



REVIEW OF QUEENSLAND'S LAWS RELATING TO TERMINATION OF PREGNANCY – SUBMISSION

Women's Forum Australia: Who we are and our position

1. Women's Forum Australia is an independent think tank established in 2005, which strives to create pro-woman cultural change, through research, education, mentoring and advocacy, with a particular focus on addressing behaviour that is harmful and abusive to women.
2. In 2016, we made submissions on the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016* and the *Health (Abortion Law Reform) Amendment Bill 2016*, including the Inquiry into the Laws Governing Termination of Pregnancy in Queensland, as part of our submission on the first Bill. We **attach** these submissions for the Commission's consideration and to give further background to our present submission.
3. The Commission has been asked to review and investigate how Queensland can modernise its laws relating to abortion. We note with some concern that the review is being undertaken on the premise that abortion is a necessary and/or desirable outcome for women. However, as we have discussed in some detail in our previous submissions, research shows that abortion can cause significant physical and psychological harm to women and that many women who "choose" abortion feel like they have no other choice.
4. For our society to be genuinely pro-woman on the sensitive issue of unplanned pregnancy, it is critical for us to consider legislation, policy and practices in a holistic and considered way. Simply focusing on providing women with the apparent "choice" of abortion whenever they want it does not address or resolve the crux of the problem – that is, it does not resolve the underlying issues which make a woman feel, when faced with an unplanned pregnancy, that terminating it is her *only choice*.
5. With this in mind, we would like to reiterate our position (discussed in our previous **attached** submissions), which is that any legislative reform in this area should be directed at addressing the following issues, rather than simply seeking to facilitate greater access to abortion:

- First, any legislative reform must include safeguards to ensure that women who seek abortions are giving fully informed consent. These include mandatory provision of information about risks, foetal development and alternatives to abortion, the opportunity to view ultrasounds and receive counselling independent of abortion providers, and the time and space necessary to make a decision. These safeguards are critical to ensure that women can make a real "choice" when it comes to abortion.
- Second, such reform must also attempt to address the societal issues that might make women view abortion as their only choice. Women who abort often cite reasons such as fear of intimate partner violence,¹ coercion from their partner or others, psychological pressures due to the pregnancy or otherwise, study and career pressures, and/or a lack of financial and emotional support.² Abortion under these circumstances is not choice - it's desperation. Instead of simply providing women with the so-called "choice" of abortion on demand, in an attempt to address the symptoms of their situation, any reform must strive to address the underlying causes of abortion and to provide women with positive alternatives that are not going to expose them to further harm.³ This includes much-needed adoption law reform, as well as addressing issues of domestic violence, access and affordability of childcare, flexible workplace and study arrangements and access to pregnancy and counselling support.
- Finally, any legislative reform must include protections against social abortions, late-term abortions and abortions on the basis of sex or disability. Abortion is a procedure with serious consequences for both the woman and her preborn child and should not be treated simply like any other medical procedure. Sex selective abortion in particular is something feminists on both sides of the political spectrum should be concerned about, as it is by and large females who stand to bear the brunt of discrimination, in keeping with international trends.⁴

¹ Taft AJ and Watson LF (2007), Termination of pregnancy: associations with partner violence and other factors in a national cohort of young Australian women, *Australian and New Zealand Journal of Public Health* Vol 31, No 2, pp 135-142.

² Finer LB, Frohworth LF, Dauphinee LA, Singh S and Moore AM (2005), Reasons U.S. women have abortions: quantitative and qualitative perspectives, *Perspectives on Sexual and Reproductive Health* Vol 37, No 2, pp 110-118.

³ Coleman PK (2011), Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009, *The British Journal of Psychiatry* Aug 2011, Vol 199, No 3, pp 180-186.

⁴ Hvistendahl, M, 2011, *Unnatural Selection: Choosing Boys Over Girls and the Consequences of a World Full of Men*, Public Affairs Publishing.

6. It is in this context that we provide responses to some of the Commission's consultation questions on the proposed new abortion legislation.

Responses to consultation questions

Q-2 Should a woman be criminally responsible for the termination of her own pregnancy?

7. Abortion is a very serious issue. Whether one attributes moral significance or human rights to the preborn child, the biological reality is that abortion ends the life of a developing human being in its mother's womb. It is appropriate that the law includes deterrents for something as serious as this, and this is also recognised in offences such as 'child destruction', which aptly holds that it is a criminal offence for a person to assault a pregnant woman and kill or harm her preborn child.⁵
8. Cases such as *R v Smart* (1981) and *R v Sood* [2006] NSWSC 1141, in which abortionists showed a lack of regard for the health and safety of their patients, affirm the need to retain the offences for unlawful abortions in the *Criminal Code 1899* (the "Criminal Code") as a matter of justice, deterrence and protection for women. In the absence of such protections, doctors like Dr Smart and Dr Sood may not face adequate penalties, will likely face less scrutiny, and will be less deterred from performing unsafe abortions that benefit them financially. Women would also have to bring their own proceedings, rather than having the protection of the criminal law.
9. Women's Forum Australia is however, in principle, against the criminalisation of women who have an abortion. We consider that there are systemic issues which mean that women are not provided with all the support or information available so that they can make a real choice, and due to various pressures, often feel like abortion is their only choice. If an abortion is undertaken unlawfully, any prosecution should be directed at the abortion provider, not the woman seeking the abortion. However, illegally importing abortion drugs to self-administer without medical supervision is a very serious health and safety matter that may still warrant appropriate sanctions to deter such dangerous behaviour.

⁵ *Criminal Code Act 1899* (Qld), s. 313(2).

Q-3 Should there be a gestational limit or limits for a lawful termination of pregnancy? Q-4 What should the gestational limit or limits be?

10. We believe that under a decriminalised abortion regime, there should without question be gestational limits for a lawful abortion. Given our position that abortion is fundamentally harmful for women, we do not have a recommendation for an appropriate gestational limit. It is clear however, that late term abortions are even more physically dangerous for women and are out of step with common practice in other states and overseas,⁶ with medical knowledge of foetal viability (23/24 weeks) and pain,⁷ and with medical advances including progress in neonatal practices.⁸
11. Under the current law abortions can only lawfully be performed on health grounds when there is a serious danger to a woman's life, physical or mental health. This would normally preclude late term abortions as not only do such procedures themselves pose serious dangers to women, but they would not be medically necessary if the baby was at a gestation where it could be delivered and born alive.

Late term abortions and women who suffer miscarriages or still births

12. We must seriously consider how legislating for late term abortions – particularly when there are children who are being helped to survive, and in fact do survive outside the womb, from as young as 21 weeks – could impact not only the women who undergo abortions, but also women who suffer miscarriages or stillbirths or lose their children through accident, assault or other circumstances, and how society views these losses.
13. It is already difficult enough for such women to talk about and thus deal with the grief they experience after losing a child through miscarriage or stillbirth,

⁶ In most European countries, abortion is only allowed up until 10-14 weeks, after which there are strict conditions that need to be met for an abortion to be performed: Duncan P, Redden M and Watts J, "Abortion laws around the world: from bans to easy access", The Guardian (5 January 2016), <https://www.theguardian.com/world/2016/jan/05/abortion-laws-around-the-world-from-bans-to-easy-access>. In the UK, abortion is only allowed up until 24 weeks to prevent physical or mental health risks to the woman or her other children. It is only allowed after 24 weeks under strict conditions (*Abortion Act 1967* (UK), s. 1(1)).

⁷ Doctors on Fetal Pain, <http://www.doctorsonfetalpain.com/>.

⁸ Salter J, "Premature babies: How 24 week-old babies are now able to survive", The Telegraph (17 November 2014), <http://www.telegraph.co.uk/women/womens-health/11121592/Premature-babies-How-24-week-old-babies-are-now-able-to-survive.html>; "Premature babies", Better Health Channel, <https://www.betterhealth.vic.gov.au/health/healthyliving/premature-babies#>.

due to society's lack of understanding and education around such issues.⁹ It is not unreasonable to consider that legislating for late term abortions on request and thus legitimising the ending of a preborn child's life up until that point for any reason, might cause these women to feel even less able to talk about the loss they have experienced.

14. Ultimately, our society's approach to miscarriage, stillbirth, or loss of a child through accident, is not logically consistent with legislating for late term abortions, and this logical disconnect is harmful to women.

Late term abortions and disability or sex selective abortion

15. Allowing late term abortions also increases the risk of abortions being requested based on disability or the sex of the child. International trends and evidence show that baby girls are by and large the targets of sex selective abortion.

Late term abortions and particularly vulnerable women

16. There are some who insist that allowing late-term abortions is important for women who are particularly vulnerable, such as those who are suicidal, those who are pregnant as a result of sexual violence, or those who have been unable to access support earlier due to family violence or other complex personal circumstances. However, these complex circumstances are not resolved by late-term abortion. If anything, they are exacerbated.
17. For example, abortion itself puts women at risk of psychological harm (not to mention physical harm), including depression, anxiety, suicidal behaviours and substance use disorders.¹⁰
18. The tragic circumstances of women who are victims of sexual, family or other violence, are also not alleviated by abortion. Abortion in these circumstances potentially conceals or even legitimises acts of violence. Instead of offering

⁹ Vincent, J, "Video: Calls for more help for miscarriage sufferers" (*sic*), 9 News (25 September 2016), <https://www.9news.com.au/national/2016/09/25/20/42/calls-for-more-help-for-miscarriage-suffers>; Meade, A, "Keneally 'incredibly disappointed' by ABC journalist's reply to stillbirth release", The Guardian (30 September 2016), <https://www.theguardian.com/lifeandstyle/2016/sep/30/keneally-incredibly-disappointed-by-abc-journalists-reply-to-stillbirth-release>; "Miscarriage: breaking an often silent trauma", ABC News (14 December 2017), <http://www.abc.net.au/radionational/programs/lifematters/miscarriage:-breaking-an-often-a-silent-trauma/9255456>.

¹⁰ Fergusson DM, Horwood LJ and Boden JM (2008), Abortion and mental health disorders: evidence from a 30-year longitudinal study, *The British Journal of Psychiatry*, Vol 193, No 6, p 444 at 449.

women a traumatic procedure that puts their health and well-being at further risk, health practitioners and others involved in providing support should be attempting to address the root causes that lead women to seek an abortion in these situations.

Q-5 Should there be a specific ground or grounds for a lawful termination of pregnancy? Q-6 What should the specific ground or grounds be?

19. The provisions on abortion under Queensland's Criminal Code have been interpreted by the courts to mean that abortion is already lawful on health grounds, where there is a serious danger to a woman's life, physical or mental health.¹¹ Such grounds have been interpreted broadly, and in terms of serious danger to mental health, allow the consideration of "a danger which would not fully afflict [the woman] in a practical sense until after the birth."¹²
20. We are of the view that further expanding the lawful grounds for abortion would only present further harm to women.

Pressure on mothers to abort disabled children

21. For example, disability selective abortions are already performed in Queensland but unless the child's disability poses a serious risk to the health of the mother, such abortions are not lawful on this ground alone. However, just because something is already happening, does not mean it should be enshrined in law. It is important for us to assess whether disability selective abortion is something Queensland wants as a state and for the Queensland Parliament to legislate accordingly.
22. Mothers of children with Down syndrome and other disabilities already feel pressure from health professionals and wider society to abort.¹³ If abortions are lawful for any reason or specifically on grounds of disability, such pressure will only increase and unborn children with disabilities will be further targeted. In a society that is meant to be fighting against discrimination and working towards greater inclusiveness for persons with disabilities, this is a grave step backwards.

¹¹ *R v Bayliss and Cullen* (1986) 9 Qld Lawyer Reps 8, 45 (McGuire DCJ).

¹² *Veivers v Connolly* [1995] 2 Qd R 326, 329 (de Jersey J).

¹³ Miller, B, "Down syndrome: Parents say they feel pressured to terminate pregnancy after diagnosis", ABC News (22 November 2016), <http://www.abc.net.au/news/2016-11-22/down-syndrome-parents-pressured-to-terminate-pregnancy/8033216>.

Sex selective abortion targeting baby girls

23. Allowing abortion for social reasons also raises the spectre of sex selective abortions. Sex selective abortion is a well-known problem in China and India, where son-preference cultures have resulted in extremely skewed sex ratios. Sex discrimination carried out via abortion is well documented and has resulted in millions of “missing” girls in some societies.¹⁴ The number of girls and women missing from the global population is estimated to be more than 160 million, with sex selection being a major culprit.¹⁵ The practice of sex selection has been widely condemned.¹⁶
24. There is evidence that sex selective abortion is already occurring in some parts of Australia. Take for example, the high-profile case of Dr Mark Hobart who refused to perform a sex-selective abortion in Victoria,¹⁷ or the investigation by SBS that found a higher number of boys than girls being born in some ethnic communities in Australia.¹⁸ In a system where abortions are lawful on social grounds, there is no protection against antenatal sex discrimination and amongst son-preference cultures residing in Australia, it is baby girls who will suffer the most discrimination

Abortion coercion

25. Of further concern, is the fact that making abortion lawful for non-medical reasons would remove protections for women against being coerced into having an abortion. Whereas now abortions can only lawfully be performed on health grounds, if abortion is permitted for social reasons, women are even more vulnerable to pressure from their partners, friends or family, employers, or health practitioners to have an abortion where it suits those

¹⁴ Above n4, Hvistendahl. See also: “It’s a girl”, <http://www.itsagirlmovie.com>; The Economist, “The War on Baby Girls”, The Economist (4 March 2010), <http://www.economist.com/node/15606229>; United Nations Population Fund, “Gender-Biased Sex Selection”: <http://www.unfpa.org/gender-biased-sex-selection>.

¹⁵ Above n4, Hvistendahl.

¹⁶ See for example: Agreed Conclusions on the Elimination of All Forms of Discrimination and Violence Against the Girl Child, Commission on the Status of Women, 51st Session (26 February – 9 March 2007), resolving that we should, “Eliminate all forms of discrimination against the girl child and the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and prenatal sex selection, which may have significant repercussions for society as a whole.”: http://www.unwomen.org/~media/headquarters/attachments/sections/csw/51/csw51_e_final.pdf.

¹⁷ Devine, M, “Doctor risks his career after refusing abortion referral”, Herald Sun (5 October 2013), <http://www.heraldsun.com.au/news/opinion/doctor-risks-his-career-after-refusing-abortion-referral/news-story/a37067e66ed4f8d9a07ec9cb6fd28cf5>.

¹⁸ SBS, “Could gender-selective abortions be happening in Australia?”, SBS (28 August 2015), <https://www.sbs.com.au/news/could-gender-selective-abortions-be-happening-in-australia>.

individuals' personal agenda or beliefs. In light of the recent NRL abortion coercion scandals,¹⁹ we should be seeking to implement more protections for women, not to take away the limited ones that exist.

Abortion for other non-medical/social reasons

26. Finally, making abortions lawful for other social reasons without any medical grounds is harmful to women in at least two ways. Firstly, it fails to recognise that abortion itself carries with it risks of physical and psychological harm,²⁰ and that in the absence of medical grounds, women are being unnecessarily put at risk. Secondly, it gives the green light for women to undergo an abortion based on their current circumstances – work/study pressures, lack of support, domestic violence etc – without actually addressing these underlying issues.

Q-13 Should there be any requirements in relation to offering counselling for the woman?

27. The risks of psychological harm, the fact that women who seek abortions often do so as a result of a myriad of pressures (see pages 7-8 of our submission on the *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016*), and the number of women who are already seeking pre and post-abortion counselling through crisis pregnancy clinics indicate that counselling is an important component of informed consent for women. This counselling should be provided prior to an abortion and as part of their mental health care plan after an abortion.
28. We provided recommendations on informed consent requirements and information about other jurisdictions' approach to this issue at pages 9-10 of our submission on the *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016*. Based on the approaches of the United States and multiple European countries, we recommended that the Queensland Government put in place legally mandated informed consent requirements and mandatory waiting periods for women considering an abortion, including:
 - Prescribing the information to be provided to women when making their decision, including information about foetal development, the harms and risks of abortion and the full suite of alternative options;

¹⁹ Wong, R, "Abortion coercion: the NRL still has a long way to go in its treatment of women", Online Opinion (20 March 2017), <http://www.onlineopinion.com.au/view.asp?article=18914>.

²⁰ Above n10, Fergusson.

- Offering women the opportunity to undergo an ultrasound prior to making a decision;
 - Imposing a mandatory waiting period following the woman's first consultation with a doctor before the abortion may be performed, during which the woman must be provided access to counselling; and
 - Requiring women to access unbiased and objective counselling, which is independent of abortion providers.
29. The mandatory provision of relevant, accurate and unbiased information to women, mandatory counselling and imposed waiting periods adhered to in other jurisdictions are clearly intended to have the combined effect of allowing vulnerable women to stop and consider all the facts and options available to them when faced with an unplanned pregnancy. We urge the Commission to recommend a similar framework to protect women and to ensure that they are best equipped to make an informed decision.

Q-14 Should it be unlawful to harass, intimidate or obstruct a woman who is considering, or who has undergone, a termination of pregnancy, or the person who performs or assists the termination? Q-15 Should there be provision for safe access zones in the area around premises where termination of pregnancy services are provided?

30. We consider that "safe access zones" are unnecessary and unhelpful (or even harmful) to women seeking abortions for several reasons.
31. Firstly, Queensland law already protects its citizens from intimidating conduct or harassment by making that behaviour a crime under chapter 33A of the Criminal Code ('Unlawful Stalking').²¹ This includes conduct intentionally directed at a person, engaged in on any one occasion if the conduct is protracted or on more than one occasion, consisting of:²²
- following, loitering near, watching or approaching a person;
 - giving offensive material to a person, directly or indirectly;
 - an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
 - an act of violence, or a threat of violence against anyone;

that would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence or detriment to that person (where

²¹ *Criminal Code Act 1899* (Qld), ch. 33A.

²² *Ibid* s. 359B.

detriment includes serious mental, psychological or emotional harm and prevention or hindrance from doing an act a person is lawfully entitled to do).

32. Acts done for the purposes of genuine political or other genuine public dispute or issue carried on in the public interest, or reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving are not covered by this section.²³ As discussed below, there are good reasons why the area around premises where abortions are carried out should not be excluded from such exceptions.
33. Secondly, preventing communication about abortion in safe access zones prevents vulnerable women from accessing support or information in the very situation in which they might need it most. Discussions about the abortion between a woman and her partner, relative or friend, or a sidewalk counsellor close to the clinic becomes an offence. This isolates a woman intending to have an abortion by cutting her off from any support at all.
34. Thirdly, the ability for people to engage in peaceful protests or to freely engage in debate on political and moral issues is an intrinsic part of every Australian's implied right to freedom of political communication²⁴. In a democratic society, and on an issue like abortion which has such a profound impact on women, it is critical to uphold the rights of women to both express and have access to all views and perspectives on the perceived advantages or harms of abortion.
35. Finally, safe access zones effectively benefit the abortion industry, which makes substantial profits from vulnerable women in difficult situations, by making it an offence to simply express views that might dissuade vulnerable women from deciding not to go through with an abortion.

Q-20 Should there be mandatory reporting of anonymised data about terminations of pregnancy in Queensland?

36. Yes. Queensland should consider a data collection system similar to that used in New Zealand. In New Zealand, abortion is only lawful under certain circumstances, including – like in Queensland – where continuance of the pregnancy would result in serious danger to the life, or physical or mental

²³ Ibid s. 359D.

²⁴ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520. See also Max Spry, 'Constitutional Free Speech and Defamation: *Lange v ABC*' (1997)17(8) Proctor17, 18.

health, of the woman.²⁵ Abortion is not lawfully available 'on demand' for any reason at any time in New Zealand.

37. Despite abortion remaining subject to the criminal law outside the prescribed grounds, New Zealand has in place a comprehensive data collection system and consequently has some of the best abortion statistics in the world. This quantitative information has been essential when considering policies and practices in such a critical area of women's health.
38. Under the New Zealand *Contraception, Sterilisation and Abortion Act 1977*, every abortion has to be performed at a licensed clinic or hospital.²⁶ The abortion providers collect statistics anonymously from every abortion patient via a form called an "ASC4". The records are then sent to the Abortion Supervisory Committee who shares them with Statistics New Zealand.
39. This method of data collection enables comprehensive abortion statistics dating back to 1980, including: the annual number of abortions; the hospitals at which abortions are performed; the age and ethnic group of the women undergoing abortions; the number of previous live births and previous abortions those women have had; the gestation at which women are undergoing abortions; the reasons for abortion; the type of procedure used; any complications that arise; and whether contraception was being used at the time.²⁷
40. We urge the Commission to recommend the implementation of a similar system that enables the collection of accurate and appropriate data around abortion practices so that any legislative reform around abortion is evidence based.

Conclusion

41. We acknowledge that the issue of abortion is a complex one and there are diverse and nuanced views held within the community about whether it should be readily available to women. However, based on extensive qualitative and quantitative evidence we reject the notion that abortion is a decision with no immediate or long-term consequences for women and their physical, psychological and emotional health.

²⁵ *Crimes Act 1961 (NZ)*, ss. 182-187A.

²⁶ *Contraception, Sterilisation and Abortion Act 1977 (NZ)*, s. 18.

²⁷ See for example the Report of the Abortion Supervisory Committee 2015:

https://www.parliament.nz/resource/en-NZ/51DBHOH_PAP67746_1/cec76cda393c1bca75b50936d1c78a32b4f25dab

42. We consider there is inadequate information currently provided to women about the risks posed by abortion and the real alternatives that exist. We also suggest that considerably more should be done to understand and address the many serious causes that may lead a woman to seek an abortion including lack of family support, domestic violence, difficult and discriminatory workplace conditions, hostile community attitudes and inadequate government and community support for single-parent and low-income families.
43. We urge the Commission to take this opportunity to recommend a legislative and policy framework that will really address the challenges women face in the home, the workplace and the community. If these challenges were appropriately addressed, many women would avoid having to undergo a traumatic and invasive procedure that carries significant risks both in the immediate and longer-term.