

Frequently Asked Questions

What is the aim of Prochoice NSW?

Prochoice NSW has been established by a group of concerned people with the support of leading medical, social justice and public health groups to remove abortion from the NSW Crimes Act.

How can this be done?

There are a number of ways laws can be reformed in New South Wales.

The Attorney General can ask the NSW Law Reform Commission to review and modernise our outdated laws taking the lead from Victoria and ACT which now regulate abortion through health laws. For more information on the Victorian example www.lawreform.vic.gov.au

Another option is for a Member of Parliament to introduce a private members bill to remove abortion from the NSW Crimes Act, as occurred in Western Australia in 1998 by Cheryl Davenport MLC (ALP).

Every Government Minister can introduce legislation about matters that fall within his/her portfolio.

Why now?

In the past seven years Victoria (2008) and the ACT (2002) have successfully legalised women's access to a safe abortion. However in Queensland and NSW abortion remains a crime. The events in Queensland have prompted Prochoice NSW to act now.

Why do we need law reform? Abortions are available in NSW and prosecutions are a thing of the past. If it ain't broke, why fix it?

The vast majority of Australians (81%) support a woman's right to access a safe abortion. The same national survey found 87% of women aged 18 to 49 support a woman's right to choose. This is not reflected in NSW law where the decision to permit an abortion rests with a medical practitioner. In 2006 a doctor was convicted in NSW for performing an abortion.

Abortion is one of the commonest surgical procedures performed in Australia.

If abortion is removed from the NSW crimes act this will protect both the women seeking and the doctors providing such services. It is outdated and should be changed so that abortion is regulated like any other safe medical procedure.

If abortion is illegal why are so many abortions performed in NSW?

The 1971 Levine Ruling in NSW allowed women to access abortion if the doctor believes on reasonable grounds that the abortion is necessary to prevent a risk of serious harm to the mother's physical or mental well being.

However it remains a crime and therefore both women undergoing abortions and their doctors are potentially at risk of prosecution.

If abortion is removed from the NSW Crimes Act this will protect both the women who seek and the doctors that provide these services. The current ambiguity is unreasonable and acts against the public interest and undermines one of the foundations of public health.

Won't making abortion legal increase the abortion rate?

There is no evidence to support this. Indeed good evidence exists in the case of medical abortion that safe and lawful access does not alter the overall number of abortions but leads to more being undertaken earlier in pregnancy.

For the six months prior to and after the removal of abortion from the Victorian Crimes Act (10/10/2008) the number of abortions claimed under Medicare (item 35643) in Victoria and Tasmania increased by under 1% (9,193 prior and 9,282 after). Due to provider privacy issues in Tasmania claims for item 35643 in Tasmania are combined with Victoria's.

As the history of backyard abortion shows, women undertake abortions even when they are unsafe and illegal. Making abortion safe and legal doesn't change the number of abortions, but it does remove the threat of criminal prosecution for women and their doctors.

What are my options today if as a woman in NSW I want an abortion?

At the moment women can access abortion if the doctor believes on reasonable grounds that the abortion is necessary to prevent a risk of serious harm to the mother's physical or mental well being.

Doctors need to assess women's reasons every time a woman requests an abortion and keep note of the answers to defend themselves should charges be laid. This defensive legal focus detracts from their capacity to provide the quality of care available to patients undertaking other medical procedures.

Abortion is a medical procedure like all others that for some patients also has moral dimensions. The medical procedure should be regulated like all others. The moral issues, in a plural society, are best left to the woman and her partner to manage in line with their own needs, medical advice and values.

Can you explain what has occurred in Queensland and how the Queensland Government has responded?

In the Queensland case, a young woman has been charged with unlawfully taking a drug to bring about her own abortion, and her boyfriend has been charged with unlawfully supplying the drug to her. They have now been committed to trial. This is a shocking situation for the people concerned, Queensland women and the doctors that provide abortion services.

Section 282 of the Queensland Criminal Code provides that a person who carries out a surgical operation on a person for the patient's benefit will not be criminally liable as long as the operation is reasonable having regard to the patient's state at the time and all the circumstances of the case. This defence was used in the case of Dr Bayliss, charged in 1986 with unlawfully performing an abortion. The Queensland government has now amended this section to cover medical as well as surgical procedures, so doctors in Queensland who perform either medical or surgical abortions may be able to rely on this defence.

However, there is no corresponding statutory defence in Queensland for a woman who undergoes an abortion. Women can still be found criminally liable for having an abortion unless they can show the abortion was necessary to prevent a serious risk to their health.

Could similar prosecutions as in the Queensland case be seen here in NSW?

Yes, the NSW law is very similar to the law in Queensland and arguably more restrictive because there is no defence for doctors who perform an abortion for the patient's benefit. This is why Prochoice NSW seeks to remove abortion from the NSW Crimes Act.

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