

# HEALTH (ABORTION LAW REFORM) AMENDMENT BILL 2016

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CHILDREN BY CHOICE SUBMISSION TO THE HEALTH, COMMUNITIES, DISABILITY  
SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

SEPTEMBER 2016



## ABOUT CHILDREN BY CHOICE

We are a non-profit community organisation providing 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 centres, 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, and support access to all options with an unplanned pregnancy, including abortion.

We are the only independent, not-for-profit women's service dedicated to unplanned pregnancy in Australia. As an organisation, we have over 40 years' experience in unplanned pregnancy and reproductive choice. We have supported over 200,000 women during this time with decision-making counselling, accurate information about their options, referrals to health services and community organisations, post-abortion support, and/or financial assistance to access abortion and contraceptive services.

We are a pro-choice, all options, woman-centred service. We support and trust women to make the best decision they can with an unplanned pregnancy, for themselves and their families. Women are the experts in their own lives. Nobody else can know better than the pregnant woman herself what is best for her in her situation.

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## RECOMMENDATION

Children by Choice supports the decriminalisation of abortion in Queensland, and the repeal of sections 224, 225 and 226 from our 1899 Criminal Code.

**To that end, we support the *Health (Abortion Law Reform) Amendment Bill* but only in conjunction with the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill*.**

**In addition, we urge the committee to recommend that both bills are debated and voted on together as a package on the floor of parliament, to reflect the combined intent of the two pieces of legislation.**

## COMBINING TWO PIECES OF ABORTION LEGISLATION

We support the full decriminalisation of abortion in Queensland, and note that this bill does not achieve this on its own. In order to achieve decriminalisation, the *Abortion Law Reform (Woman's Right To Choose) Amendment Bill 2016* would also have to be passed.

We commend the committee for the comprehensive overview of the issues relating to the *Abortion Law Reform (Woman's Right To Choose) Amendment Bill 2016* and the inquiry's terms of reference, in their report tabled at the end of August.<sup>1</sup>

While we were disappointed the report did not recommend the passing of the bill, we note that it:

- Recognised the impact that the current legislation has on access to abortion procedures, including the lack of publicly available procedures, and that the current law does not reflect modern medical practice (pages 63, 73);
- Stated that “[t]he Bill’s provisions, in decriminalising abortion, effectively align the law of Queensland with Australia’s international obligations as a ratifying country to the UDHR, ICCPR, ICESCR, CEDAW and the CRC” (page 34);
- Detailed the lack of evidence of poor health outcomes of abortion (pages 56-60); and
- Noted the support of expert medical groups including the AMA, the Royal Australian College of GPs, and the Royal Australian and New Zealand College of O&Gs, for legal clarity on abortion to assist them to provide the best possible care to their patients (pages 63-64).

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<sup>1</sup> *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland* Report No. 24, 55<sup>th</sup> Parliament of Queensland; Health, Communities, Disability Services and Domestic Family Violence Prevention Committee, August 2016.

We recognise the concerns raised by the Committee during the inquiry process and in the report itself, specifically those relating to the regulation of later gestation termination, and of conscientious objection.

It is our position that existing guidelines, professional standards, and practice bodies provide adequate guidance for practitioners around these issues and that no additional legislative regulation should be required; however, we recognise that concerns exist both in parliament and in the broader community around these issues and that therefore some legislation addressing them will be necessary for any broader abortion law reform to be successful.

**We believe the provisions laid out in the *Health (Abortion Law Reform) Amendment Bill 2016* address the concerns raised during the first inquiry, and therefore urge the Committee to recommend the two bills are debated and voted on together on the floor of parliament.**

The Committee report into the initial bill, the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*, stated clearly that the *Health (Abortion Law Reform) Amendment Bill 2016* “proposes to regulate some of the matters that have been raised during the committee’s current inquiry” (page 3).

In addition, the clauses contained in the *Health (Abortion Law Reform) Amendment Bill 2016* correlate directly with four of the six options put forward by the Committee’s first report for clarifying the law (page 77):

**Option 2: Amendment of the Criminal Code.**

In this option the Committee report states:

*The Criminal Code could be amended to remove section 225, so that it would no longer be an offence for a woman to procure her own abortion.*

The proposed bill does this.

**Option 4: Decriminalisation.**

*The committee considers that simply removing offences from the Criminal Code, without some level of regulation, is inconsistent with community expectations. While professional standards and guidelines provide some protections, further regulation would be consistent with community expectations.*

The proposed bill does this.

### **Option 5: Regulation of abortion in health legislation.**

*If abortion was decriminalised, health legislation could create a framework for decision making about late-term abortion and reflect community views and current medical practice that recognises that lateterm abortion is a more serious matter than early gestation abortion.*

*Health legislation could address conscientious objection to ensure that health professionals are not obliged to provide treatment to which they object except in an emergency. Also, health legislation could provide for safe access zones to ensure that patients and health professionals are not subject to obstruction or harassment.*

The proposed bill includes clauses which would regulate higher gestation abortion, conscientious objection, and enact exclusion zones around abortion provider premises.

### **Option 6: Abortion performed by person other than medical practitioner a crime.**

*While abortion performed by someone other than a medical practitioner has not been discussed in this report, there is a community expectation that unqualified abortion is dangerous and should be subject to the criminal law.*

The proposed bill does this.

This second bill clearly fulfils these conditions and we therefore believe that recommending it be considered in conjunction with the first bill would be consistent with the committee's concerns with a straight repeal of sections 224 to 226.

## **OPPORTUNITIES TO STRENGTHEN THE PROPOSED BILL**

While we support the *Health (Abortion Law Reform) Amendment Bill 2016* in conjunction with the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*, we believe that some clauses within the second bill could be strengthened, as follows.

- ***only a doctor may perform an abortion***: a person who is not a doctor (or a registered nurse administering a drug to perform an abortion under the direction of a doctor) would commit an offence.

We support this measure and hope it helps allay fears that there would be no possible criminal charge for anyone administering abortion medication to a pregnant woman without her consent, for example, which was an issue raised in the first inquiry.

- ***a woman does not commit an offence*** by performing, consenting to or assisting in an abortion on herself.

We support this measure. This clause addresses Committee concerns around the potential for abortion charges to be laid if there is another case like *R v Leach and Brennan* in Cairns, where no doctor was involved, as raised in the Private Member briefing on this bill on 14 September. The Committee report into the first bill raised concerns that if a similar case happened after decriminalisation, there would still be possible charges laid for importation or possession of a restricted substance, and therefore decriminalising abortion would not fully protect women and doctors from prosecution (page 35). With respect, we note that decriminalising abortion would fully protect women and doctors from being prosecuted for a termination itself. Other charges, like drug importation, are outside the purview of this legislation.

- ***an abortion on a woman who is more than 24 weeks pregnant*** may be performed only if two doctors reasonably believe the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated.

While we would prefer to see no legislated gestational limits, we understand there is concern in the community around later gestation abortion and would support this clause as it is in line with Victorian law. We note here that the Committee report into the first bill states that "abortions after 24 weeks gestation only occurs [sic] in public hospitals" (page 65) and that post 20 week procedures are performed via an induction of labour. In addition, we note the evidence provided by multiple medical experts that hospital approval processes for these procedures would likely remain unchanged under decriminalisation (page 68), making it therefore extremely unusual for a termination at higher gestation to be approved by a single practitioner only.

- ***conscientious objection***: no-one is under a duty to perform or assist in performing an abortion; however a doctor has a duty to perform an abortion if it is necessary to save a woman's life or prevent serious physical injury. Also, a registered nurse has a duty to assist in such circumstances.

We support the right of practitioners to conscientious objection, and the condition that this right is not absolute and that practitioners have a duty to be involved in providing abortion if

a woman's life is at risk. We would like to see this clause strengthened by a legislated requirement for conscientious objectors to refer onwards to another practitioner, to ensure their right to object is not prioritised over the pregnant woman's right to timely and appropriate medical care, and would also support a requirement for public disclosure of conscientious objector status via a waiting room notice or public register.

- ***patient protection or 'safe zones'***: a protected zone of at least 50 metres must be declared around an abortion facility; certain behaviour, e.g. harassment and intimidation, is prohibited within a protected zone. Publishing images of a person entering, leaving or trying to enter or leave an abortion facility is prohibited.

We support legislated exclusion zones around abortion provider premises to protect staff and patients from harassment. We suggest strengthening this clause by extending the distance to 150 metres, which would be in line with both Victorian<sup>2</sup> and Tasmanian<sup>3</sup> legislation. The Australian Capital Territory is the only other Australian jurisdiction with legislated exclusion zones, and while theirs is a minimum of 50 metres authorities have already had to expand it as it proved insufficient to provide adequate protection to staff and patients.<sup>4</sup>

We would also like to see the language altered in this clause so a safe zone 'applies' around health facilities offering abortion, rather than 'must be declared'. It appears that the Member for Cairns may have used the ACT legislation as a basis for this clause, as their *Health (Patient Privacy) Amendment Bill 2015* allows for a 'protected area' to be declared by the Minister. It is our belief that this is insufficient and allows for exclusion zones to be altered or discarded altogether at the behest of the Minister responsible (presumably the Health Minister).

In addition, the list of prohibited behaviours within the proposed exclusion zones may be ambiguous enough to allow some actions which, while not providing a direct impediment to staff and patients seeking to access a service, may still be emotionally distressing for those

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<sup>2</sup> *Public Health and Wellbeing Amendment (Safe Access) Bill 2015* Parliament of Victoria. Online at [http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/98a1f30bce0e1b51ca257ea5007be99d!OpenDocument](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/98a1f30bce0e1b51ca257ea5007be99d!OpenDocument).

<sup>3</sup> *Reproductive Health (Access to Terminations) Act 2013* Parliament of Tasmania. Online at [http://www.austlii.edu.au/au/legis/tas/num\\_act/rhtta201372o2013481/](http://www.austlii.edu.au/au/legis/tas/num_act/rhtta201372o2013481/)

<sup>4</sup> A Back & C Knaus "Police extend abortion clinic exclusion zone as first fine withdrawn" *Canberra Times* 18 May 2016. Online at <http://www.canberratimes.com.au/act-news/police-extend-abortion-clinic-exclusion-zone-as-first-fine-withdrawn-20160503-gol6mp.html>.

involved – for example, a ‘prayer vigil’ or similar action. A fine issued in the ACT was withdrawn under these circumstances due to the ‘ambiguity’ of the legislation.<sup>4</sup>

For the sake of uniformity and clarity we urge the Committee to recommend an extension of the legislated exclusion zones to 150 metres around facilities providing abortion services, for these zones to automatically apply without the need for Ministerial approval or declaration, and for prohibited behaviours within these zones to include anything which may cause distress to staff and patients.