

Protecting Queensland's individual rights and liberties since 1967

*Watching Them While They're Watching You*

Research Director  
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**By Email: [abortionlawreform@parliament.qld.gov.au](mailto:abortionlawreform@parliament.qld.gov.au)**

Dear Madam/Sir

**Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland**

The QCCL welcomes this Bill and the debate which it is generating.

The Bill, if passed, would decriminalise all abortions in this state.

The QCCL argues that changes need to be made to the law to achieve these ends: -

1. A better balance of the competing rights of the woman and the rights of the foetus;
2. To remove uncertainty in the current law that discriminates against women, especially economically disadvantaged women, who do not have access to health care services.

Many members of our organization, like a large majority of Queenslanders, believe that abortion should be legal, and a matter between a woman and her doctor. But we recognise the political reality that others, including some MPs, hold very different views, and this Bill which allows unrestricted abortion on demand may not command majority support in this House.

The QCCL policy is to support the adoption in Queensland of the Victorian model, which was introduced into that State in 2008.

The Victorian model introduced after a Law Reform Commission report completely decriminalises abortion up to 24 weeks. After 24 weeks abortion is legal where two medical practitioners agree it is appropriate in the all circumstances.

[qccl.org.au](http://qccl.org.au)



[@LibertyQld](https://twitter.com/LibertyQld)

GPO Box 2281, Brisbane QLD 4001 [forum.qccl@gmail.com](mailto:forum.qccl@gmail.com) Enquiries: 0409 574 318

Media Enquiries: Michael Cope, President: 0432 847 154

## **Uncertainty of the Present Law and its Consequences**

Despite the 1986 District Court ruling in *R v Bayliss & Cullen* and similar judicial interpretations in other jurisdictions, the law remains uncertain. Women and health professionals still risk prosecution under such an uncertain law. Such uncertainty in the law is objectionable as a matter of legal and social policy. It has bad consequences. It means that only a few private clinics are prepared to operate in an environment of legal uncertainty. Pregnancy termination services are available in only a few private clinics, mostly in South East Queensland, with only 1% provided in public facilities. Women in rural, regional and remote areas are restricted in gaining access to such services. This state of affairs discriminates against economically disadvantaged women, many of whom are unable to afford the cost of termination of pregnancy services in private clinics. The restriction on pregnancy terminations to private clinics limits the training of health service providers and further diminishes the availability of safe pregnancy termination health services.

The uncertainty in the law, and its serious and discriminatory consequences for economically disadvantaged women, should be removed. This will extend the availability of health services to all Queensland women, including access to abortions permitted under present laws, and make the law more certain in its operation to the benefit of women and health professionals.

## **Background**

In 1980, the QCCL developed a policy on abortion in line with the 1973 U.S. Supreme Court decision in *Roe v Wade*. In effect, with this ruling the duration of the pregnancy was to be the criterion by which access to abortion is limited.

This policy does not view the abortion issue as involving an inevitable choice between the so-called "Right to Life" and a policy of "Abortion on Demand". It also has the virtue of clearly identifying what interests are at stake, and does not adopt any one theory of life.

Existing Queensland laws do not embody such an approach in clearly defining and balancing competing interests. Nor do they reflect the status of women in Queensland or Australia's legal obligations under the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), or current public opinion and medical practice in Australia.

The CEDAW Convention has been ratified by the Commonwealth and relevant laws are expected to give meaning to its principles. Ratification of the convention assumes the availability of abortion services to women in the ratifying country under Article 12

According to the Victorian Law Reform Commission *Law of Abortion - Final Report* at paras 3.11 and 3.12 the rate of abortion cannot be predicted by the restrictiveness or otherwise of legislation concerning it. Rather the rate of abortion is related to the rate of unplanned pregnancy and the availability and use of contraception.

## **Competing Rights**

The Council acknowledges that the unborn foetus has certain rights that should be recognised, but submits they are less important than a born person's human rights. According to the foetus the same or greater rights than the woman concerned, especially in the early stages of a pregnancy, inhibits the exercise of the woman's rights under the U.N. Universal Declaration of Human Rights 1948.

QCCL submits that it is the duration of the pregnancy that should be the defining factor governing the availability of abortion, because this criterion is consistent and defensible.

The State has a legitimate interest in safeguarding women's health and therefore laws permitting abortion should be reformed in order to ensure that every woman, anywhere in the State of Queensland, who desires to terminate an unplanned/unwanted pregnancy has prompt, dignified, humane access to medically safe abortion.

The State also has a legitimate interest in safeguarding the interests of a foetus after it is viable. The interests of the foetus at this stage maybe protected, and balanced against the interests of the woman.

In other cases, the interests of the woman should prevail over the interests of the foetus.

A policy which pays some respect the fact that the foetus has become viable is more likely to gain acceptance.

### **Abortion and Health**

Abortion is a health service that should be provided to the public with the same standards of safety, effectiveness and regard to patient rights as any other health service.

Services must reflect current research and practice. Abortion services are an integral part of primary health care and family medicine and accordingly should be provided along with family planning and education programmes that help prevent unplanned/unwanted pregnancies from occurring.

Operations or medication to terminate pregnancy as with other contraceptive practices, should be subject to the same legal constraints as any other medical procedure. These are that the procedure must be performed by, or under the supervision of, a suitably qualified person and the patient must give their consent to any treatment or operation and have a full understanding of it and any risks involved.

With the development of the Abortion Pill RU486, women are entitled to choose this safer method. The W.H.O. recommends that in the health interests of women it be made available worldwide. This method of abortion is cheaper and less invasive than surgical abortion and is the method of choice by women. RU486 should be made available to all doctors and hospitals throughout Queensland, including the 'Flying Doctor Service'. In Queensland, this will reduce the need for unnecessary expense and travel to the few available services in Queensland.

### **Public Opinion**

The QCCL acknowledges that in our pluralist society there are different views about abortion and in keeping with its general philosophy wishes to make clear its tolerance of these views and the right of people to hold them.

However public opinion across Australia over the last 20 years has consistently shown support for a law that recognises the right of a woman to make the decision about abortion [in consultation with her doctor when necessary]. These range from 66% for repeal of laws - AGB McNair Brisbane 1990: 85% [early in pregnancy] - AGE 7/12/87] to 64% - Courier Mail Dec. 1995] Who supports legal abortion?

The 2003 Australian Survey of Social Attitudes (AuSSA) found that 81% of those surveyed believed a woman should have the right to choose whether or not she has an abortion.

### **The Significance of the First Twenty Four Weeks of Pregnancy**

United Nations and European practice sets the cut off at 20 weeks decriminalising 90% of abortions

With the availability of modern abortion practice, an abortion in the first half of pregnancy is safer for the pregnant woman than proceeding with that pregnancy. According to the Victorian Law Reform Commission-*Law of Abortion - Final Report* only .7% of abortions occur after 20 weeks – para 3.36

In addition, a high percentage of spontaneous abortions occur in early pregnancy, and that these foetus are not officially accorded anything like the status of a person until they have been 20 weeks in gestation

The argument against 20 weeks was well put by obstetricians who spoke to members of the Council's executive in 2010. They made the point that from the practical point of view a 20 week period would

cause great difficulty because the final scans during pregnancy are taken at about 19 or 20 weeks and if they revealed a serious abnormality that would put enormous matter pressure on the women to make up their minds.

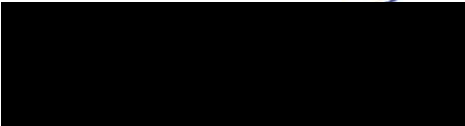
In paragraph 3.63 of its report the Victorian Commission noted the concern that a limit of lower than 20 weeks would not allow time for appropriate decisions to be made after routine testing which occurs around 20 weeks.

### **Recommendation**

Taking into account the practical issues raised in the proceeding to paragraphs, it is our submission that the Victorian model represents an appropriate balancing of the rights of women and the more limited rights of the foetus. We commend it to this Committee and House.

While there might not be consensus on the abortion issue, a substantial majority of Australians support the right of women to make their own abortion decision, especially early in the pregnancy. The Council submits that Queensland law should reflect this reality, and also give recognition to changes in women's lives and their status in modern Australia.

Yours faithfully



Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
27 June 2016