



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

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5 August 2019

The Hon. Mark Speakman SC, MP
52 Martin Place
SYDNEY NSW 2000

By email: cronulla@parliament.nsw.gov.au

And by electronic contact form

Dear Attorney General

RE: *Reproductive Health Care Reform Bill 2019*

Australian Lawyers for Human Rights (**ALHR**) writes to express our strong support for the *Reproductive Health Care Reform Bill 2019 (the Bill)* currently before the NSW Parliament.

The Bill will remove archaic criminal penalties for abortion from the *Crimes Act 1900 (NSW)* and create a standalone healthcare Act to regulate the termination of pregnancy as a health matter, rather than a criminal one.

Every other Australian State and Territory has legislated to modernise abortion laws, however, in New South Wales women and medical practitioners are subject to laws that date back 119 years and under which abortion remains a criminal offence punishable by 10 years imprisonment.

While abortion providers do operate in New South Wales, they exist within an extremely ambiguous legal space. As a result of the ever-present threat of criminal charges access to services is limited and entails unnecessary and unfair risks for women and members of the medical profession. This has very real consequences for people who need to access safe, legal and compassionate reproductive health services. It creates unacceptable barriers leading to significant gaps in services, particularly for victims of violence and people living in remote and rural areas.

Relevant international human rights standards

Ensuring access to safe and legal abortion services is part of Australia's international legal obligations. The United Nations Committee on the Elimination of Discrimination Against Women, the Special Rapporteur on the Right to Health, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have all declared that States are obliged to provide access to safe and legal abortion services.

The United Nations Human Rights Committee (**UNHRC**) has stated that the denial of access to safe and legal abortion is a breach of the fundamental human rights of women and girls, specifically under several articles of the *International Covenant on Civil and Political Rights (ICCPR)*.¹

Reproductive rights are explicitly recognised under the *Convention for the Elimination of Discrimination Against Women (CEDAW)* in Article 16(1)(e) which recognises:

*'the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, as well as to attain the highest standard of sexual and reproductive health.'*²

The Committee on the Elimination of Discrimination Against Women has said that *"it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women."* The Committee has also more recently requested that States *'remove punitive measures for women who undergo abortion'*, and has stated that the criminalisation of practitioners who provide abortion services also violates women's rights.³

The United Nations Committee on Economic, Social and Cultural Rights has also established that the right to health (which includes reproductive and sexual health) requires health services, including legal abortion services, which are available, accessible, acceptable and of good quality.⁴

There is significant and consistent domestic and international jurisprudence that establishes that the right to life is not inconsistent with the provision of abortion services. Indeed, the official view of the Australian Government is that the right to life under the ICCPR was 'not intended to protect life from the point of conception but only from the point of birth.'⁵

¹ ICCPR, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

² CEDAW, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 16.

³ Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014) para. 36; Statement on sexual and reproductive health and rights: Beyond 2014 ICPD Review (2014).

⁴ General Comment 14 (2000) on the right to the highest attainable standard of health, paras. 8, 12, 27.

⁵ Mr Peter Arnaudo, Attorney-General's Department, Hansard - Joint Standing Committee on Treaties Reference: Treaties tabled on 14 May and 4 June 2008 16 June 2008, p.7.

Conclusion

The current law is not reflective of the majority of community values or of internationally-recognised human rights principles.

It is estimated that one in three Australian women have at least one abortion in their lifetime. Those who seek abortions should not be treated as criminals and the majority of Australians recognise that our laws need to change to reflect this. Data shows that Australians overwhelmingly believe a woman should have the right to choose an abortion.⁶

Bodily autonomy is an essential human right and women must have the power to decide whether and when they will have children.

The Bill before you is consistent with the recommendations of the recent Queensland Law Reform Commission's report into termination of pregnancy laws, which itself had the benefit of evidence from multiple parliamentary inquiries.⁷ The Bill also reflects similar laws passed in other Australian states that have decriminalised abortion and regulate termination of pregnancy as a health matter, rather than a criminal one.

The provisions of the *Crimes Act 1900 (NSW)* which deal with abortion are outdated, unclear and inadequate. Patients and medical professionals in New South Wales deserve laws that are evidence-based, fit for purpose and reflect modern reproductive healthcare. The Bill achieves these aims and will bring New South Wales law in line with other Australian jurisdictions.

ALHR urges members of the NSW Parliament to support the well being and autonomy of pregnant people in NSW by voting in favour of the more compassionate, safe and legal access to abortion offered in the *Reproductive Health Care Reform Bill 2019*.

About ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

⁶ Katharine Betts, 'Attitudes to Abortion in Australia: 1972 to 2003' (2004) 12 *People and Place* 22, 22. Available online at http://tapri.org.au/wp-content/uploads/2016/02/v12n4_3betts.pdf; Queensland voters' attitudes towards abortion Report prepared by Auspoll, May 2009. Polling commissioned by Children by Choice; Queensland abortion law reform poll; February 2017. Polling and report carried out by Essential Media, and commissioned by Fair Agenda. Report available in full at http://www.fairagenda.org/blog_abortion_polling.

⁷ Queensland Law Reform Commission, *Review of termination of pregnancy laws* (Report No 76, June 2018).

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Kerry Weste', written over a light blue rectangular background.

Kerry Weste,

President, ALHR

president@alhr.org.au