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To whom it concerns,

Thank you for the opportunity to make a submission to the Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's review into the Termination of Pregnancy Bill 2018. I have also provided two submissions to the Queensland Parliamentary Committee reviews on this issue and the Qld Law Reforms Commission's review of the termination of pregnancy laws.

My submission is backed by almost 10 years of extensive experience in this area as the education and training coordinator with Children by Choice. I am currently the vice president of the Sexual Health Society of Queensland and previously a management committee member of the Young Parents Program in Stafford, Brisbane.

In my role at Children by Choice, I deliver professional development training across the state to a range of professionals including; GPs, nurses, midwives, school based youth health nurses, social workers youth workers and medical students. This training involves increasing their skills to support their clients or patients experiencing an unplanned pregnancy. I provide them with accurate up to date information on unplanned pregnancy and pregnancy options, especially abortion and its legality. The latter is by far the most requested element of our training because it is an area identified by professionals or organisations as a gap in knowledge due to the ambiguity surrounding abortion law.

There is often confusion and disbelief expressed from professionals that Queensland's abortion law not only remains in the criminal code but that these statues date from 1899. In addition to this disbelief many professionals are upset and angry by the laws impact on abortion access, with many trying to support women on a daily basis to access an abortion. This is most evident from interstate and overseas professionals who have worked in jurisdictions where abortion services are accessible to all women.

Many of these medical practitioners are extremely concerned about prosecution if they provide a patient with an abortion or support them to access an abortion. In 2018 this should not be a concern of any medical practitioner providing patient centred health care but unfortunately in Queensland this is the reality and will remain the reality whilst abortion remains in the Criminal Code. Each and every time I deliver this training, I have to acknowledge these concerns from professionals but explain that this is the way things are in Queensland. I, like the hundreds of professionals I train each year believe that abortion should not be in the Criminal code and should be treated the same as any other health procedure as is the case in most parts of Australia.

Please see below my responses to the review questions.

## RESPONSES TO THE SUBMISSION QUESTIONS

**Lawful terminations - not more than 22 weeks pregnant**

**Clause 5 of the Bill allows that a medical practitioner may perform a termination on a woman who is not more than 22 weeks pregnant. Clause 10 of the Bill provides that a woman who consents to, assists in, or performs a termination on herself does not commit an offence. Clause 22 of the Bill repeals Sections 224 to 226 of the Criminal Code which make it an offence to terminate a pregnancy.**

**Do you agree that terminations should be lawful on request up to 22 weeks?**

Answer: Yes.

Sections, 224,225,226, 228 should be repealed, not only do they criminalise a very common health procedure that is only required by a woman they are created ambiguity for professionals, women and the community.

While sections 224, 225 and 226 of the Queensland Criminal Code provide for criminal sanctions and jail terms for women 'unlawfully' having abortions and doctors 'unlawfully' providing them, they give no definition of what constitutes a lawful or unlawful abortion. In addition, the legal principles generally provide for a lawful abortion if performed to save a woman's life or to prevent serious harm to her physical or mental health – this is open to interpretation and no legal definitions of what constitutes 'serious harm' exist. This means that rape, incest and fetal anomaly etc. are not grounds in or of themselves for a lawful abortion – only their impact on a woman's health is able to be taken into account.

This has resulted in doctors being the sole gate keeper of abortion services. They alone must interpret the legal principles and make the assessment of whether it is lawful or not. This creates uncertainty and frustration for doctors as it requires doctors to ensure that the procedure is defensible. Doctors providing abortions in New South Wales and Queensland routinely feel compelled to behave, at best, misleadingly but often dishonestly and unethically in order to behave "legally" (*H Douglas, K Black, C deCosta, 'Manufacturing Mental Illness (and Lawful Abortion): Doctors' Attitudes to Abortion Law and Practice in New South Wales and Queensland' (2013) 20 Journal of Law and Medicine, p.574. Professor Heather Douglas, TC Beirne School of Law, The University of Queensland* )

The current legal principles mean a pregnant woman who requests an abortion loses her reproductive autonomy and many doctors feel compelled to manufacture a mental health problem. The need for clarity of these legal principles has been called for, for a long time by a range of experts, including Judges.

In 2015, there is an urgent need for legislative uniformity across Australia so that the law is in step with modern medical practice, and so that women, regardless of where they live, have equal access to abortion services. Justice Menhennit stated similar concerns over 40 years ago in relation to the ambiguity and uncertainty of these legal principles and the need for clarification by Parliament. The law should be amended to ensure certainty for patients and practitioners.

In regards to this stage process although I do not support any gestational limits in legislation (as favoured by RANZCOG) I accept that a staged process is more acceptable for the general community. I do not recommend that this 22 week cut off is lower however as this will only impact the rights of a very small group of women in complex situations.

The report on pregnancy outcomes from South Australia's Department of Health in 2013 reports the 91.9% were performed within the first 14 weeks of pregnancy. The small numbers of women who will choose to terminate a pregnancy after 20 weeks gestation do so in severe circumstances, such as severe maternal illness, diagnosis of a severe foetal anomaly, domestic violence or other exacerbating circumstances. These women should be able to access an abortion timely and in addition should not have to face additional barriers, such as a board of ethic approvals.

**Lawful terminations - more than 22 weeks pregnant and with the agreement of two medical practitioners**

Clause 6(1) of the Bill allows that a medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers that the termination should be performed, and has consulted with another medical practitioner who also agrees that the termination should be performed. Clause 6(2) of the Bill outlines the matters which a medical practitioner must consider when considering whether a termination should be performed - these being all relevant medical circumstances, the woman's current and future physical, psychological and social circumstances, and the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.

**Do you agree that terminations should be lawful beyond 22 weeks with the agreement of two medical practitioners?**

Answer: Yes.

If this staged process is required the process for 2 doctors should be as timely as possible and should not be onerous on the pregnant women. The small numbers of women supported by Children by Choice who choose to terminate a pregnancy after 20 weeks gestation do so in severe circumstances, such as severe maternal illness, diagnosis of a severe foetal anomaly, domestic violence or other exacerbating circumstances.

([https://www.childrenbychoice.org.au/images/downloads/AnnualReport1617\\_final.pdf](https://www.childrenbychoice.org.au/images/downloads/AnnualReport1617_final.pdf) Accessed online on 13 Feb 2018)

Gestational limits discriminate against women who may have severe congenital infections such as cytomegalovirus which may not be apparent until later gestations or may only be diagnosed beyond 20 weeks. (RANZCOG, 'Queensland abortion law reform' (Media Statement, 15 February 2017).

RANZCOG 'supports a multidisciplinary approach in assisting women in such circumstances and the availability of late termination of pregnancy for the rare situations where both managing clinicians and patient believe it to be the most suitable option in the circumstances (RANZCOG, 'Termination of Pregnancy' (C-Gyn 17, July 2016) [4.4]; See also RANZCOG, 'Late Termination of Pregnancy' (C-Gyn 17A, May 2016)

**Clause 6(3) of the Bill allows that a medical practitioner may, in an emergency, perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers it necessary to perform the termination to save the woman's life or the life of another unborn child.**

**Do you agree that terminations beyond 22 weeks should be allowed in an emergency?**

Answer: Yes.

See above

**Conscientious objection**

Clause 8 of the Bill allows for a health practitioner to conscientiously object to the performance of a termination. The health practitioner is required to disclose their conscientious objection and refer or transfer the woman to another health practitioner or health service provider. The clause does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

**Do you agree with allowing a health practitioner to conscientiously object to the performance of a termination, except in emergencies?**

Answer: No

All medical practitioners should prioritise the needs of their patients and not their own moral conscience on health matters. They should not be able to legitimately impose their own views on women who wish to terminate their pregnancies. Current guidelines from regulatory bodies are clear on the processes for conscientious objection and a legislative clause is not necessary (<https://ama.com.au/position-statement/conscientious-objection-2013> Access online on 12 Feb 2018)

I believe that this clause will be used by some practitioners as a defence to not provide support. In a large state such as Qld, this could have significant impact on a women's timely access to abortion care as has occurred in other jurisdictions. (*Current law in Queensland and other Australian jurisdictions, information paper published by the Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, June 2016. Online at*

Any legislative clause to allow for conscientious objection should not apply to non-medical practitioners, institutions or hospitals.

### Safe access zones

**Clauses 11 to 14 of the Bill allow for the establishment of safe access zones at termination service premises. The safe zone applies to an area within 150 metres of the entrance of the termination service premises, unless a distance is prescribed by regulation. It also establishes penalties for prohibited conduct or restricted recording (including the publication and distribution of a restricted recording) within a safe access zone.**

**Do you agree with the establishment of safe access zones within 150m of the entrance of termination service premises and associated penalties for prohibited conduct or restricted recording?**

Answer: Yes

This right should be afforded to all, including those working at abortion clinics or GP centres providing abortion services.

### Offences for unqualified persons

**Clause 25 of the Bill outlines offences for an unqualified person who performs, or assists in performing, a termination on a woman. Both offences have a maximum penalty of 7 years imprisonment. Do you agree with the proposed offences for unqualified persons who perform or assists with a termination?**

Answer: Yes

### Other issues

Abortion can be an emotive issue for some members of the community; however the reality is that abortion is a necessary reproductive health procedure accessed by millions of women each year. Unplanned pregnancy does not discriminate and women from all backgrounds access abortions, including religious women. "Many abortion patients reported a religious affiliation—24% were Catholic, 17% were mainline Protestant, 13% were evangelical Protestant and 8% identified with some other religion. Thirty-eight percent of patients had no religious affiliation" (Guttmacher Institution, Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008)

I trust that as legislators you will undertake this historic review based on the views of experts working in the field with the best available evidence and remove the emotion, prejudice and misinformation that surrounds this issue. I specifically note the rhetoric regarding "abortion to birth" and "sex selection abortion" the occurrence of both is not supported by any credible data and demonstrates a complete mistrust in women. It would be a disappointing outcome for the state if the outcome of this very important legislative change was based on the views of a vocal minority.

I urge the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee to recommend that the Termination of Pregnancy Bill 2018, is passed as is with no amendments.