon. NATASHA MACLAREN-JONES: So it is fair to say that the only time you have had an ability to comment on this legislation has been through the submissions you put forward and the time you are appearing here this morning?

Archbishop FISHER: Yes.

The Hon. NATASHA MACLAREN-JONES: In his opening statement Bishop Daniel mentioned that he would like to see a six-month review to look at this legislation with a bit more detail. I am interested in hearing your opinions on that and what specifically you would like to see looked at. A number of recommendations were put forward by members in the Legislative Assembly. I would like to hear your views on that.

Bishop DANIEL: As the Archbishop said, we need to object to this bill totally. But if it is going to pass we need to improve it. So I suggested six months because we need to have a meeting with church leaders—Muslims and Christians—so they can put forward their input if this is a case where we are going to pass this bill. That is why I said six months.

Archbishop FISHER: 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.

Rabbi SCHAPIRO: I like to say that perfect is the enemy of the good, and even though, as I said earlier, my preference would be for the law as it is now and as it is interpreted to be now to remain the law of the State, we should at least look at limiting the carte blanche acceptance of abortion that this bill represents. The differences in the trimesters should be looked at, at least. You could have a situation where baby is viable out of the womb. I was at an event last year where they were raising money for a milk bank for children who were born prematurely and everyone had great feelings towards those premature babies. It is the same thing but they are hidden within the womb. Discussions of late-term abortions versus earlier abortions and the causes and reasons why they want an abortion should be up for discussion and debate. We have the question of the Crimes Act or not a Crimes Act. This is why this bill has been rushed through but by rushing it through we are not even making distinctions of when the abortion is needed or for what reasons, frankly.

Reverend the Hon. FRED NILE: Thank you again for appearing. It is very encouraging for the Committee to have the eminent leaders of the three church groups—the Coptic, the Catholic and the Jewish—appear before this Committee. It shows due regard that this is a very important issue; you would not be here otherwise. It is very difficult to have God as a witness at this hearing but I would like to quote a comment from God in Jeremiah 1:4-5:

Then the word of the Lord came unto me, saying,
"Before I formed you in the womb I knew you,
before you were born I set you apart;
I appointed you as a prophet to the nations."

What does that tell us about the importance of human life the value of human life?

Archbishop FISHER: That we all love the Prophet Jeremiah and what is recorded there from God. 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. For the people of faith, we have a sense that that life is in the hands of God, is loved from the moment it comes into being and that that gives us a responsibility to show a similar love and reverence for life. We speak of human life as the image of God, like an icon or a photograph or the way we see God in the world in the preciousness of every human being. Jeremiah reminds us that it is not just true of the powerful, visible and influential people but even of the most powerless and invisible human beings.

Reverend the Hon. FRED NILE: There were some questions earlier about the Crimes Act and so on and I thought I would just ask you to comment on the words from the New South Wales Crimes Act 1900 No. 40, because somehow there is an impression given that women who have an abortion will go to jail and be prosecuted, but the actual words of that Crimes Act state:

Whosoever …

—referring to the doctors—

… unlawfully uses any instrument … to procure her miscarriage …

—a miscarriage of this woman—

… shall be liable to imprisonment for ten years.

It is not an oppressive comment or requirement against women having an abortion or considering an abortion; it is to deal with the abortionist, with the doctors. Would you like to comment on that?

Archbishop FISHER: Well, that is certainly how the law has been applied in this State; it is how it has been understood by our police and prosecutors. It was really aimed at abortionists and usually the greatest and worst, the most negligent and harmful ones have been the ones that they have gone for. That, I think, shows understanding that women in these situations often feel they have no options; they are trapped, as it were, and the last thing you would be wanting to do would be to criminalise them. I think that has been the view of our law enforcers and prosecutors, but, of course, this bill does not address that difference in any way. It just says it is no longer a crime for anyone, even the worst performing abortionist. It would not be a crime for him. It is just taken out altogether from the Crimes Act. That seems going from what some people would see as an oppressive extreme of some centuries ago to now another oppressive extreme in our pendulum.

Reverend the Hon. FRED NILE: Would you comment on this situation? I investigated the abortion clinic that operates opposite Parliament House at Macquarie Street. The doctor, in information I received, said, "We remove tissue from the woman when we are having abortion"—a tissue. It seemed to me that they were concealing the whole fact that they were removing a human being, a baby, a human body. Would you like to comment on that?

Archbishop FISHER: I think people are understandably very uncomfortable in this area and often use code words to cover up the reality or to make it more palatable. But we have to be honest with ourselves: This is not just like removing a skin cancer; this is another human life—and women know this. No woman says to you that this was trivial or this was just like removing a skin cancer or a wisdom tooth. This is not just tissue. I think people who try to cover up with words like that are not doing justice to the early human life, they are not doing justice to the women or the rest of the community in using these sorts of code words. It is not just tissue.

Reverend the Hon. FRED NILE: Rabbi, would you like to comment?

Rabbi SCHAPIRO: I wanted to comment on your first question. It is interesting that we just read to read that prophecy of Jeremiah just a few weeks ago in the synagogues. Every synagogue around the world would have read that exact prophecy. What the prophecy basically tells us and teaches us is the value of human life and that there is value of life as it is still in the womb. I have to again relate to the fact that the bedrock of our society is the value of life. That is the most important value and moral that all of us feel and have. That is what has been the underpinning of the morality of our society. To ignore the beginning of life, as I said earlier, would affect the entire—Because once it is random, once it is decided by whatever the majority thinks, we have seen the slippery slope of where that can go.

The CHAIR: Thank you, Rabbi. I have a question for Archbishop Fisher. I thank you again for your time today. In your submission to us dated 13 August, you have an executive summary and we had some discussion around the issue of counselling. I think you have focused on that partly. You say it provides no requirement for counselling or psychological care for women. In terms of the bill that we are dealing with, which was the amended bill from the Assembly, are you aware of clause 7 in the bill, which is an amendment that succeeded—personally, I am pleased that it did—that does require offering of counselling? There are quite detailed processes there. Are you satisfied that that is—

Archbishop FISHER: Would you like to remind me in what circumstances it is required?

The CHAIR: I will quickly read it:

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.

Then it goes on to say that if it is an emergency, it does not need to dealt with.

Archbishop FISHER: 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. I am not saying that all abortionists would deny it to all women but they are likely, if you look at the practices in abortion clinics, at present to offer it rarely, whereas I think that we should be saying, "This would be normal." It is such a serious decision. The woman is likely to carry a grief about this all her life. Some kind of counselling—and I am not saying it has to be counselling by a church agency, much as I would like that, or a pro-life agency, much as I would like that—But minimally, it would be there to give people the time and space to think through with some professional help what all this might this might mean for them. 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.

The CHAIR: You would rather see it firmed up and more strongly codified?

Archbishop FISHER: I would, yes.

The CHAIR: That is the only question I had. Has anyone got a pressing short question?

The Hon. NIALL BLAIR: In relation to consultation, this is not the start of this subject. I have been here for eight years and I think we have dealt with this at least on maybe one or two other occasions. We have all made reference to the other States. It has happened in Queensland and Victoria and I am sure your organisations were involved in that. Both of those two States were on the weather map this morning, so they have not disappeared as a result. The consultation part and discussion around this subject has been going on for a long time. It is not just starting from now. Surely we can be taking part of what is happening in those other States as well and adding it into our deliberations and including that as part of the consultation? Would you agree with that?

Archbishop FISHER: I think it makes sense for you to look at inquiries all around the world, as well as around our country, and what they find to the extent they are enlightening. But we only have a State Parliament and State laws because we think that there might be some particularities about our State. We do not just take a Queensland law and put "New South Wales" on the top.

The Hon. NIALL BLAIR: I will agree that we are better than the other States. We will agree with that. However, all of the same issues were brought out in Queensland as they were in Victoria. Is it not fair to say that the arguments are not going to change? They are still there and we are learning the arguments and whether it is—

Archbishop FISHER: With respect, I do not think it is exactly the same because you have got to look at each bill and what protections and what exceptions and what reasons—

The Hon. NIALL BLAIR: That is what I am saying.

Archbishop FISHER: They are different in each State. No particular State's laws is going to tell us about our bill. We are going to have to hear the arguments about our bill, as well as the more general social and moral concerns.

The Hon. NIALL BLAIR: Is this bill not based on some of those arguments and some of those debates? Yes, we can look at if it is 20, 22 and some of these other lines, but surely we cannot say that the argument is starting from scratch, because part of what has been drafted and put forward, in my understanding, has been based off some of the submissions and the consultation from some of those other States. I am agreeing that it has to be New South Wales, but should we not be learning and building upon what has happened in some of the other States to not have to start from zero and therefore dismiss the fact that this is just starting in two weeks? This has been a journey in New South Wales that has been going on for decades.

Archbishop FISHER: I think where other States have acted already we should seek to improve on their legislation, rather than just adopt their legislation and their arguments. So we still need to think about them and that is why we have our own Parliament.

The CHAIR: I will conclude it there; it is just on time. Thank you for your evidence today. It has been important for us to hear that. There are no questions on notice so you do not have to come back to us on that. Thank you very much. We will adjourn the hearing for 15 minutes and reconvene at 11 a.m. with another panel.

(The witnesses withdrew.)

REFEREND JOSEPH AZIZE, Maronite Eparchy of Australia, sworn and examined

ARCHBISHOP GLENN DAVIES, Anglican Archbishop of Sydney, sworn and examined

The CHAIR: Welcome back to the Social Issues Committee hearing and inquiry into the Reproductive Health Care Reform Bill 2019. I am Shayne Mallard, the chair of the Social Issues Committee. Thank you for coming this morning. I welcome Archbishop Davies and Reverend Azize.

Archbishop DAVIES: I am the Most Reverend Dr Glenn Davies, archbishop of Sydney and Metropolitan of New South Wales and president of the NSW Council of Churches.

The CHAIR: Thank you. Reverend Azize?

Reverend AZIZE: Joseph Azize. I am a priest of the Maronite Church and I am representing Bishop Antoine-Charbel Tarabay, the bishop of the Maronite Church in Australia. He sends his apologies but he has a prior and pressing commitment, which keeps him in Adelaide. I am his Excellency's research officer and he specifically asked me to represent him here today.

The CHAIR: Thank you very much. Archbishop, five minutes to make an opening statement. I am just checking that we have a submission from Reverend Azize and we had that distributed to members.

Archbishop DAVIES: I wrote a letter to this inquiry, and attached to that was a five-page submission from our social issues committee, with a similar name to your own. That is there. It may be not possible to take that as read but you may want to read it through the course of this time together. It is with a heavy heart I come because abortion is a very sensitive and emotionally charged topic and one which, in the State of New South Wales, we have been addressing certainly in the church sector and the faith sector since 1971 with the Levine ruling, which gave, if you like, an opportunity for what was a lawful abortion or, strictly speaking, what was not unlawful in terms of that judgement.

The reasons were given, particularly with regard to the health of the woman, and that is a concern of ours—the health of the woman in pregnancy. We see the situations where abortion would be, sadly, the appropriate procedure where the mother's life is being threatened by the child—an invasion, if you like. An ectopic pregnancy is a classic example of that. But under the Levine ruling, abortion has been allowed in our State. It is hard to get specific data on this. I hear figures of 30,000 in the State. So it is a sensitive issue for a whole range of reasons and I have received a whole range of letters from people with regard to expressing their concern for this legislation.

I think the major concerns for me and for the constituency whom I represent is the haste with which this bill has been brought to the lower House. If I was to give you any advice, it was to caution you to slow down. Although abortion has been decriminalised in most other States, the fact that abortion is currently lawful in our State means there is no urgency with regard to fix this. I understand the mantra of decriminalisation is one which is a catchcry and it sounds good, but of course this bill still criminalises abortion when it is performed by a person who is not a medical practitioner, for example. So that mantra needs to be understood in terms of what it is seeking to achieve. I have no problem with regard to making amendments to the Crimes Act with regard to abortion—as we have been doing for the last 50 years, almost, since the Levine judgement.

I think there is a community understanding with regard to abortion, which not all Christians would agree with, that there are situations where abortion is appropriate. I think because that has been happening, there is an acceptance of that in our community. But this bill goes beyond the pale with regard to changing what has been the practice with regard to abortion in our State without any community consultation. Although I am very grateful for appearing before you today, this is not consultation in the proper sense. Consultation should be conversations with doctors and religious leaders. New South Wales is the most religious State. The fact that 54 per cent, I think, are Christians and 66 per cent are people of faith, I think, should cause the Legislative Council to pause and think, "Well, what consultation has there been with the two-thirds of our population?"

That for me is the great concern. If I can think in terms of specifics, we seek to care for mothers who have unwanted pregnancies, but there are all kinds of options available for mothers with unwanted pregnancies. I had a text this morning from someone who said she was adopted. She knew her birth mother, for whatever reason, could not bring up the child or did not want the child. She was adopted out and she is now in her late sixties. She has lived a fruitful life and is so glad that her birth mother did not take an option to have an abortion, which would have been available under this bill if the bill had been law at the time of her birth.

The bill should give some recognition of what we currently have with regard to mental health reasons and welfare of the mother, which are primary concerns. But the secondary concern must not be removed—namely, the concern for the health of the unborn child. We must not put one against the other, when there are options for

the child, once born, to have a fully developed life in the care of the couple who cannot have children for various reasons and so bring up that child. 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.

It is all very well for people to say, "Well, this doesn't happen very often" et cetera. There is a clause about emergency. We all understand emergency situations and, in my view, the health of the mother takes precedence over the child if the mother's health is in danger. I know you have had the Catholic Archbishop here, and I can say that is certainly the view of Protestant Christianity in this State. 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. We are people of faith and not all people are people of faith. We are not trying to impose our views, but we are trying to say that there are options for unwanted pregnancies that are not in the line of abortion.

I think the way this bill is framed, where the use of the word "mother" is avoided and the language of termination of pregnancy is used as if it is some kind of inanimate object, does injustice to our society. All of us in this room were in our mother's womb; that is how we all began life. The vulnerability of the unborn, the voicelessness of the unborn is something that we—and you as councillors in the upper House—should take into account in that we have a responsibility to ensure the exercise of good laws for the benefit of all people. I know that there is a balancing aspect, but that is the position I hold.

The CHAIR: Thank you, Dr Davies. We will no doubt come back to your points in questions.

Reverend AZIZE: I want to leave you in no doubt that the Maronite church and people have a principled and sincere objection to this legislation. We do not see the need for it. 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. Even someone like Peter Singer concedes that it is quite reasonable to say that life begins at conception. Even a feminist like Naomi Wolf says abortion is the taking of a human life. But then, like some other feminists, she goes on to say that it can be justified. With the exception of cases such as ectopic pregnancy, we disagree. We say that the taking of an innocent human life can never be justified, except in those extreme cases, and they are already catered for under the present situation.

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.

We come to clause 6, which I think strips the mask off the ideology behind the bill. I want to be clear that we are not only opposed to the contents of the bill but also opposed to its ideology. 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 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. This bill is speaking about the ending of that life, which would otherwise be viable in very many instances. If that is accepted then the principle of the sanctity of innocent human life is rejected. If that is rejected, we are opening the door to such horrors as post-birth abortion. As you know, even an eminent ethicist like Peter Singer argues in favour of infanticide. Where does it end? Which lives are we going to decide are worth keeping and which lives can be dispensed with with an elegant brush of the pen?

I wish to speak also about clause 9, because although clause 9 appears to respect the conscientious objection of doctors who do not wish to conduct abortions, it actually subverts the principle of conscience by then requiring them to assist in finding someone else who will perform the abortion. To assist in that way is still to assist in the murder of innocent life, if the doctor has a conscientious objection. If the conscience is respected in one case, it should consistently be respected in the other case. If you lose consistency, where will it end? This bill

would have otherwise blameless doctors suffering disciplinary procedure, sanctions, for taking a conscientious stand. When I say blameless doctors, I would go even further than that. Since its inception over 1,700 years ago, the Hippocratic Oath forbade doctors to procure abortion. These doctors are standing in a noble tradition. They are standing on the side of conscience and human life. Why should they be subject to being removed or disciplined as doctors when, in any other respect, they are estimable and valuable members of the community?

The CHAIR: Reverend Azize, it is more than five minutes. I might just have to halt you there so that we can share the time with questioning. You will be able to aerate those issues further over the next three quarters of an hour. We have agreed to divide the timing to five minutes per member if they seek to ask questions. You will hear a buzzing so that we can evenly spread the time.

The Hon. NIALL BLAIR: Thank you for your time this morning. I take it from your opening submissions, and I will paraphrase, that you both feel that the legislation should remain in the Crimes Act; however, there is probably room for some consideration around some aspects or some amendments. Archbishop, I think you mentioned that there are actually times when abortion may be appropriate, and I think you made reference to emergencies. That is a paraphrase.

Archbishop DAVIES: Yes. 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. What I have a problem with is the way in which the bill seeks to decriminalise and to open the floodgates for abortion for any reason whatsoever. That is my problem.

The Hon. NIALL BLAIR: That leads into your comment—the term that you used was "unwanted pregnancy".

Archbishop DAVIES: That is correct.

The Hon. NIALL BLAIR: Some of the most harrowing stories that I have been presented with are the wanted pregnancies that have to be terminated because of the circumstances within a family or the condition in which the fetus may be in. How do we address a wanted pregnancy—a couple that have the capacity to provide the financial stability, a married couple that may have other children or a married couple of strong faith that find themselves in the circumstances where every expert is telling them that there is a serious issue with this pregnancy and yet they are faced with the harrowing decision of an abortion? That is surely not an unwanted pregnancy. It is the exact opposite. These are the stories that have been some of the most troubling—real-life circumstances that I am aware of—where, at the moment, the procedures they go through remain in the Crimes Act. How do we decouple and address issues like that, and is this a decision between wanted and unwanted?

Archbishop DAVIES: I think the difference between my term unwanted pregnancy is if a couple decide to terminate their child, that particular child is unwanted in the state in which it is. It is unwanted at that level.

The Hon. NIALL BLAIR: So it is not a decision or a child that is unwanted.

Archbishop DAVIES: It is not that they do not want a pregnancy but they do not want a child with Down syndrome or some other form of disability. I met a father who just recently told me that their fourth child was Down syndrome. I said, "I am sorry to hear that". Then I got a letter from his wife, who is a good friend of mine, which said, "Do not say you are sorry. We have a wonderful child." The fact that it is missing a chromosome—it is still a child greatly loved by them and greatly loved by God. Every mother has to make that decision when there is a disability or a fetal abnormality. I recognise the gravity of that and the compassion we need to deal with the people like that. But if this bill was dealing with the medical concerns of the life of the fetus, then your point would be correct. But this bill does not do that. This bill says, "You do not have to give a reason". I believe the Premier said recently that everyone is opposed to sex selection. Well, if that is the case, why does this bill allow sex selection in its current form? That staggers me.

The Hon. NIALL BLAIR: I am sure we will get to that. Thank you for clarifying.

Archbishop DAVIES: Sure.

The Hon. NIALL BLAIR: You can understand how unwanted in this context or scenario is different to how you have just clarified and explained that.

Archbishop DAVIES: Absolutely. My own daughters were pregnant with their children. There was a suspected abnormality, they wanted amniocentesis and they said, "Why?" And they said, "If there is an abnormality then you can have an abortion". That was the first piece of advice. But they did not want to have that,

because they were happy to have the child that God had given them. There are lots of people like that. As I have said, we are not trying to coerce people or impose our ethics on people, but there are other options than abortion. The options which counselling can provide, which might be adoption, for example, ought to be considered for the sake of the child—that is my concern.

Ms ABIGAIL BOYD: Thank you very much for coming along today to share your views. You are both here today as representatives and witnesses of particular religious faiths. You have been invited along as religious leaders. That is what makes you an expert witness for the purposes of this hearing. You are not reproductive health experts or doctors. When I ask questions about your faith, I do not intend to be offensive in any way. It is merely trying to understand the basis for your beliefs, which is why you are here, I believe.

Archbishop DAVIES: I am always happy to explain my faith at any time, Ms Boyd.

Ms ABIGAIL BOYD: Good. Now that we have that clear, there are many on the opposite side of this debate who object to the framing of it as being pro- or anti-life but instead refer to it as being pro-choice versus anti-choice. I completely understand that, in your religious views, you have a certain approach to abortion and I would never impose my views on you. You have said many times that you would not impose your views on me. But why would you not allow me to make that choice for myself, within my own conscience and my own moral framework, under this new law? It strikes me that there is a mistrust of women to make their own decisions for their own bodies and for themselves. That is the bit that I am trying to get.

Archbishop DAVIES: If it were merely a matter of choice for your own body, then I could understand. But when a pregnant mother holds a genetically distinct unborn child, it is not merely her own body. I reject the proposition that this is with regard to her own body. In terms of pro-choice or no choice, what about the choice of the unborn child? Where does he or she find a place in this debate? I think that is my concern. I do not think any mother who is pregnant thinks, "I want to kill the child within". I do not think anyone thinks that. But what they want to think about is, "Can I support this child? Is this going to satisfy my needs, my disposition or my financial situation?" Or, "I already have five children." There are a whole range of issues along those lines. My argument is that there are options other than your continuing to have this child as part of your family.

You could give this child to a childless couple who are longing for a child, who want a pregnancy—in terms of Mr Blair's remarks—and here is a mother who, with a perfectly healthy fetus, decides to remove that fetus from her body. That is the difficulty that I have. Does that make sense?

Ms ABIGAIL BOYD: Yes, I understand that. Again, I think we would differ on how we conceive of a fetus. You are saying that you would view it as being an independent life from conception.

Archbishop DAVIES: It is genetically distinct, is it not?

Ms ABIGAIL BOYD: It is genetically distinct. Yes, that is right.

Archbishop DAVIES: Therefore, it does not have the same gene compound as the mother does.

Ms ABIGAIL BOYD: Again, this is your view.

Archbishop DAVIES: I think that is a medical fact, actually, it is not just my view.

Ms ABIGAIL BOYD: Sorry, it is your view that being genetically distinct therefore creates a separate life.

Archbishop DAVIES: I think genetically distinct means that it is not part of your body. That is the point that I am making.

Ms ABIGAIL BOYD: Okay, that is fine. Again, we come back your view that you do not believe that people should be able to make decisions based on the fact that, for example, they have five children already. You are saying that the choice for a women as to whether or not to go through pregnancy in those circumstances should not be her own?

Archbishop DAVIES: I think that it is difficult for the mother to be only making that choice when there are other options. At the moment abortions can be performed lawfully. You can give grounds for mental health issues along those lines. But if you are saying, "I am a perfectly healthy mother with no mental health concerns and I just choose not to have this child and therefore have a right not to have this child", I find that difficult to sustain ethically.

Ms ABIGAIL BOYD: Okay, but religiously. That is your religious view.

Archbishop DAVIES: It is grounded in religion. That is certainly true. It is grounded in my understanding that a child is made in the image of God. That is true. But I would be surprised to think that the majority of New South Wales residents would think that a healthy child should be aborted merely because the mother chooses not to have a child.

Ms ABIGAIL BOYD: Have you been through pregnancy? Obviously not. Clearly it is not without consequence for a mother.

Archbishop DAVIES: So is abortion. There is no counselling after abortion in this bill either. It is a traumatic and devastating thing to go through. To make that decision—honourably, with regard to your own ethical position—is still a struggle. There can be tragic consequences with regard to that. As there is with a pregnant mother. Those things are certainly true.

The CHAIR: Thank you. I will just remind the public gallery—because I imagine that some of you were not here for the opening of the inquiry—that we ask you to observe respectfully and in silence the testimony and the questioning. We all have passionate views about this issue on all sides of the debate but—and I will enforce this tomorrow as well—everyone has to be respectful and observe in silence. There will be no jeering, laughing or applauding. Thank you.

The Hon. ROSE JACKSON: Thank you for making time to come along time. Firstly, Archbishop, in your opening remarks you talked about your concern with what you view as a lack of time, consultation and contemplation for this legislation. You said that was one of the reasons why you are urging us to oppose the proposition in front of us. I just want to clarify, is there any length of time or any circumstance of conversation, contemplation and dialogue between your organisation and the people who take a different view about what you describe as "the classic view of life" that you believe would ever lead you to support any form of legislation that allows termination not only in a extremely narrow circumstance of the imminent cause of harm or death to the mother? Is there any length of time, conversation or contemplation that would ever lead you to give your blessing to legislation along these lines?

Archbishop DAVIES: Thank you for that question. I believe consultation, particularly for legislation, is very important to get the best piece of legislation. Politics is the art of the possible, as I am sure you all know. I wish that Mr Greenwich had contacted me or contacted some faith leaders. The large percentage of our population who have a faith—two thirds of our population—have an interest in this. I recognise that for 50 years we have had the practice of abortion. I personally do not like all that has taken place but I recognise that that is the view. I would say—and I come back to Ms Boyd's point—that there is a general acceptance of abortion in our community on certain grounds, probably more grounds than I would give. I can see that. My opposition to this bill is that although abortion has been around and other States have passed legislation, this bill was announced on a Sunday night and was not made public, because it is not public until it is tabled in Parliament.

The plan was to table it and pass it within 48 hours. I find that unbelievable. It is not the abortion procedures, per say; it is the text of this bill. That is what is before the House. In my view the text of this bill is so defective that is requires greater consultation. I would happily give my time to talk through the issues with regard to this text. We do not have the time in this arena, obviously. But I would happily give up my time to do that, and other faith leaders would do the same, so we can get the very best bill. It may not be a bill that I am entirely happy with, but it would certainly be nothing like the egregious bill that is before the House.

The Hon. ROSE JACKSON: So other than the circumstance of, for example, an ectopic pregnancy, are you open to the idea that what you believe to be a distinct human life in embryonic form could be subject to abortion in other circumstances? Because that seems inconsistent with what you said at the beginning. This is your opportunity to have that say. We have asked you to come to talk to us. I want a better understanding of the scope in which you are comfortable with terminating a pregnancy.

Archbishop DAVIES: My view is that where the mother's life is threatened then there are grounds. Obviously other Christians would take a different point of view and I respect that. I agree with the premise that all life is precious. But if a murderer was coming towards me to attack my wife then I would do everything to stop that. If I happened to kill that person in the process that would be because I was protecting my wife. There are times where human life, as important as it is, if it is threatening another life, you need to do that balance. My concern about this is the lack of discussion and open debate about allowing abortions up to 5 ½ months and giving no reason. That is the astounding feature of this bill. That is not reflecting the Levine judgement or the Kirby judgement.

The Hon. ROSE JACKSON: That is the conversation that we are having now. We have accepted and agreed that in the circumstances of the imminent death of the mother termination is acceptable. I have asked you to give any elaboration on any other circumstances that would be acceptable to you.

Archbishop DAVIES: Acceptable to me; but also acceptable to the New South Wales population. That is the point I was making before to Ms Boyd. In New South Wales 66 per cent of the population identified with a religious affiliation in the last census. That is greater than in other States. Those people would have—not universally—strong views about abortion and a whole range of things. Of those people, 33 per cent would have greater latitude with regard to abortion. What the Parliament needs to do is make laws for the good of society. I am happy to have conversations about the least worse bill, if I can put it that way. At that level that is where I am happy to have the conversation. In terms of the detail, I had a lady who wrote to me and said that she went through a terrible birth and the child died in birth and she had all kinds of complications—this was years ago. She said that if she had known about the abnormalities and that the child would not have survived then she would have preferred to have had an abortion. I understand that. I have other friends whose child died in the womb and, in those days, the doctor said, "No, you just bring it and you will have a still birth." Medical advice has changed over the years. But there are situations where the child is not going to survive. I can understand that.

The Hon. NATASHA MACLAREN-JONES: Thank you very much. Archbishop Davies, you indicated that this is the first opportunity you have had for an open discussion in relation to the details of the bill. I am interested in if you have had other opportunities. The mover of the legislation indicated that he did consult quite widely with key stakeholders in the community. I am interested if you were consulted in any way.

Archbishop DAVIES: I was not consulted and I do not know that any of my fellow church leaders were consulted.

Reverend AZIZE: Not that I know of.

The Hon. NATASHA MACLAREN-JONES: We have seen some of the amendments that were put forward downstairs. You touched on gender selection. We saw a further amendment in relation to review. Do you have any comments in relation to whether or not that addresses the concerns that you have in relation to gender selection?

Archbishop DAVIES: Absolutely not. A review? We all know how people use the law: They will find loopholes, they will find ways where they can avoid the sanctions of the law, if they can; that is just human nature, regrettably. If there was a clear statement that you could not have an abortion—I would like to see—22 weeks is a far later—we are almost at the end of the second trimester. To have some reasoned statements in the law as to you could not procure an abortion in order for family planning and in terms of sex selection—that I think would be a helpful amendment which, as you said, was knocked back downstairs. I think there is a review clause there. The review clause, in my view, must have data in it.

We cannot find accurate statistics as to the number of abortions in this State. If this bill were to be passed, that amendment there—the level of what the report is going to do in five years time—Five years is a lot of time; it is a long time. If 30,000 is the estimate, which I have been told is accurate, then that is 150,000 abortions in five years time. That is a lot. I think that we need to be more careful in the text of the bill with regard to that. But personally, I think you would serve the people of New South Wales well if you deferred this bill or rejected this bill and said, "Let us have the consultation with at least the representatives of 66 per cent of our State rather than just some pro-choice people that Alex Greenwich spoke to or a few sympathetic doctors. I have no idea who the consultation group was but I know there was no approach to people who have a significant role in our society as leaders of faith organisations and denominations.

The Hon. NATASHA MACLAREN-JONES: Do you think the community fully understands the detail of this bill?

Archbishop DAVIES: No, I do not. I was not sure that all members of the lower House understood the consequences of the bill, so how would the general population? I have had a number of conversations with my clergy and with laypeople and they had no idea. What they read in the media—and the media is hardly ever objective—is to actually say, "We must decriminalise. We must get in line with the other States." When do the other States dictate what we do in New South Wales? We are the premier State, are we not? We make up our own mind and we form our own judgements and we do it with the good of the citizens of New South Wales in mind. People think it is all about decriminalisation without recognising that it continues to criminalise abortion in the bill. Who is going to explain that to people? I think a reasoned conversation, consultations, especially in the country, where services are far more difficult to procure than they are in the city, are the elements that need to be

addressed. There is no need for urgency on this bill because you can currently get an abortion lawfully in our State under the judgement of Judge Levine.

I think that you have time to consider carefully, consultatively, in a way in which to get the very best bill. I am not opposed to changing the Crimes Act with regard to abortion—not removing it, because this bill does not remove it completely. I prefer to see legal statements rather than opinions of judges, if I may say so. You are the representatives of our State. The judges are appointed to their positions; they are not elected by the people. They make good or bad judgements but you are representatives and therefore I put my trust in the upper and the lower House because you are serving the best needs of our State. That is why I am here because I think the best need of our State is to send this back to the drafting board, do proper consultation and come back with a bill that is actually going to care for women who are pregnant, with all the concerns and emotions involved with that, and care for the unborn as well and care in a way that establishes that we, as a society, care for the most vulnerable. That is how a society is judged, not the way it treats the rich and the powerful.

The Hon. NATASHA MACLAREN-JONES: Thank you. My time unfortunately has run out.

Archbishop DAVIES: Sorry, I probably took more of it than you did.

Reverend the Hon. FRED NILE: I am going to read to you a quote from Jeremiah 1:4-5:

> Then the word of the Lord came unto me, saying,
> "Before I formed you in the womb I knew you,
> before you were born I set you apart …

What do those words say about the sanctity of life and importance of life and the unborn?

Archbishop DAVIES: They speak of the knowledge of God of the unborn and the formation of the person in utero. I take you to a parallel text, the New Testament, and talk about Elizabeth, the cousin of Mary—the mother of Jesus—was bearing John the Baptist, when she was six months pregnant, nearly just over 22 weeks, shall I say? When Mary came to Elizabeth, mother of John the Baptist, Luke's Gospel says that the child in Elizabeth leaped for joy. That is a fascinating statement. It was not just a fetal kick; it leapt for joy. The news of the pregnancy of Mary, the news of the conception of the Messiah in Jesus, brought joy not just at the mother of John the Baptist but the John the Baptist in the womb. If you go the one of the Psalms of David, who speaks of the way in which he was intricately made in his mother's womb and how God knew him as he knew the Prophet Jeremiah, that demonstrates God's care and interest in, and love of, the person he is forming in the womb of the mother, which, in those days, they only saw when the child was born nine months after conception. That is how I would respond to that text from Jeremiah. Thank you for the opportunity.

Reverend the Hon. FRED NILE: In your submission you make a very strong point: "Furthermore, as a House of review, it is a task of the Legislative Council not merely to rubberstamp decisions of the Legislative Assembly but to consider the merits of any bill and its effect upon the people of New South Wales". Would you elaborate on that?

Archbishop DAVIES: Certainly. I realise that you all come from political parties and when the party is in Government then you can get three-line whips and things along those lines with regard to legislation, even in the House of review. When you have a conscience vote, when it is not a Government bill but a private member's bill, I think it is incumbent upon every member of the lower House and the upper House to scrutinise the bill without fear or favour from your political party members and to say, "This is where I stand," remembering that you are representing, all of you, the State of New South Wales, as opposed to the electorates in the lower House. You actually have a greater responsibility, I believe, as a Legislative Council: You are much older than Legislative Assembly, which I know you remind them of regularly, but a sense in which you represent the State as a whole and therefore understanding, "What does the State think of this? Is this the best thing for the State?"

Therefore, as a House of review—I think sometimes that House of review may be muted because of political lines that are drawn up—But I think that is the important thing about a private member's bill. It astounds me that a private member's bill—if I understand your normal procedure in both Houses of Parliament—is laid on the table for some time before it is considered and until the Government business has its job to be done. This rush—We are just barely two weeks from it being announced, less than two weeks from when the bill was made public. I think that is the concern that I—just as a normal citizen, let alone as an archbishop, have. I, as a citizen, am greatly concerned. The question you asked—do people in New South Wales know what the bill is about?—I do not think they do. They would know the text. It has been changed now slightly with amendments from the lower House. I think the consultation and your House of review status is so important in the exercise of your responsibilities in our Parliament.

Reverend the Hon. FRED NILE: In the bill itself we have the word "termination" a number of times. In part 2 (5), "termination by medical practitioner", and 2 (6), "termination by medical practitioner"—that is how it deals with the death of an unborn baby. What is your response to the use of the word termination?

Archbishop DAVIES: Sounds like a train coming to a stop, doesn't it, rather than talking about a human being, in my view. I recognise that there are other views on that. Certainly, an unborn child—talk to any parent about having a child. You are having a baby. They don't say, "You are having a fetus, are you? What's that like?" I mean, language is so important. I am sorry but I find there is a duplicity about the language in this bill with the use of the word "person," avoiding the word "mother", in the use of the word "termination". Even the title of the bill, reproductive care, when actually you are removing that which is being reproduced. I find that astonishing. I think that duplicity is not worthy of New South Wales Parliament.

The Hon. GREG DONNELLY: Thank you both for coming along today to speak for and on behalf of your respective faith traditions. First of all, Reverend Joseph Azize, your submission speaks for itself. You have elucidated on it with some additional comments in your opening statement but I think it stands as unambiguous and clear. I will leave it there for the moment. I will move to Archbishop Davies. I want to touch on one particular point—I will say this very carefully—it is a line of questioning that we have had this morning. In asking you to go back and comment further on it, I am certainly not reflecting on either the member who raise the question—because I think it is an important question—nor, indeed, your answer, but just to be clear about this.

On the issue of, or the circumstances in which—perhaps if I use this, it might be clumsy—you would potentially agree with abortion being acceptable, an ectopic pregnancy was discussed through a line of questioning. I just want to be clear—once again, if your words stand and they say as they say, let's move on—this is an issue for you to clarify the matter. People will read *Hansard* after this hearing—dare I say it might even end up in a report, who knows? Dare I say it might be quoted back to you in the Parliament from the Legislative Council debate. People will say, "Well, you will hang on this".

With respect to the matter of specifically defining and nominating today a set of circumstances upon which you make a specific, absolute or declaratory statement about circumstances with respect to acceptable abortion, is it your position to agree to nominate the ectopic pregnancy—that is your position—or is it that it is one example put to me and I gave a response back—and there might be others—but this was a real-life example given in the discourse at this hearing? That is what this is, this to-ing and fro-ing. You provided a response on that. I think it is important because, if I understand you, you made a pretty clear position. Once again, I can read *Hansard* tomorrow. I just want to give you the opportunity, because I think that is important, certainly in regard to your testimony today and perhaps what will flow from that in terms of it being your stated position.

Archbishop DAVIES: Thank you, Mr Donnelly. I appreciate the question and the opportunity for clarification. I believe that abortion—it is never a happy occurrence—it is sad for the mother and obviously for the unborn child. Where the mother's life is at risk, then an ectopic pregnancy is an obvious example. Or, where the child could not survive, and the mother's life is at risk because of that—because it is a symbiotic relationship—then I believe that abortion is conscionable and could be allowed. I did make the statement that I thought—and I could be wrong—that there is a wide recognition in society that the concerns expressed in the Levine judgement, with regard to the mental health of the mother, are grounds for divorce.

The Hon. GREG DONNELLY: Sorry—

Archbishop DAVIES: Sorry, did I say divorce? Will you wipe that from Hansard? Wrong inquiry. That is next week. Grounds for an abortion. I would not be surprised if there was a general acceptance in society of the current laws we have under the Levine judgement. I say that generally and I have not got any evidence for that. I think that is where consultation would be helpful. But I do not think there is any—so there is general agreement, I believe, beyond the position that I hold and that our churches hold. But, beyond that, there will be those who may be happy with the Levine judgement. But I am fairly certain that across the State of New South Wales there would not be general approval of an abortion for no reason other than, "I want an abortion".

Whether it be sex selection, family planning, financial constraints or whatever it might be, because there are options available. I want to press the need for counselling, which I do not think is adequately represented in this bill either before or after an abortion. It may be part of informed consent, but so that all of the options are available and that they might actually recognise the great gift that it is for a mother to bring a child into the world. That is an extraordinary gift which brings bonds of love and affection. We have all seen and experienced that in the most part with our parents and our mother, in particular. So have I answered the question adequately for you?

The Hon. GREG DONNELLY: Thank you. I appreciate the response.

The CHAIR: Archbishop Davies and Reverend Azize, this question is directed to both of you. I want to draw your attention to amendments that have occurred to the bill in the lower House, which is the bill we are dealing with today, not the original one by Mr Greenwich, it is the amended bill. I do not think all of the amendments have been ventilated very well in terms of people knowing what they were. One of those amendments touched on what you have referred to, which is counselling.

Archbishop DAVIES: Which clause is this?

The CHAIR: Clause 7, on page 4 of the bill. That is not a mandated requirement but it requires a doctor or a person performing a termination to assess whether counselling is beneficial to the young woman and then to go through a process of doing so. Does that give you—that is a new addition to the bill.

Archbishop DAVIES: I realise that.

The CHAIR: Does that give you some better confidence about the counselling aspect of the bill?

Archbishop DAVIES: I suppose better is a comparative word, so it is certainly an improvement on the bill, but when would the doctor consider it not beneficial? I am concerned that you have moved it from the hands of the mother—the concern that Ms Boyd rightly raised—who has a very significant place in all of this discussion. So the doctor says, "She doesn't need counselling, I'm not going to bother". That is appalling. All of the options need to be put before. When we live in a society where abortion becomes the default position, we normalise it by legislation. I think that we have failed as a society. In my view, this is inadequate, as helpful as it may be as an improvement on the original bill, which the proponent said publicly needed no amendments, you might recall—good grief. What is the point of having a Parliament?

Here we have the requirement of all the options through counselling. Of course, counselling is more than just options. Counselling is with regard to caring for the person. In one sense we can all benefit from counselling. Indeed, I am sure all of the council could. We could benefit from that. It helps us make informed choices. It helps us understand the dynamics and what is happening with the person in their own psyche or soul. I think that is the important thing. This is left as an option. This is too significant to be left to a medico making a decision on behalf of the woman as to whether counselling would be beneficial or not.

The CHAIR: Thank you for that evidence. Reverend Azize, would you like to contribute to that discussion?

Reverend AZIZE: I would not add anything to what the Archbishop has said but I would like to add that now that this question is before us, I think that it is time to start discussing how to assist women who do not wish to be in this situation. The way it is put, it always sounds as if a woman has, of her initiative, decided she wishes to seek an abortion; that is not always the case. Sometimes women did not wish to have the abortion but they are pressured to do so. What can be done to assist women in those cases? There are some charities that will assist them. They provide places where they can go. These places have to work in secret because if the men associated with the woman knew they would come to get the woman to kidnap her and make her have the abortion. It is not always that case and we are concerned that vulnerable women be protected from such coercion. I do not think clause 7 is going to assist in cases like that. As I have said in the submission, it is a big issue. We would be prepared to work with the Parliament on it.

The Hon. GREG DONNELLY: Just to be clear about this, gentlemen, you have clause 7 in front of you, I presume. Specifically, I take you to clause 7 (1) (b), which commences as:

> … if, in the medical practitioner's assessment …

This is the truth of this clause. It is optional.

Archbishop DAVIES: Exactly.

The CHAIR: It was a point I made at the beginning; I said it was optional.

Archbishop DAVIES: I picked that up.

The CHAIR: Thank you very much. We are out of time; it is 12 o' clock. We really appreciate the time you have taken on short notice to come in today. Reverend Azize, thank you for representing your Bishop today. Archbishop Davies, thank you for coming today.

Archbishop DAVIES: Thank you, Mr Mallard. I thank members of the standing Committee. You have a heavy responsibility upon you and you are in our prayers.

(The witnesses withdrew.)

(Luncheon adjournment)

RACHEL CARLING, CEO, Right to Life NSW, sworn and examined

DAN FLYNN, Chief Political Officer, Australian Christian Lobby, affirmed and examined

TERRI KELLEHER, National and Victorian Vice President, Australian Family Association, sworn and examined

The CHAIR: Thank you for coming in this afternoon for the hearing into the inquiry into the Reproductive Health Care Reform Bill 2019. I am Shayne Mallard, the Chair of the Social Issues Committee, which is reviewing this bill. I invite you to make an up-to-five-minute opening statement.

Dr CARLING: I would like to thank the Chair and the Committee members. It is a privilege to represent Right to Life NSW in this inquiry today into the Reproductive Health Care Reform Bill. As a former member of Parliament, I must admit I am a little bit more comfortable sitting on your side of the table, so forgive me while I adjust to sitting here at the hearings. Prior to holding my current position as CEO and prior to my time in Parliament, I spent about two decades in the disability field, including completing a PhD with the department of social work and community development in disability rights. This informs my philosophical aversion towards abortion. On a personal note, I have sat in a doctor's office where a doctor told me that my baby would be taken care of if it had the probability of Down syndrome detected.

As a disability academic and adviser at the time, I was appalled and very confronted with this very real assertion from a doctor that my baby's life may not be worth living. That was made without discussion and without prompting. On another personal note, I naturally miscarried my son, Harrison, a few months later. I would also like to point out as domestic violence survivor, I understand the feelings of vulnerability as women and this is something that survivors do not forget. We understand about coercion and control and I understand about the compassion needed for recovery and the need for increased support, not an attack on our role as mothers. These life events have solidified my practical aversion towards abortion.

As a member of Parliament I was the first, and as yet, only member of Parliament in Victoria who attempted to roll back the 2008 abortion laws—so passionate I am about this issue—through the Infant Viability Bill. This was an effort to stop late-term abortion, protect babies born alive and to offer more meaningful support and more practical support to women in crisis pregnancies. It is my hope that if a bill goes ahead in New South Wales—of course, I hold out hope that it will not—we will not need to roll back this law in this way, and that the amended bill will exclude late-term abortion and include protections for babies born alive, as per the recommendations in my submission.

These experiences have led me now to New South Wales to be working full-time on this very issue. Right to life NSW is a human rights lobby group, which defends the right to life of all human beings from conception. We give a voice to the voiceless, defend the defenceless and support the unsupported. The swiftness with which this bill has been rushed through Parliament makes our job and my job as CEO all the more important, I believe. To give a voice to the voiceless I have initiated and led a rally and a vigil outside Parliament—activities that will continue under my watch while this bill is being debated and beyond. Right to Life NSW unashamedly opposes abortion because in every case it is intended to cause death of one of us—an unborn human child—and because of the strong evidence that points to the real harms of abortion to women and girls. We are here today to give a voice to the voiceless.

Mr FLYNN: Thank you, Chair, and members of the Committee. The Australian Christian Lobby has some 33,000 supporters in New South Wales who are generally very engaged in this issue, many of whom have made separate submissions. I seek to speak on their behalf. Abortion is always a destruction of an innocent human being living in the womb. The Australian Christian Lobby urges this Committee to reject this bill. There are obviously issues with this bill being out of step with community attitudes; I will come to that shortly. Firstly, I touch on the issue of viability set at 22 weeks. The norm is that in New South Wales any miscarriages above 20 weeks must be reported and we know—and modern technology shows us—that babies are alive and well and viable.

You can have situations and hospitals where one baby has been delivered at, say, 23 weeks and there is a panel of experts and specialists working on that baby who will celebrate that baby's life. In the post-22 weeks abortion scenario, a similar baby can be born and left to die depending on one single factor: the choice of another human being in relation to that child. That is very concerning, conflicting and something that torments the New South Wales voters who are opposed to this legislation. We are concerned that this legislation opening up late-term abortion so broadly without any restrictions is out of step with public opinion; I will come to that in more detail shortly.

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. We know the story of Dr Mark Hobart, who was requested by a patient to abort a daughter because they wanted a son. 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.

We are clearly concerned about abortion for fetal abnormalities. Many, many people wish to adopt special needs children. There is a large cohort of people in that area. If somebody feels that they are unable to cope with their particular child because of a fetal abnormality—and I accept that that can be difficult for parents, who may feel overburdened with their number of children or the complexities of their own lives—there is a large cohort of people who are open to adopt special needs children. That ought to be considered. There is a concern about a doctor's conscience. The idea that a doctor who does not want to participate in abortion must refer to a doctor who will do an abortion is a real limitation on their conscience. That has been acknowledged by the ACT Human Rights Commission, which said as much. I referred to that in section 9 of our submission. Such a provision is a limitation on a doctor's conscience. There are concerns about the lack of data collected in relation to abortion. If the Parliament is serious about doing some review of sex selection abortions there ought to be some baseline collection of abortion statistics and agreement on how they are generated in New South Wales. Thank you very much.

The CHAIR: Thank you. Ms Kelleher, would you like to make an opening statement?

Ms KELLEHER: Thank you very much. The Australian Family Association [AFA] welcomes the opportunity to make this submission to the Committee's inquiry. The Australian Family Association is a voluntary not-for-profit organisation. We are concerned with the strength and the support of the natural family. Amongst a series of objectives, we make to submissions to inquiries such as this. We hold that the family is the basic unit on which societies are built and are the prime agency for the delivery of care for all family members, from conception to natural death. In terms of our objectives, we have a serious interest in the matters raised by the inquiry. We ask the Committee to consider what the very nature of the bill seeks to decriminalise, what terminations involve and what science reveals about fetal development.

In the submission I did put in some links to fetal development around what is destroyed in a determination is [*Inaudible*] to a human life. It is true that the woman must carry and nurture this life within her own body for the gestation period for it to survive but it is [*Inaudible*]. The question we have is: Does a person have the right to end the life of another and, if so, are all dependant persons at risk? Is this the sort of society we want, where it is lawful for someone to request a medical practitioner to end an innocent life. The second preliminary comment is that the bill is presented as being in the best interests of women's health. The AFA asks the Committee to consider whether it actually is in their best interest. There is much research on post-abortion trauma, particularly that of David Reardon and Priscilla Coleman. I have included links in the submission to take the Committee members to that research.

The latest research in 2018 found that although there is disagreement between pro-abortion researchers and mental health researchers on post-abortion trauma, both sides agree that abortion is consistently associated with alleviated risks of mental illness compared with women without a history of abortion. I also refer to research, which is not in the submission but I can email the links to you, that shows that women are hardwired to their unborn babies. That comes from research by Professors Evelyn and Paul Vitz in 2010, *Women, Abortion and the Brain*. I can send that link. I want to pose a couple comments from that research. The researchers came to the conclusion that women are hardwired to their unborn children whether they realise it or not. In particular they looked at stories from women, most of whom were in favour of abortion or did not have any difficulties or problems with abortion. They would say, "I don't understand why I am not getting better; I feel worse all the time and so depressed." Some were in acute pain and others were incapacitated. The research showed that brain research and psychological insights help explain their reactions.

Whether the bill is in the long-term and even medium-term best interest of women should be taken into account. We oppose the bill. We ask the Committee to recommend—it is our first recommendation—that the bill be opposed. In relation to the specific points in the bill, I will just go through very quickly our main thoughts and concerns. There is no requirement that the person upon whom the abortion is being performed has to make the request of the medical practitioner. This means that, presumably, it can be made by another person. Clause 9 (1)

of the bill bears that out because it refers to a third person making a request for an abortion to be performed on another person.

This raises the issue of coercion. It is a threshold issue. There are amendments that deal with coercion. I did put a link in the submission to evidence around coercion. There is plenty of evidence of coercion [*Inaudible*] and the most basic protection would surely require the person on whom the abortion is to be performed to make a clear and direct request to the medical practitioner for that abortion. Secondly, clause 5 and 6 require a medical practitioner to obtain the person's informed consent, which was an amendment in the lower House. [*Inaudible*]. However it makes no provision for the medical practitioner to have to make any inquiries to satisfy himself that the consent is given freely and voluntary. Further, how can there be fully informed consent when the bill has no provision about the practitioner having to be satisfied that the women has been provided with full information on all the health risks and what support services and counselling are available.

There is no recognition in the bill of the immense physical and psychological damage that abortion causes a significant proportion of women. Up to 22 weeks just a medical practitioner may perform an abortion. No reason has to be given. I am not saying that women seek abortions for trivial reasons but under the law no reason needs to be given. That is a lawful abortion. Then from 22 weeks two practitioners have to agree that [*Inaudible*] for the abortion to be performed. That includes current and future physical, psychological and social circumstances. That is very open ended.

The CHAIR: I might ask you to wind up there so we can ask you some questions, if that is okay, Ms Kelleher.

Ms KELLEHER: Yes, that is fine. Could I just mention another couple of points. They are really just the points that we have in particular about the bill. It does not provide legal protection for babies born alive; also does not provide for counselling—not directly for counselling—and fails to protect conscience. Thank you.

The CHAIR: Thank you for that. I note that we have allowed you to explain that there. We just got your submission for members of the committee. We just got that and we are distributing it now. Mr Flynn, your submission is number 33 and Dr Carling's is number 13. We have got the submissions for committee members. What we have agreed to do is divide the time up into five-minute question lots for each of the members. They will either direct them directly to you or it might be to the group. Ms Kelleher, please feel free to jump in if you feel you can contribute in that way, because I cannot see you waving your hand. Recognising that Mr Blair has just got here, we will start with Ms Boyd.

Ms ABIGAIL BOYD: Thank you very much for coming and giving your evidence here today. I have firstly some questions in relation to the study you mentioned—the La Trobe study; I think it was you, Mr Flynn—and that a number of the lower House members raised during the debate when this bill was before the lower House, talking about the male-biased sex ratios in certain populations in Australia. Have you read that study?

Mr FLYNN: I have not read it in its entirety but I stand by the extracts in our report.

Ms ABIGAIL BOYD: That study specifically noted that there can be no conclusions drawn as to whether sex-selective abortions actually occur. Although that bias was noted, they did not actually posit a conclusive reason for that. That same study also recommended that the most effective way to address any concerns about that sort of sex selection, if it was indeed happening, would be to reinforce social policies to tackle gender discrimination in all its forms. What they are saying there is—as I read it, and I will just quote that again—to reinforce social policies to tackle gender discrimination in all its forms. They were looking more at the breakdown of gender norms within society. What do you say to that?

Mr FLYNN: In light of that conversation, we would certainly assert that what Dr Mark Hobart did in declining to perform that sex-selective abortion that he was requested to do was the right thing. In other words, he is, I suppose, delivering the social norms that you speak of in that clinical setting. I hope you would agree with that.

Ms ABIGAIL BOYD: Slightly different point, I think, that you are talking about: the breakdown of gender norms within society so that a particular gender is not preferred, if indeed that is the thing that is happening.

Mr FLYNN: I think that what we are talking about is the sex-selective abortions that resulted in the elimination of young girls and, if that is to be embedded in the community, the ethos that that should not happen. In other words, as stated and as noted in the legislation of the bill as it now presents, then what I would respond to is that what Dr Mark Hobart did in declining to perform a sex-selective abortion is in line with the thing that you propose.

Ms ABIGAIL BOYD: Other than this study from La Trobe University, which did not actually conclude that sex-selective abortions were occurring, do you have any evidence that sex-selective abortions are actually occurring?

Mr FLYNN: We certainly have the case of Dr Mark Hobart. If we note that the La Trobe University study did note that fewer girls were born into certain ethnic communities in Australia and we look at what has happened in India and China, with the use of sex-selective abortion to reduce the girl population significantly, then I think we have genuine concerns.

Ms ABIGAIL BOYD: I would be concerned also if that was actually happening. I guess my question is whether we know if that is actually happening. It sounds like we can suppose it might be but there is no actual evidence to show that it is happening on any significant scale.

Mr FLYNN: I think there is enough to concern us. I think the situation in China that we have extracted—some 23.1 million girls missing—and 20.7 million in India is enough cause for concern that we should act upon it in legislation, in my submission.

Ms ABIGAIL BOYD: Thank you. If I could just ask, with the rest of my time, Ms Kelleher on the phone—I hope you can hear me.

Ms KELLEHER: I am not hearing you very clearly. If you could just speak up a bit?

Ms ABIGAIL BOYD: Would it be all right with the Chair if I moved around?

The CHAIR: If you are asking a direct question to her, yes.

Ms KELLEHER: Sorry, who is asking the question? I did not catch that name.

Ms ABIGAIL BOYD: Apologies, Ms Kelleher. It is Abigail Boyd.

Ms KELLEHER: Yes, thank you.

Ms ABIGAIL BOYD: I just wanted to ask you a question in relation to your background. I understand that you are a lawyer and a researcher by background. Do you have any medical qualifications at all?

Ms KELLEHER: No, I do not. No.

Ms ABIGAIL BOYD: I note that in your submission you talk about the potential physical health impacts on people who have had an abortion and note that as a concern. Are you the same Ms Kelleher who posited or, in fact, claimed that there was a link between abortion and cancer in 2009?

Ms KELLEHER: Yes, that would be inaudible], but certainly about 2011, I think. Yes.

Ms ABIGAIL BOYD: Are you aware that that link is completely without any kind of medical basis?

Ms KELLEHER: I would have to depart from your opinion on that. I think there has been more and more research since I looked at it some years ago. I have not been investigating it but there have been more and more studies across the world that show there is a definite link between an abortion—

Ms ABIGAIL BOYD: It is the view of the—

The Hon. GREG DONNELLY: Point of order: She is allowed to answer the question.

Ms KELLEHER: — before the first full-term pregnancy and the development of breast cancer. I stand by it.

Ms ABIGAIL BOYD: If you were to look today on the Cancer Council website or cancer organisation in America, you would see very clearly that they refute this as being something that is brought into the abortion debate to create emotion. What would you respond to that?

Ms KELLEHER: I would say that they are ignoring the huge number of studies across the world—unrelated—that have found, first, an abortion before the first full-term pregnancy has a very statistically significantly higher risk of the development of breast cancer.

Ms ABIGAIL BOYD: Thank you.

Ms KELLEHER: I think that people can investigate issues without having to—even in medical issues, to look at the research available without having a medical background.

The CHAIR: Thank you for that contribution. The next questioner will be the Hon. Greg Donnelly.

The Hon. GREG DONNELLY: I will surrender my time at this moment but reserve my right to ask questions.

The CHAIR: Thank you. The Hon. Rose Jackson.

The Hon. ROSE JACKSON: Thank you for coming along. Just to clarify, you as individuals and the organisations that you represent oppose abortion in all circumstances. So it is not as though if amendments were made, for example, to the gestation limit or the way that doctors are treated under the legislation—it is not as though those amendments would lead you to be supportive of termination of pregnancy. It is your view and your organisations' view that abortion in all circumstances is wrong?

The CHAIR: We will do it in order, so Dr Carling first.

Dr CARLING: Thank you for that question; I appreciate the opportunity to clarify. Yes, as per my recommendation 1, I would opt to vote the bill down if I had the influence to do that. My understanding is the committee today cannot consider that in its entirety, but it must consider that the bill may be amended, and that is where I have written in recommendations 2 to 9. I understand the difficult job as a legislator that sometimes you need to make a bad bill better, and I have outlined in my submission how to make this bill better. But you are absolutely right: Right to Life NSW do not support this abortion bill in any form.

Mr FLYNN: Improvements could be made to this bill; that is certainly the case in terms of viability, doctors' conscience, banning sex-selective abortions. They would be great enhancements to this bill. Again, obviously we are opposed to abortion but we are here talking about the bill. The bill could be substantially improved.

Ms KELLEHER: Our first recommendation is to oppose the bill. We are opposed to the bill. We would really like an inquiry to record numbers of abortions, reasons for abortion—which is a huge issue. But, of course, if the bill as it is could be improved before it goes through, then we do make recommendations that we do support for improvement.

The Hon. ROSE JACKSON: On the issue of sex selection, Mr Flynn, I appreciate the references you have made to international case studies, but how do you respond to the New South Wales chief gynaecologist and obstetrician's observation that, in his expert medical view, there is absolutely no evidence that sex selection occurs in New South Wales? Which is, of course, the jurisdiction that we are in and that this legislation relates to.

Mr FLYNN: I do not think that person is all-knowing and I do not think that person is able to understand what happens in families, because he is not there. Nor does he understand what happens in clinics on a day-to-day basis. I reject that broadbrush assertion, despite who is making it.

The Hon. ROSE JACKSON: It is your view that you have a better understanding of those things than the New South Wales chief obstetrician?

Mr FLYNN: There are cultural concerns that have been raised. We see it in China and India, where tens of millions of girls are missing because of a preference for boys over girls. We see that overseas and we hear Latrobe University saying, "There are missing girls", and we hear Dr Mark Hobart saying, "This happened in my clinic". This is all evidence that can be pointed to, which, in my submission, should lead the Legislative Council to ban sex-selective abortions for the sake of young girls.

The Hon. ROSE JACKSON: Despite the fact that there have been thousands of terminations occurring in New South Wales, somewhere between 20,000 and 30,000 women every year making the decision to terminate a pregnancy. That has been happening for some time in New South Wales. Those are the facts about what has been happening in New South Wales for years and years. Despite that, there is no evidence that there are missing girls in New South Wales, the jurisdiction that we are in. The chief obstetrician can point to no evidence in our jurisdiction, despite the fact that there have been terminations occurring for years and years in this jurisdiction. Despite that, you still refute his conclusion that there is no evidence that in New South Wales sex selection is occurring?

Mr FLYNN: It is not really surprising there is no hard evidence, because there is no data kept on the gestational age of the fetus, the sex of the fetus or the age of the mother. There are no statistics collected, so he would be perfectly at liberty to make that broad assertion. But there are concerns in certain cultural communities that ought to be addressed. The concern expressed in the bill, as it now presents, ought to appear in actual legislation, in my submission.

The Hon. ROSE JACKSON: Even if it is the case that there is no hard data kept, how can you make the assertion that it is occurring, if there is no data that you can point to in New South Wales to demonstrate that? He is the expert medical officer in this area and, in his expert opinion, it is not occurring.

Mr FLYNN: An expert is only as good as the data provided to them, with respect. He has not had data provided to him.

The Hon. ROSE JACKSON: Neither have you, though.

Mr FLYNN: Yes, but our assertion is that there are concerns raised by the Latrobe University report, there are concerns raised by what is happening in China and India and there is the experience of Dr Mark Hobart, which got him reported to the medical board for not referring that person seeking a sex-selection abortion to someone who would do it. These are concerning trends.

The Hon. NATASHA MACLAREN-JONES: Following on from that line of questioning, we note that the amendment has been made in the Legislative Assembly—there will be a 12-month review—looking at this to collect more data, but is it fair to say that, as legislators, we have a responsibility to ensure that we have the best legislation going forward? We are role models for other jurisdictions, so whether or not there is hard data in New South Wales or in other jurisdictions, we want to ensure that we are preventing gender-selection abortions.

Dr CARLING: I think that is very fair to say. I really appreciate your comments. I was quite surprised with how it has been written in. I hope you will amend that further and be much more strong on sex-selection abortions in the upper House, because I do support the comments that Mr Flynn has made. I think prevention in legislation is a very important aspect as well, as you pointed out.

The Hon. NATASHA MACLAREN-JONES: This is a question that I have asked of previous witnesses. The mover of the legislation advised that he consulted widely with key stakeholders. I am just interested to find out if any of the witnesses were consulted or asked in any detail about this legislation before it was put forward?

Dr CARLING: I was not consulted, and Right to Life NSW and our members were not consulted at all.

Mr FLYNN: I can confirm that the Australian Christian Lobby NSW was not consulted.

Ms KELLEHER: I can confirm that the AFA certainly was not consulted.

The Hon. NATASHA MACLAREN-JONES: I have not had a chance to read all of the information that has been provided by all of you today, given the short time frame that we have and the submissions that have all come through, so I do apologise. But I have noted that there are a number of recommendations that you have put forward in your submissions. I am interested to know what are the two or three key things that you would like to see the Legislative Council look at if we are to amend the legislation as it currently is?

Dr CARLING: If the option of voting the bill down is off the table, if that is what you are asking, I would definitely want the Legislative Council to look very seriously at the late-term abortion provision. As I said in my opening statement, that is something that I have tried to knock out in Victoria. The thought that we are aborting viable unborn children is appalling to me, and that has definitely been the experience that is happening in Victoria. I think that is something that we definitely need to ensure is not happening here in New South Wales. Another important recommendation for me would be around clause 5, the unfettered right to abort. I think that there absolutely needs to be parameters if this bill is going to go through. It needs to be amended to have some parameters around that so that abortions are not occurring for social reasons.

Mr FLYNN: Building on that, the pre-abortion counselling is something that I think should be available in every circumstance, and not left to the whim of the medical practitioner. That links to fetal abnormality; if there is fetal abnormality, there ought to be a broad discussion about the options available, particularly in relation to adoption for the child. If something can be done about banning sex-selection abortion; even if it saves one young girl, it would be worth it.

Ms KELLEHER: If I could jump in and point out what is in the submission, but if the bill is not voted down—that would be our first position—I think the points that really require attention are that the abortion should have to be requested by the person on whom the abortion is to be performed, and, in the absence of such a request to be unlawful. Secondly, to require a medical practitioner to provide the person on whom the abortion is to be performed with full information about all of the health risks and information on support and counselling services, or at least to satisfy his or herself that the woman has been so provided. Failure to do this would mean that the abortion is unlawful for failure to obtain informed consent. That is what that goes to; otherwise, informed consent is empty rhetoric.

Thirdly, to require that all abortions would only be lawful if there is a serious reason or risk to the life of the woman if the pregnancy continues; to provide that medical assistance be rendered to any baby born alive from abortion; and to provide that no medical health practitioner who has a conscientious objection is required to perform, assist or participate in the abortion, and would not suffer any detriment if they do so decline.

The Hon. NATASHA MACLAREN-JONES: One final question. I am interested to know, because we have talked about the collection of data particularly around gender selection, if any of you have any data that relates to that in relation to New South Wales? Or any research that may have been done?

Dr CARLING: Unfortunately that is one of the problems with New South Wales and Australia-wide. We do not collect data around abortions and I think that is something we absolutely should be doing in New South Wales moving forward. So that we know exactly what is occurring and why it is occurring.

Reverend the Hon. FRED NILE: Just following up that question. You mentioned a couple of times La Trobe University research, I have seen reports that already in Victoria there is a big discrepancy between male and female births. Can you comment on that? Because of their abortion legislation.

Dr CARLING: Absolutely. Do you mind if I jump in there, Mr Flynn? Because of the legislation in Victoria, which is unfettered for any reason, including social reasons to have abortion up to birth, there is quite a large acceptance in the community that sex selection abortions are occurring. As Mr Flynn referred, one doctor has actually been in trouble with the medical board—quite serious trouble—for refusing to refer a couple for a sex selection abortion. That is particularly being identified within the Indian and the Chinese communities.

Reverend the Hon. FRED NILE: Just following up another area of the bill regarding conscientious objections and the provisions that are provided for doctors. Do you believe they are adequate or inadequate?

Ms KELLEHER: If I could just make a comment there, unless you are asking a particular person.

Reverend the Hon. FRED NILE: No, just generally to all three witnesses.

Ms KELLEHER: It does not actually provide protection for conscientious objectors. In particular, in relation to health professionals employed in hospitals, because if abortions are performed there, usually the roster is drawn up the day before, and if any staff member was to withdraw, saying they have a conscientious objection, that would cause disruption to the schedule. So they would not be popular. It puts them in an invidious situation. The other thing about the New South Wales provision on conscience, is that it does not require the practitioner to disclose a conscientious objection.

It goes further than Victoria, saying there must be information on how to locate or contact a medical practitioner, who does not have a conscientious objection, or to transfer the person's care to another practitioner or health service where there are medical practitioners who do not have a conscientious objection. This effectively forces medical practitioners, with a conscientious objection, to act as an abortion referral service. I think we need to question the ease of access to abortion referral or information services. It is certainly not difficult. This is contrary to the right of conscience recognised in international treaties and instruments. It is an abrogation of their right to conscience without adequate reason.

Dr CARLING: I believe Clause 9 is completely inadequate and that it conscripts all health professionals to be complicit under the legislation as it stands. I think the provision is not necessary because a referral, for example, is not required for an abortion. You do not need a doctor's referral, for example, to go to a clinic. You can turn up to a clinic, sign up and have an abortion without any kind of referral. I think that needs to be recognised. I also think it is unreasonable to expect any health professional, who has an objection to abortion—and some have objections to all abortions—but some have objections to particular types of abortion. Some might participate in an early-term, for example, but not in a late-term. I think it is unreasonable to expect them to choose which abortionist, or abortion facility, to direct a woman to—which seems to be the implications under this legislation.

Reverend the Hon. FRED NILE: Just following up my other questions. I have had the impression that in New South Wales, because of the criminal law, which prosecutes the doctor who performs the abortion, not the mother, that public hospitals in New South Wales do not normally perform abortions. If this bill is passed, would public hospitals then be forced to conduct abortions in New South Wales?

Dr CARLING: That is absolutely where this bill is trying to go. It is trying to open up abortion into public hospitals, taking it out of the private—or to add it to hospitals, I guess. Yes, I think that is definitely the intention of this legislation.

Reverend the Hon. FRED NILE: So the majority of abortions are performed in private clinics—abortion clinics?

Dr CARLING: That is my understanding in New South Wales, yes.

The Hon. GREG DONNELLY: Thank you both for coming along. Thank you for the opportunity to ask you some questions.

Dr CARLING: I am here on the phone too, Mr Donnelly.

The Hon. GREG DONNELLY: Of course, I am very sorry. That is always the problem when you cannot see the witnesses. I would be looking you in the eye if you were in the room but you are not here. I am looking at a chair where you ought to be sitting, Ms Kelleher. We do not pay air fares in the New South Wales Parliament to get witnesses here. But this is a very serious matter so I will be very deliberative about this, and all of you can perhaps respond. It is related precisely to the terms of reference. Let us work through this. Are you all aware that one of the primary sponsors of this bill—who promoted himself as one of the first five sponsors of the bill—was Brad Hazzard, the member for Wakehurst and the health Minister in New South Wales?

Mr FLYNN: Yes.

Dr CARLING: Yes.

The Hon. GREG DONNELLY: In that role, Mr Hazzard is the first health person in the State, if I can use that phrase. He is the first health officer in the State of New South Wales.

Mr FLYNN: Yes.

Ms KELLEHER: Yes.

The Hon. GREG DONNELLY: With respect to some earlier examination on the matter of the Chief Obstetrician and Gynaecologist for New South Wales, so we will call that the first officer for obstetrician and gynaecological matters in the State of New South Wales. Are you aware that that person reports directly to the health Minister?

Mr FLYNN: I think that is probably likely.

Dr CARLING: That is interesting.

The Hon. GREG DONNELLY: So you do not know?

Dr CARLING: I do not know.

The Hon. GREG DONNELLY: Does anyone know, as a matter of course, in terms of the position here in New South Wales, that the Chief Obstetrician and Gynaecologist reports directly to the health Minister? Does anyone of the three witnesses know that for sure?

Dr CARLING: I do not know that for sure.

The Hon. GREG DONNELLY: With respect to the Chief Obstetrician and Gynaecologist. Are you aware that that person is appearing before this enquiry into the reform of abortion in New South Wales, which specifically has direct—and dare I say significant—impact on their area of responsibility with respect to employment by the New South Wales Government?

Mr FLYNN: I will take your word for it.

Dr CARLING: So will I.

The Hon. GREG DONNELLY: I will say that again. Was my question unclear?

Mr FLYNN: We accept what you say.

The Hon. GREG DONNELLY: Yes. So to the best of my knowledge, as a member of this Committee, the Chief Obstetrician and Gynaecologist has not sought to appear before this Committee to give evidence. Secondly, to the best of my knowledge, and bearing in mind we have been swamped by submissions in the last 48 hours, the Chief Obstetrician and Gynaecologist has not made a submission to that enquiry. Let us assume that that is the case—that the Chief Obstetrician and Gynaecologist has not made a submission to the enquiry. Would that be a surprise to you? I will ask you one at a time. Dr Carling, would that be a surprise to you—that the Chief Obstetrician and Gynaecologist of New South Wales has not made a submission to this enquiry?

Dr CARLING: Mr Donnelly, that would be a very great surprise to me if that was the case.

The Hon. GREG DONNELLY: Mr Dan Flynn, it is the same question to you. Would that be a surprise to you?

Mr FLYNN: Yes that would be.

The Hon. GREG DONNELLY: And Ms Kelleher would that be a surprise to you?

Ms KELLEHER: Yes it would. I would have thought, in his position, he would have a direct interest in this matter, in the matter of the enquiry.

The Hon. GREG DONNELLY: Any of the three witnesses at the table at the moment, including the one on the phone, are you aware of any reason whatsoever that you have heard of why the New South Wales chief obstetrician and gynaecologist has not made a submission to this inquiry or is not seeking to appear before the inquiry? Have you heard that?

The Hon. ROSE JACKSON: Point of order: I am not sure how these witnesses can speak to the intentions, actions or inactions of the New South Wales chief obstetrician. I do not know if they have any capacity in which to reflect on why he has chosen to do or not do something.

The Hon. GREG DONNELLY: That was not my question.

The CHAIR: The Hon. Greg Donnelly, if you want to rephrase your question—

The Hon. GREG DONNELLY: I will use the same words because I was not seeking to, in any way, try to trick or mislead or be underhand in this. My question was "to the best of your knowledge". In other words, there has been a lot of public commentary and a great deal of media coverage on this matter—in fact, probably more than any other issue for very long period of time in New South Wales. It has been right through all the media and we have heard all sorts of things. Because you are clearly stakeholders in this inquiry and you have sought to come along and give evidence, have you heard any reason whatsoever why the New South Wales chief obstetrician and gynaecologist has not sought to make a submission or appear before this inquiry? Dr Carling?

Dr CARLING: No, none at all.

The Hon. GREG DONNELLY: Mr Flynn?

Mr FLYNN: I am not aware.

The Hon. GREG DONNELLY: Ms Kelleher?

Ms KELLEHER: No, I am not aware.

The Hon. NIALL BLAIR: Firstly I apologise for not being present during your opening statements. Dr Carling, I go back to a part of one of your answers earlier where you used the words "not support abortion in any form". Is that the stance of your organisation or yourself personally that you do not support abortion in any form at all?

Dr CARLING: Right to Life NSW opposes abortion—

The Hon. NIALL BLAIR: In every form.

Dr CARLING: —in every form and if you had an opportunity to listen—

The Hon. NIALL BLAIR: That is a harder line than even what we had from some of the religious organisations earlier that said that in certain circumstances like emergencies et cetera they saw the need for that to occur. Is that different to your stance?

Dr CARLING: I understand that and it could be a language issue there. For example—

The Hon. NIALL BLAIR: Let us then may be run through some options.

Dr CARLING: Okay.

The Hon. NIALL BLAIR: If a pregnancy is likely, under medical instruction, to place the mother in grave risk and potential death, that is not supported by your organisation for a reason for an abortion?

Dr CARLING: I would need a more specific example than that; that is actually quite broad. In my understanding, there are very few cases.

The Hon. NIALL BLAIR: If there is a mother who is pregnant and there are a number of medical practitioners who are saying that unless an abortion is carried out that mother is likely to die; the baby may die and the mother may die. That is not a reason for an abortion, under that medical advice, in your organisation's opinion?

Dr CARLING: If you are talking about something like an ectopic pregnancy, for example, I would not describe that as an abortion. An abortion is the deliberate termination of the unborn child's life.

The Hon. NIALL BLAIR: Other than that, there is no other reason?

Dr CARLING: I would need some more examples but that is—

The Hon. NIALL BLAIR: What about a 15-year-old girl who has been sexually assaulted by may be a member of her own family and she is pregnant? Is that something that we should talk about may be as a reason for grounds for an abortion?

Dr CARLING: I do not believe abortion is a solution.

The Hon. NIALL BLAIR: That is okay. I am just getting an idea of this because, as I said—

Dr CARLING: If I may interrupt, if you had had an opportunity to have listened to my opening statement, I actually shared my personal experiences that have led me to be pro-life, which include—

The Hon. NIALL BLAIR: I apologise for that and I am just picking up on the part where you said "in any form". That is why I am now, not having heard what you said earlier, asking on that a bit further.

Dr CARLING: I would appreciate if you did have the opportunity to read the transcript—

The Hon. NIALL BLAIR: I will.

Dr CARLING: —because my views are formed from, for example, being a domestic violence survivor and being an expert in disability and mental health.

The Hon. NIALL BLAIR: As I have said, the reason I am asking you is that it seems like some of the religious organisation representatives earlier today had, I would say, a more liberal view on this than what you are now saying. I am just trying to work out between the two because I understand there is a lot of evidence today that says, "We oppose it, but if it has to occur, this is how to make it better", for the want of a better term. But I was just picking up on that part of "in any form".

Dr CARLING: Can I make it very clear that I do not believe we should have criminal penalties for a woman in the situation under any circumstances? I believe women are very vulnerable at the time.

The Hon. NIALL BLAIR: Should it come out of the Crimes Act then?

Dr CARLING: I am very happy for it to continue to be in the Crimes Act but for women not be penalised. I think the Crimes Act could be amended. Abortion is simply not health care and I would not support a healthcare bill that has abortion in it.

The Hon. NIALL BLAIR: What about the fact that we have 30,000 happening at the moment; it is sitting in the Crimes Act and nothing is happening in relation to enforcement? Some of the witnesses earlier said that they would like to see more enforcement under the Crimes Act. Would you agree with that?

Dr CARLING: I think it is a tragedy that we have so many abortions occurring in the State. Yes, I would like to see fathers who have raped their daughters being found criminally liable—

The Hon. NIALL BLAIR: That is sexual assault.

Dr CARLING: —for forcing their daughters into having an abortion. That is something I have covered across in the disability—

The Hon. NIALL BLAIR: I would like to see a father who rapes his daughter prosecuted for sexual assault, full stop.

Dr CARLING: I would like to see both. I would like to see men who seek to control women by forcing them and coercing them into having an abortion to be criminally liable for that and I would like to see doctors who are taking advantage of women at a vulnerable time in their life to make money, because abortion is an industry. I would like to see them held criminally liable.

The Hon. NIALL BLAIR: Should any woman be prosecuted under that?

Dr CARLING: No, I do not support women being—

The Hon. NIALL BLAIR: No circumstances whatsoever?

Dr CARLING: No.

The Hon. NIALL BLAIR: Gender selection, if they made that choice?

Dr CARLING: I do not—

The Hon. NIALL BLAIR: Should a woman who chooses to go and seek an abortion—Let us take the doctor and the practice out but let us say a woman decided to select for gender, should they also be included under the provision?

Dr CARLING: As we have talked about with sex selection, that often comes because of cultural pressure. So again, I do not believe this is a woman's—

The Hon. NIALL BLAIR: That was not my question.

Dr CARLING: I know it is not your question but you are trying to be—

The Hon. NIALL BLAIR: Should any woman be prosecuted for an abortion under any circumstances?

Dr CARLING: I would not prosecute a woman for abortion because I believe they are at the very vulnerable time in their life. I believe we need to support women and protect babies and I think there is a balance that we can achieve through the Crimes Act to support women and protect babies at the same time.

The Hon. NIALL BLAIR: Thank you. I will read the opening statement, as I said. I apologise for not being here at the start.

Dr CARLING: Please do. Thank you.

The CHAIR: We will conclude with a question from me and it is regarding the issue of gender selection, which achieved a lot of media attention on this issue. I put it to you that if there was gender selection occurring, it would be occurring now in New South Wales under the situation where a woman goes to a doctor and gets an approval for an abortion based on mental health, physical health or even social issues, particularly mental health issues, and that we would be aware of this problem much more substantially than you presented in evidence? The second thing I put to you is that this study by La Trobe. You have cited and it has been cited quite a bit. There is no other study; there is no other work.

It has got some critics because it does not deal with other types of fertility issues around that study. The amendment that the lower House put into the bill, which is what we are dealing with today—the bill as amended—is clause 14. It requires the health ministry after 12 months to do a report on the issue, if there is evidence of gender selection, report it to the Parliament, in which case, if it does emerge, would be then an issue for us to consider how we deal with that. Does not that address, in a realistic way, the concerns you have but are not really backed up strongly by evidence, not in this State, of a gender selection issue?

Mr FLYNN: The awareness is somewhat anecdotal and somewhat broadly culturally based. The idea that the New South Wales Parliament is somehow going to collect evidence about sex-selective abortion is really somewhat of a fiction because there is no data collected about abortion at all, full stop. You cannot build something as high-level as sex-selection abortion data when there is no data collected at all. It is a fiction, in my submission.

The CHAIR: Clause 14 of the Act requires that the Parliament come back to us in 12 months. The secretary is going to come back to the Government probably through regulation so we need to do some work around this to give the Government the answers to these questions.

Mr FLYNN: As the Legislative Council reviews those regulations, my urging is to be very particular that they are actually recording the number and the details of the abortions so that they can get that more high-level result of sex selection. Otherwise, it cannot happen, in my submission.

Dr CARLING: May I also add to what Mr Flynn has said, and I agree with what he is saying. May I also add that I do not have confidence in this Parliament who were rushing through a bill with less than a month of discussion and consultation. There is really no consultation. This is really two days of hearings and your website crashed because of all of the submissions that came in. I do not have confidence that this Parliament would be able to carry out that 12 month review and I do not have confidence that when that review came back, that this Parliament would act on that.

The CHAIR: I will accept that criticism from a Victorian parliamentarian, a former one. Thank you very much for coming in this afternoon. Thank you, Ms Kelleher on the phone for participating in the inquiry. We appreciate the time you have taken today on such short notice.

Mr FLYNN: Thank you Chair. Thank you members of the committee.

Dr CARLING: Thank you Chair. Thank you members.

Ms KELLEHER: Could I just asked one last question?

The CHAIR: Yes.

Ms KELLEHER: Would you like me to send those couple of links to you regarding women's post-abortion trauma?

The CHAIR: Yes, we would. Someone will call you back with the information.

Ms KELLEHER: Good, thank you.

(The witnesses withdrew.)

Ms BRONWYN MELVILLE, Honorary Secretary, Newcastle Pregnancy Help, sworn and examined

Ms TIANA LEGGE, CEO, Women and Babies Support (WOMBS), sworn and examined

The CHAIR: Good afternoon and welcome to the hearing into the Reproductive Health Care Reform Bill 2019. I am going to ask you to state your name and your position in the organisation you represent, and to either swear the oath or affirmation. I invite you to make an opening statement, up-to-five-minutes each, starting with Ms Legge.

Ms LEGGE: I will just reiterated that my name is Tiana Legge. I am the CEO of Women and Babies Support, otherwise known as WOMBS. WOMBS is a not-for-profit organisation that advocates for the needs of women and their babies during and after pregnancy and challenging circumstances. Honourable Committee members, I understand you have a copy of our submission and I am happy to take questions on it. I would like to raise the point that it has been most difficult, because of time constraints, to carefully consider all the issues that we would have liked to addressed in this submission. We have had virtually no time to consult with our stakeholders, especially the women of New South Wales, specifically over this bill. Thank you.

Ms MELVILLE: I want to take this time to introduce myself and explain why I may be of use to this inquiry. My name is Bronwyn Melville and I live in Newcastle, New South Wales with my husband John and my family. My background is in health, particularly in the area of diagnostic imaging for 25 years, and I have studied embryology. In more recent times I worked in the area of grief and loss and studying psychology. I have been a volunteer pregnancy support worker in New South Wales since 1998 in several centres across New South Wales. My own understanding of crisis pregnancy was through my experience of becoming pregnant at 18 years old whilst training at Prince Henry Hospital, which does not exist anymore, as a radiographer in 1983. When I presented myself at my local doctor's surgery I was given a referral for an abortion facility in Surry Hills. Long story short, my journey culminated in the birth of a beautiful baby girl at the women's hospital in Paddington, Darlinghurst in 1984.

I adopted this baby to a family through a closed adoption. Was this time challenging for me? Of course it was. But it was not tragic or devastating because of the support I had through a pregnancy support centre at the time, because others were willing to walk with me on my journey. My experience led me to become a pregnancy support worker in 1998 to walk with others as they face challenges like mine and I have continued in that role. Quite by chance, through social media, I did meet up with my adopted daughter 10 years ago—so Facebook does do something good. She came into my life and into the life of my family and has added more to our lives. We talk now and then and I have given support to her when she had her own babies.

One day after she met me she did say to me, "Thank you for giving me life." I said, "I did not give you life, I just allowed it to happen." When women come into the centres across New South Wales, and I work in collaboration with a number of centres around New South Wales, they come in with a unique set of circumstances. They have a crisis on their hands and they want someone to listen to them, which is what we do; we listen with love and care. As we address this very important issue around care and health and also social concerns, I ask you just to take the time to think about that please. I just wanted to finish with a quote from Albert Einstein:

> The human being is part of a whole, called by us 'This Universe', a part limited in space and time. He experiences himself, his thoughts and feelings, as something separate from the rest— a kind of optical delusion of his consciousness or a prison for us … our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole of nature in its beauty.

The CHAIR: Thank you for that. Thank you for those opening statements and we have your submission, we have one submission, do we not? We have got the two submissions. Thank you.

The Hon. NIALL BLAIR: Thanks for coming in and thank you for your submissions. Going back, Ms Legge, to your commentary around time in relation to this. I accept it is a short time period that this bill has been before the Parliament but the issue itself, we are not starting from scratch here in New South Wales, are we?

Ms LEGGE: No. A similar bill was introduced two years ago.

The Hon. NIALL BLAIR: In New South Wales? Yes?

Ms LEGGE: Yes.

The Hon. NIALL BLAIR: And what about the other states?

Ms LEGGE: Well, yes. Other states have moved to decriminalise abortion either in whole or in part.

The Hon. NIALL BLAIR: Yes. And I have just had a quick look through your submission and it is quite substantial. You have attached the white paper from the symposium that was held at the Australian Summit on Abortion Law Reform in 2018.

Ms LEGGE: Yes.

The Hon. NIALL BLAIR: So the reason you were able to pull this information together and get this in is because this is a live debate that has been happening and evolving in one form or another for some time, is it not?

Ms LEGGE: Yes, that is correct. I will just make the point that in other states where these laws have passed, the public has responded, given time, and in a very significant way. I mean, in Queensland there were thousands and thousands of submissions to the commission held, to the Queensland Law Reform Commission. I note that the greatest majority of those submissions were actually opposing that bill that passed in Parliament.

The Hon. NIALL BLAIR: My point is we can look at those submissions. We can look at the issue of the bill when it was here in 2017. I was here then. I know that we are talking about differences in whether it is 22 weeks or where to draw the lines, and there are some variances from other States. However, the issues are not really that different in New South Wales than they are in Queensland or they are in Victoria or what we are hearing in South Australia with their inquiry. And I am being very generalistic here. I know there are going to be individual differences, whether it is 22 weeks will raise different issues than whether it is, for example, 18 weeks. But broadly, we can build upon what has happened to this point and make informed decisions and discussions one way or the other, because this is a live debate that has been happening for some time.

Ms LEGGE: Yes. I just make the comment that although I agree with you that it is a live debate and it has been talked about, I think that at many levels the debate has been dishonest. I think the dishonesty lies in the fact—

The Hon. NIALL BLAIR: Sorry, in Queensland? Or in Victoria?

Ms LEGGE: Across the board.

The Hon. NIALL BLAIR: Across the board?

Ms LEGGE: So I am actually talking about Queensland as well, which had a very similar law to what we currently have in New South Wales. Even more restrictive. And my point on that is that in Queensland and currently in New South Wales, abortion is legal. So the push to decriminalise and legislate that, just on its own merit does not sit well with us when women can readily access abortion for legal reasons in this State. And, sure, I understand the issues around wanting to decriminalise, but we are not hearing from the women of New South Wales that they want decriminalisation. Many are not even aware that it is a crime.

The Hon. NIALL BLAIR: There may be some differences with other witnesses. What you have said is a very similar statement to another witness earlier this morning. So I guess going back to your opening statement and the debate to this point, the criticism is this has been rushed through and we are not hearing the new stories or the new circumstances. So tell me, while you are here now, what is the aspect that we need to know that we do not know, that we have not heard in the debate the before here in New South Wales, that we have not heard from the other States and other jurisdictions around the world? If this is being rushed through, surely we need to know that information now. So what do we not know or what has not been raised? The decriminalisation issue has been raised earlier today. So what do we not know or do we need to know?

Ms LEGGE: We are not hearing from the women of New South Wales of their current experiences around abortion.

The Hon. NIALL BLAIR: I have plenty of emails that have come from women and their experiences. We have other organisations that will be appearing on behalf of women's groups as well. So what is the difference?

Ms LEGGE: It is one thing to hear it; it is another thing to address the issues around abortion even currently with its legality.

The Hon. NIALL BLAIR: Okay. So what issues do we need to know now? Because I have got five minutes and I need to know out of the tens of thousands of submissions, the debates in Queensland and Victoria, the debate in 2017—

Ms LEGGE: The number one issue is women are being pressured and coerced into abortions.

The Hon. NIALL BLAIR: Okay.

Ms LEGGE: Even in the legality of it within the State as we know it, women are being pressured. And not just a few women—a significant number.

The Hon. NIALL BLAIR: So say there is, say, 30,000 is the number that has been used today abortions in New South Wales. Should we be then focusing on the prosecution of people that are pressuring those women in? Because there are not many prosecutions.

Ms LEGGE: Yes, we should.

The Hon. NIALL BLAIR: And that will address the issues before us?

Ms LEGGE: It will, but coercion does not just involve a man dragging a woman to a clinic or using emotional or physical pressure on her. It ranges from everything from a lack of support—

The Hon. NIALL BLAIR: Okay. So that is the number one issue? Coercion is the number one issue?

Ms LEGGE: Yes, it is.

The Hon. NIALL BLAIR: Okay. Thank you. I have run out of time.

The Hon. ROSE JACKSON: You have mentioned in your comments in response to my colleague, the Hon. Niall Blair, that under the current arrangements in New South Wales there are not many or really any prosecutions under the Crimes Act for the termination of pregnancy and that in fact most women are not even aware that it is in the Crimes Act. So on the question of whether it should be removed from the Crimes Act, would not those two factors alone suggest that in fact it should—

Ms LEGGE: No.

The Hon. ROSE JACKSON: —because it is not a functional law and in fact most people do not even realise that it is the law?

Ms LEGGE: So there are two provisions, obviously, in the Crimes Act that we are talking about. That is an illegal abortion carried out by a practitioner or someone who actually carries out the procedure, and the criminality attached to a woman procuring an abortion for illegal reasons. So I would just like to address those two issues separately. It is functional, particularly for women against unscrupulous providers. So I am sure you have heard of the Sood case, of Dr Sood who was prosecuted and received a criminal penalty for harming women, seriously harming a group of women, for carrying out an illegal abortion where she had not even seen the women. So that affords protection from unscrupulous providers and it is appropriate that that is a crime because it is not only harm against the woman; it is harm against the unborn child.

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.

The Hon. ROSE JACKSON: Are you aware of fact that in jurisdictions where abortion is illegal and in fact there are significantly more prosecutions than there are in New South Wales—and particularly I will draw your attention to Northern Ireland—the use of abortion drugs obtained over the internet in an unsupervised, non-medical environment are in fact a lot higher than they are in jurisdictions like New South Wales because in fact what the criminalisation of abortion and the enforcement of those laws does is it forces women into unsupervised, non-medical environments, and that the dangerous practices you have identified are in fact more prevalent and women are more at risk of that where abortion is illegal and those laws are enforced?

Ms LEGGE: I think that we just need to look at our own jurisdiction. I think that we need to look at New South Wales, what is currently happening. We are talking about a current law and current procedures. We have not had any women prosecuted. I do not think there is cause for alarm there, to keep the law as it is. So I do not think that applies to New South Wales.

Ms MELVILLE: We do get calls in our centres as well, across New South Wales. As I said, I am aligned with other organisations across New South Wales, and the statistics are there that if a woman comes in for an abortion, post abortion counselling, 100 per cent of the time she says she was not offered pre-abortion

counselling. We get calls from women who have taken the abortion pill living in regional parts of New South Wales under the current system. And there are issues around that, issues around their health not being supported.

Ms LEGGE: I think the point raised by Mr Blair is relevant here, that this is a live topic. Even with all of the discussion around changes in legislation in not just this State, but also Queensland and Victoria, we are not hearing from women that they are concerned that it is a crime. We are just not hearing it.

The Hon. NIALL BLAIR: It is not in the other States.

Ms LEGGE: No but in New South Wales we are not hearing concerns with the current law and legislation. We know women who have used the fact that they believe there are restrictions as a means to tell another party, "I cannot do this", even if they might not be correct. Some women think abortion is illegal beyond 20 weeks currently. A lack of restrictions in law in not necessarily a good thing for women. The community expects restrictions. Women expect restrictions. We know what abortion is.

The Hon. TREVOR KHAN: Ms Legge, were you present when the Faruqi bill was debated?

Ms LEGGE: Yes, I was.

The Hon. TREVOR KHAN: You were in Chamber, were you not?

Ms LEGGE: Yes, I was.

The Hon. TREVOR KHAN: It is amazing; I am getting old, but I remember some faces.

The Hon. GREG DONNELLY: You will have to worry now that he has said that to you.

Ms LEGGE: I am not worried.

The Hon. TREVOR KHAN: Nor should you be. On page two of your submission you say that the bill that is before the Parliament is similar to the Faruqi bill

Ms LEGGE: Yes.

The Hon. TREVOR KHAN: Do you remember me speaking in opposition to the Faruqi bill?

Ms LEGGE: Yes, I do. I have your transcript.

The Hon. TREVOR KHAN: Indeed, I thought you did. Let me ask you this. If you have looked at the transcript you will see that I subsequently spoke in regard to the Sood case and my concerns with the Sood case. Do you remember that?

Ms LEGGE: Yes, I do.

The Hon. TREVOR KHAN: The Sood case involved a late-term termination by Dr Sood, did it not?

Ms LEGGE: I am taking your word for it. Sorry, I do not remember the details.

The Hon. TREVOR KHAN: That was an exercise where Dr Sood prescribed an abortifacient to a lady in her room and then had the lady go home. They were the essential facts. Then, having taken the abortifacient without having had a proper consultation, the child was delivered and, thankfully, was delivered alive. That was the fact scenario around Sood. I think it was around 26 weeks. Yes?

Ms LEGGE: Like I said, I am trusting your word for it.

The Hon. GREG DONNELLY: I think that is important. I understand you are leading the witness. This is not a court and she is just a layperson trying to comprehend what you are saying. The facts of this go to a very significant case.

The Hon. TREVOR KHAN: I understand. You are using my time, Greg.

The CHAIR: Greg, while you were not here the witness did raise that case.

The Hon. TREVOR KHAN: If you look at the bill that is now before the Parliament, post 22 weeks it requires two doctors, does it not?

Ms LEGGE: yes.

The Hon. TREVOR KHAN: It requires one of them at least to be an obstetrician, does it not?

Ms LEGGE: A specialist medical practitioner, yes.

The Hon. TREVOR KHAN: And it requires it to be done in a public hospital, does it not?

Ms LEGGE: Yes.

The Hon. TREVOR KHAN: What this bill provides is a regime of regulation which does not exist under the current law, does it not?

Ms LEGGE: It has different provisions.

The Hon. TREVOR KHAN: With respect, this requires two medical practitioners for a start—this is post 22 weeks—does it not?

Ms LEGGE: Yes.

The Hon. TREVOR KHAN: One of them a specialist, correct?

Ms LEGGE: Correct.

The Hon. TREVOR KHAN: In a public hospital, correct?

Ms LEGGE: Correct.

The Hon. TREVOR KHAN: Those provisions do not exist under the current law, do they?

Ms LEGGE: No, but the issue with the Sood case was not so much that it was late term; it was harm to the woman. The issue of the gestation—

The Hon. TREVOR KHAN: Let me stop you there. What I am suggesting to you, Ms Legge, is that this bill provides additional protections for the women than that which exist under the current law, does it not?

Ms LEGGE: I disagree because those provisions do not extend throughout the entire pregnancy. Those provisions do not apply before 22 weeks.

The Hon. TREVOR KHAN: Under the current law there is no provision for two doctors post 22 weeks, is there?

Ms LEGGE: No, there is not.

The Hon. TREVOR KHAN: There is no provision for the doctor to consider the issue of counselling, is there?

Ms LEGGE: No, but under the bill that you are proposing the penalties are inadequate. So even if there was a prosecution under this bill, what are the penalties? A slap on the wrist. Under the current law the provisions are criminal. You cannot get a more severe penalty in law than a criminal provision. It is the most effective deterrent against doctors who would behave in an unscrupulous manner toward any women at any stage of pregnancy.

The Hon. TREVOR KHAN: Ms Legge, there is no requirement post 22 weeks currently for a termination to be performed in a public hospital, is there?

Ms MELVILLE: Currently that does not happen in New South Wales. It is mostly in abortion clinics, from what we know, because the information is not necessarily available.

The Hon. TREVOR KHAN: We will get that information from others. There is no provision currently under law that requires termination post 22 weeks to be done in a public hospital, is there?

Ms LEGGE: Not that I am aware of, no.

The Hon. GREG DONNELLY: I thank you both for coming along this afternoon. I have five minutes so I will have to use my time in the most efficient way that I can. I do apologise for being absent at the start to hear your opening statements. I will start with Ms Melville. With respect to your submission, there is an opportunity now in two or three minutes to really say the most significant point you want to make with respect to your testimony today. You have given a submission and there has been oral testimony. But what I am going to do with my remaining time is offer my two or three minutes to you to make your most important point and reinforce that point or make another point if you think that is valid and needs to be elucidated. Then I will offer the same thing to Ms Legge.

Ms MELVILLE: As I said, I have been doing this since 1988 and have seen a lot of people over the years. I have some background in health and am now working in psychology. One of the important things we need

to think about—and this is certainly borne out amongst the women we see—and that has not been talked about is pregnancy proneness. I went to the Australian Young Pregnant and Parenting Network —

The Hon. GREG DONNELLY: Sorry to interrupt, but what did you just say?

Ms MELVILLE: I said "pregnancy proneness".

The Hon. GREG DONNELLY: I apologise, but could you please explain what that means, because I do not know.

Ms MELVILLE: Okay. Last week I was in Maroochydore at the Australian Young Pregnant and Parenting Network symposium and they talked a lot about the research around the fact that there is a proneness amongst some groups and amongst some situations in society for habits to be repeated or histories to be repeated. For example, if a young girl was born to a teenage mother that might happen to her. That is probably fairly likely. We know that the solution is—and the research was done by a man whose name I cannot remember but who was very interesting—around education. Education is the thing and getting them into education will help them

The Hon. GREG DONNELLY: Support.

Ms MELVILLE: Support and education. What we have found in our centres is that there is often a proneness for some people to be pregnant and concerned or to be a teen and be pregnant. If they come into a clinic we do not simply say, "Get rid of the baby or terminate your pregnancy", because that does not take away the circumstances that brought them to that point. That is my most salient point today. We need to remember that we are not solving the situation. We are not looking at this holistically and we are not looking at the needs of that person in totality. From a psychological point of view that is what you are supposed to do.

The Hon. GREG DONNELLY: Thank you very much for that. Sorry to be rushing. Ms Legge, can I offer you the same opportunity? We now have your submission, which, obviously, in the time available, we have not had a chance to thoroughly read and absorb. I do note that there are significant documents as attachments. In light of the time, would you like to make any comment with regard to your submission and your most significant point?

Ms LEGGE: I will just reiterate what I said to Mr Blair. I think we have to, in considering a new law for the State, really look at how this is going to affect women in a practical way. This law effectively permits abortion on demand until 22 weeks of pregnancy and then beyond until birth for such a broad range of reasons that effectively it is a very liberal law. Because there are no health requirements attached to obtaining an abortion, we are concerned that this will mean the health considerations currently under law will not be taken into account for women. That is another safeguard in the current law: that a doctor can only perform an abortion in the best interests of a woman's health and must take that into consideration. With regard to the pressure put on women, if they can obtain an abortion for virtually any reason until birth, that removes that safeguard that they can say, "No, I cannot get an abortion," if they are being pressured or coerced at any point. There is no cut-off point during the pregnancy when they can say that. That exposes more women to harm.

Our primary concern with this bill—and I would just like to address an issue that was raised before we came to this section, in the previous section, with regard to the definition of abortion under this bill, or a termination. We believe it needs to be more specific. Under the general understanding of abortion, which we understand this is what this bill is about—a termination—an abortion means the intentional ending of a pregnancy with the intent to end the life of an embryo or a fetus. That is the common understanding of abortion. Under this bill—I will read out the actual definition. It is defined by the bill. A termination means:

> … an intentional termination of pregnancy in any way, including, for example, by—
>
> (a) administering a drug, or
>
> (b) using an instrument or other thing.

We know that a pregnancy may be ended intentionally for a medical necessity, and using a drug or an instrument—I am referring to page 4 of our submission, if that helps—but where the aim is not the death of the child. I noticed there was some discussion around this earlier in the hearing. An example would be a treatment for an ectopic pregnancy by administering the drug RU486. Another example would be an early induction of labour or an early delivery or a C-section, even, because of a medical condition of the mother that requires the termination of the pregnancy early. The key difference is that these termination of pregnancies is not with the intent—the intent is not the death of the unborn child, the embryo or the fetus.

We are recommending that that definition is made clearer to avoid confusion. But even within the medical community, the term "abortion" is used to indicate a miscarriage, which referred to spontaneous abortions or

induced abortions. Yes, that is one issue that we have with the bill. I think it will help to understand where our position is also with this piece of legislation, if that is the intent of this bill and this legislation—that the termination of pregnancy in any way with the aim the death of the embryo or fetus, excluding all other terminations of pregnancy—that what this bill effectively does is legislate for the intentional and direct ending of the lives of tens of thousands of unborn children in this State.

Ms ABIGAIL BOYD: Thank you very much for coming here and making your submissions today. Obviously I have not had time to read all of the submissions, because I just got given them, but I have skimmed parts of it now. Apologies if I have missed something that is in a bit that I have not read. I wanted to touch first on this issue of coercion and particularly in the context of domestic violence. You note—I think in this report on the symposium—that the link between domestic violence and coercion around reproductive choices is a strong one.

Ms LEGGE: Yes, it is.

Ms ABIGAIL BOYD: I think that is accepted on both sides of this debate.

Ms LEGGE: Yes, it is.

Ms ABIGAIL BOYD: But the domestic violence peak bodies—and I am sure we will hear more from them tomorrow—their view and the view of those on the other side of the debate, if you like, is that there is more coercion to not have an abortion than there is to have an abortion, whereas your evidence is that, I think, you say 95 per cent of those coming to you say that they are actually being coerced into having an abortion. Can you talk more about that?

Ms LEGGE: Sure. We looked at this in detail and we did a lot of research around this in order to produce the white paper. What we found out of that was that there is just not enough data or research being done in the area. We have preliminary data that strongly associates domestic violence with abortion, but we need more research and study done into it as to—are men pressuring women to have abortions? Or are women having abortions to avoid a situation of domestic violence, and that is of their own doing and choice?

Ms ABIGAIL BOYD: Where does that 95 per cent come from?

Ms LEGGE: Could you refer me to that figure?

Ms ABIGAIL BOYD: I would love to if I can remember where I just read it. Maybe it was in yours, Ms Melville.

Ms LEGGE: I think it is, because I have read her submission.

Ms MELVILLE: What page are we on? Yes, I have got it.

Ms ABIGAIL BOYD: Page 2 of your submission. Apologies. You say 95 per cent of those in contact—

Ms MELVILLE: If you look, there is a reference at the end of the page.

Ms ABIGAIL BOYD: There is not a reference for that one.

Ms MELVILLE: Which page, sorry?

Ms ABIGAIL BOYD: I wanted to ask you about that one as well, but that is in relation to the psychological reasons the essay studied.

Ms MELVILLE: I am just wondering where it is.

Ms ABIGAIL BOYD: Page 2 at the top, the second full paragraph. It says:

> 95 per cent of the women who contact our centre for assistance and are seeking abortions said they do so because their partner is not supportive or is threatening to leave them.

Ms MELVILLE: I am part of Newcastle Pregnancy Help. We divert our phones through to Sydney pregnancy help and they provide a 24-hour service. So when a woman is concerned and pregnant, she picks up the phone, rings the 1300 line and a person answers the phone. When women ring in and they say that they are—and I checked these stats yesterday with the person who gathers the information This is from New South Wales now. She said that when women ring in and they say if they have had an abortion and they talk about—as I said, 100 per cent of them say they were not offered pre-abortion counselling, but 95 per cent of them say that they have been pressured.

Ms ABIGAIL BOYD: So that is taken at the Sydney pregnancy help centre.

Ms MELVILLE: Yes, but we are part of that.

Ms ABIGAIL BOYD: Presumably they take data, do they, of each call?

Ms MELVILLE: They do, and that has been done for a number of years.

Ms ABIGAIL BOYD: In relation to the other study—just because we were looking at that one a moment ago, the 95 per cent of cases women named psychological reasons for abortion—that is based on a South Australian study. I note that in South Australia, because there is still criminalisation of abortion in South Australia, doctors have to fill that form in and they can either put medical or psychological. There is no opportunity to put anything else. I put it to you that that is why we have 95 per cent putting down psychological. What would you say to that? Do you have any New South Wales statistics?

Ms MELVILLE: It does not give you many options, really, does it? You can talk about—there might be a whole range of reasons. There might be economic reasons. There might be many things. If you are just saying you want to choose between psychological and medical, and the doctor has to do that, I cannot speak for those doctors. They have to make that decision.

Ms ABIGAIL BOYD: So the implication that these women need counselling because 95 per cent of them have put psychological or doctors have put psychological instead of medical on the reasoning in South Australia—it is not a particularly strong basis for that statement.

Ms MELVILLE: I would suggest that everybody needs to have counselling if they are pregnant and concerned, and that includes myself. A couple of my pregnancy concerns are sitting in the back of this room. They are children that—I went through a time when I was going through difficulty. So if a woman is pregnant and concerned, she is in a vulnerable state. It is not up to us to turn around and say, "You should be doing this. Here is a piece of paper and off you go to an abortion clinic." It is not up to us to tell her what to do and that is not our job. Our job is to listen to them and to give them that space where they can freely do that and safely do that. That is what people tell us is the most important thing. Does that answer your question?

Ms ABIGAIL BOYD: Yes it does.

Reverend The Hon. FRED NILE: Thank you very much for appearing as witnesses at our inquiry. Just some general questions from your submission for Newcastle Pregnancy Help, I note that you state, and it is correct, that there is no requirement in the bill for psychological assessment or counselling and, as you have already just said, 95 per cent of women name psychological as a reason for the abortion. You are advocating that women always have counselling with an appropriate, qualified counsellor. And then you recommend that vulnerable clients have compulsory counselling prior to any invasive procedure, that this is a minimum of duty of care. Would you comment on that?

Ms MELVILLE: I think particularly I can reflect back on my time working in New South Wales hospitals and also I worked in Tasmania for a period of time. If somebody comes in for any procedure it is required that they give consent. It is required to fully understand what they are doing and that they give that consent freely. That should be for any medical procedure. If we are talking about something which has potential risks, and I am not just talking about psychological I am talking about the possible health risks, of course that person should be offered. Or it should be a requirement especially if it is something that has possible dramatic side-effects and possibly death. We do not know.

If you go into a doctor and say to them, "I want to have my knee surgery but I want it done now and I want this to happen in this hospital," you do not have that choice. You have to ask and they will refer you on to who they want to refer you want to, and then you go through a procedure before that happens and it is a thoughtful process that takes time. You have time to consider all the parameters and all the possible side-effects and all those things and you work out what your rehab will be et cetera et cetera. This to me is no different. You need to be looking holistically at the person and what the issues are that are impacting upon them and it is not something that can simply be done by a five minute or six minute consultation with a doctor.

Reverend The Hon. FRED NILE: You also make a note in your submission for the appropriate counselling by an entity not associated with the abortion provider. You are suggesting that there be some bias if it is done by the abortion provider or associated with the abortion provider?

Ms MELVILLE: I do not know about you but if I was going to buy a car, get my roof fixed, do whatever, I would not be asking the people who did it how good they were. I would not be asking them to be the ones to advocate for themselves. If somebody has a vested interest in something, they are not unattached to that issue or to whatever is going on. As I said, the delicate situation that someone is in and, whether or not they realise it, it

may be something that impacts them later on. We had a woman walk into one of our centres that was 81 years old to talk to us about an abortion she had when she was 17 years old. She just wanted to talk to someone. That is not unusual. The reality is that women are the ones who have to carry this burden and their partners as well may be feeling something. To be able to give them that time it needs to be good quality counselling and it needs to be something that is done away from the people who will be providing that service. It is not fair to them as well, that is not their main work, if you like. It is not their main thing that they do. They are there to provide a termination, to deal with that particular issue, their expertise is not in this particular area.

Reverend The Hon. FRED NILE: There has been some discussion about late-term abortions and public hospitals. I note in the bill, in part 4 clause 12, the Secretary of the Ministry of Health may approve a hospital for late term abortions, so it is not automatic that every public hospital will be required to perform late-term abortions, it depends on the Secretary of the Ministry of Health to approve it and that assumes that the hospital board, the actual hospital itself, has applied for that approval. Do you feel there are many hospital wards or public hospitals wanting to be having late-term abortions, to have one ward for late-term abortions and the other ward for maternity?

Ms MELVILLE: I was talking to a young nurse only yesterday. She wanted to catch up with me today and I said that I cannot, that I am off to do this and she made, it was just a heavy sigh and I said, "What is going on?" And she said, "That will be me if my hospital takes that on." For her that was the weight of, "What do I do? Because I may not want to be involved in that." That is a real concern because, as I said I have worked in hospitals, and if somebody had said to me, if I was needed in that room, you need to come and provide ultrasound guidance while we do this abortion, that may be an issue for me. It may be something I do not want to be involved in.

The Hon. NATASHA MACLAREN-JONES: Thank you very much. I just wanted to go back to the era of coercion of a woman to terminate a pregnancy. As my colleague mentioned, we will be hearing from other witnesses tomorrow about the evidence that they have. I would like to know particularly about some of the cases that have been presented to you of women who have raised with you the concerns of being coerced or under pressure to terminate their child and also the age group that you might be looking at as well.

Ms LEGGE: Okay. It is probably good to refer to our submission. This is related to counselling so it all starts at the first instance when a woman needs to think about her options and she starts discussing her pregnancy with others. We know that women usually turn to the most significant people in their lives to first talk about that they are pregnant and that they are concerned about their pregnancy. It might be the partner, it might be a family member or a GP, they are the people most frequently that a woman first turns to. She may feel like she cannot talk to these people for whatever reason. If it is a young woman scared to tell parents, that does not want the involvement even of the partner, it is those women that are particularly vulnerable and then have to look for help and support or guidance outside their circles.

Unfortunately not all women are able to avail that sort of support that they need so we know that women in that situation are in a crisis, that their circumstances are complex, they are often difficult. They are dealing with many different reasons why they feel that they do not want to be pregnant or that they cannot continue the pregnancy. There are support services available but unfortunately not many women know where they can turn to for a really holistic level of support. The women who have shared their stories with us are women who have actually gone straight to abortion clinics thinking that they cannot continue the pregnancy for whatever reason. It usually is because of their male partner not offering support and them feeling like they just cannot have a child on their own, they cannot do it.

If you turn to page 8 of our submission, a woman who shared her story with us, it was very moving, was a woman called Emma. She is actually had 12 abortions so her experiences in obtaining abortion in New South Wales was interesting in that, I will quote from her, "In arriving at the clinic, blankly they booked me in, took my money and gave me a five minute counselling session where basically they twisted everything to suggest abortion was my obvious best path. I use the term counselling very loosely because someone asking, "Do you want to go ahead with this" and you say, "Yes" is not counselling. Not one person warned me of the dangers emotionally, physically or spiritually. Not once did they suggest that perhaps I might need other support options or put me in touch with an independent counsellor.

I only wished in all of the unplanned pregnancy I faced that just one person had said to me I will help you or I will support you or I will point you in the right direction, not one, and I have had eight abortions. That is a lot of situations that I have faced. Every single time I was coerced, forced or abused into having an abortion." My apologies, that was the same Emma I was referring to earlier. She had eight abortions, not 12. Another story that was shared with us was from Jaya Taki and you would have probably heard about her on the news. She was coerced into having an abortion by her then partner, a National Rugby League player.

Ms LEGGE: She also talks about the inadequacies of the counselling she received at the abortion clinic. Referring to her speaking to a counsellor at a Sydney abortion clinic, she said,

> I remember thinking that you have a counselling session beforehand and that is when they decide if you can have an abortion or not. The first question she said was, "How long have you been together?" I said, "Four months" and she said, "Oh yeah, I can see why you would want an abortion." I remember thinking, "Please ask me more questions. Please ask me if this was my choice." She said, "Yeah, I get it. You don't want this baby that early in your relationship."
>
> No-one support me and I thought that was my final chance. I was hoping she would sign-off and say, "This woman cannot have an abortion." Instead she gave me an envelop, "Make sure you put your money in there.

These are just a few of the stories that we hear from women where they are just not offered the support that they need before they reach the point where the feel like they just have to book an abortion. There are two cases where women were pressured by others around them. Like I mentioned earlier, it is also a lack of support. Women are unaware that they can go to a pregnancy centre and they can have someone who will sit with them, talk about their needs and their circumstances, address each of those needs and stay with the women for as long as she needs. The pregnancy centres that we have dealt with and have been involved with as part of our research are very client centred and are very much about just supporting the woman in her needs. They do offer non-directional counselling.

The CHAIR: Ms Legge, earlier in your testimony you made a statement quite strongly that abortion is legal in New South Wales. I put it to you that obviously we know that it is in the Crimes Act. I am a legislator. Most of my adult life I have been involved in public debate one way or another, but I was not aware until the Faruqi bill that it was actually in the Crimes Act. That is perhaps negligence on my own part, but I am sure the vast majority of women out there—and from the emails we are getting that is the case—do not know that it is a crime in the Crimes Act. This bill seeks to transfer it to a stand alone health Act. In 1971 Justice Levine quoted what could be described as a loophole. I put it to you that most women seeking an abortion can get an abortion in New South Wales. If they see a doctor they will ask the right questions and they will get a referral. We have been told that 80 women a week are having abortions in New South Wales. If it is effectively abortion on demand in New South Wales through that loophole created in 1971—and no Parliament has tried to address that loophole—

The Hon. GREG DONNELLY: Point of order: It is just not appropriate to call it a loophole.

The Hon. TREVOR KHAN: That is not a point of order, Greg.

The CHAIR: I am not going to rule on that. I am going to put that to the medical association later.

The Hon. GREG DONNELLY: It is common law.

Reverend the Hon. FRED NILE: It is judge-made law.

The CHAIR: It is a judge-made law. But, effectively, up until 1971 it was in the Crimes Act and it was an illegal activity. On the principle that it is abortion by demand, by want of a better description, in New South Wales in practice, the desire to move it to a health Act that encompasses those same principles, and toughen them up, as the Hon. Trevor Khan pointed out, in terms of the later-term abortions, it should be desirable to take it out of the Crimes Act and put it into a health Act.

Ms LEGGE: I think what is missing in this conversation is that the reason why it is in the Crimes Act is because abortion—a direct and intentional termination—is the taking of the life of an unborn child. Right from the beginning of this legislation—it is a very old law—it was known and recognised that the unborn child has interests. The interests of the unborn child are to be taken into consideration in this law.

The Hon. NIALL BLAIR: I have a quick question about counselling and the ability to have a separation between the interests of the organisation and the patient. I know it is not the intention, but I would hate anyone reading this tomorrow to think we are using the example of buying a car in the same light as abortion. I can understand the issue with the separation between advice and service, particularly if you want to talk about the financial sector. But in my experience the examples you have given are bad examples and should not be what we are aiming for. I would argue that in the medical profession there are some of the best examples that we see of counselling being provided within the same centre or organisation.

I would use the examples of genetic testing for someone who is going through cancer treatment and wants to know about that. Quite often they will receive counselling around the ethics and outcomes of genetic testing—because it is a big deal and a big decision to make—from the same centre. I ask the question: are there not good examples where this can occur? Is not the medical profession the best example of this? I agree that the examples you gave are bad examples and they should be stamped out. But surely we have a counselling and a psychology

sector that is attached to the medical profession that we would want to turn to for some of the best examples, rather than trying to flog off other services, particularly if they were funded for the services of counselling as well.

Ms LEGGE: Unfortunately in our experience, particularly in the area of prenatal testing, it is not the case as you described it.

The Hon. NIALL BLAIR: The case I used was within the cancer treatment centre.

Ms LEGGE: Oh, okay.

The Hon. NIALL BLAIR: I agree with you on the bad examples that you have highlighted. I would say that that is potentially a symptom of a system in New South Wales that probably does need some reform. I am asking a question about moving forward, regardless of whether it is in the Crimes Act or another Act. Should we not be able to rely upon the medical profession and counsellors that work within that to be able to provide independent services to people seeking help?

Ms LEGGE: I think we should, but that is where the distinction between what procedures we are talking about is important. For example, in the instance of a woman with cancer, that would a terrible situation for any women to be in pregnant, especially—

The Hon. NIALL BLAIR: No, I am not talking about pregnancy. A person who is undergoing cancer treatment may go into a centre for genetic testing to see whether they have to inform, for example, the rest of their family members that their type of cancer may be genetic. At the moment that person receives counselling about that test and what it may do to them and their family from the same institution. That counselling may deter them one way or another from taking the test. Forget pregnancy. I am using this as an example to show that I think there are many good examples within the health sector where we can see a delineation between a person being able to give independent advice and support versus the services that are offered in that clinic. It was a counter argument to the bad examples that you have given where they think they can get more dollars in their back pocket by advising people to go through with abortions. I do not want that bad example to be cast across the medical professions, particularly the counsellors in those sectors.

Ms LEGGE: There are probably other witnesses who can speak more thoroughly on this but what we have heard is that doctors are under a lot of pressure when it comes to prenatal testing to not facilitate a live birth if it has a bad outcome. There is a legal liability attached to that. They do not want to be responsible for the birth of a child with a disability or whatever it may be that is identified in the testing process and face prosecution over that. That is a pressure on doctors. The diagnostic testing around this is becoming so advanced and covers so many issues. It can even supposedly determine whether or not you might have a heart murmur in the baby. Then there is the question, "Do you want a baby with a heart murmur?" It is such a broad issue that you are raising. We believe that the medical community wants to act in our interests but there is pressure on them to give a couple the baby they want and ensure the baby is not delivered against the parents wishes.

The CHAIR: On that point, we will conclude the evidence from this panel today. Thank you, ladies, for coming in today.

Ms MELVILLE: Could I just make one small point? I promise I will be quick.

The CHAIR: Yes, a quick one.

Ms MELVILLE: I think that the Hon. Trevor Khan raised the issue of the two-doctor rule, which I think is currently what is in New South Wales. I am not an expert in the law, but that is currently what has to happen: two doctors have to sign off on—

The Hon. NIALL BLAIR: No, it is not.

Ms MELVILLE: Okay. Even if it is not, that concerns me because there is no guarantee that the second doctor will look at that patient or see that patient, and there is no guarantee that there will be any review of the notes. I worked in health for 25 years. My concern is that is not looking at the whole picture. That is not taking into consideration all the issues. That is just signing a piece of paper and signing it away.

The Hon. TREVOR KHAN: Ms Melville, you can rest assured I will put that to the obstetricians when they come in.

Ms MELVILLE: There is the whole gamut in there.

Reverend the Hon. FRED NILE: The two doctors might work at the abortion clinic.

The CHAIR: We have medical panels coming in tomorrow, so that question will be addressed to them. Thank you for coming in. Have you come down from Newcastle today?

Ms MELVILLE: Yes, I did.

The CHAIR: Thank you for coming down from Newcastle today on short notice.

Ms MELVILLE: That is okay. I have an understanding boss.

The CHAIR: Thank you for being here today. We will adjourn for afternoon tea and reconvene at three o'clock.

(The witnesses withdrew.)

(Short adjournment)

PHILIP GOLDSTONE, Marie Stopes International, affirmed and examined

NICHOLAS COWDERY, Adjunct Professor of Law, University of Sydney, NSW Council of Civil Liberties, former Director of Public Prosecutions, affirmed and examined

JANET LOUGHMAN, Women's Legal Service NSW, affirmed and examined

ELIZABETH ESPINOSA, President, Law Society of NSW, sworn and examined

The CHAIR: Welcome to the afternoon session of the inquiry into the Reproductive Health Care Reform Bill 2019. I am Shayne Mallard, the chair of the Social Issues Committee, which is doing this short inquiry into the bill. I welcome our afternoon witnesses.

Ms ESPINOSA: I am here in my capacity representing approximately 30,000 to 34,000 solicitors in the State.

The CHAIR: Dr Goldstone, I understand you were down to come tomorrow but you were not available, so we put you into this panel, which is not quite exactly the same grouping you were in. We will cope with that. We have got submissions from the Women's Legal Service—number 32—and yourself, Dr Goldstone, at number 14. I just want to check if there are any other submissions that have come in.

Mr COWDERY: There has been a submission from the Council for Civil Liberties. It was submitted last night.

The CHAIR: We have got about 10,000 submissions and we might be looking for it. We will have a search for it. The law society?

Ms ESPINOSA: There is no submission from the law society.

The Hon. GREG DONNELLY: Chair, if the gentleman might have a copy that we could get copied for us?

The CHAIR: Mr Cowdery, would you have a copy?

Mr COWDERY: I have not. I will see if something can be done. I do not have a copy of it, no. I did not bring a copy.

The CHAIR: That is fine. We will search.

The Hon. GREG DONNELLY: You do not have a copy of the submission with you?

The Hon. NIALL BLAIR: This is not your first rodeo. I reckon you will be fine without it.

The CHAIR: I invite you to make opening statements up to five minutes, and after that we will rotate the questions from the panel.

Ms ESPINOSA: Thank you. My opening statement is going to be short and brief; really, it is introductory as to what my role is. As I said, my name is Elizabeth Espinosa. I am the president of the Law Society of NSW. The Law Society of NSW represents over 30,000 member solicitors and up to 34,000 solicitors across New South Wales. The law society and myself in this role as president are aware that this is a sensitive and difficult subject and there is actually a range of opinions amongst solicitors in New South Wales. In this context, in a representative role, I have encouraged the legal profession to respectfully engage and take interest in the bill. On 5 August 2019, in my message in a weekly publication called Monday Briefs—this is a weekly email sent to all our members, so approximately 30,000 emails sent every Monday morning. In that publication on 5 August, I said:

> Members may be aware that a private member's bill, the Reproductive Health Care Reform Bill 2019 New South Wales, has recently been introduced into Parliament and is expected to be debated this week. New South Wales is the only State or Territory in Australia that has not decriminalised the termination of pregnancy. The stated purpose of the bill is to reform the law relating to the termination of pregnancies and to regulate the conduct of registered health practitioners in relation to terminations. The bill itself provides for health practitioners to raise conscientious objections in relation to performing a termination and a review of the operation of the Act, if passed, is to be conducted within five years of the Act commencement. There is no doubt a diverse range of strongly held views on this issue and I hope that the debate in Parliament can reflect the civil and respectful way these sensitive issues should be dealt with and that all voices are heard in considering the merits of the bill.

That was a statement that I issued to the 30,000 solicitors of New South Wales. I understand that different lawyers and different legal organisations have, in fact, participated actively in the debate. I note that there have been a number of assertions made regarding the bill and I understand—and it is my strong view as representative of the law society—that it is important and critical that communication and debate or discussion be accurate and factually based. Within the legal profession of New South Wales there is a range of skills and practice areas and I am

pleased that with me today are two of my professional colleagues. Janet Loughman is a highly regarded solicitor and has a thorough knowledge of the human impact of this issue—in particular, on women in a position of vulnerability. Nick Cowdery, AO, QC, is an eminent criminal lawyer and can speak to the legal complexity. That is my opening statement. Thank you.

Ms LOUGHMAN: I would like to acknowledge the traditional owners of the land on which this Parliament sits and this committee meets today, the Gadigal people of the Eora nation, and pay my respects to their elders past, present and emerging. Thank you for the opportunity to comment on and give evidence today in relation to the Reproductive Health Care Reform Bill 2019. Women's Legal Service is a community legal centre that aims to achieve access to justice and a just legal system for women in New South Wales. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victim support, child protection, human rights and access to justice. We operate from a feminist framework and support a woman's right to autonomy and access to safe and affordable health care, including reproductive health care.

As we all know, abortion has been criminalised in New South Wales for 119 years. Since 1982, when Women's Legal Service NSW was first established, we have advocated for the decriminalisation of abortion and that abortion be treated as a healthcare issue. Since 1986 we have been operating a specialist domestic violence service. Last year over 90 per cent of clients who contacted us for advice had experienced domestic and family violence. Through our work, we are aware of the high rates of sexual violence and reproductive coercion that occur in abusive relationships. It is also well accepted that pregnancy places women at an increased risk of domestic violence. For example, it is one of the questions asked by police and other agencies in New South Wales when they are assessing risk of harm following a domestic violence incident.

Concern about violence is a reason some pregnant women decide to terminate their pregnancies. We work with women who have disclosed sexual and domestic violence, who have told us they are pregnant and, on occasions, expressed their wish to terminate their pregnancy. In seeking a termination, some women have expressed concern about being forever tied to a violent abuser if they have a child with that person. They also fear their child being exposed to violence if they proceed with the pregnancy. We have supported women to exercise their right to reproductive health services and to access abortion care. I would like to refer the committee to a submission made by our sister organisation Women's Legal Service Queensland, who in June 2016 made a comprehensive submission to the Queensland Law Reform Commission inquiry.

Their submission, in particular, draws on significant social science research, including the American Turnaway Study, which in 2014 found that women who sought but were denied an abortion were slower to end violent relationships. They were more likely to have sustained contact with the perpetrator over time and to continue to experience physical violence than women who were able to access an abortion. 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.

We support the bill as introduced into the Legislative Assembly. It was carefully considered, respects an individual's right to dignified and safe access to reproductive healthcare, is consistent with the findings of the Victorian Law Reform Commission and Queensland Law Reform Commission reviews and was supported by medical bodies. We note several amendments have since been made to the bill by members of the Legislative Assembly. We believe these amendments were unnecessary and, in some cases, undermine access to abortion care for women, particularly women in rural and remote areas. However, we also recognise the human rights imperative to remove abortion from the Crimes Act and the benefit to people in being able to access reproductive healthcare. We therefore recommend the Legislative Council passes the bill, now as it is currently drafted, with no further amendments.

Mr COWDERY: As I have said, I am here principally as a representative of the NSW Council for Civil Liberties. The Committee now has our submission and I rely on the matters included there. In short, the submission is that the bill should proceed without further amendment. The Council takes the view that the amendments that have been made were not necessary but that the passage of the bill should not be further delayed. On that account, or for any further amendment. There are one or two specific matters mentioned in the submission but I do not think that I need to identify those particularly for the purposes of this introduction.

I leave the medical and social issues that arise in this discussion to others. I am speaking from a legal and largely prosecutorial point of view after 50 years in criminal practice, 16 of them as Director Of Public Prosecutions for this State. 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.

Police, I am told, have a policy of not charging abortion offences. A prosecutor is bound to apply the New South Wales Director of Public Prosecutions' prosecution guideline No. 4, the decision to prosecute. I can identify at least nine public interest factors in that guideline, and they are footnoted in submission, that individually or in some combinations depending on the circumstances of the case, would require a prosecutor not to proceed. The offences are otiose and should be removed. I see no problem with enacting a provision such as the one proposed to criminalise termination by an unqualified person. That would be a reasonable provision to seek to prevent foreseeable harm which should be the prime purpose of the criminal law. The present state of this law, in my view, does not prevent harm it causes harm. Thank you.

Dr GOLDSTONE: I would like to thank the Chair and Committee members for the opportunity to address you today. I am appearing before this Committee as Medical Director of Marie Stopes Australia and as a doctor who has more than 20 years of experience in providing abortion care in New South Wales. This bill is long overdue. More than 70 per cent of people in New South Wales agree there should be access to safe, legal abortion and as a health care professional I can tell you that it is necessary for the health and wellbeing of women in this State. I chose to specialise in abortion care more than 20 years ago. It is incredibly rewarding to work in area of healthcare, to talk with people going through an exceptionally difficult and complex stage in their life, and to be able to help them.

Over the past two weeks I have listened carefully to the debate on this bill, or as much as I can between seeing patients, and at times I have found it disturbing how people have mischaracterised and denigrated the type of people I have spent my life working with. Abortion care is healthcare and so it needs to be guided by healthcare legislation. That does not mean to say that it is not an issue deserving of ethical and moral debate. However, such debate needs to be in the interests of the person who is making the decision to have an abortion. While I am supportive of this bill and its intent I believe there are myths and misconceptions that need to be addressed and challenged. New South Wales needs to decriminalise abortion because right now some women are faced with impossible barriers when trying to access a health service.

Each year Marie Stopes provides financial support to women across Australia who want to access abortion but cannot afford it. These women are facing significant social issues on top of financial hardship. These issues include domestic violence, mental health issues, sexual assault, some are facing incarceration, and others are faced with substance addiction. A majority of the financial support that Marie Stopes Australia provides is actually supporting women in New South Wales and of those who are accessing financial support, it is the women in New South Wales who are more likely to be experiencing family violence, sexual violence and other coercive experiences. These women have, at many times, not been able to find a doctor or a hospital willing to help them and much of this is because of the current legal status of abortion in New South Wales.

As a doctor, my primary purpose is to help people and this is why I not only provide abortion care services, but why I am also here today to advocate on behalf of women in New South Wales who want to take control of their reproductive autonomy. They should be able to access abortion care in their own State without being made to feel like criminals and as a doctor I should be able to help my patients without fear of prosecution. I know that this bill has attracted a number of amendments and others are under consideration. 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.

Another proposed amendment being discussed, I believe, needs to be addressed with facts. 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. While I acknowledge that this bill attracts great emotion, I believe that we must ensure that any legislation and any conversation on this legislation is grounded in fact. I believe we owe it to the people of New South Wales and to the all of the health professionals involved in abortion care across this State.

The CHAIR: The committee has resolved to rotate the questions, five minutes per member, and if we have any time at the end we may ask another question. I will allow them to direct the questions to you and to ask who to answer it, or maybe the whole group to answer the question.

The Hon. NIALL BLAIR: Thank you for your time and submissions. On the issue of legality or decriminalisation, or decriminalising abortion in New South Wales, we have had some witnesses today say it is unnecessary because there are a lot happening anyway. There are legal grounds to obtain abortions in certain circumstances and then potentially, Mr Cowdery, the fact that no-one is being prosecuted because of maybe some of the statistics and the notes that you mentioned, mean that what is the big deal? I guess I just wanted to ask the question, what does decriminalising it actually do in New South Wales, other than remove maybe a law that is not being used or that is not being applied, and what does it mean in that sense. Anyone can have a crack at that question. That was the evidence, to say we do not need to decriminalise it, it is already legal in New South Wales, for want of a better word.

Ms LOUGHMAN: Except that it is not because it is in the Crimes Act. It is a serious issue because it still is in the Crimes Act. It is a significant barrier to access, both for women seeking abortion and for health professionals providing the services. I am sure Dr Goldstone can talk on that issue. There are still issues of shame in relation to seeking abortion services which the criminalisation supports. The fact that it is in the Crimes Act is a tool that can be used by perpetrators of violence to threaten and to coerce, the fact that that is a crime.

The Hon. NIALL BLAIR: On that, we almost heard the other way as well, that it actually provides a protection against coercion because the women feel that they can say to someone, "No, I'm not going to do that because it's illegal." That was evidence that we received earlier today. Do you have a comment on that?

Ms LOUGHMAN: I think that it is a woman's right to choose and it is her right to go to a medical practitioner and either seek or not seek an abortion. We do not need the Crimes Act to be providing the framework for that decision-making.

The Hon. NIALL BLAIR: It was more on the coercion side, protection against coercion.

Ms LOUGHMAN: I think the risk is more that it is used as a tool of coercion.

Mr COWDERY: You have referred to the prospect of prosecution. In my opening I was expressing my views about the interpretation of the guidelines and their application, of course. There have been prosecutions in comparatively recent times. There was a case in 2017 in the Blacktown Local Court of *R v Lasuladu*, and going back before that in 2006 there was the case of *R v Sood*. The prospect is always there that there can be prosecutions. I am no longer the Director of Public Prosecutions, I do not make decisions any more in these matters. But others may take different views of the interpretation of these guidelines and their application to particular cases. Having the risk of prosecution there in my view creates the harm of causing confusion, the sorts of things that have been mentioned already, confusion in the minds of those who would otherwise be involved, difficulties in accessing appropriate services, particularly in country areas in New South Wales, and the general angst that attaches to anybody who is contemplating doing something that is prima facie criminal and needing to find a way through to avoid that criminal outcome. Those sorts of psychological and practical harms, if a person does not receive service in time, can be done away with by taking the criminality out of it.

The Hon. NIALL BLAIR: I do not want to cut people off, we get five minutes and I am trying to jump in. I quickly ask one more question, because then I think I have run out of time. The issue of gender selection is being raised at the moment, and there are people calling for amendments in relation to that. In my understanding that would be a request from the mother to have the termination because of gender selection. Does that potentially increase the likelihood of them being potentially prosecuted under the current Act if there were amendment to the Crimes Act, because they have chosen to go down that path based on the gender? Or am I just making stuff up? That is a legal question.

Mr COWDERY: I need to qualify the answer to your last question because the Sood case was in 2006 and I was the Director of Public Prosecutions then. That was a case where the public interest considerations did not apply to prevent a prosecution. You can get two different kinds.

The Hon. NIALL BLAIR: I will leave it. I think in my haste I have not made that quite clear.

Dr GOLDSTONE: Before your time runs out 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.

Certainly we have seen in other jurisdictions, such as Queensland, where, following law reform, general practitioners were more willing to become involved in the provision of medical abortion. This has a positive impact because women can access early medical abortion at early gestations often in their own community. Certainly the legality does impact services and I strongly believe that it is a significant contributor to the reason why we have almost no public provision in public hospitals.

Ms ABIGAIL BOYD: Thank you all for coming here today and giving your evidence. Both Ms Espinosa and Dr Goldstone mentioned the need to have this debate on the basis of accurate and factually-based information. One of the concerns where there are a lot of myths and misconceptions around seems to be with late-term abortions. It is often used in an emotive way around this myth of the frivolous woman who wakes up at 36-weeks pregnant and decides that is the day she is going to have an abortion, which, as we know, could not be further from the truth: late-term abortions are a tiny percentage, quite exceptional. All of your organisations supported the Faruqi bill, which had no gestational limit at all. Could I ask you to give your views on why gestational limit is not required and what the impact of having gestational limit in the legislation is?

Dr GOLDSTONE: There are a number of jurisdictions that do not have a gestation limit. In Australia the Australian Capital Territory does not have a gestational limit, and we do not find Canberra women rushing out and having abortions at 30 weeks. In fact, there is no difference in the presentation of women in the Australian Capital Territory than there is in States that have a gestational limit. Similarly, internationally, Canada does not have a gestational limit and women are not accessing terminations of pregnancy at late gestations. I think this idea that, as you pointed out, women would frivolously decide to end their pregnancy at 30 weeks is offensive to women. As gestation increases the reasons why women seek termination of pregnancy become more complex and more compelling and nobody seeks terminations at late gestations for insignificant reasons.

Ms LOUGHMAN: I would like to add that as lawyers we do not see a case for legislating gestational limits. We see that there is not a role for legal oversight there, there is a role for medical oversight. We clearly see it as a healthcare issue and that medical oversight and health profession oversight is appropriate.

Ms ESPINOSA: I would endorse that in consideration of whether it be 22 weeks or any limit or whatever thresholds are, the Law Society has always been guided by the Australian Medical Association. It is a medical issue as opposed to a legal issue as to that type of threshold.

Ms ABIGAIL BOYD: One of the witnesses yet to give evidence, Professor Anna Walsh, has put in a submission. One of the issues raised says that decriminalising abortion:

> … sets a precedent for other areas of medicine that are morally controversial.

In your experience when abortion has been decriminalised in other jurisdictions, do we see that as a precedent for other areas of medicine that are morally controversial becoming more acceptable? Is that something that you would agree with?

Dr GOLDSTONE: I would not agree with that. I have not seen any evidence to support that notion.

Ms LOUGHMAN: I am not able to comment.

Ms ESPINOSA: Neither am I.

The CHAIR: You might verbalise that, Mr Cowdery.

Mr COWDERY: I am shaking my head here.

The CHAIR: Shaking your head negatively.

Ms ABIGAIL BOYD: Finally, in relation to the issue of reproductive coercion I asked the previous witnesses it is my understanding that the domestic violence peak bodies see the decriminalisation of abortion as being a necessary step for addressing the domestic and family violence epidemic. The previous witnesses were saying that they saw around 95 per cent of clients coming to them saying that they were being coerced into having an abortion, as opposed to the other way, which is what we understood the evidence to be. Do you know of any evidence for the assertion that it is actually more the other way?

Ms LOUGHMAN: I do not have a recollection of clients coming to us with that particular concern. I think that obviously consent must be free and willing—a woman's decision—but I do not see a role for the criminal law in providing a framework for that.

The Hon. ROSE JACKSON: I would like to direct a couple of questions to Dr Goldstone. One of the issues that we have had discussed in some of the evidence this morning is the issue of counselling and support.

There has been evidence—and it would be my reflection as well, from conversations that I have had with girlfriends and others—that it is certainly a difficult decision to terminate a pregnancy and that, as Ms Boyd has suggested, women do not make that decision lightly or trivially. The suggestion has been that it is important to offer women some kind of counselling and support. I also quote from a witness who we are going to hear from, Ms Anna Walsh from the University of Notre Dame. She includes an unnamed New South Wales doctor, who suggests that the overall philosophy and Marie Stopes is that there is no need to talk to people about an abortion and it is not giving patients truly balanced information. I would like you to talk to us a little bit about the support that you do provide women and the process that you go through when women seek to access services at Marie Stopes.

Dr GOLDSTONE: 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. If at any time during the consultation there are signs of ambivalence we would never proceed. I tend to err on the side of caution and, in fact, there are times when I have told a woman that I would not provide her abortion today, even though she has turned around and said that she really wants this today, because I am concerned about areas of ambivalence. These women are referred to counselling services.

We have our own counselling service and sometimes we also direct women to external counselling services. Approximately 100 women a month are referred to external counselling—or counselling that is outside of the consultation with the doctor who will provide the termination. On the other hand, many women have done enough talking and are at the point where they have made their decision, they are sure of their decision, and can become frustrated if we grill them or question them too much about their decision. I think the wording that is in the amendment of the bill where the doctor makes an assessment as to whether the woman would benefit from additional counselling—it is unfortunate that it is in the bill because that is what we would do anyway and some women will require further counselling and many will not. I think that it is important that the doctor makes that assessment at the time and refers as appropriately. I can assure you that all the medical practitioners who I work with would have that approach.

The Hon. ROSE JACKSON: Thank you for that. Another question I had related to the quality of access of services currently available. I know in your submission you note that you have 17 locations, including some regionally and remote. What is it like for women—we know that women can access terminations right now in New South Wales, we understand that and that evidence has been given—in regional New South Wales and how is that experience, under current arrangements, different to women in urban settings?

Dr GOLDSTONE: Women have access to less services, so they have less access to provision of abortion and contraceptive services. They often have poorer access to correct information as well. If there is one GP in the town in which the woman lives and they are opposed to abortion, that woman may be very limited in her ability to obtain correct information—she may in fact be provided with incorrect information, which can sometimes delay and defer her access to correct information and abortion services. Women in rural and regional areas are certainly disadvantaged in access to information and services.

The Hon. ROSE JACKSON: Perhaps, Ms Loughman, you might have some reflections on that as well. I am interested to know the different level of services you might see women experiencing in regional New South Wales under current arrangements and whether you think that difference in service accessibility is acceptable.

Ms LOUGHMAN: We do understand that access to services is much more difficult in regional and rural New South Wales and certainly would see it as unacceptable.

The Hon. TREVOR KHAN: That difficulty—and I will direct it at you first, Ms Loughman, but I think Dr Goldstone will also wish to contribute as well—of accessing services in rural, regional and remote locations leads to, does it not, terminations occurring later in the pregnancy than, for instance, women who live in urban areas? Is that correct?

Ms LOUGHMAN: I cannot talk from experience of that but logically that would be the case.

Dr GOLDSTONE: Apart from the fact that the services do not exist in their community, they are faced with additional barriers of financial costs of travel—often hundreds of kilometres or many hours, sometimes interstate. This means increased time off work, sometimes childcare, transport and accommodation costs and, for a lot of women, this is a significant barrier that does not get organised overnight. For many of those women, they do present several weeks later than they could have if they had been able to access a service within their

community. That is where medical abortion through primary care and through general practitioners is so important—because women can access services much easier and it is much easier to deliver those services to women living in those areas.

The Hon. TREVOR KHAN: Are you aware of the study by Keogh—I think it was the "Intended and Unintended Consequences of Abortion Reform in Victoria", I think is the name of the paper—that indicated that in Victoria, one of the effects of abortion law reform was that the overall number of abortions did not increase, but that abortions were occurring earlier in pregnancy—than before the reforms occurred?

Dr GOLDSTONE: Absolutely and that reflects my previous comments. We have already seen—I was at a conference the week before last in Brisbane and there was quite a lot of discussion about how access has changed in Queensland since abortion law reform. And yes, it means that women are able to access services earlier and that can only be a better outcome for women.

The Hon. TREVOR KHAN: In Queensland before reform, the situation had developed, had it not, that women—and in some cases quite young women—were having to be flown out of State into New South Wales in order to obtain access to termination services?

Dr GOLDSTONE: That was the case, yes.

The Hon. TREVOR KHAN: For those women involved, I would suggest a significant increase in trauma to them suffered by having to go through this experience?

Dr GOLDSTONE: And they would often have to leave behind their support network—their partner might not be able to travel with them, their partner may need to work or remain behind to look after children. So for women to have to go through that experience and not have their support network with them is extremely unfortunate.

The Hon. TREVOR KHAN: Let us now deal with one proposal, which seems to be floated from time to time, and that is something like a 72 hour cooling-off period to apply. How would you see that applying for a woman from a rural or remote area who has to travel some distance and then has to be told, "You have come all this way but you are going to have to cool your heels for 72 hours." How do you see that as a proposition?

Dr GOLDSTONE: That would be horrendous.

Ms LOUGHMAN: I agree. That would be very problematic.

Dr GOLDSTONE: Horrendous and unnecessary. As I mentioned earlier, when women attend the abortion provider, they are very often at the end of their decision-making journey and they have had numerous episodes of information provision, decision making and supportive discussion before then. I really do not see any benefit. I only see harm from a cooling-off period.

Ms LOUGHMAN: I agree. For women escaping domestic and family violence, that is a terrible circumstance to be in. They may have very limited opportunities without being monitored or stalked to seek access to services—even more limited access to finances, which are then controlled by the perpetrator of violence. I think it would be a very detrimental measure.

The Hon. TREVOR KHAN: Have you read the Victorian Law Reform Commission report into abortion law reform in Queensland?

Ms LOUGHMAN: I have not read the whole report, no.

The Hon. TREVOR KHAN: Were you aware of the analysis in that report and, indeed, I think the analysis also occurred in Victoria, that demonstrated that since about the mid-1990s there has been a continual reduction in the rate of terminations that have occurred in Australia. Are you aware of that?

Ms LOUGHMAN: I accept your proposition.

The Hon. TREVOR KHAN: You will never hear it from me. Dr Goldstone, are you aware of that?

Dr GOLDSTONE: Yes. We do not have accurate abortion data but the trend is that there is a declining proportion of abortions occurring. A lot of that is attributable to the availability of longer acting, more effective contraceptive methods, which are still utilised at low rates in Australia compared to overseas. Part of the problem is access to contraceptive services as well. That needs to be bundled in with provision of abortion care.

The Hon. TREVOR KHAN: Indeed, it might also be reflected by better sex education in the community as well.

Dr GOLDSTONE: Yes, but it could be better.

The Hon. TREVOR KHAN: Always.

The Hon. NATASHA MACLAREN-JONES: I am just going to go back to the topic of gender selection abortions or terminations. We have received evidence in relation to SBS Radio investigation conducted in 2015 by journalist Pallavi Jain in relation to birth ratios. It was claimed that the evidence was presented in the Australian Bureau of Statistics that showed that it was skewed. They further went on to find that 109.5 boys for every 100 girls from Chinese-born Australians and 108.2 boys from every 100 girls from Indian-born Australians compared to the ratio of all Australian births of 105 to 1.7 males for every Australian female. They said that the number of boys being born compared to girls was unnaturally high. Further on the evidence went to a State-by-State breakdown and the quote that is provided in the submission is that, "There were 279 girls missing in New South Wales in the community alone from 2003 to 2013".

I note, Mr Goldstone, that you say in your submission that you feel that the topic of gender selection and amendments in relation to that are not warranted or needed. The Legislative Assembly has put forward an amendment to do further research into this area to gather information and data. Do you still stand by that position, or do you feel that more work needs to be done, considering a majority of New South Wales residents do believe that this is an area that needs to be looked at?

Dr GOLDSTONE: I think the evidence at the moment is poor and we could probably benefit from further data, but I would just like to add that some of the worst female to male sex ratios that exist internationally are in areas that actually have very restrictive abortion laws anyway. I am uncertain how such legislation would work in practice or how it would be policed. It also has the potential to drive women to clandestine or unsafe services. The World Health Organisation [WHO] have recognised this as a concern internationally. They have also commented that societies would benefit more from addressing the reasons why males are preferred in some communities and issues of gender inequality and inequity that drive these kind of cultural phenomenon.

The Hon. NATASHA MACLAREN-JONES: Having said that, you mentioned earlier that there is an important need for clarity for practitioners, which is why it is important to decriminalise terminations. Wouldn't that be the case to ensure that in this legislation we are making it quite clear to practitioners that it is not acceptable to terminate a pregnancy in relation to gender?

Dr GOLDSTONE: Women do not come in requesting that.

The Hon. NATASHA MACLAREN-JONES: We do not know that at this stage. Isn't it better that we clarify so that there is no difficult decision for a practitioner to make, rather than waiting to see if that is presented?

Dr GOLDSTONE: I think we would benefit more from heeding the WHO's advice on this matter.

The Hon. NATASHA MACLAREN-JONES: The next question I was interested in was raised earlier, in relation to coercion of women to have terminations. I am interested to know whether or not any of you have a position on whether there should be criminal sanctions on individuals who coerce women into having terminations, particularly in cases of domestic violence, as has been raised before.

Dr GOLDSTONE: Is that a legal question?

Ms LOUGHMAN: It sounds like a legal question. My first response is to say that the law is adequate in dealing with that issue, and that it is going to cause more harm by putting it in the Crimes Act than relying on the current laws about harassment and intimidation.

Mr COWDERY: I cannot give you chapter and verse but I am pretty sure that the factual situations that might arise in those cases would be covered already by existing criminal laws, because they would be offences of a kind—overbearing the will of the woman to undertake a procedure, which is potentially harmful for her. It is something along those lines but I have not looked specifically at that question.

The Hon. NATASHA MACLAREN-JONES: That is fine. Everyone is operating under time constraints and all of the details. The final thing I wanted to know was—the mover of this legislation has said that they have consulted quite widely with key stakeholders and industry leaders. I am interested to see if anyone here was contacted prior to the bill being introduced into the Legislative Assembly, asked for their opinion and what did you give?

Ms ESPINOSA: The Law Society was consulted I think in 2016 when there was a similar proposal.

The Hon. NATASHA MACLAREN-JONES: I am more interested in this particular bill.

Ms ESPINOSA: I cannot say whether specifically we have been consulted in relation to this particular bill.

The Hon. TREVOR KHAN: I can tell you that they were not.

Ms ESPINOSA: At different times the Law Society has been consulted in relation to decriminalisation of abortion.

Mr COWDERY: The NSW Council for Civil Liberties was contacted in relation to this bill and made responses.

Ms LOUGHMAN: We were part of a collective action that allocated responsibility for this to a smaller group. To that extent we were consulted, but not directly.

Mr COWDERY: I should say that I had the honour to be the only male member of the Women's Electoral Lobby Roundtable, which became the NSW Pro-Choice Alliance. I think that is what my colleague is referring to. Of course, we were consulted.

Ms ESPINOSA: If I may clarify, the Law Society was also indirectly consulted, in the same way that I think Ms Loughman just explained. We were aware that there was potentially an open letter, so there was indirect consultation, but not direct.

Reverend the Hon. FRED NILE: Do you normally conduct a survey of all of your members to establish their attitude to a submission—what you are recommending?

Ms ESPINOSA: We have a policy committee structure where members are represented generally in relation to policy submissions. There have been some situations where—with issues like this one, which are highly sensitive and complex—there are a range of opinions. In this case we have not polled our members. There have been circumstances where members have engaged with the Law Society in relation to debates.

The Hon. TREVOR KHAN: Same-sex marriage.

Ms ESPINOSA: We have had events, such as thought leadership events, where we invite members of the profession to engage in thought leadership, and there is genuine consultation and debate. But, in direct answer to your question—"Have we polled our members in relation to this position?"—no, we have not, which is why I am not here with a position. I am here to ensure that what is presented or discussed from my perspective, representing the solicitors, is factual, accurate and respectful.

Reverend the Hon. FRED NILE: You mentioned that there were no prosecutions, or almost none, under the existing abortion law. Do you have an explanation for that?

Mr COWDERY: I do not have a neat explanation for it. But it would be related to police policy for a start. It would be related to the circumstances that might lead to a complaint being made in the first place. Most people who seek abortions would not be, I imagine, wanting to be the first to put up their hands and go to the police, and say this is what I am doing. I think it would be as a consequence of the fact that many people have been able to take advantage of the service without exposing themselves to criminal liability in the first place.

Reverend the Hon. FRED NILE: Is it a fact that the special squad the police had—an abortion squad—that did check out where abortions were performed, which was disbanded some years ago, would that have been a factor? That there is nobody in the police force really responsible for abortions in New South Wales.

Mr COWDERY: It would be a factor. Of course, we have a long history of the enforcement of these laws over time. But if citizens are genuinely concerned about the prospect of the commission of a criminal offence and they want to prevent it, then they have only to complain to the police and action will be taken.

Reverend the Hon. FRED NILE: Just another general question. It is very important to have a high standard for all doctors involved in medical procedures, especially in issues involving abortion. Is it a fact that one of the anaesthetists, Dr James Peters, at the Marie Stopes centre in Maroondah, infected 56 women with Hepatitis C by sharing needles. He was under the authority of Dr Mark Schulberg, who was also later found to have recklessly prescribed multiple patients with more than 25,000 Xanax tablets and 9,000 Valium—among other addictive drugs. What provisions are there in Marie Stopes to ensure that there is high quality in their medical professionals?

The CHAIR: I just need to caution you on adverse mention there in terms of that statement. Just be cautious about your answer there.

Dr GOLDSTONE: My understanding is that those incidents preceded the purchase of what was the Croydon Day Surgery by Marie Stopes.

The CHAIR: So it was a previous owner.

Dr GOLDSTONE: A previous owner.

Reverend the Hon. FRED NILE: So a previous owner. Not under Dr Schulberg.

Dr GOLDSTONE: Marie Stopes recently received high accolades from the Australian Council on Healthcare Standards [ACHS]. All of our clinics are accredited with the ACHS and we received a number of merits and an award for excellence. So I would not question the quality of the care we provide in our clinics.

Reverend the Hon. FRED NILE: So there is different staff now manning the centre?

Dr GOLDSTONE: Yes.

Reverend the Hon. FRED NILE: Another question from some of the earlier answers. Are you suggesting that there should be no gestation limit on abortions? The bill talks about 22 weeks. Are you proposing that should be abolished and that 22 weeks should be up to birth?

Dr GOLDSTONE: The bill allows for terminations to occur beyond 22 weeks under circumstances. The current law, as it sits, does not place any gestational limits.

Reverend the Hon. FRED NILE: So you are happy to support an open-ended situation?

Dr GOLDSTONE: You have to remember that the majority of terminations, by far, occur in the first-trimester—somewhere between 90 and 95 per cent. The majority of the small percentage above that occur in the early to mid-second trimester. As I mentioned earlier, the circumstances in which a woman seeks a termination at a later stage of pregnancy are very complex, very compelling, horrible fetal anomalies, horrible social circumstances, substance abuse, mental health issues. I think we are talking about an extremely small proportion of terminations and we should not allow that to derail decriminalising abortion in this State.

The CHAIR: My question is directed to Mr Cowdery, with your Council for Civil Liberties hat on. You indicated earlier that police have a policy of not charging abortions.

Mr COWDERY: So I am told by police.

The CHAIR: But prosecutors are obliged to prosecute?

Mr COWDERY: They are obliged to consider a prosecution if it is referred to them by police.

The CHAIR: So the 1900 Criminal Act, where the law is now, with the 1971 Levine exceptions. I earlier used the word loophole but was pulled up on that, so exceptions. We are told 80 abortions per week. Project, with your Council for Civil Liberties hat on, a government that was less open about abortions occurring in our society—a different government—could it, without changing the law in Parliament, direct prosecutors and police to clamp down on abortions, given the existing law and that exception?

Mr COWDERY: I think it could direct police to clamp down, yes. To investigate more thoroughly, maybe to reinstitute squads that used to exist in the past, and to give a different priority to the investigation.

The CHAIR: Would it drill down on those exceptions? I put it to you that it is almost abortion on demand in New South Wales now, with a GP granting that approval based on emotional distress for the woman?

Mr COWDERY: It would make the situation worse than it is now. Yes, a government could, administratively, require closer monitoring.

The CHAIR: What I am getting at, as a civil libertarian moving it from the Criminal Code where it is in an area of doubt in some circumstances into a stand-alone health act would be a better civil liberty outcome.

Mr COWDERY: I think it is a much better civil liberties outcome. It gives certainty and it is directed to the specific issue. If I could just comment. You said could a prosecutor be directed to prosecute. There would have to be some pretty substantial changes made before that could happen.

The Hon. GREG DONNELLY: Hypothetical.

Mr COWDERY: Attorneys general do not direct Directors of Public Prosecutions in this State.

The Hon. GREG DONNELLY: Of course not. Not good ones anyway, Mr Cowdery. I have got a very short period of time for this so I am sorry about running pretty quickly. I do apologise. We have got a bill that has

gone through the Assembly and is now in the Council. It has received some amendments. As Ms Espinosa said, the last time we dealt with this in New South Wales, at least in terms of a political debate, was colloquially called the Faruqi bill back in 2016-17. Mr Goldstone, just so I can be clear about the trajectory here, was Marie Stopes a supporter of the Faruqi bill at that time as far as you know?

Dr GOLDSTONE: Yes we were.

The Hon. GREG DONNELLY: So you supported that bill to pass through the Parliament?

Dr GOLDSTONE: Yes we did.

The Hon. GREG DONNELLY: With respect to Ms Espinosa. I am sorry if I have pronounced your name incorrectly. It might have been before your time in your role at the organisation. But in 2016, do you have a recollection that your organisation supported the passing of the Faruqi bill?

Ms ESPINOSA: We made enquiries to prepare for today and I can tell you that the Law Society presented a neutral position.

The Hon. GREG DONNELLY: A neutral position.

Ms ESPINOSA: Yes.

The Hon. GREG DONNELLY: Okay. This is important. I would like to go to the Second Reading speech of Mehreen Faruqi in her contribution in the Council on 11 August 2016. She said:

> in our consultation process to date we have met or had discussions with representatives from numerous organisations, who strongly support the bill.

You will recall this is a bill that removed abortion from the Crimes Act 1900 but otherwise left it completely unregulated. Is that your understanding Mr Cowdery?

Mr COWDERY: That is my recollection—yes.

The Hon. GREG DONNELLY: And Mr Goldstone, that is your understanding?

Dr GOLDSTONE: Yes.

The Hon. GREG DONNELLY: And Ms Loughman, that is your understanding?

Ms LOUGHMAN: Yes, that is my understanding.

The Hon. GREG DONNELLY: And Ms Espinosa, that is your understanding of what the Faruqi bill aimed to do?

Ms ESPINOSA: Yes.

The Hon. GREG DONNELLY: In terms of naming the people who supported strongly the bill and assisted her with the progress of her bill, she goes on to say—and I will not read the whole list—the New South Wales Council for Civil Liberties and the Women's Legal Service. And both the other two organisations represented here today supported the Faruqi bill—that is your testimony as I understand it. The point I am getting at is that then your respective organisations supported the decriminalisation of abortion to take it out of the Crimes Act and not have it regulated at all statutorily. You are coming before us today and putting the position that the same organisations are taking a different view. That different view is in two parts.

First of all, as I understand your submissions and indeed both written and oral, you in the first instance supported the passing of the Greenwich bill as introduced—the first print; in other words, unamended. So you supported that position, which is different from the position with respect to the Faruqi bill. You are now coming before the inquiry today and saying that notwithstanding that this was our primary position with respect to the Greenwich bill we support the bill as amended before the Legislative Council, which is the second print of the bill—in fact what we are being required to think about and deliberate over—but with no further amendments.

With respect to your respective organisations we have gone from 2016-17—and you might recall the Faruqi bill was voted down on 11 May 2017—total removal of abortion from the Crimes Act, and that was your position then, very publicly endorsed: totally out of the Crimes Act, no statutory regulation. You are now saying in your original position, "We support," or would have supported, "the Greenwich bill," and now you are saying, "We are supporting the amendment to the Greenwich bill, although reluctantly." What I am trying to gather is this: If the Legislative Council does in fact pass some amendments—who knows what they are—or just even one amendment, and let's say this one amendment is to try to protect a woman from being coerced into an abortion,

what would your respective organisations' positions be with respect to that amended bill? And can we start with Ms Espinosa?

The CHAIR: That was five minutes on the question.

The Hon. GREG DONNELLY: I know—

The CHAIR: Order! So, briefly, if you could address that point and how you feel it works. Thank you.

Ms ESPINOSA: I am unable to present a position, as I said in my opening statement. We did not present a position then and we do not present a position now. The role of the Law Society is to be consulted in relation to legislative drafting.

The Hon. GREG DONNELLY: Thanks.

The CHAIR: Thank you. Ms Loughman?

Ms LOUGHMAN: Our view is that decriminalisation is hugely important and it must happen without delay.

The CHAIR: Mr Cowdery?

Mr COWDERY: The council agrees with that and to answer the question directly it would depend on the terms of the amendment.

The CHAIR: And Dr Goldstone?

Dr GOLDSTONE: My submission addressed some of the restrictions in the first draft of the bill and the reasons why the amendments were not necessary. However, decriminalisation of abortion is vital and we should not delay it any further.

The CHAIR: Thank you for that. Thank you for your time today at short notice, for coming in to contribute and being flexible to appear before the inquiry. We thank you very much.

(The witnesses withdrew.)

ANNA WALSH, School of Law, University of Notre Dame, Sydney, sworn and examined

MARGARET SOMERVILLE, School of Medicine, University of Notre Dame, Sydney, sworn and examined

MICHAEL McAULEY, President, St Thomas More Society, sworn and examined

The CHAIR: Welcome to the second last group of witnesses of today's hearing for the inquiry into the Reproductive Health Care Reform Bill 2019. I am Shayne Mallard, the Chair of the Standing Committee on Social Issues, which is conducting the short inquiry. Thank you for coming in today. Please state your full position title.

Mr McAULEY: I am the President of the St Thomas More Society, I am an adjunct professor at the University of Notre Dame and I am also a practising barrister and I have been doing personal injury work, in particular medical negligence work, for some time.

Professor SOMERVILLE: I am currently Professor of Bioethics at the School of Medicine, University of Notre Dame, Australia. I am also emerita Samuel Gale Professor of Law, professor in the Faculty of Medicine emerita and emerita founding director of the McGill Centre for Medicine, Ethics and Law in Montreal.

Ms WALSH: I am a lawyer and an academic at the University of Notre Dame and I am a PhD candidate there as well.

The CHAIR: Please take only up to five minutes on an opening statement, recognising that the panel will drill down into some of the issues you raise.

Ms WALSH: Thank you very much for the opportunity to appear today before the Committee. I should just state that I do appear as an individual. I do not come here representing the views of the University of Notre Dame. I am not a supporter of the bill but I do come here just to address the amendments in my area of competence. I have been a medical negligence lawyer for 20 years. I have specialist accreditation in medical negligence. I was a partner at Morris Blackburn lawyers where I headed up the medical law department. I have a master of bioethics from Harvard, a master of laws from Sydney and my PhD study is on the attitudes and experiences of doctors who have a conscientious objection to abortion in New South Wales and Victoria, so I thought that might be the area in which I could perhaps provide some information to the Committee.

I just noticed that my name was mentioned earlier and there was a comment made about something that I had said. That was that I had said if the abortion law was changed it would set a precedent for other morally controversial areas. I think that was a misunderstanding about what I meant and I will be charitable and say it was probably my poor drafting in my submission but I was actually quite focused on the conscientious objection clause that is actually in the current bill with the amendments. I have concerns about the way it is drafted and the way that it can be applied to other areas such as physician assisted suicide and euthanasia so I meant it in that context.

The CHAIR: Ms Boyd might pick that up later. Thank you. Do you have anything to add to your opening statement?

Ms WALSH: I am happy to address any aspects of my study. There may be questions. I put some of the quotes in my written submission. It is a novel study. It is not an area where there is much research at all—that is the phenomena of conscientious objection specifically from the perspective of people who have the objection. You could have a lot of very big studies that are quantitative, that are tick-a-box surveys of hundreds and hundreds of doctors, that do not really drill down into the detail. This is the first one in Australia that just focuses on these particular doctors who have that objection, to understand what they think about abortion, whether they have any limits on when they would actually refer and I also asked them about providing information because at the time I took their information the Tasmanian law was in place and that has a slightly different clause.

The CHAIR: Thank you. We have your submission No. 21.

Professor SOMERVILLE: May I assume that you have distributed my—

The CHAIR: Yes—submission No. 24. We have all your submissions.

Professor SOMERVILLE: Thank you for having me here as a witness. Abortion is always a moral and ethical issue but it is a separate question when it should be a legal issue, and that is the question that you have to answer. Most Australians do not accept the strongest pro-choice stance that abortion at any stage is a decision solely for the pregnant woman and her doctors and that the law should never be involved, nor do they accept the strongest pro-life stance, which is that abortion should never be legally allowed. Most Australians are on a spectrum between these two poles. So does the bill strike the right balance between these poles and provide the right safeguards? My answer is a clear no.

What are some of the problems and deficiencies? Abortion on demand up to 22 weeks is out of line with norms in civilised countries comparable to Australia. A 2017 Galaxy poll in New South Wales showed that 51 per cent of people put a limit at eight weeks or less. I was surprised—that is much earlier than I would have expected. I suggest the limit should be 12 weeks, and you can read my reasons for that in my written submission. All abortions require explicit safeguards and even more so after 22 weeks. The bill contains few, if any. Leaving the decision about abortion after 22 weeks—that is abortion of a viable fetus; viability is generally set at 20 weeks—to two specialist medical practitioners means the decision is entirely at the discretion of these doctors. Again this is way out of line with the norms implemented in most countries like Australia. I can tell you what some of those norms are perhaps in the question period.

The requirements for obtaining informed consent are completely inadequate. We know that many women are unaware of the risks and harms of abortion. Likewise the provision for access to counselling is completely inadequate. In particular, there is a conflict of interest for doctors working in abortion clinics counselling women about abortion. Publicly available, independent counselling is essential. Sex selection abortion—it is sex selection not gender selection—will not be controlled and is very likely to occur. There is evidence of that in Canada in relation to previous questions that were raised. A requirement of effective referral is a breach of the doctor's right to freedom of conscience, and for some their freedom of religion. This is, as human rights lawyer and Jesuit priest Frank Brennan said, "ideological totalitarianism". There must be concern for the impact of aborting unborn children with disabilities on other people with disabilities and the impact of that on society. Think of a society eliminating all Down syndrome children. What kind of society would that be? That actually has been suggested in Denmark.

The criminal law, yes it is meant to prevent harm, but its other important functions are symbolic, an affirmation of the shared values we have, especially regarding respect for human life, and these will be lost if this is taken out of the criminal code. I hope that you will vote against this bill, or at the very least require major amendments. In deciding, remember that we are all ex-fetuses and our lives were protected by ethics and law. In changing those ethics and law you, as our lawmakers, need to consider deeply what we as a society owe to present and future unborn children with respect to protection of their lives. The ethical tone of a society is not set by how it treats its strongest, most privileged, most powerful members, but by how it treats its weakest, most vulnerable and most in need. Unborn children belong in that latter group.

Mr McAULEY: I thank you for asking me, on behalf of the St Thomas More Society, a society of Catholic lawyers, to present today. I am honoured, I might say, to be here with Professor Anna Walsh and Professor Somerville, in particular Professor Somerville who is really a world-renowned expert on bioethics and has exposure to bioethical changes in very many countries, and in a certain sense—at least speaking for myself—I am a dwarf sitting next to a giant. She is really in the trop drawer in terms of bioethics and we are very honoured to have her here. I should also say that I was present while the former Director of Public Prosecutions, Mr Nicholas Cowdery, gave his presentation. Can I say this in relation to Mr Cowdery's evidence before the Committee; when he stuck to his knitting—that is when he stuck to law—I agree with him. When he went beyond the law, I disagree with him strongly. He is quite right, in effect since 1971 in New South Wales—he perhaps did not put it in quite these terms—the situation is, as a result of the Victorian case and the New South Wales case, there has effectively been abortion on demand and effectively abortion has been lawful.

That was acknowledged very much by President Kirby in the CES case. This is not a situation where there are very large numbers of women who are seeking abortions who are denied abortions. Quite the contrary. Mr Cowdery quite rightly referred to the Sood case, which was quite exceptional. It involved serious abuse by a medical practitioner, which everyone would be concerned about. The fact of the matter is at the present time abortion is lawful in New South Wales when you look at the law itself, the decisions of the court and the practice. Indeed, on the very issue of abortion the truth is that there are very many different views in the community, very wide nuances between people who are in different camps and no jury would ever in the current circumstances convict if the police and Director of Public Prosecutions were to bring a prosecution, in the vast majority of cases. This is not an issue about whether abortion should be made lawful in New South Wales; it is.

As I got off the plane from Cooma I quickly read Professor Somerville's paper and I should make it clear that I agree generally, both with Professor Walsh and Professor Somerville. In particular, my understanding is that at 22 weeks most babies, if born at that age and given appropriate care, can survive. My submission is that the vast majority of the people in the community are horrified at the thought of ready and unrestricted abortion of babies who are 22 weeks old or older. I accept what Professor Somerville says about counselling being independent and government funded and also it should be directed to helping the mother and providing the mother with real alternatives. There is a tragedy about this bill. The tragedy is this; that it has been brought on very quickly and there is every sign that it is being pushed through both Houses extraordinarily quickly. I got a copy of this bill

at five past five on Friday night. I had already planned to go down to Jindabyne. In fact I went down to Jindabyne and instead of skiing I had a look at the bill. It is not appropriate that a bill of such significance, of such enormous importance to the community, be rushed through in this way.

There are many sections of the bill that need to be looked at carefully. In my submission the bill supports the interests of abortion clinics. What it does not support is the interests of women. It has no positive solutions for women. It is not true to say that abortion is a silver bullet that solves every problem. It does not solve the problems of domestic violence. In relation to medicalisation; doctors have skills in medical techniques, they do not necessarily have highly-developed skills or knowledge in ethics or bioethics. So there needs to be some form of regulation. If the bill is passed in its present form there will be no effective regulation, it will be a free for all, not only before 22 weeks but after 22 weeks. The whole question of complicity, if one looks at section 9 (1)—who knows what that means? I defy anyone to come up with a clear explanation of what that means.

The Hon. NIALL BLAIR: Which section?

Mr McAULEY: Section 9 (1). You can ask me a question about it if you want.

The Hon. NIALL BLAIR: If we get there.

Mr McAULEY: I will be finished in a minute—The problem with section 9 is it is an attempt to take people out of the medical profession who quite reasonably should be there and it is not only important for them but it is also important for the thousands and hundreds of thousands of people who appreciate their particular philosophy of life and care for the mother and the unborn child.

The CHAIR: Thank you, Mr McAuley, and thank you all for giving your opening statements. The members of the Committee have agreed to rotate the questions, five minutes each, and make sure everyone has time to ask questions. We will do that alphabetically.

The Hon. NIALL BLAIR: I am curious, Professor Somerville and Mr McAuley both, you have made mention that—I paraphrase—that after 22 weeks there are few, if any, controls or regulations in place. Have you seen the amendments that went in, in the lower House? Because they certainly set up some process now after 22 weeks that is different to the original printing of the bill, is that correct.

Professor SOMERVILLE: Like Mr McAuley, I received a copy of the bill at 5 o'clock on Friday and the heading for it was "Second Print". I thought that meant that it did have the amendments in it.

The Hon. GREG DONNELLY: That is correct .

Professor SOMERVILLE: Is that correct?

The Hon. GREG DONNELLY: Yes, it is.

Professor SOMERVILLE: What are you suggesting are the safeguards that are in there?

The Hon. NIALL BLAIR: I think you said there were few, if any, processes—

Professor SOMERVILLE: No, safeguards. What do I mean by "safeguards"? Here is what most abortion—

The Hon. NIALL BLAIR: We will go back and check. Again I do not want to split hairs, I have a short period of time, but I just want to make sure that we are talking about the amendment bill.

Mr McAULEY: We are on the same page.

Professor SOMERVILLE: Yes.

Mr McAULEY: We have the same document.

The CHAIR: The amendment bill.

Mr McAULEY: I am not worried about the first bill.

The Hon. NIALL BLAIR: I do not want to pass judgement on whether it is appropriate or not; I just want to make sure we are on the right bill.

Professor SOMERVILLE: Yes, but I would really like to tell you what some—

The Hon. NIALL BLAIR: But they are in your submission, those safeguards, are they not?

Professor SOMERVILLE: Pardon?

The Hon. NIALL BLAIR: They are in that written submission.

Professor SOMERVILLE: No, they are not actually. I mean there was also a limit to how much you could put in the submission at that late date. The sort of safeguards are pain management—for example, in some American States you have to give a baby over 20 weeks, if it is going to be aborted, a general anaesthetic; an ultrasound scan that the mother must look at before she has the abortion; independent counselling; and cooling-off periods. Those are some of the kinds of safeguards that are in abortion laws. Don't forget you are dealing with a baby that, if you delivered it rather than killed it in utero, has a chance of living. It is a viable child.

The Hon. NIALL BLAIR: Thank you. Mr McAuley, when you say that in a sense it is legal in New South Wales now, it is happening, it is on demand, why not move it and put some other processes around it in the health system, and even in certain circumstances say that they should be carried out in a public health facility, and manage and regulate it that way?

Mr McAULEY: I have no problem with abortions being carried out—I mean I have a problem with abortions, but I have no problem with them being carried out in public health facilities.

The Hon. NIALL BLAIR: I am talking about taking it out of the crimes legislation. This is the legal aspect of it. We can talk about the yes or no, the moral and ethical, whether you believe about abortions, that is a separate issue. I am talking about where it is housed at the moment in the Crimes Act. If it is happening on demand since the Levine ruling, and there are not really cases other than one or two that we have seen cited about it being followed through, investigated and prosecuted, why not then move it across to the health aspect and put other procedures and processes around it?

Mr McAULEY: Speaking for myself, I have no problem with taking it out of the criminal jurisdiction in general terms. What I do have a problem with is the inadequate safeguards in the current bill for the woman, for the child and for society in general.

Professor SOMERVILLE: Can I just add to that?

The Hon. NIALL BLAIR: Can I just clarify that: You support it coming out of the Crimes Act but are concerned about whether there is enough provision in it to protect those other areas.

Mr McAULEY: But I think Professor Somerville has a different view.

The Hon. NIALL BLAIR: That is why you are all here, that is why I wanted to confirm yours, and now Professor Somerville's.

Professor SOMERVILLE: Yes, and I do have a different view because the Crimes Act has two purposes. One is to prevent harm and the other is to set up our most important symbolic and value issues.

The Hon. NIALL BLAIR: Is it working at the moment? If there are 30,000 a year, is it preventing that harm?

Professor SOMERVILLE: No, but that is because it is not applied.

The Hon. NIALL BLAIR: Should we then apply it? Should we be policing it more? Should we have investigative teams cracking down on abortion and should we be applying the law to reduce the harm?

Professor SOMERVILLE: My position, as explained in my written submission, is that we should not have law before 12 weeks. The reason for that is not because I think abortion does not matter. It does. It is because you cannot apply the law and having law that you cannot apply brings the whole of the law into disrepute. But I think it can be applied after 12 weeks.

The Hon. NIALL BLAIR: So decriminalise up to 12 weeks.

Professor SOMERVILLE: Yes. You would put that in the Crimes Act, not decriminalise—well, I suppose you can say it is decriminalised. Leave the provision in the Crimes Act but make amendments to it because of the symbolic function of that, that this is one of the most important issues we face in society. It is not just a nothing procedure.

The CHAIR: That is helpful too. Ms Boyd?

Ms ABIGAIL BOYD: Thank you for coming and giving your evidence today. Professor Somerville, you talked about the post-22 weeks issue and two doctors, and a woman being able under the bill to procure an abortion in circumstances where it is seen as warranted within the particular limitations of the bill. My understanding is that it is stricter than the current law. Under the current law you only need one doctor and the

same circumstances. Can you explain why you are opposed to the extra restrictions past 22 weeks than what we currently have?

Professor SOMERVILLE: My experience is that the vast majority of doctors, even if they are willing to provide early abortions, will not provide abortions after 20 weeks unless there is the most serious reason for doing so. If you look at the end of my paper you will see that I have written up three cases that I personally was consulted on in Canada. None of those cases involved a serious risk to the mother and yet the people got an abortion. In one case it was a 34-week gestation pregnancy of a married woman and they found that the baby had a cleft palate. She and her husband said they did not want a defective baby and that baby was aborted. So there are cases, and generally speaking people who are pro-choice on abortion deny that there are unjustified late-term abortions, or even deny that there are late-term abortions at all, but in fact there are.

Ms ABIGAIL BOYD: Coming back to the question, this bill tightens up the restrictions. It is not what I would want, but it actually makes it more strict after 22 weeks than what we currently have.

Professor SOMERVILLE: Just because of one compared with two doctors? I am a bioethicist and also a medical lawyer, and part of my work is to deal with doctors who do not do what is required. I would assume there would be two doctors who might often work together. One wants to do it; the other one signs it off. I mean we see that sort of thing.

Ms ABIGAIL BOYD: If you think this is not an additional restriction, it is clearly no worse than the current situation, so I am just not clear why you are objecting to it basically whether it is the status quo or a little bit stricter than the status quo. Why object?

Professor SOMERVILLE: I would put the cut-off at 12 weeks, not at 20 weeks.

Ms ABIGAIL BOYD: But that is not the current law. Are you saying that if we are going to legislate at all on this, it should be the other way, to make it a lot stricter than what the current law is?

Professor SOMERVILLE: If you are doing abortions at 22 weeks presently, yes, I think it should be a lot stricter, and I think it is out of line with international standards. Most of the European countries with which we could compare ourselves, for example, have a limit usually between 10 and 12 weeks. I think one of them has a 14-week cut-off, but they are miles lower than 22 weeks.

Ms ABIGAIL BOYD: That is interesting. Why the 12-week gestation limit? What is the rationale for the 12-week limit?

Professor SOMERVILLE: The rationale is that, as I said at the beginning, all abortions involve an ethical judgement. Is it ethical to do this? I might decide one way; someone else might decide the other way. The trouble with using law in that original period, now that we have chemical abortion, is that you cannot apply the law to that. Also, I think that pragmatically we will not be able to get a prohibition up to that point. I think from the time of conception to birth that child should have the same ethical concern applied to it, but having to live in a multicultural pluralistic society, sometimes you have to make accommodation, and because you cannot apply the law, that brings the law in general into disrepute, and then I would be worried that law on abortion after 12 weeks would not be applied either, and I am very keen to have that law applied.

Ms ABIGAIL BOYD: Can I just ask, do you support contraception, birth control?

The Hon. GREG DONNELLY: Point of order—

Ms ABIGAIL BOYD: This is directly relevant, thank you, Mr Donnelly.

Professor SOMERVILLE: Yes, I do.

The CHAIR: I think the witness has answered the question already with a yes.

Professor SOMERVILLE: It is a wonder you have not asked me if I am Catholic. That is usually what people ask.

The Hon. GREG DONNELLY: I will ask that question.

The CHAIR: Order! The witness is Professor Somerville. Mr Donnelly, do you want to take the opportunity now?

The Hon. GREG DONNELLY: I will reserve my time and we will come back to it.

The Hon. ROSE JACKSON: I have a question for Ms Walsh. I wanted to ask you about this issue of conscientious objection by doctors, because there have been some doctors who are supportive of this legislation,

doctors of faith who do not want to provide abortion services themselves, but they say that it is their faith—that they are Catholic or that they are Islamic; that is not the faith of their patients—and that their role as doctors is to provide care, support and advice to the patient so that they can access services that they want to access safely and without judgement from their medical practitioner.

Ms WALSH: Sure, I accept that. That is certainly one way that some doctors will think, but we are all different. One thing that came out of my study—it was 35 people—is that it is not binary. These people had self-identified as being conscientious objectors. Even among that group there were some who would actually not have a problem with a woman having an abortion for rape, a severe fetal disability or even serious social circumstances. However, in relation to referral or providing information, there were some differences of opinion, but certainly they thought, overall, that the law should not impose a requirement that doctors should have to refer, facilitate or provide information if they felt very strongly about the particular circumstances that presented themselves to them. I accept that there are some people of faith, no faith or what have you, that have various views.

But, overall, the doctors that I identified largely had an issue with providing a referral or providing information. They were largely concerned about providing information because they were concerned about referring them to Marie Stopes clinics or others and being unsatisfied that the counselling that they got there—and I did hear the question in the last session, which I thought was not responsive, the answer that he gave, because we do not know where they are being referred to. A lot of women may have a particular faith background, cultural background or philosophical position were counselling also includes continuing a pregnancy. They may want to be referred to a crisis pregnancy centre or even a church group or anything like that. The doctor who is doing that referral or who is providing information has to actually understand the patient's world view; it is not their world view and it is not the State's world view. I think sometimes that gets a little bit lost in the mix, because it is seen perhaps as a minority view.

The Hon. ROSE JACKSON: There is no restriction in the legislation and in general of doctors providing additional information, is there? So, yes, they are required under the proposed legislation to provide information to the patient, who has come to them seeking information on termination of pregnancy as to where they might access that service. But there is no prohibition on them also providing additional referral or advice or support to that patient? Yes, if, in their professional, medical assessment, they form a view that that woman does have mental health issues or needs other referrals, they can do that. But they cannot exclude or refuse to provide her—in the suite of information that they are providing their patient—information that she has perhaps directly requested about where she might access doctors or medical services that include termination of pregnancy.

Ms WALSH: The clause actually says—it is actually very badly drafted—subsection 1 talks about the first person asking about an abortion for the second person and it says this section applies to those people, and then subsection 3 is not about a first person asking about a different person, it is a person asking about themselves. So it is very unclear, it is bad drafting, but it talks about the fact that they have to give information on how to locate or contact a practitioner who, in their belief, does not have a conscientious objection to the actual termination. No, it does not say that they cannot provide additional information. Clearly, that is in my submission. I have said that some people said that they would begrudgingly take part if the law said that they had to provide information, but they would annotate it.

But they would still be fearful that a patient might report them or that they would be concerned about the fact that if they referred to a church group, the Salvation Army or something like that, that it was not medical. They were concerned about patients getting counselling or support from all world views. I do not think that we have done enough inquiry. I think it is a good thing that we are talking about it, about where Marie Stopes—I do not want to just pick on them—and other abortion providers send people for counselling, and whether there is enough variety to suit the actual patient that is before them. I think that is an education issue for doctors, though.

Professor SOMERVILLE: I will just add to that. In Ontario, Canada, the College of Physicians and Surgeons of Ontario have said that failure to do that when it is required by law is unprofessional conduct that will result in the loss of your medical license. That is another reason why it is very important what you put in that provision. In fact, they have gone as far as saying, "If you do not want to do what the law requires, you should not be a doctor".

The Hon. NATASHA MACLAREN-JONES: I am interested in finding out a bit more from a legal as well as a medical background. I come from a nursing background, not a legal background. I am interested to know in a situation for late-term abortions—whether it is 20 or 22 weeks—where an abortion is attempted and a live birth results, what would happen under the current legislation before us? Would the doctor or the nurse be required

to try and save the life of that newborn, or proceed to allow it to die, as it is a termination, and that is the contract that is entered into with the patient?

Mr McAULEY: I think, as to the present law, I might take that as a question on notice so that I can give a more careful—

The Hon. NATASHA MACLAREN-JONES: Unfortunately, due to the nature of this inquiry, we have such a short time frame.

Mr McAULEY: I want to give a careful and accurate reply. What I can say is that, in relation to section 6, the question you raise exemplifies the incompetence of the drafters of this legislation, and the ridiculous fact that this is being rushed through. Clearly, no one has given any thought to what happens when a child more than 22 weeks, having been expelled from the mother, as it were, is still living. There should be provision in the legislation. One of the speakers in the Legislative Assembly pointed out that there are significant numbers of children in Victoria who are apparently left to die. Now, we are a civilised society. That should not happen. That is why this legislation needs to be carefully considered and not just bolted through.

Professor SOMERVILLE: I would also add to that. In the bioethics academic literature there have been some articles about what have been called "post birth abortion". The authors of those articles are arguing that if you have a baby that has a disability—and if you had known about it before it was born you would have had an abortion—then you should be allowed to have the baby killed after it is born. In fact, in the Netherlands there is a protocol that is being used, it is called the Groningen Protocol, that allows parents who have a baby with a severe disability to be euthanised. Those are real issues that you are raising.

The Hon. ROSE JACKSON: Luckily no Parliamentarians are raising them.

The Hon. NATASHA MACLAREN-JONES: What suggestions would you say we should consider as amendments to this legislation to provide support to a baby that is born in that situation?

Mr McAULEY: There should be a provision which deals with that in a clear fashion. Section 6 (3) needs to be revised so that the medical practitioner is required to certify certain things. The failure of this legislation is to, as it were, create medical practitioners who have an interests in abortion and abortion clinics as gatekeepers in such a significant way. In clause after clause of this legislation the medical practitioners are given decision making authority without giving clear criteria which they are required to apply. That is certainly to section 6, in relation to sex selection. It must also relate to disabilities. There are a whole series of problems; informed consent, counselling, there are all sorts of problems in this legislation that are simply overlooked. It will be tragic if this legislation is passed in its present form.

Ms WALSH: The actual NSW Health policy framework talks about that reality that a late term abortion could result in live birth. I put that in my submission when I read the wording. It is not wrong but it does not emphasise the fact that there should be active resuscitation or active care. It actually does the opposite and suggests that if it is too burdensome or it is futile it is not wrong to, not in so many words, I guess palliative care or what not. We just do not have a parallel for this very strange situation where it is not the same if a child was born and there was a difficult delivery and they are very damaged and there is a decision made by parents who wanted that child with the medical team to discuss burden or futility because here the actual intention was to terminate the child's life. It is a very strange situation. I think either these guidelines have to be amended to make them stronger, to give more action guidance to doctors in that scenario or alternatively something could be put into the bill as a moral guidance point so it is not just left to the people who did the termination to decide amongst themselves. It is just a very strange scenario I think where it does require some guidance beyond what is in the current framework here.

Reverend the Hon. FRED NILE: Just a general question, when you read the bill and I have checked it, there is no mention of the words "mother" or "woman" in the bill.

Mr McAULEY: That is true.

Reverend the Hon. FRED NILE: It has all this very politically correct jargon, "performance of terminations". This is part 2: "Performance of terminations". It is like a stage show. Part 2, section 5: "termination by medical practitioners". It keeps using the word "termination". It never says the truth, kill, murder, destroy the baby. That is the end result, isn't it?

Mr McAULEY: There is no doubt about that.

Reverend the Hon. FRED NILE: Just following up that point, I note from your submission, Dr McCaffery you have concerns about medical practitioners performing terminations.

The Hon. GREG DONNELLY: It is not "Dr McCaffery", it is Mr Michael McAuley.

The Hon. TREVOR KHAN: It is close.

Mr McAULEY: Do I need to get my driver licence out to prove it to you, Reverend Nile?

The CHAIR: It is good to see humour at this late hour.

Reverend the Hon. FRED NILE: Mr Simon McCaffery.

Mr McAULEY: Michael McAuley is my name, I can assure you. Even when the police ask me I say, "I am Michael McAuley".

The CHAIR: As was sworn in earlier.

Reverend the Hon. FRED NILE: Mr Michael McAuley, I note from your submission you have concerns about medical practitioners performing terminations without any level of expertise. This leads me to ask: Have you ever been involved in or observed a case where a medical practitioner performing a medical termination prior to 22 weeks has failed?

Mr McAULEY: Yes.

Reverend the Hon. FRED NILE: Would you comment on that?

Mr McAULEY: As a personal injury lawyer I have acted in a number of cases where unfortunately over the years where abortions have been botched for one reason or another. For professional reasons I do not think I can say any more than that. There are issues of confidentiality and so on. All of those situations are tragic.

Reverend the Hon. FRED NILE: Could you mention the situation without mentioning the names?

Mr McAULEY: I really do not think I should say more because if I went into detail there may be some person who it might revive terrible memories for them. I really would prefer not to answer that question.

Reverend the Hon. FRED NILE: I move on to a question for Anna Walsh. I understand you have conducted a unique academic study into doctors' views on their rights of conscience. Can you speak to the range of views you encountered? Were views polarised or did you find a good balance amongst the medical profession.

Ms WALSH: Firstly, it is a biased study because it is from the perspective of people who self-identified as being conscientious objectors. And that is a good type of study to do because it is not about people making a law about how they feel about conscientious objection, or they think it is unintelligible that someone would have an objection to a particular service or act. It is about hearing from those people who have really thought about it and reflected on it and believe that it is wrong, it is the antithesis of medicine to do that. There was a little bit of differentiation, as I mentioned earlier, that it was exactly a binary situation. There were some doctors who felt they had a conscientious objection to abortion and would self-identify as that but might still not have a problem in certain circumstances.

On the whole, they all thought the idea of requiring a referral or providing information was unnecessary and unreasonable. You only have to look at the fact that in three state of Australia with quite liberal abortion laws, Western Australia, the ACT, and South Australia, they have a protection in their Act for conscientious objection. It does not require any kind of referral at all. In Victoria that law has been in place for something like 11 years and since that time the internet has flourished, there are no prohibitions on advertising for abortion services and the Royal Hospital for Women has a 24-hour service where you can ring up to find more information on where a practitioner might be able to do that service for you. The doctor does not have any special information. Particularly where this bill is drafted here, we do not know what their views are, we just know their general views. You have to give them the piece of legislation: How do you feel about doing this?

There may well be doctors on the corollary who genuinely think they are pro-choice but the idea of perhaps doing a social abortion at 20 weeks is something that makes them feel very uncomfortable. They might not know anyone other than an abortion clinic and they do not feel comfortable referring there. So they have to actually pick up the phone and find someone who does not have a problem doing an abortion in that particular circumstance. I think that the concept of bringing in legislation to somehow regulate this so that women can have access to information. The first step is to find out how do doctors who have the objection feel and what is the scope of it? Secondly, and it is fair to ask this, what have been the experiences of women who have perhaps sought a referral and what was their level of inconvenience?

It is a balancing of those rights. If the woman can easily look it up on the internet, yes, she has been inconvenienced by going in to do that, but that again is an education point. I think the main point that came out of

the study was that we do not need a clause for conscientious objection requiring the doctor to give a referral or information and if there was going to be some kind of clause it should be similar to the one that the member for Wagga Wagga put up, which covered referral, it covered performing, assisting and facilitating. I had example of a young doctor who was on the obstetric board who did not want to participate in abortion, facilitate it by putting in the line for late term abortion to run the drugs through that would cause the termination. She had a lot of problems.

I have extracted that particular quote. That is an education point for the medical profession itself so there is not any kind of unjust discrimination. An education point for the community: If the abortion comes out of the Crimes Act and becomes standard healthcare women have to understand that not all doctors will agree with it. They cannot just front up to any surgery and expect the doctor to provide the service they want just because it is lawful. Making something lawful will not necessarily change a person's view on whether it is moral. That is what happens when you live in a diverse pluralistic society, we have to make accommodations.

The Hon. TREVOR KHAN: It really does go to the document that the Hon. Greg Donnelly has so helpfully just distributed, and that is the *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations*. Have you seen that document?

Mr McAULEY: No.

Ms WALSH: Yes I have, I have it in front of me.

The Hon. TREVOR KHAN: Can I take you to 4.2, which is the "Conscientious objection" clause.

The Hon. GREG DONNELLY: Just to clarify, these are guidelines, these are not law.

The Hon. TREVOR KHAN: Absolutely, yes. If I mislead the witness, I am sure you will pull me up. So, again, this is the *Pregnancy - Framework for Terminations in New South Wales Public Health Organisations* policy directive, prepared by the Ministry of Health New South Wales. Clause 4.2 reads:

> 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.

If you look at that guideline directive, prepared by the Ministry of Health, the last review date was 2 July 2019, publication date 2 July 2014. If you look at clause 9 of the bill, will you tell me how clause 9 oversteps the policy directive position already adopted by the Ministry of Health? I will start with Ms Walsh.

Ms WALSH: You will have to give me a minute to compare.

Professor SOMERVILLE: I will answer. I think the policy directive is wrong; I think it is unethical. I think that it is wrong for the same reason that I object to clause 9.

The Hon. TREVOR KHAN: Professor Somerville, I think we would all accept that that is probably your view. It is not the question that I asked.

Ms WALSH: I guess 4.2 (1) uses of the word "may" inform the woman, and that other practitioners "may" prepare to provide to health service and the directive requires them here, under clause 9, to someone that they in their belief does not have a conscientious objection to the performance of the termination. It has not been tested. Nobody has brought an action under—we do not have an attribute for conscientious objection in our anti-discrimination law. This is a policy document that applies to the public health and facilities; it does not apply to GPs. I do not think we know enough about how that is meant to work in a variety of circumstances. This is a hospital circumstance but it will be different to a GP's clinic.

The Hon. TREVOR KHAN: Sure and it might be different for a GP in the suburbs of Sydney compared to a woman who goes to a GP, let us say in Brewarrina, where they might perhaps be one GP, or perhaps a visiting GP only. The impact of the exercise of the conscientious objection, I suggest, by a medical practitioner, may be more deleterious upon the health and welfare of a woman in a remote location in New South Wales, would you not agree?

Ms WALSH: I actually do not agree.

The Hon. TREVOR KHAN: Really?

Ms WALSH: Yes, I do not agree because I do not think the doctor has any more information than the woman can get off the Internet. The issue is really supply and demand of how quickly she can get the abortion. It is not about providing information on someone who will do it. There may be, if they are in the country—most people in the country have a limitation to services and they have to wait—

The Hon. NIALL BLAIR: Including Internet?

Ms WALSH: Including Internet? Well—

The Hon. NIALL BLAIR: Come and I will take you for a drive.

Ms WALSH: Another alternative is—as I said in the submissions—if the State wishes to make this lawful health care then perhaps the burden should lie upon it to do that. Now, we could do that in a few ways—one way is to produce a pamphlet or a brochure that can be in the waiting rooms of all GPs, so that the GP does not actually have to provide the information themselves, they can direct them, or the secretary can direct them to the pamphlet. So they are not doing more than what is already on the Internet.

The Hon. TREVOR KHAN: Under the provisions of clause 9, could I suggest that if the doctor has a pamphlet that directs a person to a family planning clinic, they meet their obligation under conscientious objection clause.

Ms WALSH: Yes, but what I am saying is that in my study—and I appreciate that not everyone will understand this—many of those doctors felt that was participation in it and they did not want to do it.

The Hon. TREVOR KHAN: I understand that. But if one is, I suggest, that delicate, then the balance that you talked about earlier has to be weighed in the balance

Ms WALSH: Yes, that is your opinion. I think that they could be some concerns if you apply the same test to euthanasia or physician-assisted suicide—

The Hon. TREVOR KHAN: We will not go there yet.

Ms WALSH: Well that is the problem because if you make a clause here for a morally controversial service why would you not repeat it in a piece of legislation there? You can already see in Victoria. They have a mandatory referral clause, it is higher than what is in this bill—which is a softer option—yet in euthanasia or, rather, in their assisted dying Act, the conscientious objection clause does not require it. In fact, doctors are not even supposed to raise it with patients. So there is a mismatch there.

The CHAIR: I might have to end that one there as we have another panel. We have five more minutes for the Hon. Greg Donnelly.

The Hon. GREG DONNELLY: I will be as quick as I possibly can. First of all, with respect to the policy directive document, I thought it was worth putting on the table because up to this point it has not been placed on the table. It speaks for itself. I take you to the front cover—it was published on 2 July 2014. You may not know this but the previous iteration of this document actually altered and amended wording to insert in the areas, inter alia, conscientious objection. In 2014 there was wording different from what you read here, which were, dare I say, better and tighter wording for people with a conscientious objection. That is a statement, not a question. I note that this review date, 2 July 2019, which is obviously the most recent.

For some reason that is beyond me—and I will get to my question—the New South Wales chief obstetrician and gynaecologist—so this is the first health officer in the State, who deals with matters of obstetrics and gynaecology—who reports directly to the Minister for health, the Hon. Brad Hazzard, who is a sponsor of this bill. The New South Wales chief obstetrician and gynaecologist, to the best of our knowledge, has not provided a submission to this inquiry—and that will be corrected because if it has and comes out because we have received so many submissions, we will find it eventually—but he has not sought to appear before this inquiry to give testimony. So, we are not able to see whether or not, with respect to the 2 July 2019 date, these guidelines literally have just been further changed in the part to do with conscientious objection or any other area. So my question, Ms Walsh, is this—

Reverend the Hon. FRED NILE: Without consultation.

The Hon. GREG DONNELLY: —With respect to a document like this, which is a policy directive, with respect to a Government health department—in other words, a Government agency—so we are not talking about a black-letter law, we are not talking about regulation. We are talking about effectively policy within an entity like government—it could be a corporation, but in this case it is NSW Health. Do we have this fundamental

problem that this is subject to change over time, by directive of essentially the CEO of the agency and not subject to the scrutiny of the Parliament, either through regulation or legislation?

Ms WALSH: Certainly it is very worrying because this phenomena of conscientious objection is quite new and we need to hear from the people who are directly affected and think about making it a good policy because it will certainly apply to other controversial areas of health care. It is not something that I can give you, you know, sort of write out a script for it now because I think we need to hear from many people about many things.

The Hon. GREG DONNELLY: Professor Somerville, in your submission, you reflect quite extensively on the matter of conscientious objection. Although I have spoken very fast I hope you had gathered what I have just said in terms of the explanation history of this document. Would you like to comment about the matter of the difficulties of having embedded in a document like this, what is clear, important, dare I say, rights for individuals—in this case in the context of the New South Wales health system—which is subject to unilateral change by a government agency—i.e. it is not subject to regulation or law, which is subject to review of the Parliament?

Professor SOMERVILLE: That is true. However, he did make the point that it is not binding either. It is not—

The Hon. GREG DONNELLY: Yes.

Professor SOMERVILLE: —it is not law, it is not subordinate law, it is not regulations. There is no offence if you do not follow the guideline—although I would be worried that the same thing would happen as has happened in the jurisdiction that I have been in, that it is treated as medical malpractice or unprofessional conduct.

Ms WALSH: It represents a standard when there is no—

Professor SOMERVILLE: Exactly. Also, of course, in case law the courts often pick up these documents and say, "Well that is the reasonable care standard". So it is a problem.

The Hon. GREG DONNELLY: Thank you. My final question is to Mr Michael McAuley. Mr McAuley, I want you to watch me carefully with this question. You provided an answer with respect to a question directed to you. It is a very specific question about your position with respect to the removal of the provisions of abortion in the New South Wales Crimes Act 1900. We can see it in *Hansard* tomorrow, but I sort of wrote down your earlier answer where you said words the effect of, I think your phrase was "in general terms"—you certainly used the word "general" and you were careful with your words— that you did not or may not object to its coming out of the Crimes Act. Now, you will read that in *Hansard* tomorrow so I am giving you the opportunity to perhaps reflect on what you have said and clarify it if necessary. However, if what you said is what you said, let's leave it at that.

Mr McAULEY: I cannot remember the precise words I said.

The Hon. NIALL BLAIR: I wasn't badgering!

The Hon. GREG DONNELLY: Well, I tell you that you used the words—

Mr McAULEY: Look, I think Mr Blair was actually standing over me at the time.

The Hon. NIALL BLAIR: I was sitting!

The CHAIR: Order!

The Hon. GREG DONNELLY: He's from the Nationals Party. He does that very well!

Mr McAULEY: But I will say this: That you are dealing with this legislation, and this legislation is tragic because while I am sure it is brought with the best of intentions it has got enormous flaws. I understand the desire and the argument to decriminalise, but there really needs to be a lot more thought about it.

The CHAIR: On that point, I note we are over time—

Professor SOMERVILLE: Can I just make one—

The CHAIR: Only eight minutes late, considering how long we are going today, so that is the end of the hearing. I thank you for—is it something important, Professor Somerville?

Professor SOMERVILLE: Yes, it is.

The CHAIR: Okay, very briefly.

Professor SOMERVILLE: Just because there was a lot of discussion about sex selection and arguments that it did not happen in Australia, I direct you to koala fertility Australia, which is an IVF clinic that advertises that it provides sex selection.

The CHAIR: Members will look at that issue—thank you. Thank you all for coming in today at short notice and—

Mr McAULEY: Thank you very much for listening to us.

The CHAIR: —sharing your extensive qualifications and experience with us.

(The witnesses withdrew.)

Mr TIMOTHY GAME, SC, President, Bar Association, affirmed

Ms GABRIELLE BASHIR, SC, Junior Vice-President, Bar Association, sworn

The CHAIR: Welcome to the final session for today for the Legislative Council inquiry into the Reproductive Health Care Reform Bill 2019, conducted by the Social Issues Committee. I am Shayne Mallard, the chair of that committee. Do the witnesses have a brief opening statement?

Mr GAME: We do not specifically wish to make an opening statement. I will say this: Prior to the election the Bar Association had as its policy the decriminalisation of abortion. That was a position we had reached quite separately from any public debate about it. We expressed that position. We were not consulted specifically on the bill but we were already proactive on the subject. We made limited representations but we communicated to the Premier our support for the bill; that is as far as we have taken it. At your invitation we have made written submissions and have come today to speak. Our position as expressed is that we basically support the Queensland model. The Queensland model is effectively the bill that was introduced, but as you are well aware there have been some substantial amendments to the bill since that time. Things have moved on since that time, obviously.

Ms BASHIR: I do not need to add anything to that statement.

The CHAIR: Thank you. If members accept we will do three minutes.

The Hon. NIALL BLAIR: Chair, I am happy with the submission. I do not need to ask any questions.

The CHAIR: Thank you, Mr Blair.

Ms ABIGAIL BOYD: Thank you for coming and for being here to answer these questions at the end of this day. I just have one question. We have heard this idea quite a bit in the media and a little bit today that with the bill comes a new opportunity for late-term abortions and a fear around it allowing more late-term abortions than we currently have. My impression of the bill as amended is that it actually presents a stricter legal position for abortions over 22 weeks than what we currently have. Could you confirm or deny that?

Mr GAME: That is correct. In the amendments to the Crimes Act you have the criminal offence that was in section 82 taken out and you have the common law "procuring a miscarriage" taken out. However, you have a criminal offence that sits there, an unauthorised termination, which is in the new section 82. But then in the substantive legislation, which defines the relationships around which terminations take place, 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. So the answer to your question, in a word, is yes.

Ms BASHIR: That is particularly so given the requirements now for specialist medical practitioners to perform the termination late-term and also the statutory requirement for informed consent as is defined in the dictionary here. As we understand it, that is a requirement that has been grafted onto a healthcare procedure here that we do not see in other areas of healthcare. It is something though that of course medical practitioners will understand and is regulated within their guidelines.

Ms ABIGAIL BOYD: The. original bill was effectively in relation to abortions over 22 weeks, was effectively representing the status quo all reflecting the status quo, whereas the amended version actually takes this to a more strict position than what we currently have.

Ms BASHIR: Quite.

Mr GAME: Absolutely, but particularly in defining the position of medical practitioner in relation to the patient.

The Hon. GREG DONNELLY: I reserve my time.

The Hon. ROSE JACKSON: How difficult is it to understand the current legal position in relation to termination of pregnancy in New South Wales when we think about the fact that there are provisions in the Crimes Act there to be interpreted in relation to various judicial pronunciations in matters over some period of time also overlaid by policies and directions within NSW Health. From a legal point of view how complicated is it to understand the current position of abortion in New South Wales?

Mr GAME: It may not be hugely complicated but it is anomalous because you have criminalisation of doing things that bring about an abortion in section 82 and that is a crime that carries currently 10 years imprisonment and that is unique in Australia, in Australian States. We are kind of behind every other State. It is

not that is complicated but it is unsatisfactory because the exposure still sits there and yet the situation has not been put in accordance with practice which is, there is a practice not to prosecute. So I would not describe the thing in terms of complexity, but I would describe the thing in terms of, from a lawyer's perspective, it is not a satisfactory situation.

The Hon. ROSE JACKSON: That anomaly that you have identified between the way that the law is written and current practice. Do you think that that is confusing to women who may be wanting to know their legal rights and responsibilities in that area?

Mr GAME: It is confusing. Sorry. In that respect it is complicated because it is confusing to be told that it sits on the statute book and then, yet, for one to go ahead with a termination so that—yes. It has a real potential to confuse or obfuscate clear thinking about the situation. On further reflection, the legislation acts, the legislation has its own nuances but the legislation defines those relationships so that they can be spelt out. From a lawyer's perspective we would say that is a good thing.

Ms BASHIR: I would only add that two things to that. One is that I know you have received other submissions and we would refer you to those submissions in the context of domestic and family violence. However, the legislation can act in a way against a woman who may need to have an abortion. But also just emphasise what Tim has already said about the fact that what it means with criminalisation of abortion staying on the statute books in New South Wales is that the women and medical practitioners of New South Wales are not in an equal position under the law in this State as opposed to the rest of the nation. For reasons of equal treatment under the criminal law for doctors and women of New South Wales as opposed to other doctors and women in this nation when it comes to terminations, we support the decriminalisation.

Mr GAME: Just one thing about that is, we lawyers are very unhappy about leaving things prosecutorial discretion or policing discretion and say, "Well, Okay. They will exercise their discretion and will not do it." That is not a satisfactory way to deal with the problem. The time comes when you actually have to confront it.

The Hon. TREVOR KHAN: I do not really want to ask terribly much because it will turn it into almost a Dorothy Dixer exercise.

The Hon. GREG DONNELLY: Go for it.

The Hon. TREVOR KHAN: I will do my best. Can I go into you anticipated would be an appropriate framework for the law, and that is you went to the Queensland legislation and one of the provisions that you saw is the third dot point, dealing with conscientious objection. We will call it the obligation to refer on. There has been a lot of evidence received from opponents of the bill, and indeed opponents of law reform in this area at all, who point to the conscientious objection provision that requires referral on and invites you to comment as to why the Bar Association has come to the view that the provision, as set out in dot point three, is appropriate.

Ms BASHIR: That was one of the recommendations of the Queensland Law Reform Commission Report and it is also the position in Victoria, Tasmania and the Northern Territory. Again, in terms of a model and what would mean women in this State were placed in a position most equal to others around the nation, accepting that it is in four of the other States, it is our position that it is an appropriate model having been reviewed by the Queensland Law Reform Commission.

The Hon. TREVOR KHAN: The arguments that are brought in respect of clause 9 of the bill seems to be that we are placing an undue onerous upon members of the medical profession by requiring a referral on. That is, it is an undue interference with the exercise of their conscientious objection. What do you say with regards to that? I am not agreeing with it by the way.

Ms BASHIR: No. We understand.

The Hon. TREVOR KHAN: I am balling it up.

Mr GAME: The protections for conscientious objections go further than the Queensland guidelines, significantly so. They appear to be carefully—and I heard what the previous witnesses said and they say something different—but they do appear to be a fairly carefully thought out set of protections for those in a position of conscientious objection.

The Hon. TREVOR KHAN: We did our best I have got to honestly say.

Mr GAME: I did not mean to—anyway, that is how they read. I would not have any, I would not be alarmed about them at all.

Ms BASHIR: Certainly, one of the critical factors which applies across the board to conscientious objectors and other medical practitioners is that there is a duty owed in any case, in the case of an emergency. In a way one could read these conscientious objection provisions in a manner that was protective of the conscientious objector in terms of ensuring that the woman who is coming, and it is limited to where there is a request for the person to perform a termination or to advise the person about the performance, to ensure that they have access to medical advice in that respect.

Reverend The Hon. FRED NILE: Just a quick point. I have had doctors contact me who are opposed to abortion and have a conscientious objection to it and said that they would never refer for an abortion. They could not do that. They would rather go to jail than do that. So what do you do for them?

Ms BASHIR: I do not know that the bill captures that situation because in terms of the, in terms of what remains an offence under the criminal law it appears to be that it is limited to unqualified persons performing or assisting in the performance of the terminations. It does not appear that there is any criminal prescription in relation to those doctors. Under the criminal law it does not seem that there will be any offence per se, if that is the question.

Reverend The Hon. FRED NILE: If they do not refer them.

Mr GAME: It is not an offence. All it could be is it could sound, potentially by virtue of the provisions of section 9, a breach of their obligation upon which someone could potentially sue. That is all it would be.

The Hon. GREG DONNELLY: What obligation, sorry, sir?

Mr GAME: This legislation—

The Hon. GREG DONNELLY: Sorry, I mean obligation to who?

Mr GAME: To the patient.

The Hon. GREG DONNELLY: Thank you.

Reverend the Hon. FRED NILE: The other quick point is that obviously we are now at the 22 weeks and the baby is obviously viable, has a heartbeat and feels pain. Should there be any consideration as to whether this is in the interest of the babies that will be aborted at 22 weeks, as a human being?

Mr GAME: We actually defer to the medical profession on that subject. The choosing of a time is not something that we as lawyers are really in a position to comment on. The Queensland Law Reform Commission took advice about the question. We relied on what the Queensland Law Reform Commission had to say about it but generally that is a medical question and for myself I do not feel that I can buy into an argument about it.

Reverend the Hon. FRED NILE: You are taking advice of the medical profession?

Mr GAME: I think so, yes.

Ms BASHIR: We would say also that under the law after 22 weeks under this current bill, in considering whether the termination should be performed a specialist has to consider all relevant medical circumstances and also—and you can read the section for yourselves—it is not simply the considerations of the woman or patient that is considered. It is broadly drafted to capture all relevant medical circumstances.

The Hon. GREG DONNELLY: Thank you very much for coming along. I will be as brief as I can. Mr Game, in your opening statement you indicated about the formulation of the organisation's policy prior to the State election, if I recall correctly, and I think you used the words, or words to the effect that: following the election or thereabouts you because proactive—I think that was the word that you used.

Mr GAME: Can I just clarify? We were not proactive. All is said was this: On legal issues we put on our website our policies but we do not do more than that. And then after the election we did not do anything. Then there was the bill and we did no more than that. I am not saying what we should or should not have done, but that is what we did.

The CHAIR: Thank you for clarifying.

Ms BASHIR: I think I had better clarify that. We did not just put the policy on the website. We did write to the major political parties and some of the crossbenchers in relation to what our positions were and asked them to state their position and received correspondence in that respect.

The Hon. GREG DONNELLY: With the greatest respect, Ms Bashir, Mr Game said after about this issue of proactive, which it has been clarified it is not proactive, so thank you, sir, for that, you said, and I wrote it down, that you made representations to the Premier.

Mr GAME: After the bill was introduced we communicated to the Premier our support.

The Hon. GREG DONNELLY: For the bill.

Mr GAME: Yes.

The Hon. GREG DONNELLY: This is the first version of the bill.

Mr GAME: That is correct.

The Hon. GREG DONNELLY: I am just trying to get this chronology right. You supported that bill in that form. With respect to the organisation's position, the New South Wales Bar Association's position, as a matter of policy and principle as an organisation do you believe that with respect to the development, the creation and ultimately the passing of laws by a legislature—any legislature—that that needs to be done in a deliberate fashion, and carefully, and involve consultation with the public, as a general statement?

Mr GAME: Yes.

The Hon. TREVOR KHAN: They often complain about the laws we pass, Greg.

The Hon. GREG DONNELLY: With respect to the time line for this legislation, it was introduced and second read by the mover, Mr Alex Greenwich, on 1 August. We are today—and it is all getting foggy for me now—at 14 August, I think, so it is two weeks later and this bill, as we understand it, is going to be debated and taken through to conclusion in the Legislative Council on 20 August, which is next Tuesday. That is 20 days from go to whoa—20 days on a major piece of legislative reform in this State. Is it the position of the Bar Association of New South Wales that that period of 20 days is sufficient for such an important piece of legislation in terms of being dealt with and processed or dealt with and proceeded through both Houses of the New South Wales Parliament?

Mr GAME: I think that question is sufficiently loaded to not answer it. But one thing about this legislation is this—and what takes place in the cut and thrust of Parliament is not a matter for us, but the issue has been on the table, from our perspective, for some time. They introduced similar legislation in South Australia 50 years ago during the Dunstan era. So it is not a new thing. What happens in a shorter period of time in Parliament is a matter for the politicians.

The Hon. GREG DONNELLY: So we just get on with it?

Mr GAME: That is for you.

The Hon. GREG DONNELLY: You bet it is.

Mr GAME: But in terms of us, we are across the issue, we were across the issue and—

The Hon. GREG DONNELLY: And on that issue you have no view?

The Hon. TREVOR KHAN: He is expressing a view, Greg. Jeez!

Mr GAME: I am saying that we were in a position to deal with it. But we do get legislation regularly—major pieces of legislation both in our association, the Law Council and the ABA—where we have to comment on very major pieces of Federal legislation and State legislation within days, all the time, and we do it. The particular committee which this was involved with has made 40 submissions in the last year on legislation, so we actually—

The Hon. TREVOR KHAN: And most of the time you are ignored.

Mr GAME: Sorry, I won't say that.

The Hon. TREVOR KHAN: Well, you are.

The Hon. GREG DONNELLY: But you are not accountable to the citizens of New South Wales—

Mr GAME: No, we are not accountable.

The Hon. GREG DONNELLY: —as the politicians are.

Mr GAME: Absolutely.

The Hon. GREG DONNELLY: You are accountable to your membership, not the citizens of New South Wales, which the politicians are.

Mr GAME: Of course.

The Hon. GREG DONNELLY: Is that the key difference?

Mr GAME: Of course.

The Hon. GREG DONNELLY: Yes. Thank you.

Mr GAME: But just hang on—I just wanted to say this though: We are lawyers and we are consulted because we do have a reasonably good understanding of how the laws work, and that is what we can contribute to the conversation.

The Hon. GREG DONNELLY: That is all you can contribute.

The CHAIR: The last question is from the Hon. Niall Blair and then we will wrap up today's hearing.

The Hon. NIALL BLAIR: Is it fair to say that this is not an issue that has popped up two weeks ago? In fact the Bar Association had a position on this issue even before the first printing of this bill was submitted. And the fact that not only has it happened in other States, there have been inquiries and law reform papers done on those similar laws and the substantive issue is something that has been bubbling, I would say, particularly in New South Wales for some time so that when this bill arrived the Bar Association was able to provide a submission and provide evidence today because this is something that has been an issue for a long time and your members believe and your submission submits that we should decriminalise abortion in New South Wales; is that the case?

Mr GAME: The answer is yes.

Ms BASHIR: We saw it coming and that is why we took a policy position on it.

The Hon. NIALL BLAIR: Let me just clarify that, Ms Bashir. Anyone that has been following this debate has seen this coming and has been able to, I would imagine, have a view on some of the substantive matters and pull together a campaign or submissions and, if invited, organise themselves to provide evidence today. Because this has not happened in two weeks. This is something that has been debated. There have been other versions of bills that have come before the Parliament. It has happened in other States. This is a live issue that needs to be addressed one way or the other in New South Wales because it has many stakeholders.

Ms BASHIR: I can just say that that was our perception and one of the reasons, particularly once the Queensland Law Reform Commission made its recommendations and Queensland put the laws up, that we had better get a policy position on it and we did.

The Hon. GREG DONNELLY: With no further amendments to the bill, as I understand it, in the council—is that your position? That is what you say in your submission. The bill should not be subject to any further amendments—that is your position.

The CHAIR: The danger is that barristers have to have the last say, Mr Donnelly.

The Hon. GREG DONNELLY: No, they don't. They are just barristers. We are the legislators.

The CHAIR: We have concluded but that is on the record. Do you want to respond to that?

Ms BASHIR: No.

The CHAIR: Thank you for making time to come in this evening. I know you are in court tomorrow and that is why we have fitted you in at the end of the session. Thank you for making 40 submissions to the Government. We appreciate your expertise in all the different areas you help us in.

(The witnesses withdrew.)

The Committee adjourned at 17:35.