

## Submission of Family Planning NSW

**Developing principles to address the detrimental impact on health, equality and human rights of criminalisation with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV**

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Family Planning NSW is a not-for-profit organisation funded by the NSW Ministry of Health



Family Planning NSW welcomes this opportunity to make a submission to the International Commission of Jurists in relation to: *'Developing principles to address the detrimental impact on health, equality and human rights of criminalisation with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV'*.

**What is your interest/ the interest of your organization in this work? What specific issues do you work on in relation to the proposed topics covered?**

Family Planning NSW is the one of Australia's leading providers of reproductive and sexual health services. We are experts on reproductive and sexual health and have provided independent, not for profit clinical services and health information to people throughout New South Wales, Australia's most populous state, since 1926. We:

- respect the rights of women to have autonomy to control and decide freely on all matters related to their reproductive and sexual health.
- believe that doctors, nurses, pharmacists and other qualified practitioners, and women themselves, should not be criminalised by performing or choosing to have a medical or surgical abortion
- are committed to working for the elimination of unsafe abortion, and to increasing access to safe and affordable abortions in a non-judgemental environment.

The legal status of abortion and access to abortion vary across Australia. In NSW, abortion is contained within the *Crimes Act*, which means that abortion is a criminal offence unless certain conditions are satisfied. While in practice, women of financial means living in metropolitan centres can usually access abortions, this is certainly not the case for the broader population, and criminalisation presents a constant risk to all women and their healthcare providers.

Family Planning NSW, together with other women's non-government organisations, will spearhead a campaign this year to decriminalise abortion in NSW and to ensure that abortion is regulated like any other healthcare procedure. We acknowledge that challenges with criminalisation and access are even more challenging for women across the world and will continue to work for women's reproductive and sexual health and rights globally.

**In your view, what concepts (human rights, moral/ethical, legal, good governance, harm etc.) are helpful in understanding whether the use of criminal law is justified in the context of the select areas? Are there some areas or conduct that should never be criminalized? On what basis?**

*Law*

Abortion is a medical service and should be regulated under health care legislation, consistent with other medical procedures. Women should never be criminalised for seeking an abortion.

The Office of the High Commissioner for Human Rights (in the *Information Series on Sexual and Reproductive Health and Rights*) notes that countries with less restrictive abortion laws generally have lower abortion rates than countries with highly restrictive laws.

*Safety*

The highly-respected 2018 report *Accelerate progress – sexual and reproductive health and rights for all: report of the Guttmacher-Lancet Commission* notes that 'an abortion can only be considered safe if a woman can have one without risk of criminal or legal sanction, and without risk of being stigmatised by her family and her community'.

### *Policy*

The location of abortion in the NSW *Crimes Act* contributes to a policy environment that is unsupportive of women's reproductive health and rights. It is challenging for civil society to argue for improvements in abortion policy frameworks and service delivery in the context of criminalisation.

### *International human rights*

The Guttmacher-Lancet review synthesised the body of international law in this area, noting that achievement of sexual and reproductive health relies on the realisation of sexual and reproductive rights. These are based on the human rights of all individuals to decide whether, when, and by what means to have a child or children, and how many children to have. Access to safe abortion services, including post-abortion care, is a key component of reproductive health.

### *Equity*

The Guttmacher-Lancet review notes that the abortion rate has declined in recent years in developed regions as contraceptive use has increased, but is higher in developing countries 'where desire for smaller families is increasing yet contraceptive access is low'. In NSW, the cost of an abortion is prohibitive for some women.

### *Medical*

Doctors should be able to serve their patients' best interests, without the law impeding them.

### *Availability, Accessibility, Acceptability and Quality*

Criminalisation makes it challenging for the NSW health system to fully realise women's rights to health as expressed in WHO's framework for healthcare: 'Availability, Accessibility, Acceptability and Quality'. Abortion is not universally available, accessible and acceptable in NSW or across Australia.

### **What would your topline recommendations be to States on the use of criminal law in the areas you work in?**

Abortion should be removed from the criminal law and regulated as per other medical procedures.

### **How do you think a set of principles will help support the work you do? How will you use them?**

International norms and frameworks are useful in changing how people think about abortion. They provide standards with which all levels of government, internationally, can be called to account.