

# Should abortion be removed from the Crimes Act in New South Wales?

## What they said...

*'In an area such as abortion, where views are deeply held around the starting point of human life, it is a gross violation of doctors' human rights to force them to act against their conscience'*

**Professor Joanna Howe and Professor Suzanne Le Mire of the University of Adelaide Law School**

*'Ensuring women have access to safe and legal terminations is vital to protecting their health, welfare and control over their bodies and their lives'*

**Independent MP Alex Greenwich who introduced the Reproductive Health Care Reform Bill into the lower house of the New South Wales parliament**

On September 7, 2019, the New South Wales Liberal state council voted down a motion to condemn the Reproductive Health Care Reform Bill. The Bill was introduced into the state parliament a month before in a bid to decriminalise abortion in New South Wales. It has become the centre of controversy within and outside the government.

<https://www.abc.net.au/news/2019-09-07/abortion-nsw-liberals-vote-down-condemnation/11489378>

This has temporarily defused the issue which is threatening the government's two-seat majority in the lower house, with two government members threatening to cross the floor if amendments are not made. <https://www.abc.net.au/news/2019-09-04/liberal-party-meeting-could-be-most-contentious-in-20-years/11477990>

The Bill has provoked opposition from conservative media outlets, Catholic, Anglican and Jewish church leaders, and pro-life advocates. It has been supported by a Pro-Choice Alliance of 60 health, legal, and community and women's rights organisations including doctors and nurses across the state. <https://www.theguardian.com/world/2019/may/02/sixty-groups-join-pro-choice-alliance-to-campaign-for-nsw-abortion-law-reform>

The Bill was passed in the New South Wales State Parliament's Lower House, on August 9, 2019, following two weeks of debate.

Members of Parliament were granted a conscience vote on the Bill. Titled the Reproductive Health Care Reform Bill it was introduced as a private members bill by independent Alex Greenwich. The Bill aims to remove abortion from the Crimes Act and define it as a medical procedure in its own legislation. <https://www.abc.net.au/news/2019-08-08/abortion-vote-passes-nsw-lower-house/11394454>

The Bill was passed with 59 in favour and 31 against.

Premier Gladys Berejiklian, Deputy Premier John Barilaro and Opposition Leader Jodi McKay supported it. Seven Liberal ministers voted against it, including Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman and Planning Minister Rob Stokes. <https://www.abc.net.au/news/2019-08-08/abortion-vote-passes-nsw-lower-house/11394454>

The proposed legislation still needs to pass the state's Upper House. The Bill is being considered by a Legislative Council. The inquiry has attracted 13,000 submissions, causing state parliament's web portal to temporarily crash.

<https://www.theguardian.com/world/2019/aug/15/nsw-abortion-law-backers-unlikely-to-support-calls-for-sex-selection-ban>

## Background

### Overview of abortion in Australia

Abortion in Australia is largely regulated by the states and territories rather than the Federal Government. The grounds on which abortion is permitted in Australia vary by jurisdiction. In every state, abortion is legal to protect the life and health of a woman, though each state has a different definition.

Nowhere in Australia is there a requirement that a woman's sexual partner be notified of a proposed abortion or to consent to the procedure. Australian courts will not grant an injunction to restrain a pregnant woman from terminating her pregnancy, even if the applicant is the putative father of the fetus. There is also no waiting period for an abortion. A minor does not need to notify a parent of a proposed abortion nor is parental consent required, except in Western Australia. In Western Australia, a proposed abortion by a minor under 16 years of age must be notified to one of the parents, except where permission has been granted by the Children's Court or the minor does not live with her parents.

Early-term surgical abortions are generally available around Australia for those women who seek them. The procedure is partially funded under Medicare, the government-funded public health scheme, or by private healthcare insurers. Prosecutions against medical practitioners for performing abortions, or against women for inducing a miscarriage are extremely rare. In the case of 'a child capable of being born alive' (usually taken to mean after 28 weeks of pregnancy), a termination may be subject to a separate crime of child destruction in some States and Territories.

In 2019 the Australian Labor Party unveiled a national abortion policy for the 2019 Australian federal election. The party's policy included requiring public hospitals to offer abortion procedures consistently under new Commonwealth funding agreements, encouraging New South Wales to remove abortion from its criminal laws and building an abortion clinic in Tasmania. In response Liberal Party leader Scott Morrison stated the issue was controversial and sensitive and decisions should be left to the states. His Coalition colleagues were largely quiet on the matter,<sup>[19]</sup> while anti-abortion groups including the Australian Christian Lobby and Cherish Life campaigned against Labor on the issue. Labor lost the 2019 election, with representative Ed Husic claiming that the misrepresentation of the party's abortion policy was a contributing factor.

### Abortion in New South Wales

Abortion is explicitly listed as a crime under sections 82–84 of the New South Wales Crimes Act 1900, but the interpretation of the law is subject to the Levine ruling, from *R v Wald* of 1971, which held an abortion to be legal if a doctor had an honest and reasonable belief that, due to 'any economic, social or medical ground or reason', the abortion was necessary to 'preserve the woman involved from serious danger to her life or physical or mental health which the continuance of the pregnancy would entail'.

This ruling was expanded by *CES v Superclinics Australia Pty Ltd* (1995), which extended the period during which health concerns might be considered from the duration of pregnancy to any period during the woman's life, even after the birth of the child. This arguably precludes any successful prosecutions for illegal abortions. Despite this, in 2006, a doctor, Suman Sood, was convicted of two counts of performing an illegal abortion where she failed to enquire as to whether a lawful reason for performing the abortion did exist.

In August 2016, Greens MP Dr Mehreen Faruqi released an exposure draft of the Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016 to "Repeal sections 82–84 of the Crimes Act, relating to abortion offences. On the eve of the introduction of the bill on 23 June 2016, it was removed from the order of business for the following day.

## Internet information

On September 7, 2019, the ABC published a news report titled 'Motion to condemn abortion bill voted down at NSW Liberal State Council meeting' which detailed the that a protest motion against the Reproductive Health Care Reform Bill was voted down delegates voted it down 236 to 217, without debate. The Bill does not have majority support among Liberals in the lower house.

The full text can be accessed at <https://www.abc.net.au/news/2019-09-07/abortion-nsw-liberals-vote-down-condemnation/11489378>

On September 7, 2019, The Sydney Morning Herald published a report titled 'Liberal, National voters overwhelmingly back NSW abortion reform'

The report detailed recent polling commissioned by the New South Wales Pro-Choice Alliance and Fair Agenda which found more than one third (36.9 percent) of Liberal and 48.3 percent of National voters would be less likely to vote for their parliamentary representative if they voted for abortion to remain in the Crimes Act.

The full report can be found at <https://www.smh.com.au/national/nsw/liberal-national-voters-overwhelmingly-back-nsw-abortion-reform-20190905-p52oe0.html>

On September 6, 2019, Green Left Weekly published a report titled 'NSW to mobilise for free, safe abortion' The report details protests being organised by pro-abortion groups in response to mounting opposition to the abortion reform bill within the government and among anti-abortion groups outside parliament.

The full text can be accessed at <https://www.greenleft.org.au/content/nsw-mobilise-free-safe-abortion>

On September 6, 2019, BuzzFeed.News published a report titled 'The Delay In Decriminalising Abortion Has Nothing To Do With Public Opinion, Polling Suggests' The report refers to the results of a recent survey conducted the University of Sydney's United States Studies Centre (USSC) and carried out by YouGov which found that 60 percent of New South Wales respondents believed that by law, a woman should always be able to obtain an abortion as a matter of personal choice.

The full text can be accessed at <https://www.buzzfeed.com/ginarushton/nsw-abortion-attitudes-poll-yougov>

On September 4, 2019, the ABC ran a news report titled 'Why Saturday's NSW Liberal Party State Council meeting will be "most contentious" in 20 years'

The report outlines the division within the Liberal Party on the Reproductive Health Care Reform Bill and its capacity to disrupt the Party's State Council and threaten the government's two-seat majority in the lower house.

The full text can be accessed at <https://www.abc.net.au/news/2019-09-04/liberal-party-meeting-could-be-most-contentious-in-20-years/11477990>

On August 16, 2019, On Line Opinion published a comment by Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending access to abortion, titled 'Sex selection abortion' which argues that some proponents of New South Wales abortion law reform are relatively indifferent to the practice of gender selection.

The full text can be accessed at <https://www.onlineopinion.com.au/view.asp?article=20456>

On August 15, 2019, The Sydney Morning Herald published a comment by Dr Danielle McMullen, vice-president of the Australian Medical Association (New South Wales) titled 'Gender selection has nothing to do with decriminalising abortion: AMA' which argues that gender selection is not affected by decriminalising abortion and that attempts to restrict access to abortion prevent sex selection would deny women legitimate access.

The full text can be accessed at <https://www.smh.com.au/national/nsw/gender-selection-has-nothing-to-do-with-decriminalising-abortion-ama-20190814-p52h2z.html>

On August 14, 2019, The Australian published a news report titled 'Churches take aim at NSW abortion bill'

The report details the objections of a number of prominent church leaders to proposed changes to New South Wales abortion law.

The full text can be accessed at <https://www.theaustralian.com.au/nation/churches-take-aim-at-nsw-abortion-bill/news-story/c2d7732e19bbc92f5aa3151984d625b1>

On August 12, 2019, The Conversation published a comment by Erica Millar, lecturer at the Centre for Health, Law and Society at La Trobe University, titled 'Here's why there should be no gestational limits for abortion'.

The article explains that gestational limits on abortion harm disadvantaged women who frequently have delayed access fetal testing.

The full text can be accessed at <https://theconversation.com/heres-why-there-should-be-no-gestational-limits-for-abortion-121500>

On August 10, 2019, The Sydney Feminists Inc Reproductive Rights Information Page was updated. The page gives detailed information in the access to abortion and other forms of reproductive care that New South Wales women can access under the state's laws.

The information page can be accessed at <https://www.sydneymfeminists.org/reproductive-rights-information-page>

On August 10, 2019, The Sydney Morning Herald published a comment by Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending access to abortion, titled 'NSW is one step closer to abortion on demand - for any reason'

The comment focuses on the extended grounds for performing abortions and the likelihood of increased late-term abortions.

The full text can be accessed at <https://www.smh.com.au/national/nsw/nsw-is-one-step-closer-to-abortion-on-demand-for-any-reason-20190809-p52fh6.html>

On August 8, 2019, Independent MP Alex Greenwich, who introduced the Reproductive Health Care Reform Bill into the lower house of the New South Wales parliament, published on his parliamentary website his contribution to the debate on the second reading of the Bill.

Greenwich's argument in support of the Bill can be read at [https://www.alexgreenwich.com/reproductive\\_health\\_bill](https://www.alexgreenwich.com/reproductive_health_bill)

On August 5, 2019, on August 5, Archbishop Anthony Fisher (Catholic Archbishop of Sydney) and Archbishop Glenn Davies (Anglican Archbishop of Sydney) issued a joint statement titled 'Speaking the Truth in Love'

The archbishops outline their reasons for opposing the decriminalisation of abortion in New South Wales.

The full text can be accessed at <https://www.sydneycatholic.org/addresses-and-statements/2019/a-joint-statement-with-anglican-archbishop-of-sydney-dr-glenn-davies-on-proposed-abortion-laws/>

On August 5, 2019, The Lawyers Weekly published a comment and analysis by Susan Wnukowska-Mtonga and Hannah Lawson titled 'Why all MPs should vote for the Reproductive Healthcare Reform Bill 2019'

The article details the legal barriers and impositions faced by women seeking abortions and medical providers as a result of the current law.

The full text can be accessed at <https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019>

On August 4, 2019, The Sydney Morning Herald published a comment and analysis by Associate Professor Joanna Howe and Professor Suzanne Le Mire of University of Adelaide Law School titled 'Doctors' rights to object to abortion should be protected'

The comment explores a range of reasons why doctors' ethical objections to abortion should be respected.

The full text can be accessed at <https://www.smh.com.au/lifestyle/health-and-wellness/doctors-rights-to-object-to-abortion-should-be-protected-20190802-p52dc9.html>

On August 2, 2019, The Sydney Morning Herald published an editorial titled 'Critics of abortion bill are putting up a smokescreen'

The editorial argues that the proposed law reform is likely to reduce the number of late-term abortions in New South Wales.

The full text of this editorial can be accessed at <https://www.smh.com.au/lifestyle/health-and-wellness/critics-of-abortion-bill-are-putting-up-a-smokescreen-20190802-p52der.html>

On August 1, 2019, The Herald Sun published a comment by Andrew Bolt titled 'Seriously? Killing Babies Just Before Birth' which criticises late-term abortion.

The full text can be found at <https://www.heraldsun.com.au/blogs/andrew-bolt/seriously-killing-babies-just-days-from-birth/news-story/34415d0888f6a221cba5d6fc57cbcd3>

In August 2019, Children by Choice updated its information page outlining abortion law in all states and territories in Australia.

This information can be accessed at

<https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice#NSW>

On July 31, 2019 The Conversation published a comment by senior lecturer Helen Pringle, at the University of New South Wales in the faculties of Arts and Social Sciences, titled 'After 119 years, NSW is set to decriminalise abortion. Why has reform taken so long?'

The article examines the history of attempted abortion law reform in New South Wales and the degree of popular support for such reform.

The full text can be access at <https://theconversation.com/after-119-years-nsw-is-set-to-decriminalise-abortion-why-has-reform-taken-so-long-121112>

On July 31, 2019, Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending access to abortion, published a comment titled 'NSW Abortion Legislation 2' which outlined arguments against the proposed legislation on the basis of disinformation regarding criminality of abortion, community attitudes, conscientious objection, abortion 'rights' and adverse impacts of abortion.

The full comment can be accessed at <http://debbiegarratt.com/category/abortion/>

On July 30, 2019, The Sydney Morning Herald published a comment by Miranda Devine titled 'Why is a Liberal government pushing radical abortion laws?'

The comment criticises the proposed legislation and examines the hostility and divergent points of view on the issue with the Government.

The full text can be accessed at <https://www.heraldsun.com.au/rendezview/why-is-a-liberal-government-pushing-radical-abortion-laws/news-story/1b2ae0c42d13c81faa23b33a14d16c21>

On July 30, 2019, The Power to Persuade published a comment by Ashlee Gore, a Lecturer in Criminology and Policing at Western Sydney University, titled 'Abortion laws in NSW: Beyond Decriminalisation'.

The article supports the removal of impediments to abortion at a legal level; however, it stresses that many social, economic and systemic barriers will remain.

The full text can be accessed at <http://www.powertopersuade.org.au/blog/abortion-laws-in-nsw-beyond-decriminalisation/30/7/2019>

On May 2, 2019, The Guardian published a news report titled 'Sixty groups join pro-choice alliance to campaign for NSW abortion law reform' which names and quotes the position of some of the groups seeking abortion reform in New South Wales.

The full text can be accessed at <https://www.theguardian.com/world/2019/may/02/sixty-groups-join-pro-choice-alliance-to-campaign-for-nsw-abortion-law-reform>

In 2017, the New South Wales Parliamentary Research Service published a paper titled 'Abortion law: a national perspective Briefing Paper No 2' by Tom Gotsis and Laura Ismay which carefully examined research data on popular attitudes to abortion across Australia and within New South Wales.

The full text can be accessed at

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

On March 12, 2016, the Australasian Legal Information Institute published a comment and analysis by Elizabeth Henderson, a final year law student at the University of Sydney, titled, 'The Confused Law of Abortion in NSW: CES v Superclinics' which gives a detailed overview of the evolution of New South Wales abortion law.

The full text can be accessed at

<http://www.austlii.edu.au/au/journals/PolemicUSyd/1996/33.pdf>

## **Arguments in favour of abortion being removed from the New South Wales Crimes Act**

1. Ready access to abortion and its decriminalisation are favoured by a majority of voters. Supporters of the Reproductive Health Care Reform Bill argue that its provisions to decriminalise abortion in New South Wales are in accord with the views of a large majority of New South Wales voters and with the views of most Australians.

No public opinion poll in Australia in 50 years has found a popular majority opposed to broad access to abortion. In fact, no opinion poll has found more than 5-10% of voters opposed to abortion in all or almost all circumstances. <https://theconversation.com/after-119-years-nsw-is-set-to-decriminalise-abortion-why-has-reform-taken-so-long-121112>

Several surveys have been conducted on public opinion towards abortion over the last four decades. In 2008, the Victorian Law Reform Commission conducted substantial research into

Australian attitudes toward abortion. The Commission concluded most Australians supported a woman's right to choose whether to have an abortion.

A variety of socio-demographic characteristics were associated with positive (and negative) views of abortion. For example, there was less support for abortion among persons with religious beliefs. Nonetheless, even among persons with religious beliefs, supporters remained in the majority.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

Australian Election Studies (AES) have revealed similar results. The proportion of Australians who believe 'women should be able to obtain an abortion easily when they want one' has increased from 46.2 percent in 1979 to 63.0 percent in 2016, while the proportion of respondents who believe abortion should be banned has remained consistently around 5.0 percent.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

The AES figures for New South Wales are broadly similar to the national responses. 65.6 percent of New South Wales respondents in 2016 believe that women should be able to obtain an abortion readily, compared with 35.9 percent in 1987. The percentage of persons in 2016 who believed abortion should be banned was 1.7 percent, compared with 6.0% in 1987.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

In September 2015, the New South Wales Greens commissioned Lonergan Research to survey New South Wales residents on their views on abortion. This survey represents the latest publicly available survey of the opinions of New South Wales citizens. The survey was conducted online using a permission-based panel, with data weighted to the latest population estimates sourced from the Australian Bureau of Statistics. A total of 1,015 New South Wales respondents aged 18 years or older were surveyed; 595 respondents were drawn from Sydney, with the remaining 420 drawn from regional New South Wales.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

63% of respondents classified abortion as a women's health issue. This classification was more prevalent across regional and rural New South Wales (68 percent), compared to Sydney (60 percent). 46 percent of respondents from Sydney also saw it as a moral issue, compared with 39 percent of residents from regional/rural New South Wales.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

76 percent of respondents were not aware that abortion is an offence under the New South Wales Crimes Act (1900). 73 percent of respondents believe that abortion should be decriminalised and regulated within the health service. Support for decriminalising abortion was marginally higher across regional and rural New South Wales (77 percent) compared to Sydney (70 percent), as well as in older groups of respondents.

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

Support for the decriminalization of abortion was highest (86 percent) amongst respondents who had voted for The Greens in the 2015 New South Wales State Election, followed by those who voted for Labor (77 percent), the LNP (75 percent) and another party or Independent (69 percent).

<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>

It has been suggested that one possible reason why it has taken New South Wales so long to reform its abortion laws was the fear of a backlash among voters. Even feminist campaigners had concerns that attempts to reform the law might fail and backfire on reformers, perhaps resulting in more restricted access. <https://theconversation.com/after-119-years-nsw-is-set-to-decriminalise-abortion-why-has-reform-taken-so-long-121112> This view that the decriminalization of abortion is rejected by voters has been played up by a number of political and social commentators, particularly in the conservative media. In a comment published in The Herald Sun on July 30, 2019, Miranda Devine asked, 'What is the point of

electing a Liberal government if all it does is implement a Labor-Greens agenda? This is the question all conservative voters in NSW should be asking today as the Berejiklian government plans to ram through parliament one of the most radical abortion bills on the planet.’ <https://www.heraldsun.com.au/rendezview/why-is-a-liberal-government-pushing-radical-abortion-laws/news-story/1b2ae0c42d13c81faa23b33a14d16c21> Critics of Devine’s comments argue that she is promoting her own views on abortion as all available data suggests that a comfortable majority of LNP voters favour abortion law reform. Further, supporters of the Reproductive Health Care Reform Bill argue that those politicians who are opposing the Bill are ignoring the wishes of a clear majority of their electorates. Though all major parties are allowing a conscience vote on the issue, supporters of the Bill maintain that those elected to represent voters do not have the right to put their personal beliefs ahead of the wishes of those who voted for them.

In a comment published in *The Conversation* on July 31, 2019, senior lecturer Helen Pringle, at the University of New South Wales in the faculties of Arts and Social Sciences stated, ‘The chief obstacle to reform has little to do with voters’ electoral behaviour, let alone their general attitudes on abortion. Rather, it’s been the lack of will among MPs that’s been the problem.’ <https://theconversation.com/after-119-years-nsw-is-set-to-decriminalise-abortion-why-has-reform-taken-so-long-121112>

## 2. The New South Wales Crimes Act 1900 contradicts judicial rulings and current medical practice and stigmatises and threatens patients and their doctors

Supporters of the Reproductive Health Care Reform Bill argue that there are serious discrepancies between the Crimes Act in New South Wales as it relates to abortion and the availability of terminations within the state. Critics maintain that these discrepancies between the criminal law and current medical practice create fear, uncertainty and inequalities in the health care that is provided to women seeking terminations. They also create apprehensions among doctors.

Unlike Victoria and the Australian Capital Territory, surgical abortion remains illegal to women and doctors in New South Wales if it is procured ‘unlawfully’. Sections 82, 83 and 84 of the New South Wales Crimes Act 1900, all relate to abortion as a criminal offence. Section 82 clearly states that ‘a pregnant woman who unlawfully administers an abortion through an unlawful drug or instrument’ faces a maximum penalty of 10 years imprisonment. Section 83 makes it an offence for anyone else to procure the miscarriage of a woman and Section 84 prohibits anyone from knowingly supplying drugs or instruments to procure a miscarriage under these terms, ‘anyone who unlawfully supplies the pregnant woman with such drugs or instruments to help procure an abortion’ faces a maximum penalty of 5 years imprisonment.’ [tps://www.sydneyfeminists.org/reproductive-rights-information-page](https://www.sydneyfeminists.org/reproductive-rights-information-page)

Elizabeth Henderson, a final year law student at the University of Sydney, has explained the uncertainty inherent in the current New South Wales criminal law. Henderson states, ‘The key word in Section 82 is ‘unlawfully’. The use of this word implies that under some circumstances an abortion may be lawful. Subsequent judicial rulings, notably the MacNaghten and Menhennit rulings, have determined that risk to the pregnant woman’s physical or psychological health could make an abortion lawful, while the 1971 New South Wales Levine ruling extended relevant factors impacting on the woman, making an abortion legal on economic and social grounds.

<http://www.austlii.edu.au/au/journals/PolemicUSyd/1996/33.pdf>

Henderson explains that the broader interpretation of lawful abortion as a result of this series of judicial rulings is at odds with the narrower and less clear definitions of abortion as a crime contained in the New South Wales Crimes Act 1900. Henderson states, ‘The most obvious problem with the current situation is the visible difference between the true legal

position and the actual practice of abortion. This disparity means that there is a great deal of uncertainty surrounding access to abortion. Abortion availability largely hinges on whether the state is prepared to enforce the law and on what kind of abortion services exist in a particular area.’ <http://www.austlii.edu.au/au/journals/PolemicUSyd/1996/33.pdf>

This discrepancy between law and practice means that while abortion is generally available to women in New South Wales without fear of prosecution, there are some situations where the lingering effect of the Crimes Act can restrict access and may result in doctors being charged with a crime.

Ashlee Gore, a lecturer in Criminology and Policing at Western Sydney University, has stated, ‘While some practitioners may attempt to support women’s autonomy through the existing policies and legal framework, not all women have access to such supportive providers.

Women in rural areas for example may have to rely on local GP’s as their first point of contact, especially if they are unaware of the availability of specialist family planning and reproductive health services out of area. One study reported that the conscientious objections of local conservative GP’s made the referral process especially stressful for some women. One New South Wales woman reported seeing five GPs before she was finally provided a referral.’ <http://www.powertopersuade.org.au/blog/abortion-laws-in-nsw-beyond-decriminalisation/30/7/2019>

In addition to the current Crimes Act making it difficult for some women to access abortion, it also places a strain on doctors. Susan Wnukowska-Mtonga and Hannah Lawson, in a comment published by Lawyers Weekly on August 5, 2019, stated, ‘While it would be easy to assume that this law, like many outdated crimes remaining in the code, is rarely relied on for prosecution, a doctor was charged and convicted with manslaughter for administering an abortion after failing to assess whether the pregnancy would pose a danger to the woman’s health as recently as 2005.’ <https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019>

The Australian Medical Association (AMA) supports abortion being removed from the New South Wales Crimes Act 1900. The AMA has noted that New South Wales is the last state in Australia to decriminalise abortion, placing women and doctors under a ‘different and stigmatised legal arrangement to other states.’ The AMA has expressed support for the Reproductive Health Care Reform Bill, stating the bill ‘reflects the common law entitlements that currently exist, while removing the stigma and legal uncertainty associated with abortion being included in the Crimes Act.’ <https://www.theguardian.com/australia-news/2019/jul/28/nsw-set-to-decriminalise-abortion-as-health-minister-says-its-time-for-change>

### 3. Reforming the law to treat fertility control as a health issue respects women’s reproductive autonomy

Those who support the Reproductive Health Care Reform Bill argue that it is necessary to prevent those legal anomalies that can still occur within New South Wales in which a woman’s right to determine whether she will proceed with a pregnancy is denied.

Supporters of abortion law reform in New South Wales note that Australia has an obligation to respect, protect, and fulfil women’s reproductive rights under various international human rights treaties, including the Convention on the Elimination of all forms of Discrimination Against Women, which Australia signed and ratified in 1983.

<https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019>

Supporters of women’s reproductive autonomy further observe that reproductive rights are inextricably linked to a woman’s ability to exercise a number of other fundamental rights

including the rights to self-determination, equality, freedom from discrimination, and freedom from torture and cruel, inhuman and degrading treatment.

<https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019>

The ability for women to access and exercise their sexual and reproductive rights has long been recognised as an integral part of the right to health, so much so that an alliance of 60 peak health, legal, and community organisations including doctors and nurses across the state have formed part of the latest push to decriminalise abortion in New South Wales. Domestic Violence New South Wales, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and Family Planning New South Wales are among organisations that have signed up to be a part of the pro-choice alliance.

<https://www.theguardian.com/world/2019/may/02/sixty-groups-join-pro-choice-alliance-to-campaign-for-nsw-abortion-law-reform>

Independent MP Alex Greenwich who introduced the Reproductive Health Care Reform Bill into the lower house of the New South Wales parliament has stated, ‘The vast majority of people from all walks of life support a woman's right to choose and this comes from a moral position based on social justice, fairness and the fundamental human right to bodily autonomy. Ensuring women have access to safe and legal terminations is vital to protecting their health, welfare and control over their bodies and their lives. It is about women's rights to appropriate health care and it is our role as community representatives in this place to protect those rights. The need to end a pregnancy is a health matter, not a criminal matter and the Reproductive Health Care Reform Bill recognises this and removes abortions from the Criminal Code and regulates them as a medical procedure.’

[https://www.alexgreenwich.com/reproductive\\_health\\_bill](https://www.alexgreenwich.com/reproductive_health_bill)

In an opinion piece published on August 5, 2019, in Lawyers Weekly, it was noted that in 2017, a Sydney woman was prosecuted for self-administering the abortion drug RU486.

<https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019> The woman was prosecuted under Section 82 of the New South Wales Crimes Act 1900 which states, ‘Whosoever, being a woman with child, unlawfully administers to herself any drug or noxious thing; or unlawfully uses any instrument to procure her miscarriage, shall be liable to penal servitude for ten years.’

<https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice#NSW> The situation regarding an abortifacient such as RU486 which is intended to allow for the early termination of a pregnancy and prevent the need for any form of surgical intervention is complicated in New South Wales.

Lawyers Weekly has noted, ‘With the forced closure of the Tabbot Foundation, the only national postal service legally delivering the medical abortion drug RU486 to women in need, we may see more prosecutions, particularly of women in regional New South Wales who often find it much harder to access contraception and basic reproductive services.’

<https://www.lawyersweekly.com.au/politics/26210-why-all-mps-should-vote-for-the-reproductive-healthcare-reform-bill-2019> Thus it is argued that women who are doing no more than trying to regulate their fertility in a timely manner could find themselves charged with a crime.

4. Late-term abortions should remain available and will not be increased by the proposed legislation

Supporters of decriminalising abortion in New South Wales argue that the proposed legislation would probably make late-term abortions in that state less rather than more likely. In an editorial published in The Sydney Morning Herald on August 2, 2019, Lisa Davies stated, ‘Evidence from other states suggests the bill is likely to reduce the number of late-

term abortions even further. Currently, the legal ambiguities and the lingering stigma of the Crimes Act discourage some doctors from offering abortions, making it harder for women, especially from disadvantaged and rural backgrounds, to find a cheap service in their neighbourhood. If more doctors are in the market, women will be able to get cheaper advice locally in a timely fashion and later-term abortions will fall.'

<https://www.smh.com.au/lifestyle/health-and-wellness/critics-of-abortion-bill-are-putting-up-a-smokescreen-20190802-p52der.html>

Davies further argues, 'The bill...will in fact make late-term abortions less likely and increase rather than decrease scrutiny of them...the bill says that for late-term pregnancies, those over 22 weeks, two doctors must be consulted before the procedure. That is more stringent than the current legal situation where only one doctor's approval is required at any stage of the pregnancy for an abortion to be lawful. The bill's threshold for requiring a second opinion after 22 weeks is actually stricter than Queensland where it is 24.'

<https://www.smh.com.au/lifestyle/health-and-wellness/critics-of-abortion-bill-are-putting-up-a-smokescreen-20190802-p52der.html>

Supporters of New South Wales abortion law reform argue that their opponents are using late-term abortions as a diversion. It is claimed that these critics have taken a very rare occurrence and used it as the basis for opposing a necessary reform.

Lisa Davies has stated, 'The focus on late-term abortions is...skewed because they are already extremely rare. Less than 1 per cent of abortions are believed to occur after 20 weeks.' <https://www.smh.com.au/lifestyle/health-and-wellness/critics-of-abortion-bill-are-putting-up-a-smokescreen-20190802-p52der.html>

Davies has also noted that the proposed legislation would do nothing to alter the provisions already in place which contribute to the rarity of late-term abortions. Davies explains, 'Late-term abortions are...already subject to very strict controls since they almost always involve drastic cases such as women who are the victims of violence, mental health issues or drug addiction or where the fetus has been diagnosed with serious deformities. When doctors encounter these cases, they are handled in hospitals by teams of health professionals. The claim by conservatives that these decisions are not documented or justified is already fanciful and it will be even more so once the bill is passed and two doctors are involved.'

<https://www.smh.com.au/lifestyle/health-and-wellness/critics-of-abortion-bill-are-putting-up-a-smokescreen-20190802-p52der.html>

Supporters of the proposed New South Wales reforms note that the Royal Australian College of Obstetricians and Gynaecologists (RANZCOG) and the Australian Medical Association (New South Wales) both support the 22-week gestation period. RANZCOG has stated that 'a late abortion is only ever performed when there is a compelling clinical need' and that the bill will not change 'current clinical practice'. <https://www.hrlc.org.au/news/2019/8/7/nsw-abortion-gestation-period>

Supporters of the New South Wales bill note late abortions are performed under pressing circumstances and should not be a determining factor in any debate surrounding abortion access. About half of all late-term abortions occur because of fetal abnormality. The nature and severity of some serious and fatal fetal conditions cannot be confirmed until 20-22 weeks (after a routine ultrasound at 18-20 weeks). Those concerned with the pregnant woman's psychological wellbeing argue that it is critical that she have time to understand her options and to discuss them with medical professionals, support services, and her family. There is evidence that gestation limits in abortion law cause women in these distressing situations to feel rushed in their decision-making. <https://www.hrlc.org.au/news/2019/8/7/nsw-abortion-gestation-period>

The other half of abortions performed late-term are for reasons including: women who do not menstruate regularly (because they are young, perimenopausal or on contraceptives, for

example) miss early symptoms of pregnancy; abusive partners prevent women from accessing abortion services at an earlier date; relationships break down; socioeconomic circumstances change. <https://theconversation.com/heres-why-there-should-be-no-gestational-limits-for-abortion-121500>

It has been noted that the law needs to allow late-term abortions to ensure that women in disadvantaged circumstances are not faced with unwanted pregnancies. According to experts in reproductive health, 'Gestational limits discriminate against the most vulnerable of women and women in the most difficult of clinical circumstances. Often disadvantaged women may not access diagnosis of lethal or serious anomalies until later gestations.'

<https://www.hrlc.org.au/news/2019/8/7/nsw-abortion-gestation-period>

Erica Millar, a lecturer in the social, cultural and socio-legal aspects of reproduction at La Trobe University, has written, 'There's no evidence gestational limits result in fewer second and third trimester abortions. But there is evidence that such cut-offs harm women, especially those who are already disadvantaged. They also prevent medical professionals from providing pregnant people with the best possible care.' <https://theconversation.com/heres-why-there-should-be-no-gestational-limits-for-abortion-121500>

##### 5. Sex-selection should not be part of the debate surrounding New South Wales abortion law reform

It has been claimed that exploiting popular opposition to the sex selection of children is a tactic being used to try to undermine proposed New South Wales abortion law reform.

Dr Danielle McMullen, vice president of the Australian Medical Association (New South Wales) has claimed, 'Our state Parliament [in New South Wales] has been paralysed into inaction because people who want to obstruct access to abortion or prevent it entirely have linked it in a very insincere and flawed way to the very emotionally charged issue of gender selection.' <https://www.smh.com.au/national/nsw/gender-selection-has-nothing-to-do-with-decriminalising-abortion-ama-20190814-p52h2z.html>

Those who object to the issue of sex selection becoming part of the debate argue firstly that there is no evidence that abortion as a sex selection method is being used in any significant way in either New South Wales or Australia and secondly, to the extent to which it might occur, it would be extremely difficult for medical practitioners to know that this was a patient's motivation and doctor's attempts to determine this would harm the service supplied to all women seeking abortion.

It has been noted that there is no Australian demographical information to support the claim that abortion is being used as a sex selection tool. An upper house inquiry into the abortion bill held on August 15 heard evidence from a number of medical and women's groups that the practice was not an issue in New South Wales.

<https://www.theguardian.com/world/2019/aug/15/nsw-abortion-law-backers-unlikely-to-support-calls-for-sex-selection-ban>

Ann Brassil, the chief executive of Family Planning New South Wales, noted there was 'no evidence that gender selection occurs'. Brassil added, 'For us to introduce legislation in relation to gender selection on the basis of no evidence would be irresponsible because we would be in a situation where we're making it up and we could create enormous harm.'

<https://www.theguardian.com/world/2019/aug/15/nsw-abortion-law-backers-unlikely-to-support-calls-for-sex-selection-ban>

Secondly, any law against using abortion for sex selection would be unenforceable; while, the legal burden this would impose on doctors would prevent them giving the best care to their patients.

Dr McMullen has stated that any law specifically prohibiting the use of abortion for sex selection (as proposed by one potential amendment to the New South Wales abortion Bill)

would place doctors at risk of criminal prosecution. Such an amendment could make any doctor providing abortion services after nine weeks 'party to a crime' as technology allows the sex of a baby to be identified from about this time. <https://www.sbs.com.au/news/party-to-a-crime-ama-says-nsw-abortion-clause-is-a-threat-to-doctors>

Such prosecution concerns for doctors would reduce the quality of care they could give their patients. McMullen explained, 'If a patient wants an abortion on the basis of gender selection, they aren't telling us. This means that doctors would have to view every abortion requested after nine weeks as potentially suspect, saddling doctors with the prospect of being party to a crime. This would lead to delays in delivery of care at best and no procedure at worst.'

<https://www.smh.com.au/national/nsw/gender-selection-has-nothing-to-do-with-decriminalising-abortion-ama-20190814-p52h2z.html>

Danielle McMullen and others have suggested that concerns regarding gender selection are being exploited by opponents to abortion as a means of undermining women's access to this service. Dr McMullen has stated, 'The fact that gender selection is such an emotive issue is precisely why this bill's opponents continue to make this bad-faith argument. The people who are doing this...see this as an opportunity to put a stop to something they don't like and place controls back on women under the cover of doing something people broadly support...'

<https://www.smh.com.au/national/nsw/gender-selection-has-nothing-to-do-with-decriminalising-abortion-ama-20190814-p52h2z.html>

## **Arguments against abortion being removed from the New South Wales Crimes Act**

1. The proposed changes to New South Wales abortion law would expand the grounds on which an abortion could be performed, including for sex selection

Critics of the proposed changes to the New South Wales law regarding abortion claim that they would result in abortions being performed for any reason, including the apparently trivial. There is concern that this would signal a disrespect for human life. There are vigorous objections, for example, to the possibility that abortion could be performed for sex selection. The Catholic Archbishop of Sydney, Anthony Fisher, has condemned proposed legislation to decriminalise abortion in New South Wales, claiming it would allow the termination of a pregnancy 'on demand for any reason one desires.' The archbishop argues that the capacity to terminate a pregnancy without offering any justification 'trivialises abortion'.

<https://www.theaustralian.com.au/nation/churches-take-aim-at-nsw-abortion-bill/news-story/c2d7732e19bbc92f5aa3151984d625b1>

A similar argument has been put by Rabbi Nochum Schapiro, the president of the Rabbinical Council of Australia. Rabbi Schapiro has claimed that the legislation, in its present form, would allow women to obtain an abortion not only for reasons related to their education or career but also if they did not like the gender or eye colour of an unborn child. Rabbi Schapiro has stated, 'If it doesn't suit me [the mother] I can abort – that is a flippant view of life.' <https://www.theaustralian.com.au/nation/churches-take-aim-at-nsw-abortion-bill/news-story/c2d7732e19bbc92f5aa3151984d625b1>

Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending access to abortion, has similarly stated, 'Prior to 22 weeks, abortion is on demand and can be made for any reason.' <https://www.smh.com.au/national/nsw/nsw-is-one-step-closer-to-abortion-on-demand-for-any-reason-20190809-p52fh6.html>

In relational to a particularly contested justification for abortion, sex selection, the Anglican Archbishop of Sydney, Glenn Davies, has queried why the bill does not specifically prohibit abortion on sex selection 'if everyone is opposed to sex selection'. Dr Davies stated that his church accepted abortion in cases where the health of a mother was at stake and gave the

example of an ectopic pregnancy. However, he was concerned that the proposed decriminalisation would allow abortion for far less significant reasons.

<https://www.theaustralian.com.au/nation/churches-take-aim-at-nsw-abortion-bill/news-story/c2d7732e19bbc92f5aa3151984d625b1>

Those who are concerned about abortion for sex selection claim that there is evidence to suggest that it is occurring. In an opinion piece published in On Line Opinion on August, 16, 2019, Debbie Garratt stated, 'A La Trobe University study found that 'systematic discrimination against females starts in the womb'. Within some Victorian migrant communities, boys were born at the rate of 122 and 125 for every 100 girls born. This unnaturally high male birth rate difference defies the standard of 105 boys for 100 girls. One of the researchers, Dr Edvardsson says it is clear that there is a gender bias in these communities.' <https://www.onlineopinion.com.au/view.asp?article=20456>

Garratt and others are concerned that the liberalisation of access to abortion as represented by the proposed New South Wales reforms will result in an increased number of abortions being performed for sex selection purposes in that state. Liberal MP and former minister for women Tanya Davies unsuccessfully moved a motion to require 'termination not to be used for gender selection'. Instead, members agreed to an amendment by Nationals MP Leslie Williams noting disapproval of the practice. Critics of gender selection and the potential of the new legislation to foster it argue that this statement of disapproval is insufficient. Christian Democrat MLC Fred Nile has stated, 'I think it's very important to discourage women or families and husband or wife if they want to try and control whether they're going to have girls or boys.' The Shooters Party leader, Robert Borsak, has similarly stated, 'I just won't count any situation where there's a chance for cultural reasons or other for potential parents to be selecting against a female. That's an anathema to me and I don't want that to happen.' <https://www.dailytelegraph.com.au/news/nsw/failed-amendment-on-sex-selective-abortion-expected-to-resurface-in-upper-house/news-story/07e680499740c8102b9a8c4230a11883>

## 2. The proposed legislation would lead to more late-term abortions

Those opposed to liberalising and extending access to abortion as proposed within the Reproductive Health Care Reform Bill have particular concerns regarding late-term abortions. These concerns relate to the potential viability of the unborn child. Their issue is that the aborted baby may have been able to live outside the womb if given medical support. Critics of late-term abortion also have concerns regarding the capacity of the fetus to feel pain at later stages of gestation.

Under the proposed New South Wales legislation, abortion would be available on demand up to 22 weeks. After that point it remains available, with some further qualifications, until immediately before birth. On July 30, 2019, commentator Miranda Devine criticised the new legislation for allowing abortion beyond 22 weeks, with negligible restrictions. Devine stated, '[T]he Greenwich-Hazzard bill allows for abortion on demand for women up to 22 weeks and, from 22 weeks right up until birth, all it takes is a second doctor to sign off, taking into account "current and future physical, psychological and social circumstances".'

<https://www.heraldsun.com.au/rendezview/why-is-a-liberal-government-pushing-radical-abortion-laws/news-story/1b2ae0c42d13c81faa23b33a14d16c21>

This point has been emphasised by Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending legal access to abortion. Garratt has stated, 'This bill allows late-term abortion for virtually any reason. It allows abortions up to birth for physical, psychological and social reasons, which in effect, encompasses everything, for there is no reason outside those three categories. Social reasons would include relationship breakdown,

financial challenges or even sex selection.’ <https://www.smh.com.au/national/nsw/nsw-is-one-step-closer-to-abortion-on-demand-for-any-reason-20190809-p52fh6.html>

Garratt has further claimed that other supposed restrictions to access to late-term abortion are similarly ineffectual. Garratt notes, ‘The second doctor [required to approve an abortion beyond 22 weeks gestation] does not have to even see the patient or look at her file. The second doctor does not have to be independent. Even more telling, there is no legal penalty if the two-doctor rule is not observed. A law without a penalty is no law at all.’

<https://www.smh.com.au/national/nsw/nsw-is-one-step-closer-to-abortion-on-demand-for-any-reason-20190809-p52fh6.html>

New South Wales backbencher, Wendy Tuckerman, has stated, ‘This bill allows abortions to occur very late in pregnancy and in circumstances without a medical need or the provisos that currently exist. At 22 weeks, that’s a five-and-a-half-month-old fetus.’

<https://www.crookwellgazette.com.au/story/6322589/pro-choice-advocate-wendy-tuckerman-mp-votes-against-abortion-bill/>

Another New South Wales Liberal backbencher, Kevin Connolly, has stated of the proposed legislation, ‘Removing the last vestiges of legal protection for unborn children in New South Wales is not a health care reform. It is a step backwards to a less-enlightened, less-civilised society which places only selective value on human life.’

<https://www.heraldsun.com.au/rendezview/why-is-a-liberal-government-pushing-radical-abortion-laws/news-story/1b2ae0c42d13c81faa23b33a14d16c21>

Those concerned about an increased incidence of late-term abortions note that these have increased in Victoria by 39 percent since abortion was decriminalised.

<https://www.smh.com.au/lifestyle/health-and-wellness/doctors-rights-to-object-to-abortion-should-be-protected-20190802-p52dc9.html>

Commentator Andrew Bolt has stressed the moral uncertainty of this development, stating, ‘Ministers of the New South Wales Liberal Government seems to me to have moved too far from abortion towards infanticide.’ <https://www.heraldsun.com.au/blogs/andrew-bolt/seriously-killing-babies-just-days-from-birth/news-story/34415d0888f6a221cba5d6fc57cbcd3>

Bolt further quoted Miranda Devine, ‘Not only does the bill allow unborn babies to be aborted right up until the moment of birth, but it forces any doctor with a conscientious objection to refer the patient to a doctor who will carry out the abortion....’

<https://www.heraldsun.com.au/blogs/andrew-bolt/seriously-killing-babies-just-days-from-birth/news-story/34415d0888f6a221cba5d6fc57cbcd3>

Bolt has queried, ‘Why is a Liberal co-sponsoring such a bill? Have they no respect for the life of a child just days from birth?’

Perhaps we should oblige all politicians in favor of this bill to inspect the body of one baby aborted in the final weeks of pregnancy, just to be absolutely clear that they understand the moral gravity of their decision.’ <https://www.heraldsun.com.au/blogs/andrew-bolt/seriously-killing-babies-just-days-from-birth/news-story/34415d0888f6a221cba5d6fc57cbcd3>

Opponents of late-term abortion have argued that one of its consequences could be that an aborted late-term baby that survives the procedure would simply be left to die. Clare Bruce, a commentator for Hope, a Sydney non-denominational, Christian FM station, has stated, ‘A baby inadvertently delivered alive [after late-term abortion] could be left to die in one hospital ward—while doctors fight to save a premature baby of the same age, in the next.’

<https://hope1032.com.au/stories/life/news/2019/babies-who-survive-an-abortion-will-be-allowed-to-die-if-new-laws-pass-nsw-senate/>

Bruce has offered by way of evidence, ‘The most recent statistics from Victoria show that out of 310 late-term terminations performed in that state in 2016, there were 33 babies born alive and left to die from prematurity – representing more than 10 per cent of all late-term

abortions.’ <https://hope1032.com.au/stories/life/news/2019/babies-who-survive-an-abortion-will-be-allowed-to-die-if-new-laws-pass-nsw-senate/>

Critics of late-term abortions also raise the question of fetal pain. Deidre Little, in a comment posted on the Royal Australian College of General Practitioners Internet site, noted, ‘I have been disappointed by the silence or perhaps ignorance...concerning fetal pain. This Bill makes no provision for relieving fetal procedural pain. Fetology has demonstrated the ability of the unborn child to feel pain. Surgeons who operate on the fetus now sedate the unborn child to prevent fetal movement in response to painful procedures.’

<https://www1.racgp.org.au/newsgp/professional/changes-to-nsw-abortion-bill-raise-further-questio>

Critics of late-term abortion have further noted that it is not supported by most of the New South Wales electorate. According to a Galaxy Poll conducted in 2017 for Abortion Rethink, only five percent of people polled in New South Wales said abortion should be legal right up until birth; 74 percent oppose abortion outright beyond 23 weeks gestation and 56 percent agree that an unborn baby at 23 weeks is a person with rights.’

<https://www.heraldsun.com.au/rendezview/why-is-a-liberal-government-pushing-radical-abortion-laws/news-story/1b2ae0c42d13c81faa23b33a14d16c21>

3. Abortion is readily available for most woman in New South Wales under the current law and changing the law may worsen their situation

Opponents of the Reproductive Health Care Reform Bill argue that the bill and the Act it proposes are not necessary. They claim that women’s access to abortion is not impeded by the provisions of the New South Wales Crimes Act regarding abortion and that liberalising the law may place some women in a worse situation.

On July 29, 2019, Emily’s Voice published a comment by Claire van Ryn in which the author, who opposes the Reproductive Health Care Reform Bill, noted, ‘Abortion is already legal in New South Wales, provided continuing a pregnancy represents a serious risk to a woman’s physical or mental health.

Doctors can already take into account social and financial circumstances, and abortions are routinely available to 20 weeks, and then with some restrictions to 24 weeks.’

<https://emilysvoice.com/no-protection-for-women-or-babies-in-proposed-nsw-abortion-legislation/>

Van Ryn has expressed concern that under the provisions of the Reproductive Health Care Reform Bill women may be offered less protection than they are under current practices in New South Wales. Van Ryn suggests, ‘Under the proposed new legislation, abortion will be available to term for physical, psychological and social circumstances such as, “My boyfriend/partner/parents want me to have an abortion” and, “I’m scared to tell my mum I’m pregnant”.’ Some critics have expressed concern that having to offer no justification for seeking an abortion may leave some vulnerable women able to be more easily pressured by partners or parents into abortions they have not chosen. <https://emilysvoice.com/no-protection-for-women-or-babies-in-proposed-nsw-abortion-legislation/>

Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending legal access to abortion has claimed, ‘The proponents of this Bill, along with the dominant media would have the general public believing that every woman faces major hurdles to access abortion and walks around under criminal threat thereafter. This is simply not true. The only criminal prosecutions to take place have been where a doctor has been completely incompetent which only demonstrates the need for such safeguards for women.’

<http://debbiegarratt.com/category/abortion/>

Garratt has explained further, ‘Most women not only have no trouble accessing abortion, but are completely unaware that it is not completely legal with the threshold for performing

abortion set so low that women can access it for any reason at all without threat of legal repercussion.’ <http://debbiegarratt.com/category/abortion/>

Marie Stopes Australia has been offered as an example of the ease with which New South Wales women can obtain an abortion. Marie Stopes Australia is a medical fertility control service that operates in New South Wales as well as Queensland, Canberra, Melbourne, Perth and Darwin. On its promotional page, its Sydney clinic informs readers, ‘Sydney women can access our abortion services without GP referral and can choose from medical or surgical abortion at our clinics in Westmead, Penrith or Sydney CBD. Our clinics offer both surgical abortion and medical abortion. However, if you cannot get to a clinic, you may be eligible for a medical abortion by phone.’ <https://www.mariestopes.org.au/abortion/abortion-clinic-sydney/>

New South Wales Family Planning explains, ‘In NSW the law allows you to have a “lawful” abortion if the doctor believes your physical or mental health is in serious danger by continuing the pregnancy...Only you...with your doctor, have the right to decide on whether the best option is to have an abortion.’

<https://www.fpnsw.org.au/factsheets/individuals/abortion/law-abortion-nsw>

It has also been disputed whether those difficulties some New South Wales women currently face accessing abortion would be remedied by the proposed changes to the law.

A recent survey of the experiences of New South Wales rural women seeking an abortion found these ranged from being easy and supported to very challenging. Challenges related to delays in seeing a rural GP, lack of willingness of GPs to refer, lack of information provided about the procedure or the clinic, lack of information about medical abortion and the required follow-up visit, delays caused by the need for blood tests or ultrasounds and negative GP attitudes. <https://www.rrh.org.au/journal/article/3538>

It has been claimed that a change in the New South Wales law would not automatically improve the situation of such women struggling to access abortion. Poor access to GPs and testing delays are systemic issues that would not be affected by legislative changes.

Commentators have also noticed that access to abortion may have declined since the procedure was decriminalised in Victoria. Associate Professor Louise Keogh, Health Sociologist at the Centre for Health Equity at the University of Melbourne has stated, ‘Law reform, while positive, has failed to address a number of significant issues in abortion service, and may have even resulted in a “lull” in action.’ In 2016 Professor Keogh interviewed doctors, nurses and clinic managers, and discovered concerns about reduced access to surgical abortion, and abortion after 20 weeks’ gestation. They were also worried that some hospitals were opting out of the service altogether.

<https://www.theage.com.au/national/victoria/fears-for-abortion-services-seven-years-after-victorian-law-reform-20161206-gt5bs6.html>

In 2015, the Victorian Department of Health listed only two public hospitals providing abortions – the Royal Women’s Hospital which offered abortion up to 18 weeks with ‘limited appointments available’ and Monash up to 12 weeks.

<https://www.theage.com.au/national/victoria/barriers-to-abortion-remain-in-victoria-seven-years-after-decriminalisation-20151009-gk5dnz.html>

#### 4. Doctors’ freedom of conscience is not adequately protected

Opponents of the Reproductive Health Care Reform Bill argue that it is a dangerous infringement of doctors’ freedom of conscience as it requires them to refer a patient onto another medical practitioner who will perform an abortion despite their objections to the intended procedure. This has been seen as a challenge to freedom of conscience and religion and to the autonomy of the individual practitioner.

In July 2019, the Cambridge Journal of Law and Religion published a comment by Associate Professor Joanna Howe and Professor Suzanne Le Mire of the University of Adelaide Law School. The professors stated, 'All Australians should be concerned when a law forces other Australians to act in a way that they believe is gravely wrong.

Freedom of conscience is a foundational principle of a diverse, pluralist democracy like Australia. It protects individuals who hold moral or religious views from compulsion. Forcing doctors to refer for abortion – whether directly or indirectly – undermines our hard-won and precious values of tolerance and freedom of belief and religion.

This is why it is so concerning that the proposed NSW abortion laws force any doctor with a conscientious objection to abortion to refer patients to a doctor who will perform one.'

<https://www.smh.com.au/lifestyle/health-and-wellness/doctors-rights-to-object-to-abortion-should-be-protected-20190802-p52dc9.html>

The professors explained the status that a referral has for a medical practitioner. It is a significant action. They explained, 'Under the law, referrals are required to be in writing, signed and dated by a doctor. The referring doctor must consider the need for the referral and provide any information about the patient's condition that is necessary. Referral establishes a working relationship between the referring doctor and the doctor for whom referral is sought.'

<https://www.smh.com.au/lifestyle/health-and-wellness/doctors-rights-to-object-to-abortion-should-be-protected-20190802-p52dc9.html>

Writing a referral is therefore an active step in the procurement of an abortion and being compelled to issue a referral would violate the freedom of conscience of an objecting doctor.

Professors Howe and Le Muir each note that late-term abortions can be particularly problematic for doctors and would make mandatory referral especially difficult.

Professors Howe and Le Muir also note that attempting to force doctors to perform procedures against their conscience will force them out of the profession and may stop potential doctors and obstetricians from joining the profession. The professors note, 'Violating doctors' freedom of conscience is also likely to create a number of systemic risks for the medical profession. It is likely to dissuade doctors with a conscientious objection to abortion from remaining in the profession. It may also inhibit medical students with a similar moral persuasion from entering the profession, or certain specialties within the profession. Such an approach risks reducing the access to healthcare for everyone and creating a monocultural medical profession. This is particularly concerning in a deeply multicultural, multi-faith state like New South Wales.'

<https://www.smh.com.au/lifestyle/health-and-wellness/doctors-rights-to-object-to-abortion-should-be-protected-20190802-p52dc9.html>

This concern about creating a medical monoculture which will tolerate only one perspective has been stressed by Debbie Garratt, an executive director of Real Choices Australia, a group opposed to extending legal access to abortion. Garratt has stated, 'The very strong message [this law] sends to medical practitioners (even those who may in some or many circumstances support abortion) is that they may risk prosecution for even suggesting abortion may not be the best or most appropriate course of action for their patients. At what point can a woman trust that anyone will properly assess her for risk factors, screen her for coercion, or care in any way for her real needs?'

[http://debbiegarratt.com/category/abortion/#\\_ftn3](http://debbiegarratt.com/category/abortion/#_ftn3)

5. The Reproductive Health Care Reform Bill has not been adequately debated in the parliament or the community

Opponents of the Reproductive Health Care Reform Bill argue that it has been forced through the New South Wales parliament without an adequate opportunity to address the complex issues which the Bill involves. Critics also complain that there has not been enough opportunity for members of the community to make submissions to the parliament.

Stephen Kamper, MLA for Rockdale, is among a number of New South Wales MPs who have expressed concern that the Bill has been pushed through the parliament without adequate discussion and investigation. Kamper stated, 'I opposed the bill following deep consideration. I explained during my contribution to the debate that I was extremely disappointed with the anxiety and urgency thrust upon MPs to consider the bill within days. The legislation, I believe, required a parliamentary committee that would introduce due process and recommendations including expert advice from legal and health professionals and any other community sector representatives.

Other less critical legislation is afforded greater due process and consideration.'

<https://www.theleader.com.au/story/6319071/updated-how-mps-voted-and-what-they-say-about-abortion-bill/>

On August 15, 2019, The Maitland Mercury published a letter to the editor from Pastor Bob Cotton, of the Maitland Christian Church. Pastor Cotton, who is opposed to the Reproductive Health Care Reform Bill. Pastor Cotton argued that the Bill had progressed through parliament too rapidly for the risks it represents to be properly considered. Pastor Cotton stated, 'Many are rightfully angry that this legislation has been forced upon Parliament without adequate time for all aspects of this bill to be thoroughly examined. It is far too important a matter to be rushed and the people of New South Wales need time to consider the implications of this legislation and to make sure that their representatives in Parliament are putting forward the wishes of their electorate and not their own personal agendas.'

<https://www.maitlandmercury.com.au/story/6329007/letters-to-the-editor/>

Pastor Cotton has urged voters to encourage the New South Wales upper house to reject the Bill so that it will be sent back to the lower house for more adequate discussion. Pastor Cotton wrote, 'I am respectfully asking everyone who is concerned about this matter and the way in which it is being handled to email the members of the Legislative Council and call upon them to reject this bill when it comes up for discussion next week. There is little time but very good reason to do this.'

<https://www.maitlandmercury.com.au/story/6329007/letters-to-the-editor/>

The New South Wales Police Minister, David Elliott, has accused the parliament of accepting 'rushed' and 'poorly written legislation'. Elliott argued that the Bill has had to be rapidly amended and that there have been complaints about inadequate community consultation. Elliott stated that his complaints were justified by 'the Premier's decision to delay the Second Reading for a week and the maladministration was proven when even the Bill's sponsor moved amendments within 48 hours of its introduction...'

<https://www.dailytelegraph.com.au/news/nsw/abortion-debate-heats-up-as-religious-leaders-front-inquiry/news-story/2daa6b8a975e6c0d219063bf39f6566c>

Elliott has claimed that he has received more constituent queries regarding the Reproductive Health Care Reform Bill than for any other proposed piece of legislation. Elliott stated, 'This is the largest number of constituent inquiries I've had in nearly a decade ... and ten times more than I received during the Greyhound Debate.' The Minister claimed the source of much voter anger was that the legislation was not put out for community consultation for an 'extended period'. <https://www.heraldsun.com.au/news/liberal-mp-david-elliott-inundated-with-inquiries-over-abortion-laws/news-story/302d29e4ad04575c7c16c8f735fad9c1>

After the Bill had passed the lower house, the upper house instituted an inquiry before it debates and votes upon the Bill. Police Minister Elliott has further claimed that his 'concerns about the lack of consultation have been reflected in ...[the] admission by the Chair of the Upper House Inquiry that he received thousands of submissions. It's my view that more submissions would have been received if the Leader of the House had followed conventional parliamentary process.'

<https://www.dailytelegraph.com.au/news/nsw/abortion-debate-heats-up-as-religious-leaders-front-inquiry/news-story/2daa6b8a975e6c0d219063bf39f6566c>

Three committee members have attempted to delay the inquiry writing a letter to Premier Gladys Berejiklian asking her to ‘intervene’ to allow more time for public consultation. <https://www.dailytelegraph.com.au/news/nsw/abortion-debate-heats-up-as-religious-leaders-front-inquiry/news-story/2daa6b8a975e6c0d219063bf39f6566c>

The Catholic Archbishop of Sydney, Anthony Fisher, has similarly stated his concerns regarding a ‘dogmatic determination’ on the part of supporting politicians to accept no changes. The legislation, he claimed, had been rushed through a lower house vote with no attempt to consult with himself or other church leaders who had an interest.

<http://cathnews.com/cathnews/35779-archbishop-fisher-takes-aim-at-nsw-abortion-law>

## Further implications

The campaign waged by opponents of the Reproductive Health Care Reform Bill has centred on its most extreme potential consequences:

that it will allow abortion on demand up to 22 weeks, increasing the likelihood of abortion for gender selection and

that it will increase the number of late-term abortions.

The call for further debate and community consultation seems largely a stalling device intended to give those who oppose the legislation a greater opportunity to present their arguments and hopefully sway the wider community.

This indicates the change in the abortion debate in this country over time. In 2007, during a similar debate in Victoria over the decriminalisation of abortion, Rita Joseph, author of ‘Human Rights and the Unborn Child’, focused the debate on what has more traditionally been at its centre – the right of the unborn child to protection of his/her life. Joseph opposed the decriminalisation of abortion, stating, ‘Such an attack on laws that protect unborn children contravenes the 1948 Universal Declaration of Human Rights, which recognised the child before birth as having human rights to be protected by the rule of law...’

In every premeditated abortion, deprivation of life is the intended outcome for the child.

Despite the current ideologically driven campaign to decriminalise abortion, arbitrary deprivation of life, under modern international human rights law, is still strictly prohibited.’

<https://www.theage.com.au/national/the-right-to-life-is-the-most-important-of-all-20070727-ge5g0f.html>

Arguments such as Joseph’s are now less commonly put. In a joint statement issued on August 5, 2019, by Archbishop Anthony Fisher (Catholic Archbishop of Sydney) and Glenn Davies (Anglican Archbishop of Sydney), the unborn’s right to life was raised. The statement asks, ‘Where is the right of that unborn child to take her first step? Her first day at school? Where is her right to become herself? Her right to live.’

<https://www.sydneycatholic.org/addresses-and-statements/2019/a-joint-statement-with-anglican-archbishop-of-sydney-dr-glenn-davies-on-proposed-abortion-laws/> However, even this statement from prominent church leaders focuses on late-term abortion rather than abortion per se. Churches appear to have lost credibility as moral arbiters within Australian society such that they have not put forward their traditional defence of the rights of the unborn with their usual vehemence. Indeed, Archbishop Fisher has complained that he and other church leaders have been excluded from the debate.

<http://cathnews.com/cathnews/35779-archbishop-fisher-takes-aim-at-nsw-abortion-law>

Some critics of the Bill have noted that the language in which it is framed removes the unborn child from consideration. There is only one reference to ‘fetus’ and the procedure to be decriminalised is defined as the ‘termination’ of a ‘pregnancy’. Neither ‘fetus’ nor ‘pregnancy’ are defined. <https://www.spectator.com.au/2019/08/the-nsw-abortion-saga-sacrificing-humanity-to-wokeness/>

It appears that the debate has shifted so that the formerly asserted rights of the unborn have been largely displaced by the widely accepted reproductive rights of the woman. Individual autonomy in a woman's reproductive life – including ready access to abortion – is now generally endorsed and forms part of a set of mainstream values that include equal treatment in the workplace, equal representation in parliaments and boardrooms, and protection from all forms of physical, sexual and verbal abuse.

This position has been articulated by Independent MP Alex Greenwich who introduced the Reproductive Health Care Reform Bill into the lower house of the New South Wales parliament. Greenwich stated, 'The vast majority of people from all walks of life support a woman's right to choose and this comes from a moral position based on social justice, fairness and the fundamental human right to bodily autonomy. Ensuring women have access to safe and legal terminations is vital to protecting their health, welfare and control over their bodies and their lives. It is about women's rights to appropriate health care and it is our role as community representatives in this place to protect those rights. The need to end a pregnancy is a health matter, not a criminal matter and the Reproductive Health Care Reform Bill recognises this and removes abortions from the Criminal Code and regulates them as a medical procedure.' [https://www.alexgreenwich.com/reproductive\\_health\\_bill](https://www.alexgreenwich.com/reproductive_health_bill)

Those who oppose the Bill by focusing on abortion for sex selection and late-term abortion are highlighting extreme consequences of the Bill which may provoke popular concern and objections to the decriminalisation of abortion.

The question of abortion as a means of sex selection appears largely to be a high-impact diversionary tactic. Abortion for gender selection is difficult, if not impossible, to prevent. There is little data to suggest it is happening and where it may be occurring the families concerned are not usually revealing their motivations to their medical practitioners. Despite this, the issue has proved problematic for the New South Wales premier, Gladys Berejiklian, and has led her to promise support for an amendment to the Crimes Act which would specifically prohibit sex selection. <https://www.theguardian.com/world/2019/aug/15/nsw-abortion-law-backers-unlikely-to-support-calls-for-sex-selection-ban>

The period of gestation at which abortion is allowed has always been contentious and may pose even greater problems for the passage of this Bill. The nearer an unborn child/fetus is to viability outside the womb, the easier it is to argue for its independent rights. Thus, commentator Andrew Bolt has stated, 'Have they no respect for the life of a child just days from birth?

Perhaps we should oblige all politicians in favor of this bill to inspect the body of one baby aborted in the final weeks of pregnancy, just to be absolutely clear that they understand the moral gravity of their decision.' <https://www.heraldsun.com.au/blogs/andrew-bolt/seriously-killing-babies-just-days-from-birth/news-story/34415d0888f6a221cba5d6fc57cbcd3>

Those who support late-term access to abortion typically argue on the grounds of fetal abnormality. <https://www.abc.net.au/news/2019-08-19/abortion-debate-nsw-missing-point-woman-who-had-late-termination/11424790> Those who would restrict late-term terminations stress that many are conducted for psychosocial reasons.

<https://www.heraldsun.com.au/news/opinion/rita-panahi/im-prochoice-but-i-wont-back-lateterm-abortions/news-story/cdb09161a235fa58977e687ab9836bd9#load-story-comments>  
The issue of late-term abortion remains an area of concern for Australians despite long-standing data showing general support for a woman's right to choose.

The Victorian Law Reform Commission has identified five studies on popular attitudes to abortion as having the greatest reliability; however, none demonstrated majority community support for abortion past the first trimester. In one of these studies, 60 percent of respondents claimed to support a woman's right to abortion on demand, but 51 percent opposed abortion

for financial or social reasons, increasing to 82 percent opposition to abortion after 20 weeks for non-medical reasons. [http://debbiegarratt.com/category/abortion/#\\_ftn3](http://debbiegarratt.com/category/abortion/#_ftn3)

Division within the New South Wales Government has made it no longer certain that the Bill will be passed in its current form. Liberal backbenchers Tanya Davies and Kevin Connolly have said they will move to the crossbench if amendments are not made to the bill. Were this to happen, it would rob the government of its two-seat majority. The Bill will be voted on in the upper house in September, after a delay of three weeks in the original schedule.

<https://www.abc.net.au/news/2019-09-07/abortion-nsw-liberals-vote-down-condemnation/11489378>