Submission to

the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Termination of Pregnancy Bill 2018

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) for the opportunity to provide feedback to the *Termination of Pregnancy Bill 2018* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 59,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

Recommendations

The QNMU recommends:

- The parliament pass the bill;
- The Queensland government provide access to:
  - reliable, safe and affordable contraception;
  - counselling services before and following a termination;
  - information and services to support adoption or maintaining a pregnancy; and
  - appropriate sexual and reproductive health and information.
- The Queensland government in conjunction with the federal Department of Health develop and implement a broad female sexual and reproductive health strategy that includes comprehensive access to education, services, counselling and information.

Abortion Law Reform in Queensland

The Committee may be aware the QNMU made submissions to the Queensland parliamentary inquiries into the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016,* the *Health (Abortion Law Reform) Amendment Bill 2016* and the Queensland Law Reform Commission (QLRC) Review of Termination of Pregnancy Laws in Queensland. As the major health union in Queensland and a regular voice in the public debate, it is appropriate for the QNMU to make submissions on this matter. We do so in the knowledge that any discussion around abortion is sensitive and can be polarising.

Termination of pregnancy is a complex health issue. The QNMU Council and its policy committee gave extensive consideration to the previous bills, the QLRC review and the current bill. We formed our position through due process within our governance structure, briefing papers and empirical evidence where available. We offer the committee some guidance on several significant issues where the QNMU has formulated a position.

We recognise the need to modernise and clarify the law to reflect current community attitudes and expectations. We feel the interests of the woman and those who assist her are best served where abortion is not a criminal offence. Females[1] need safe, quality care for all their reproductive and health needs and this should be reflected in any consequential legislation.

Female Health and Access to Services

Females need access to quality health care that does not restrict their capacity to make decisions about their own reproductive health and fertility. We see termination of pregnancy within a broad context of female health that includes education, independent counselling and support services for the whole area of reproductive health. Increased education and access to services are critical for females of all ages and for all their health needs. Access to such services should be on the basis of healthcare need and should not be limited by age, socioeconomic disadvantage or geographical location (AMA, 2014).

Policy initiatives to improve availability and access to medical abortion have improved choice for some women[2], however abortion remains expensive. Like women in many developed countries, Australian women who are socially, geographically and economically disadvantaged, have limited choice and access to abortion (Shankar et al., 2017).

[1] We use the broad term 'female' to indicate someone born into or who transitions into that sex.

[2] We use the term 'woman' to mean a biological female capable of bearing offspring.

Despite optimism from those who seek to improve women's access to abortion, the increased availability of medical abortion has not yet addressed the disadvantage experienced by poor and non-metropolitan women (Baird, 2015). For many poor women and those in non-metropolitan locations even this rebated cost is prohibitive, especially when travel costs are also involved. This disadvantage is compounded if women are also young, disabled, racially marginalised or without citizenship entitlements (Baird, 2015).

Critical attention must be paid to improving access to services and information in rural and remote areas. Rural women experience many barriers to accessing an abortion including finding information about the provider; stigma, shame and secrecy; logistics involved in accessing the clinic related to travel; money and support (Doran & Hornibrook, 2016). It is of concern that women who cannot easily access an abortion may try potentially unsafe and unregulated ways to self-abort. Unsafe abortions are usually associated with women in resource-poor countries. The implications of lack of access to abortions in Australia are not well documented but could potentially have negative health consequences (Doran & Hornibrook, 2016).

Appropriate information, counselling and targeted programs should also be available for women with limited language literacy, women with disabilities, women from cultural and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women. Indigenous women have higher rates of maternal morbidity and mortality than non-indigenous women, reflecting the gradient of inequity in health care and the burden of background illness (Sifris & Belton, 2017). The indigenous maternal mortality ratio was 14/100,000 women who gave birth, as compared with 2/100,000 for non-indigenous women. During the same period 2008 to 2012, 12 indigenous women died due to direct or indirect causes related to pregnancy and childbirth and none directly due to an elective abortion (Sifris & Belton, 2017).

Indigenous women often do not have the same access to reproductive health services as other Australian women, and they suffer from relative social disadvantage and poverty that impacts on their health outcomes. Access to fertility management and abortion services are therefore important to women's health. For some Australian women, access to termination of pregnancy will save their lives (Sifris & Belton, 2017).

In addition to access to safe and legal termination services, women should have access to appropriate support to maintain a pregnancy to term and subsequently to raise a child, and access to services for adoption where a woman chooses to continue the pregnancy to term but not to raise (or care for) the child.

To that end we support a broad sexual and reproductive health strategy that includes comprehensive access to education, services and information. Such a strategy may contribute to lowering the incidence of unplanned and unwanted pregnancy.

It is within the context of female health and the right of an individual to make decisions about any aspect of their own wellbeing – physical and mental – that the QNMU recommends the Bill be passed through the parliament. Removal of sections 224, 225 and 226 of the *Criminal Code 1899 (Qld)* (the Code) is the threshold matter so that women and those who assist them are free of prosecution.

As we have argued previously, the Code is not the appropriate mechanism for regulating a medical or surgical procedure.

Termination of Pregnancy Bill 2018

We offer the Committee some comments on the following matters contained in the Bill.

Lawful termination

The bill enables a medical practitioner to perform a lawful termination:

- on request during the first 22 weeks of pregnancy; and
- after 22 weeks of pregnancy
  - if the medical practitioner considers the termination should be performed and has consulted with another medical practitioner who also agrees that the termination should be performed (the matters which a medical practitioner must consider include 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), or
  - in an emergency circumstance (eg to save the woman's life or the life of another unborn child).

The QNMU supports these provisions.

Assisting with Termination

The bill enables another medical practitioner, a nurse, midwife, pharmacist, Aboriginal and Torres Strait Island health practitioner or other registered health practitioner prescribed by regulation to assist in a termination of pregnancy performed by a medical practitioner (it is unlawful if the assisting person knows, or ought reasonably to know, that the termination of pregnancy being performed by the medical practitioner does not comply with clauses 4 or 5 of the Bill).

The QNMU considers only a qualified, experienced and competent health practitioner should terminate a pregnancy. Nurses and midwives are subject to a comprehensive legal and regulatory framework at both national and State level. Provisions governing who is permitted to lawfully perform terminations of pregnancy need to recognise the clinician's scope of practice.

The QNMU supports these provisions.

Conscientious Objection

The bill acknowledges a medical practitioner may conscientiously object to the performance of a termination of pregnancy:

- a medical practitioner is required to disclose their conscientious objection and refer or transfer the woman to another health practitioner or health service provider; and
- this provision does not limit any duty owed by a registered health practitioner to provide a termination of pregnancy service in an emergency circumstance.

The QNMU has endorsed the *Conscientious Objection* policy of the Australian Nursing and Midwifery Federation (2017), the peak nursing union body to which the QNMU is affiliated which states:

1. Nurses, midwives and assistants in nursing (however titled) have a right to refuse to participate in procedures which they judge, on strongly held religious, moral and ethical beliefs, to be unacceptable (conscientious objection). Fear, personal convenience or preference, are not sufficient basis for conscientious objection.

2. In exercising their conscientious objection, nurses, midwives and assistants in nursing must take all reasonable steps to ensure that the persons preference, quality of care, safety, and advance care directives are not compromised.

3. Subject to their scope of practice, nurses and midwives in the course of their employment, must not refuse to carry out urgent life-saving measures or procedures.

4. In situations of conscientious objection, the nurse, midwife or assistants in nursing should express a desire not to participate in that procedure, in advance if possible. In these circumstances, the employer must allow the nurse, midwife or assistants in nursing to leave the area and/or not participate in the procedure as soon as practicable without any discriminatory or adverse action being taken.

5. Nurses, midwives and assistants in nursing should give serious consideration to avoiding employment positions where they can foresee that a situation of conscientious objection may arise with relative frequency.

6. Nurses, midwives and assistants in nursing accepting employment positions where they know they may be called on to be involved in situations at variance with their beliefs, have a responsibility to inform their employer.

7. Nurses, midwives and assistants in nursing should support colleagues who exercise their right to conscientious objection, and endeavour to prevent them being placed in situations that may compromise their religious, moral and ethical beliefs.

8. No discriminatory or adverse action should be taken against any nurse, midwife or assistant in nursing voicing a conscientious objection either in an application for, or during employment.

9. In health and aged care facilities nurses and midwives should have access to counselling and support services to meet their needs in their workplaces.

The QNMU supports the conscientious objection provisions in the bill.

Safe access zones

The bill establishes safe access zones applying to an area within 150 metres of the entrance of a termination of pregnancy service premises (unless that distance is varied under a regulation by the relevant Minister)

In the interests of patient confidentiality and safety as well as the health and safety of workers, we support the provisions establishing a safe access zone within a radius of 150 metres from premises at which termination of pregnancy services are provided (unless varied under regulation by the Minister).

Anyone entering these premises must have protection from harassment, vilification or any other form of abuse.

The QNMU supports the provisions in the bill establishing safe access zones.

New criminal offences

The bill introduces new criminal offences for prohibited conduct or restricted recording of a person in, entering or leaving termination services premises.

The QNMU condemns behaviour that includes:

(a) harassing, hindering, intimidating, interfering with, threatening or obstructing a person, including by capturing or attempting to capture images of the person, intended to stop the person from entering the facility or having or performing an abortion in the facility; or

(b) an act that can be seen or heard by a person during the protected period for the facility, and intended to stop a person from

(i) entering the facility; or
(ii) having or performing an abortion in the facility; or

(c) a protest, by any means, during the protected period for the facility relating to the performance of abortions in the facility.

The QNMU supports provisions in the bill restricting these forms of behaviour.

Recording and publication of images

The QNMU condemns the recording and publication of images of a person in, entering or leaving, or trying to enter or leave, an abortion facility

(a) without the other person's consent; and
(b) with the intention of stopping a person from having or performing an abortion.

These types of vigilante behaviour have no place in a health care setting or any other site.

The QNMU supports the provisions in the bill restricting these forms of behaviour.

Counselling

The QNMU recommends counselling services should be routinely available before and after any termination. Counselling should be voluntary, confidential, unbiased and provided by a trained professional.

Conclusion

We recognise the Committee's task is not easy and we thank you for addressing this contentious issue. Legal reform is long overdue, but that in itself will not change those in the community with deeply held beliefs. Decriminalisation will however, provide dignity to women who face these situations and the health practitioners who assist them.

References

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