**Barbara Baird**
**Associate Professor**
Discipline of Women's Studies

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

*Author's credentials*

I am an academic researcher who has been investigating the past and present provision and experience of abortion in Australia for over twenty-five years. My work has been published in international academic History journals, Women's Studies/Gender Studies journals and Public Health journals. My current research project is investigating the provision of abortion services in Australia since 1990. As well as conducting extensive research into primary and secondary documents I have conducted about thirty oral history interviews with 'key insiders' in each jurisdiction. I have spoken with doctors and other health professionals, managers in health centres and abortion clinics, and advocates and activists. I have thus far published only two articles from the project thu- one about doctors who provide terminations of pregnancy and the other about the history of medical abortion in Australia. [1] I am aiming to publish a book that tells this history of change and continuity over the last twenty five years.

[1] Baird, Barbara. "'Happy Abortionists' Considering the Place of Doctors in the Practice of Abortion in Australia since the Early 1990s." *Australian Feminist Studies* 29.82 (2014): 419-434; Baird, Barbara. "Medical abortion in Australia: a short history." *Reproductive health matters* 23.46 (2015): 169-176.

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*Time for change*

It has not come as a surprise to me that a bill to remove abortion from the Queensland Criminal Code is before the Queensland parliament. One of the most significant changes regarding the provision of abortion in Australia since the late 1990s has been the move to decriminalise abortion. The nationwide move in this direction is gathering momentum. As is noted in the Information Paper about this matter provided on your website Western Australia (in 1998), the ACT (in 2002), Victoria (in 2008) and Tasmania (in 2013) have all partially or completely removed abortion from the criminal law. Debate on a liberal abortion law reform bill in the NT parliament, proposed by the Speaker Ms Kezia Purick, has adjourned, and it assumed that it will resume after the coming election. Dr Mehreen Faruqi, member of the NSW upper house, has proposed a bill to remove abortion from the criminal code in that state. Tasmania, the ACT and Victoria have also in recent years adopted exclusion zone legislation which protects abortion clinics from harassment by protesters.

That is, the bill before the Queensland parliament is not striking new ground; it is moving the state in the same direction that has been adopted, and is being sought, in several other Australian jurisdictions. Public opinion among Queenslanders supports this move. [2] The Royal Australian and NZ College of Obstetricians and Gynaecologists' (RANZCOG) 2016 College Statement on termination of pregnancy is relevant here: 'Uniformity and clarity of legislation would benefit both health practitioners and the women for whom they care.' (https://www.ranzcog.edu.au/college-statements-guidelines.html#gynaecology)

[2] Betts K. Attitudes to abortion: Australia and Queensland in the twenty-first century. *People and Place*;17(3): 2009 16
25-39.

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*What policy objectives should inform the law governing termination of pregnancy in Queensland?*

The law governing abortion in Queensland should be framed by the principles that apply to all other necessary health care services. Timely access to safe and affordable abortion should be facilitated by government policy with respect to differences among women eg geographic location, age, socio-economic background, cultural background, so as to avoid inequality. A sustainable well trained abortion care workforce should be a matter for government interest and facilitation. Law or policy should not obstruct the best practice provision of abortion care. RANZCOG 's 2016 statement is helpful: 'Access to termination services should be on the basis of health care need and should not be limited by age, socioeconomic disadvantage, or geographic isolation. Equitable access to services should be overseen and supported by health departments in each jurisdiction, in the same way it is for other health services'.

*What legal principles should inform the law governing termination of pregnancy? What factors should be taken into account in deciding if a termination of pregnancy is lawful?*

Termination or pregnancy should be governed by the same legal principles as all other health care. Currently abortion is singled out in law, and in provision. Despite its commonality as a healthcare service that women need, it is not currently provided by the public health system in Queensland. This exceptionalism does not facilitate best practice nor equitable access. The removal of reference to abortion in the criminal law would be one significant step in ensuring that Queensland women have access to the best possible sexual and reproductive health care.

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Health care is already a highly regulated area of contemporary Australian life – and appropriately so. We expect the best care and need to know that law and government policy ensure this. The provision of abortion services is already regulated with respect to the suitability of premises, clinical guidelines, and the availability of pharmaceuticals, to name just a few dimensions. The need for patients to give informed consent is a matter subject to High Court ruling as well as professional codes.
There is no need to continue or create anew any law or regulation that singles out the termination of pregnancy from other health care services.

*Should termination of pregnancy be regulated according to the period of gestation?*
I do not support the regulation of termination of pregnancy according to the period of gestation. I support the pregnant woman's autonomy with respect to decision-making about the continuation or not of her pregnancy, regardless of the stage of gestation.

It should be noted that the absence of legal regulation with respect to the point in gestation when an abortion is performed (eg in the ACT), or the presence of liberal legal regulation with respect to gestational stage (eg SA, Victoria, Tasmania) does not mean that abortions are performed in any great number at later stages of gestation in these jurisdictions. This is because most women who seek abortions do so early in their pregnancy. According to the Victorian Law Reform Commission's report 94.6% of abortions in Australia are performed before 13 weeks, 4.7% after 13 but before 20 weeks, and 0.7% after 20 weeks (Victorian law Reform Commission 2008 p. 36, http://www.lawreform.vic.gov.au/all-projects/abortion). About half of all abortions performed after 20 weeks in SA are for reasons of 'foetal abnormality'

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(Pregnancy Outcome in South Australia 2011 www.sahealth.sa.gov.au/pregnancyoutcomes). (Statistical information about abortion in Australia is not collected uniformly from state to state and there is no one totally comprehensive national collection of date. SA is generally regarded as having the most comprehensive and reliable statistics).

In Australia termination is thankfully a very safe process and it is safest when performed early in pregnancy. It is also safe when conducted later in pregnancy but there are more considerations for the woman's health that must be taken into account the later in pregnancy a termination is performed. The expert knowledge of the medical practitioners and other health professionals who assist her must of course be considered in any given case, as should their general knowledge about the circumstances.

The RANZCOG's view on later term termination of pregnancy is of interest in this regard. Their 2016 statement on Late Termination of Pregnancy says 'RANZCOG strongly supports the availability of a legal late termination of pregnancy for those women in the rare circumstances where it is clinically unreasonable to compel decisions around termination of pregnancy at an earlier gestation' (https://www.ranzcog.edu.au/college-statements-guidelines.html#gynaecology). Ironically, their statement refers to the circumstances where conclusive diagnoses of possible 'foetal abnormality' are not available until late in the second or the third trimester and allowing for termination of pregnancy at this later stage actually avoids the pressure to have an termination at an earlier stage. The 'abnormality' may be suggested but it may not eventuate and without the legal or regulatory pressure to abort early the pregnancy can continue in the hope that the 'abnormality' will not eventuate – but can be aborted if it does.

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The workings of the WA reformed law of 1998 are relevant as a *negative* example for the Queensland case. Under the 1998 law women who are more than 20 weeks pregnant must present their case to a panel of doctors. Very few terminations for women more than 20 weeks pregnant have been performed in that state under this law and nearly all have been for severe 'foetal abnormality'. Working within this law has caused inequities: women in country areas often have delayed access to specialist services which would diagnose foetal abnormality and so may present later than their metropolitan peers, sometimes too late to access an abortion; relatedly women who receive diagnosis of a 'foetal abnormality' at 18 or 19 weeks, or who otherwise wish to consider an abortion at this point, perhaps because of relationship breakdown or partner death or late discovery of pregnancy, experience undue pressure to decide if they are to avoid the limited framework of the panel. Several people to whom I spoke in WA knew of women who were more than 20 weeks pregnant who had been denied abortions in WA who then travelled to Victoria to the only private clinic in the country where abortions are performed up to 24 weeks. This is an undue burden on them but also an option not available to women without the financial and personal means to travel.

Given the small number of abortions that are performed after 20 weeks it must be understood that the circumstances which lead women to seek them are rare and particular, and sometimes extreme. These women should be treated with respect and compassion and women should not be denied the opportunity to direct their own future because of blanket laws or regulations about gestational stage. The absence of legal or regulatory reference to gestational limit avoids unfair arbitrary distinctions based on assessment that can hinge on a matter of days and enables women and their health care professionals to make decision based on the individual circumstances of each woman's life.

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*Should Queensland provide for conscientious objection by health providers?*
Both the Victorian and Tasmanian reformed law include provisions to deal with the conscientious objection to abortions. The Victorian legislation is, in my opinion, the better legislation because it takes better care to ensure that a patient's access to an abortion is not unduly delayed or impeded because of a doctor's objection. The Australian Medical Association's (AMA) position statement, *Conscientious Objection 201*3, is similarly a helpful point of reference for the Queensland debate. (https://ama.com.au/position-statement/conscientious-objection-2013). While the Victorian and Tasmanian legislation and the AMA's position recognise a doctor's right to refuse to perform a procedure to which they have a moral objection, unless it is in an emergency situation, all expect the doctor to inform the patient of their position as soon as possible, and make sure that they have sufficient information to seek their desired treatment elsewhere and that they are treated with respect.

*What counselling and support services should be provided for women before and after a termination of pregnancy*
Most women do not need counselling in order to make their decision to have an abortion. Those that do should have access to expert, non-judgemental and women-centred counselling services. These can be provided either by the abortion clinic or by a separate agency. Agencies like Children by Choice, or women's health centres, or Family Planning centres, should be supported by state government funding to offer women free pre and post termination counselling. Public hospitals should also be able to offer such counselling.

Yours sincerely

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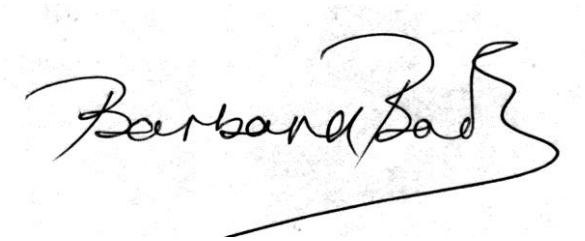

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