

# CHILDREN BY CHOICE

ASSOCIATION INCORPORATED

THE LEADING VOICE FOR WOMEN'S REPRODUCTIVE CHOICES IN QUEENSLAND

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## COMMENTS ON THE DRAFT *HEALTH (PATIENT PRIVACY) AMENDMENT BILL 2015*

# ABOUT CHILDREN BY CHOICE

Children by Choice is a non-profit community organisation that provides counselling, information and education services on all options with an unplanned pregnancy, including abortion, adoption and parenting. We provide a Queensland-wide telephone counselling, information and referral service to women experiencing unplanned pregnancy. We deliver sexual and reproductive health education sessions in schools and youth forums, and offer training for health and community professionals on unplanned pregnancy options. We advocate on women's sexual and reproductive health issues at a state and federal level.

Children by Choice supports women's access to all options with an unplanned pregnancy, including abortion, and have been involved in helping women access these options since the service began operation in 1972. Children by Choice is the only independent, not-for-profit women's service dedicated to unplanned pregnancy in Australia.

## CONTACT

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# EXECUTIVE SUMMARY

**Children by Choice fully supports the Health (Patient Privacy) Amendment Bill 2015 and commends the Australian Capital Territory Health Minister, Shane Rattenbury, for his commitment to pursuing women's unimpeded access to pregnancy termination in the ACT.**

While supporting the intention of the Bill, we also retain some reservations around the implementation of it should it pass the ACT legislature. We endorse the comments made by national group Reproductive Choice Australia (of which we are a member organisation) in a written submission to this consultation; in particular,

*We appreciate the balance of rights questions that the exposure bill raises, and understand that in the interests of proportionality, and compliance with the ACT's Human Rights Act 2004, the exposure bill has sought a limitation to freedom of expression that 'only applies to a relatively small geographic area, declared by the responsible Minister under criteria that defines the least restrictive means to achieve the stated outcome', and which only 'applies to a defined period allowing staff and patients safe and private access to the approved facility.'*

*However, we have concerns regarding this approach. In preparing for the possibility of a greater number of providers of termination of pregnancy in the ACT, including general practitioners who may see patients seeking medical termination throughout the weekly appointments schedule, we recommend removing reference to a protected time from the exposure bill, and stating in metres a distance for the protected areas. This will ensure clarity, consistency and ease of application of the law.*

*We acknowledge that by delegating responsibility to the relevant Minister to declare the protected area for each facility the exposure bill is leaving open the possibility that each facility's protected area will be tailored and therefore comprehensive and effective in the protection it provides. However, this leaves open the possibility for the reverse to also be true: that future ministers will apply their discretion in a way contrary to the spirit of the bill and in so doing provide little protection to women and their supporters.*

*While 150 metres is the distance currently employed under the Tasmanian Reproductive Health (Access to Terminations) Act 2013, it may be that this is too large a distance to achieve compliance with the ACT's Human Rights Act 2004. One possible solution is the designation of protected areas of 50 metres, along with delegation of authority to the relevant Minister to make these larger where required. This solution would both comply with the Human Rights Act 2004, and guarantee protection for women and their supporters.*

# EFFECT OF CLINIC PROTESTERS

Creating exclusion zones to protect patients and employees of pregnancy termination services from offensive and obstructive behaviour by protesters is an important and necessary initiative.

Most providers of pregnancy termination services have extensive experience with protestors being obstructive, abusive and violent toward patients, their support people, staff and passers-by as this recently published story from a clinic employee demonstrates:

*Inside the clinic we had security cameras recording the front entrance that gave us a clear view of the protestors and the patients walking in. It was horrible to sit there and watch the girls walk past the protestors and I felt so helpless.*

*They would stand at either ends of the street waiting to launch on someone who started walking towards the clinic, shoving pamphlets with incorrect information and macabre pictures and handing out rosary beads. The girls are followed right up until they walk through the door and it was not uncommon for them to burst into tears as soon as they walked into the waiting room.*

*More than anything it made me angry having to walk past the protestors every day. Not because it was an inconvenience to me but my heart just broke for the poor girls. On several occasions patients with an appointment that day would call the office because they were across the road from the clinic but didn't feel like they could walk past the protestors, particularly if they were alone and didn't have a support person.*

*I would walk across the road and meet them, give them a hug and let them have a cry. If they wanted me to, I would walk with them into the clinic, shielding them from the protestors the best I could.<sup>1</sup>*

Many clients of Children by Choice anecdotally report concerns about their safety and privacy due to harassment by protesters outside clinics. In Victoria in 2001, a security guard at a pregnancy termination service was murdered by an anti-abortion protestor, and although in Australia this has been an isolated incident, the very fact of its existence (along with community awareness that abortion providers are often violently targeted by protesters in the United States) serves to heighten concern amongst some clinic patients and their support people.

The Centre for Reproductive Rights released a report in 2009, *Defending Human Rights*, on the impact of anti-choice protests. Below are some of their findings:

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<sup>1</sup> M Watson "This is what it's like to be abused outside an abortion clinic. Should protesters be kept away?" *Junkee.com*, published 4 September 2015. Available online at <http://junkee.com/this-is-what-its-like-to-be-abused-outside-an-abortion-clinic-should-protestors-be-kept-away-2/64625#pW6A11jHSzMFweft.99>

**Costs of Intimidation and Harassment.** *Anti-abortion activity, particularly as it crosses over from free speech to intimidation and harassment, is very burdensome to many abortion clinics. In addition to large investments in security and alarm systems, clinics—particularly those without adequate police protection expend thousands of dollars annually on security guards to protect staff and patients. Time is taken away from patient care to counsel patients affected by anti-abortion activity, and time and resources are invested in making staff feel safe and to train them in security matters.*

*Providers also report that many trained physicians are deterred from performing abortions by the economic pressures placed on them in their private practices by the presence, or threat, of protest activity. Some are deterred by the stigma associated with being known as an abortion provider, or the effects harassing protestors will have on their patient caseload or receipt of referrals from other physicians. Others are prohibited by their partners or institutions from performing abortions because of these concerns*

**Personal Toll on Staff and Women Seeking Abortions.** *On a personal level, working at an abortion clinic takes a daily toll on the well-being of clinic staff and physicians. In particular, walking a gauntlet of ugly epithets and personal targeting, apart from fears for their physical safety, is demeaning and depleting. Staff and owners in Alabama, Pennsylvania, and Texas discussed how clinic owners or administrators “put themselves out there” as the face of the clinic to the media and abortion opponents in order to protect their staff.*

*While staff turnover was infrequently reported, many staff report feeling anger and frustration on behalf of patients, as well as concern that the patients’ confidence in providers and their care is shaken by hearing the slurs and lies of protestors. Staff report that many women are frightened and anxious when they come into the clinic, or reschedule appointments in an effort to avoid protestors, which sometimes results in delaying a procedure beyond the gestational limits of the clinic.*

*A staff member who works at the front desk in the Fargo, North Dakota clinic on procedure days is the first person patients see: “They always ask if the protestors are always there, will they be there when I leave,” she said. “...Always, some are so shaky they can’t hold the pen when they have to register.”<sup>2</sup>*

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<sup>2</sup> *Defending Human Rights: Abortion providers facing threats, restrictions and harassment* Published in 2009 by the Center for Reproductive Rights, New York, US. Available online at <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/DefendingHumanRights.pdf>

# A BALANCE OF RIGHTS

When opposing exclusion zone legislation, many anti-abortion activists claim that such laws violate their freedom of speech or freedom of expression.

It is broadly understood that limitations to rights may be prescribed by law in order to protect public safety or the rights of other individuals.<sup>3</sup> As the Australian Capital Territory's Human Rights Act 2004 explicitly states in its preamble:

*Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.*<sup>4</sup>

The Act also states explicitly that the 'right to life' referred to by the Act 'applies to a person from the time of birth'<sup>4</sup> – therefore, arguing that anti-abortion protesters are defending a fetal right to life is not consistent with the Act.

While freedom of expression is clearly a fundamental right that should be included in any overarching rights mechanism, most such mechanisms limit this right in certain ways. For example, the Victorian Charter provides for this right to be limited “to respect the rights and reputation of other persons”, or “for the protection of national security, public order, public health or public morality.”<sup>5</sup> The ACT Human Rights Act states in regard to freedom of expression:

*This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.*<sup>4</sup>

**It could be reasonably argued that this would include the right to such freedom of expression in the immediate vicinity of abortion clinics, were it not for the overwhelming number of rights that may be and are impacted by the exercise of such a broad definition of freedom of expression.**

As the Centre for Reproductive Rights states,

*Reproductive rights include a woman's right to make fundamental decisions about her life and family, to access the reproductive health services necessary to protect her health, and to decide whether and when to have children. Reproductive rights are based on a number of fundamental human rights, including the rights to health, life, equality, information, education and privacy, as well as freedom from discrimination.<sup>50</sup> In particular, the right to health includes “the right to attain the highest standard of sexual and reproductive health.”<sup>51</sup> The right to reproductive health also requires that reproductive health services, goods, and supplies be made widely available, economically and physically accessible, and evidence-based.<sup>52</sup>*

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<sup>3</sup> See for example Human Rights Brief No. 3: Freedom of Religion and Belief. Human Rights Law Centre, 2006. Available online at <https://www.humanrights.gov.au/publications/human-rights-brief-no-3>.

<sup>4</sup> Human Rights Act 2004 Available online at <http://www.legislation.act.gov.au/a/2004-5/current/pdf/2004-5.pdf>

<sup>5</sup> Article 18.3 of the Charter of Human Rights and Responsibilities Act 2006.; Available online at <http://www.humanrightscommission.vic.gov.au/index.php/the-charter>.

Furthermore, we support the Centre's assertion that failure to protect clinic staff and patients from anti-choice harassment by government bodies to be neglectful of their responsibility to ensure these rights are protected:

*[A]bortion providers face intimidation, harassment, and violence in the course of carrying out their work, which government at all levels, contrary to its obligations, often permits with impunity. In each of the six states included in the investigation, staff members at abortion clinics face a working environment that is insecure, threatening, and demeaning, due to the unlawful activities of abortion opponents. ..While outright violence has decreased at most facilities, the legacy of past murders, bombings, arsons, and assaults is intimately known to many of those performing abortions, creating an atmosphere of fear and easy intimidation.*

While the proposed legislation of this consultation would limit the rights of people to protest within the immediate vicinity of facilities providing abortion, it does not limit the right to protest with the same material and the same activities in different parts of the Australian Capital Territory – for example, outside the legislature, which is where such protests arguably belong.

Restricting protests and other intimidating behaviour in the vicinity of abortion facilities offers protection of the rights of the staff and patients of those clinics – which are providing, it should be noted, legal medical services.

**Exclusion zone legislation is, we would argue, a good way to balance the rights of protesters with the rights of clinic staff and patients.**