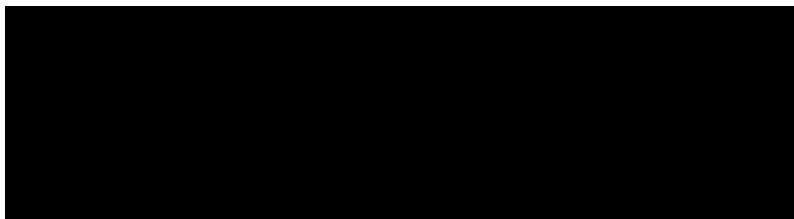


Termination of Pregnancy Bill 2018 Inquiry:

Fair Agenda Submission

Your details

Submission made on behalf of: an organisation
Submitted by: Renee Carr, Executive Director, Fair Agenda.
Level at which submission has been approved: national organisation.



1. 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?

Yes.

Fair Agenda strongly supports this provision. We believe that a pregnant person is best placed to make the decision that is best for themselves and their family, and that the law should allow them to do so.

Community support

We note that polling indicates there is significant community support for a woman's legal right to make decisions about her pregnancy. A poll conducted in February 2017, by Essential Research, based on a sample of 1,201 Queenslanders aged 18+ showed that:

- 70% of Queenslanders agree that a Queensland woman should have the same legal rights as a Victorian woman regarding the decision to terminate her pregnancy (when asked "In Victoria a woman can make the decision to terminate her pregnancy up until 24 weeks of gestation. Do you agree or disagree that a Queensland woman should have the same legal rights?"). Further detail available in Appendix A.

The importance of 22 weeks

Fair Agenda is aware that some groups are advocating against 22 weeks as the point at which requirements surrounding access to termination change. We strongly support this provision in its current form, and strongly oppose any reductions to the stage in pregnancy at which decision-making power is taken away from the pregnant person.

We note that the proposed 22 weeks provision is consistent with Queensland Clinic Guidelines for Perinatal Care at the Threshold of Viability¹, which note that obstetric management should be maternal focused until 22 weeks gestation of pregnancy.

The same Clinic Guidelines advise that they consider the threshold of viability to be between 23 weeks and 0 days and 25 weeks and 6 days gestational age. And advise that before 24 weeks gestation, life sustaining interventions are not generally recommended. Finally, we note that in Queensland between 2000 and 2008, 100% of babies born at less than 22 weeks gestation died.²

We also that maintaining the 22 weeks provision as proposed by the Law Reform Commission is particularly important because ultrasound screening for foetal health is routinely recommended at 18-20 weeks gestation.³

If this screening returns an unexpected or negative diagnosis, it is important that the pregnant person is supported to understand the options and information available, and to make the decision that is best for them in all their circumstances.

We note that many severe fetal anomalies, including those incompatible with life, are not able to diagnosed until this mid-pregnancy scan. In some cases, additional testing will need to be carried out in order to provide an accurate diagnosis, and its likely severity and impact on quality of life. Depending on a pregnant woman's location and her model of antenatal care, this could take days or weeks.

It is imperative that a woman in this situation is given enough time to understand her options and process all the information about the diagnosis and to discuss this with appropriate medical professionals, support services, and her family. And does not feel rushed to an extremely quick decision in relation to a negative or unclear fetal diagnosis, because she fears a legal deadline will constrain her options.

In particular, we note that the introduction of a legislated gestational limit at 20 weeks in Western Australia was found to have negative impacts on women in this situation.

The Acts Amendment (Abortion) Act 1998 (WA) in Western Australia provides that a woman cannot access an abortion after 20 weeks unless two members of a panel find that the mother or unborn child has a severe medical condition that justifies the procedure.

A review of the legislation conducted by the *Acts Amendment (Abortion) Act 1998 Review Steering Committee* found (in relation to "particular issues which affect counselling in relation to post 20-week terminations") that: "on occasions, a foetal abnormality may be suspected of which the nature or severity is uncertain. In this situation to have the facility for observation or further evaluation of the foetus over a

¹ Queensland Clinical Guidelines: Perinatal care at the threshold of viability, September 2014, 4-14.

² Queensland Clinical Guidelines: Perinatal care at the threshold of viability, September 2014, 4-14.

³ Genetic Health Queensland: Prenatal screening and testing, Queensland Government, available at

period of weeks is central to the accurate diagnosis of either the nature of the abnormality or its severity".⁴

The Review Steering Committee found that when a woman received a diagnosis of foetal abnormality just a few days prior to the 20-week point:

- Women reported that their ability to make a decision was seen to be aggravated by their perceived sense of uncertainty as to whether they will have access to termination once the 20-weeks has passed;
- Women reported feeling that their decision to terminate the pregnancy was pressured by a time factor, because they are aware that once the pregnancy is deemed over 20-weeks the decision is no longer theirs alone;
- Women reported a diminished sense of personal control in making important life decisions;
- Women reported concerns that decisions may be made in haste or be fear based, with potential psychological implications;
- Women also reported concerns about the subjectivity of the panel or the possibility of judgment.
- There were also reports of emotional distress following diagnosis of foetal abnormality inhibiting the ability to reach an informed decision.⁵

We further note the comments of RANZCOG that, "in scenarios where there are non-identical twins, if termination is only permitted before 20 weeks, this can seriously endanger the healthy twin."⁶

Domestic violence

Finally, we note the importance of this provision for women affected by domestic violence.

We know that for a woman in trying to escape an abusive partner, pregnancy can be used as a mechanism by her partner to try and trap her in the relationship. In fact, the World Health organization has recognized that intimate partner violence may lead to a host of negative sexual and reproductive health consequences for women, including unintended and unwanted pregnancy, abortion and unsafe abortion, and pregnancy complications.⁷

A woman experiencing domestic violence and unplanned pregnancy is also more likely to present later in pregnancy for pregnancy or abortion care. This may be because financial abuse by the perpetrator of the violence prevents a woman from being able to get to, or afford to see a doctor quickly. The perpetrator may also obstruct her access to a doctor, or prevent her attending an appointment by herself; and/or use physical and online surveillance to make her feel unable to get to a doctor or clinic without their knowledge, or without further violence.

⁴ [Report to the Minister for Health on the Review of Provisions of *The Health Act 1911 and The Criminal Code* relating to abortion as introduced by *The Acts Amendment \(Abortion\) Act 1998*](#), 17 June 2002, p 22.

⁵ Report to the Minister for Health on the Review of Provisions of *The Health Act 1911 and The Criminal Code* relating to abortion as introduced by *The Acts Amendment (Abortion) Act 1998*, 17 June 2002, p 23.

⁶ Queensland abortion law reform: Media Statement, RANZCOG, available at <https://www.ranzcog.edu.au/news/Queensland-abortion-law-reform>

⁷ C Garcia-Moreno, A Guedes and W Knerr (2012) *Understanding and addressing violence against women: Intimate partner violence* World Health Organisation Department of Reproductive Health. Available online at [REDACTED]

Fair Agenda are aware that data from Children by Choice's client contacts over the past three years show that the likelihood of a woman only being able to seek pregnancy or abortion care later in pregnancy is even greater for women experiencing reproductive coercion. Of the small proportion of women who have contacted Children by Choice to discuss their pregnancy options after 16 weeks into the pregnancy, women affected by violence, including reproductive coercion, are over-represented. (Reproductive coercion refers to a range of male partner pregnancy-controlling behaviours, from contraceptive interference through to forced sex and rape in relationships.)

We are also aware that many of the women who disclose violence while seeking pregnancy options counseling from Children By Choice say that they want to escape the abuse; and that they are already at breaking point, under huge strain and distress as a result of their partner's violence, and that the children they already have are as much as they can handle given what they have been through.

Given this, we understand that access to and affordability of termination procedures can be entwined with a woman's ability to escape domestic violence. Issues that are often present in violent relationships - including: surveillance, manipulation, and financial or other control – further restrict a woman's capacity to access a termination, even if she is doing so to attempt greater safety for herself and any existing children. And such issues can be further compounded by the limited proximity of healthcare options, for women in many parts of rural or regional Queensland.

All these factors can mean that it can be impossible for a woman affected by domestic violence to access abortion services early in her pregnancy.

For example, financial abuse by a family violence perpetrator may prevent a woman from being able to get to, or afford to see a doctor quickly. The perpetrator may obstruct her access to a doctor, or to attend an appointment by herself; and physical and online surveillance may make her feel unable to get to a doctor or clinic without his knowledge, or without further violence.

We also know that pregnancy is a time of increased risk for women, as pregnancy is a key risk factor for domestic violence beginning or escalating. If a perpetrator is already using violence against a woman, the violence is likely to increase in severity during pregnancy. For many women, their pregnancy will be the beginning of their partner's violence against them.

For a woman trying to escape domestic violence, additional barriers to termination access can trap her in a situation that compromises her ability to get safe from her perpetrator's violence against her and her children. Evidence from international contexts suggests that when women are denied abortions they are more likely to remain in those violent relationships than women who are able to access the procedure.

For all these reasons, we would be extremely concerned about any changes to the proposed 22 week threshold, and the additional harm they could create for women affected by domestic violence.

2. 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?

Yes.

Fair Agenda strongly supports this provision.

We believe it is vital that law reform makes provision for lawful access to terminations later in pregnancy; and recognises the complex, deeply personal and difficult circumstances that lead to someone needing abortion care after 22 weeks in pregnancy.

We note that the women who present for assistance at this point are often very vulnerable women living in the most complex and difficult circumstances. This includes: people who have just learnt of severe foetal abnormalities; those for whom continuing the pregnancy would pose a significant health risk or risk to their life; someone who is facing a traumatic change in circumstances (such as a partner or child with cancer), or someone who is experiencing abuse, control or violence from a partner which has prevented them from accessing services earlier.

In particular, we support the position of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), as the leading standards body in women's health in Australia, those who care for pregnant people, and those involved in performing abortions later in pregnancy. They have previously stated:

"The College supports the availability of late termination of pregnancy in rare situations where both managing clinicians and the patient believe it to be the most suitable option, as well as supporting a multidisciplinary approach in assisting women in such complex circumstances."⁸

We note that very similar legislation has been in place in Victoria since 2008. These provide that a registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if at least two medical practitioners reasonably believe that the abortion is appropriate in all the circumstances. In Victoria, in considering whether the abortion is appropriate in all the circumstances,

⁸ RANZCOG Submission – Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016, 30 June 2016.

medical practitioners must have regard to: all relevant medical circumstances, and the woman's current and future physical, psychological and social circumstances.

Reflecting on the period following the law's introduction former Victorian Health Commissioner Bethia Wilson has said of the laws:

"Victoria's laws are functioning well, and provide the kind of legal structure we need in place to ensure a woman who needs a termination can access it."

"Through law reform in Victoria we have been able to remove the barriers that made it difficult for a woman who needs to terminate her pregnancy to do so when she is early in her pregnancy; and also ensured the law is not adding to the distress or creating an unreasonable burden on women dealing with the difficult and complex circumstances that contribute to the need for termination after 24 weeks."

Fair Agenda believes that the current proposed criteria for decision making about terminations after 22 weeks gestation are both medically appropriate and compassionate, given the complex and deeply personal factors that are likely to be relevant to decision-making and care for the women whose care would be governed by these provisions.

Further, we also understand that current clinic and licensing frameworks in Queensland require any termination provided after 22 weeks gestation to be carried out in a hospital facility, and that there are clear practice guidelines and clinical standards governing treatment options for complex pregnancies, as well as hospital level procedures and approval processes which must be met in order for any treatment to be authorised at this point.

Fair Agenda also supports the proposed approach to consultations in these circumstances. We hold concerns that any additional requirements could delay access to treatment and compound the distress of a woman facing a devastating fetal diagnosis, or any of the other difficult and distressing circumstances that led to a need for abortion care later in pregnancy.

We also note that any such impact would not meet community expectations, as demonstrated in polling conducted by Essential Research in February 2017, which showed 88% of Queenslanders think a woman living in rural or remote Queensland should have the same access to medical procedures – including pregnancy terminations – as women in the city.⁹

3. Lawful terminations - more than 22 weeks pregnant and in an emergency

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.

⁹ [Queensland abortion law reform poll](#), Essential Research, February 2017. (Survey sample of 1,201 people, with an overall confidence level of 95%).

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

Yes.

Appropriate and emergency medical care should not be restricted by laws in this circumstance.

4. 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?

Yes

We strongly support this provision.

We recognise that medical practitioners may hold personal beliefs that impact on their attitudes towards provision of abortion, and the decisions they would make if they were personally facing a crisis pregnancy. However, Fair Agenda strongly believes that a practitioner's personal beliefs about abortion shouldn't be allowed to interfere with their patient's access to reproductive healthcare.

Further, we note that the provision proposed in the Termination of Pregnancy Bill 2018 aligns with the Australian Medical Association's position statement on Conscientious Objection, which provides that "*A doctor who makes a conscientious objection to providing, or participating, in certain treatments or procedures should make every effort in a timely manner to minimise the disruption in the delivery of health care and ensuing burden on colleagues. If you hold a conscientious objection, you should inform your patient of your objection, preferably in advance or as soon as practicable and inform your patient that they have the right to see another doctor. You must be satisfied the patient has sufficient information to enable them to exercise that right. You need to take whatever steps are necessary to ensure your patient's access to care is not impeded.*"¹⁰

We further note the importance of this provision for those living in regional and rural areas where healthcare options may already be limited.

We believe conscientious objection should not apply in an emergency.

¹⁰ Australian Medical Association, Position statement on Conscientious Objection – 2013, [REDACTED], and expanded upon at [REDACTED]

5. 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?

Yes

Fair Agenda believes pregnant people have the right to access medical treatment without prejudice or harassment, and that people who work at services that provide terminations have the right to attend their workplace without harassment, intimidation or obstruction.

We note that in the past, such behaviour has occurred at facilities that provide terminations, and that this has an adverse impact on patients, as well as staff at the services.

The Catholic Leader has previously reported on an annual 40-day vigil in Queensland; where people are invited to pray non-stop, "to be a visible presence" outside a Bowen Hills clinic. They report "at least 30 turning up to pray on the day".¹¹ It has been reported that these "protestors try to engage in 'sidewalk counselling' giving false and misleading information about abortion that causes unnecessary distress."¹²

A Fair Agenda member, has shared in anonymous testimony her experience of protestors outside a clinic:

" [I] was horrified by the men waiting by the door with images on signs still burned into my mind. [They had] horrifying signs, whispering abuse at you so no one else can hear and the police aren't called. Knowing nothing about you, yet trying to shame you for making the best decision you can for your life and your body."

We believe safe access zones are necessary to prevent the distress and harassment of women and clinic staff; and to protect their privacy.

¹¹ [Numbers of people praying outside Brisbane abortion clinic in Lent on the rise](#), The Catholic Leader, 29 March 2017.

¹² [Anti-abortionists abused during around-the-clock prayer vigil outside Brisbane clinic](#), The Courier Mail, 26 March 2013.

6. 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?

Yes

7. Other issues

If you wish to make any other comments in relation to this Bill, you can do so here:

Counselling

We note that some groups have argued that anyone needing an abortion should be required to undergo mandatory counselling. We would strongly oppose any such requirement.

We trust women to make the reproductive healthcare decision that is best for themselves and their families, including deciding upon the nature or extent of any counselling they may want.

Fair Agenda supports the availability of independent, and unbiased counselling to those who request it. But we strongly oppose the requirement that it be mandatory.

We note that Women's Health West, noting personal experience of counselling in a mandatory setting in Victoria said "we found that compulsory counselling not only reinforced a lack of control, it sparked anger among women that they were assumed to be incapable of making a considered decision."¹³

We note that the World Health Organisation also does not recommend mandatory counselling in its policy guidance on abortion.¹⁴

We are also concerned that any requirements around counselling could create additional barriers and difficulties to accessing services. We note that in the United States mandatory counselling requirements have been used to shame women and make it more difficult to access abortion. In that context, counselling requirements have hit low-income people and those in rural areas particularly hard; because many families live hours from the nearest clinic, and attendance at a mandatory counselling appointment increases the costs, lost wages and time involved in getting the treatment they seek.¹⁵ Given the size of Queensland, and

¹³ Women's Health East submission to Victorian Law Reform Commission, quoted in [Victorian Law Reform Commission report., p 123.](#)

¹⁴ Safe abortion: technical and policy guidance for health systems (second edition), World Health Organisation,

¹⁵ Biased Counseling & Mandatory Delays, NARAL Pro-Choice America,

distance between many facilities, we imagine that similar challenges may be faced if such a requirement were put in place in Queensland.

Finally, we note that any requirement to attend counselling could also pose additional barriers and distress at a later gestation if they delayed access to treatment, which may also be quite time sensitive.

Publication of submission

If the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee accepts a submission, it becomes part of the committee's records and is usually published on the committee's webpage as soon as possible to encourage public consideration. However, a committee may decide that a submission, or part of it, should be kept confidential.

Contact details of individuals (e.g. residential or email addresses or phone numbers) are removed before submissions are published.

*Are you content for your submission to be published? **

Yes

Appearing as a witness at a public hearing

As part of its inquiry, the committee will hold public hearings to build on the information provided in written submissions. These hearings provide the opportunity to those witnesses, who are invited by the committee to appear, to explain further, or add to, information included in their submissions. Hearings enable committee members to question submitters on the issues raised in their submissions. They also give submitters an opportunity to respond to issues or arguments put forward in other written or oral submissions.

Further information can be found in the guide [Appearing as a Witness](#), available [here](#).

Would you like to be considered to appear as a witness before the committee?

Yes

Appendix A: Polling

Source: [Queensland abortion law reform poll](#)

Essential Research, February 2017

Sample: 1,201 people aged 18+.

Access to medical procedures

Q5. Do you think a woman living in rural or remote Queensland should have the same access to medical procedures – including pregnancy terminations – as women in the city?

	Total	Vote Lib Nat	Vote Labor	Vote Greens	Vote One Nation	Vote other
Total agree	88%	87%	94%	94%	83%	74%
Total disagree	8%	10%	3%	4%	12%	18%
Strongly agree	74%	71%	82%	87%	69%	54%
Agree	14%	16%	12%	7%	14%	20%
Disagree	6%	7%	2%	2%	8%	14%
Strongly disagree	2%	3%	1%	2%	4%	4%
Not sure	4%	4%	3%	4%	5%	7%

	Total	Men	Women	Aged 18-34	Aged 35-54	Aged 55+
Total agree	88%	86%	90%	85%	89%	90%
Total disagree	8%	10%	7%	12%	7%	5%
Strongly agree	74%	71%	78%	72%	78%	73%
Agree	14%	15%	12%	13%	11%	17%
Disagree	6%	8%	3%	8%	5%	4%
Strongly disagree	2%	2%	3%	4%	2%	1%
Not sure	4%	5%	4%	3%	4%	5%

Same legal rights as Victoria

Q6. In Victoria a woman can make the decision to terminate her pregnancy up until 24 weeks of gestation. Do you agree or disagree that a Queensland woman should have the same legal rights?

	Total	Vote Lib Nat	Vote Labor	Vote Greens	Vote One Nation	Vote other
Total agree	70%	68%	75%	88%	65%	56%
Total disagree	25%	27%	19%	11%	28%	41%
Strongly agree	53%	47%	61%	65%	51%	39%
Agree	17%	21%	14%	23%	14%	17%
Disagree	12%	16%	10%	7%	13%	9%
Strongly disagree	13%	11%	9%	4%	15%	32%
Not sure	6%	5%	6%	2%	7%	3%

	Total	Men	Women	Aged 18-34	Aged 35-54	Aged 55+
Total agree	70%	68%	73%	69%	71%	70%
Total disagree	25%	26%	23%	27%	23%	23%
Strongly agree	53%	54%	53%	51%	55%	52%
Agree	17%	14%	20%	18%	16%	18%
Disagree	12%	13%	11%	8%	12%	15%
Strongly disagree	13%	13%	12%	19%	11%	8%
Not sure	6%	6%	5%	4%	6%	7%