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Re. Personal submission to the Health, Communities, Disability Services, and Domestic and Family Violence Prevention Committee on the Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland.

Dear Committee

I have prepared this submission in a personal capacity as one who long ago adopted Queensland as my home state. I am a woman of reproductive age and proud of our healthcare system, except in the case of the basic human right of women's access to termination of pregnancy.

I, like many Queenslanders, was shocked to hear of the 2010 trial of Cairns couple Tegan Leach and Sergei Brennan on the charges of procuring an abortion and supplying drugs to be used for an abortion. Even though I was working in a healthcare organisation at the time, I had no idea that abortion was in the Criminal Code and that such a trial was possible. As a result I have become involved with Pro Choice Queensland and have served as President of Children by Choice Association for the past 3 years.

Although my submission is a personal one, my professional experience includes working in communications roles for a women's health information service, a medical indemnity provider, a GP training organisation and an Indigenous health service, in addition to serving in a voluntary capacity for Young Parents Program (a support service for women under 18 who choose to parent), Pro Choice Queensland and Children by Choice.

In this submission I have supplied my experience as it relates to each of the five areas for consideration. As will be clear in my responses, I am no law expert, however I do possess extensive experience in helping facilitate access to this vital health service for the thousands of Queensland women who require it each year.

I am very happy to meet with the committee in person or via telephone at any time should you require any further information in regard to my submission.

With warmest regards
Lorraine Pacey

Re. Personal submission to the Health, Communities, Disability Services, and Domestic and Family Violence Prevention Committee on the Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland.

1. Existing practices in Queensland concerning termination of pregnancy by medical practitioners

While it is estimated that between 10,000 and 14,000 women require an abortion in Queensland each year, only 1% of these abortions occur in the public health system.¹

Lack of public access to this vital health service is a direct result of the continued inclusion of abortion in the Criminal Code.

Evidence shows that the number of abortions performed is not impacted by the availability of the service i.e. having better public availability will not increase the number of abortions performed. Rather, the rate of abortion is directly correlated with rates of unintended pregnancy, which is directly correlated with rates of contraceptive use.²

Better access to abortion services will significantly reduce the stress experienced by the thousands of women each year who are unable to afford the \$300 to \$800 an abortion costs through a private provider, who find it difficult to access services due to living in a rural or remote location and are unable to arrange childcare or time off work if they need to travel for an abortion.

In short, if you are a middle-class woman or couple with the ability to pay to access an abortion through the private system, and live or are able to travel to an area to access one of the 10 private clinics that provide this service to the entire state, or to a doctor who can provide a medical termination, then accessing a termination of pregnancy is not a problem.

If however, you live outside South East Queensland, are unable to afford the \$300 to \$800 fee, plus associated costs of paying for child care, travel etc. accessing a termination is very, very difficult, at what is already a very stressful time.

In my 8 years of working in the Queensland health sector I have been consulted on too many cases to count of women being unable to access this vital health service though the public system.

The introduction of the *Therapeutic Termination of Pregnancy Guidelines* in 2013 held great promise for increased access for Queensland women needing to access abortion through the public health system. However, the reality is that adherence to these guidelines is up to hospital administration and many, many hospitals are not adhering to them because they are afraid of the legal implications of providing abortion services, even though the guidelines say that they should.

If abortion is removed from the Criminal Code it is my firm belief that many more hospitals will comply with these guidelines.

¹ Pro Choice Queensland (2016), 'Abortion facts', Available at: <https://prochoiceqld.org.au/abortionfacts/>

² Sedgh, G 'Induced Abortion: Estimated Rates and Trends Worldwide' (2007b) 1343.19 quoted in VLRC (2008) pg 33

Currently, as President of Children by Choice I know that a great deal of time is spent by our staff negotiating with public hospitals to try to ensure compliance with the guidelines. When advocating on a patient's behalf, the outcome is often that instead of spending their time counselling women to help them come to an informed decision regarding their pregnancy, they are on the phone calling around professional and personal networks to try to scrounge together the \$350 needed to allow a patient to access a termination in the private sector. If these women were able to access this procedure without hassle at their local public hospital as per the guidelines, our counsellors could concentrate on just that, counselling.

I'm not naive enough to expect that our public system is able to 'take on' all these cases. However, it will mean that women such as S (story below) will not be disadvantaged as they are now.

A recent Children by Choice publication included a minute sample of the many thousands of cases they have dealt with that are a direct result of the lack of publicly available abortion services in Queensland resulting directly from the continued inclusion of abortion in the Queensland criminal code. One story,

S, a woman with a severe and debilitating medical condition, pregnant after being raped by a carer, was refused an abortion in a public hospital, despite her sight being at risk if the pregnancy continued. She had to find hundreds of dollars herself to have an abortion in a private clinic.³

It is this lack of clarity as a result of the continued inclusion of termination of pregnancy in the Queensland Criminal Code that means that women in Queensland find it extremely difficult, if not impossible, to access pregnancy termination in the public system and are therefore relying on a difficult to access, expensive, private system.

2. Existing legal principles that govern termination practices in Queensland;

The 2010 trial of Tegan Leech and Sergei Brennan shows the reality of the continued inclusion of these laws in the Queensland Criminal Code.

Tegan and Sergei were not charged with accessing or administering un-regulated drugs (drugs for medical termination were not widely available in Australia until two years later). Rather, this young couple was charged with procuring an abortion and with the supply of drugs to be used for an abortion. These charges were a direct result of the continued inclusion of abortion in the Queensland Criminal Code.

As has been reported on numerous occasions, video of the initial police interview shows that Tegan and Sergei were so unaware of the fact that procuring an abortion was actually a crime, that they refused the offer of legal representation at their police interview⁴.

³ Children by Choice (2016), 'Submission on the establishment of a Human Rights Act for Queensland'

This is the reality of the inclusion of these laws in the Queensland Criminal Code. Women and their partners who are making informed decisions regarding their health can be charged and imprisoned for doing so.

Indeed, even the prosecution at this trial made reference to the unjust nature of this law,

*... this particular prosecution has generated a large degree of debate in the community concerning the appropriateness of the abortion laws in this State ... the laws are made by others ... if you disagree with them, your chance is at the ballot box to make that known.*⁵

The only reason Tegan and Sergei were found not guilty was because the drugs were proven to be non-toxic to Tegan, not because abortion was against the law. It was clearly agreed by all in that courtroom that section 224 of the Criminal Code made that part of the charge undeniable⁶. Tegan could have gone to prison for 7 years. Sergei for 3.

Argument is sometimes made that section 282 of the Queensland Criminal Code provides adequate protection for clinicians regarding the provision of abortion. However, the continued challenge of public hospitals and clinicians not providing or assessing women for eligibility for abortion shows that clinicians do not feel that s282 provides adequate protection against sections 224 or 226 of the Queensland Criminal Code. It is also worth noting that s282 does not protect women, only clinicians.

There is also concern in the challenge of patients being in a position to access all-options, undirected counselling and service provision.

Children by Choice is a not-for-profit organisation that provides women in Queensland with all-options pregnancy counselling to help facilitate their decision to parent, adopt or terminate an unwanted pregnancy. There are other providers who do not offer all-options counselling, but do not advertise this fact. It is only when these women wish to discuss the option of terminating an unwanted or unviable pregnancy that they are told that the 'counselling' service is unable to help them.

It is of course a moral decision for a clinician to decide whether provision of abortion is something that aligns with their personal values. It is essential that this right be protected. Women have a right to access medical care and doctors and health services not comfortable providing abortion services should be open and upfront about this, and refer women without judgement to a service that can help them.

The recent case of Q in Rockhampton, a 12 year old girl experiencing an unplanned pregnancy who, despite being assessed as appropriate to have an abortion by herself, both her parents, her GP, two gynaecologists, a psychiatrist and a social worker, had to go to the Supreme Court to be able to have an abortion.

⁴ Carlisle, W (2010), 'Abortion on trial in Queensland', Radio National. Available at: www.abc.net.au/radionational/

⁵ Quoted in Carlisle W (2010), 'Abortion on trial in Queensland', available at www.abc.net.au/radionational/

⁶ Ibid.

As Dr Caroline De Costa and Professor Heather Douglas noted when examining the case, the result of abortion law being retained in the Queensland Criminal Code is “increased anxiety and reluctance on the part of doctors to be involved in performing abortions ...”⁷

3. The need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations;

The existing laws in Queensland are considered to be broadly similar to those in Victoria prior to law reform in 2008.⁸

Prior to legislative reform, the Victorian Law Reform Commission report recommended repeal of sections 65 and 66 of the Crimes Act (relating to ‘unlawful termination’ and ‘supply’ of instruments or substances to terminate a pregnancy) as essential to ensure that the ‘law is modernised, clear and widely understood’ and ‘reflects current clinical practice and community standards’.⁹

Queensland and New South Wales are now the only two states in Australia where a woman can be prosecuted for accessing an abortion. New South Wales is also currently considering legislative change.

The addition of mifepristone and misoprostol to the Pharmaceutical Benefits Scheme in 2013 was expected to increase the ability for women to access abortion.¹⁰ Mifepristone is on the World Health Organisation list of essential medicines. While there is great opportunity to use this as a way to increase available access to safe pregnancy termination, particularly for women living in regional and remote areas, in my conversations with GPs who have become authorised providers or who are planning to do so, lack of take-up as authorised prescribers has been very clearly linked to the continued uncertainty regarding the legality of abortion provision among Queensland clinicians.

While strong attitudes of advocacy groups (both pro and anti-choice) tend to dominate public debate around access to abortion, work has been done to document broad community views regarding the legal availability of abortion.

A 2009 poll of over 1000 Queenslanders found that **79% of voters wanted the law changed** so that abortion is no longer a crime.¹¹

⁷ De Costa, C and Douglas H (2016), How the 'Q' case abortion ruling could hurt young Queensland women Available at: <https://www.crikey.com.au/2016/05/02/abortion-ruling-queensland-rockhampton/>

⁸ VLRC (2008), ‘Law of abortion: final report’, Victorian Law Reform Commission, pg 21

⁹ Ibid p5, p7

¹⁰ Taft A (2012) ‘Arrival of RU486 in Australia a great leap forward for women’ available at: <http://theconversation.com/arrival-of-ru486-in-australia-a-great-leap-forward-for-women-9193>

¹¹ Auspoll (2009) quoted at <https://prochoiceqld.org.au/abortionfacts/#opinion>

The Victorian Law Reform Commission report contains results of the analysis of 5 broad studies into public opinion on abortion access:

- The 2003 Australian Survey of Social Attitudes (AuSSA) found that the majority of people (81%) agreed or strongly agreed with a woman's right (rather than the law's right) to choose in regard to accessing abortion. This compares with 9% of respondents who disagreed or strongly disagreed.¹²

Since this data was collected attitudes seem to have moved further in support of a woman's right to choose abortion, with the Christian Research Association reporting that in the 2009 survey the percentage of respondents who disagree or strongly disagree with abortion had dropped to 7.5%.¹³

- The 2004 Australian Election Study found that only 4% of people agreed that abortion should never be allowed under any circumstance.¹⁴
- The Marie Stopes International survey found that 60% of women agreed that women should be able to access an abortion under any circumstance, 30% under some circumstances.¹⁵

The following two studies were included in the VLRC report, despite the report finding that both surveys raised 'concerns about question design'.¹⁶

- The Southern Cross Bioethics Institute survey found a majority of respondents agreed that a woman had the right to choose abortion under any circumstance¹⁷, despite the question being weighted to encourage a negative response.
- Despite the arguably emotive language used to ask individuals if they support 'abortion-on-demand', 60% of respondents in the Australian Federation of Right to Life survey agreed with a woman's right to choose.¹⁸

The report authors found that 'it is reasonable to conclude that approximately half of the population supports relatively open access to abortion services and an additional third supports access within certain limits.'¹⁹

These attitudes are not reflected by the current inclusion of abortion access in the Queensland Criminal Code.

¹² VLRC (2008) pg 58

¹³ Christian Research Association, 'Approaches to abortion and ethical issues', available at www.cra.org.au

¹⁴ VLRC (2008) page 59

¹⁵ VLRC (2008) page 63

¹⁶ VLRC (2008) page 63

¹⁷ VLRC (2008) page 60

¹⁸ VLRC (2008) page 61

¹⁹ VLRC (2008) page 67

4. Legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods; and

I have no legal training and am writing this as an individual so I will leave analysis of legislative and regulatory arrangements to those more learned than myself.

However, I will note that Queensland and New South Wales are the only two remaining Queensland states where a woman can be charged with accessing an abortion.

I also know that **rates of abortion access are not impacted by availability of abortion**, they are impacted by rates of unplanned pregnancy. And that about half of all pregnancies are unplanned. And about half of these unplanned pregnancies are terminated.

That's between 10,000 and 14,000 women in Queensland each year who are breaking the law.

It was not surprising to see the old 'women will be able to have abortions right up to 9 months' headline pulled out by anti-choice groups as soon as Mr Pyne presented this bill to Parliament.

The counsellors at Children by Choice inform me that in their experience talking with women about termination of pregnancy, those who contact them to discuss accessing abortion past the first trimester are usually doing so as a result of a diagnosed fetal abnormality or other such traumatic diagnosis or experience.

This anecdotal experience is backed up by data collated by the Australian Institute of Health and Welfare which found that:

- **94.5% of abortions occurred before 13 weeks gestation**
- 4.7% occurred after 13 weeks but before 20 weeks
- Just .7% occurred after 20 weeks.²⁰

5. Provision of counselling and support services for women.

No woman desires having an abortion. We just don't. But if we do choose to terminate a pregnancy, the ability to access supportive, non-directive and non-judgemental counselling is essential.

There are currently organisations operating in Queensland who deceptively advertise they provide 'pregnancy counselling'. When women contact these services they discover that these organisations do not offer the non-directive and non-judgemental counselling services they have advertised as offering, instead they offer anti-choice counselling.

²⁰ AIHW quoted in VLRC page 36

An example of the experience of one woman contacting an anti-choice organisation can be found on the Children by Choice website here: <http://www.childrenbychoice.org.au/working-for-change/anti-choice-pregnancy-counselling>

While I believe it is important that any woman considering pregnancy termination is offered the ability to access supportive, non-directive and non-judgemental counselling, particularly if abortion is being considered in relation to a diagnosed fetal abnormality, I do not believe it should be compulsory. Women have the ability to make their own moral judgements about what is best for them at the time. If they do not feel they need assistance in making a decision, then it should not be forced upon them.

Children by Choices is a pregnancy counselling service committed to providing unbiased information on all unplanned pregnancy options – abortion, adoption and parenting.

We receive funding from the Queensland Department of Communities to provide counselling and support services and education regarding unplanned pregnancy.

Our core activity is the provision of counselling for women considering their options in relation to an unplanned pregnancy.

With no increase in funding, demand on our services has increased enormously in recent years. Most months the Management Committee receives reports from staff that demand for the previous month has exceeded all previous records. Requests for financial assistance to access abortion via private providers is also higher than ever before. This demand is being driven by many factors including an increased likelihood for women experiencing domestic violence to ask for help (women experiencing domestic violence are more likely to also experience unplanned pregnancy). The counsellors also tell me that the complexity of the cases that they are dealing with is increasing significantly. It is these women who would benefit the most to a change in our laws.

With more and more women needing to access our services to make an informed decision regarding their pregnancy options, removal of abortion from the Queensland Criminal Code would significantly increase access to termination of pregnancy services for women in Queensland. The immediate result of this for our organisation would be our counsellors being able to spend more time providing valuable counselling services and less time calling around trying to fund provision of abortion services for our most vulnerable women.

Thank you for your thoughtful consideration of my submission.

Lorraine

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