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Public Health Association
AUSTRALIA

# Public Health Association of Australia submission on Abortion Law Reform in Queensland

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
abortionlawreform@parliament.qld.gov.au

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## The Public Health Association of Australia

The Public Health Association of Australia Incorporated (PHAA) is recognised as the principal non-government organisation for public health in Australia and works to promote the health and well-being of all Australians. The Association seeks better population health outcomes based on prevention, the social determinants of health and equity principles.

The PHAA is a national organisation comprising around 1800 individual members and representing over 40 professional groups concerned with the promotion of health at a population level. This includes, but goes beyond the treatment of individuals to encompass health promotion, prevention of disease and disability, recovery and rehabilitation, and disability support. This framework, together with attention to the social, economic and environmental determinants of health, provides particular relevance to, and expertly informs the Association's role.

Key roles of the organisation include capacity building, advocacy and the development of policy. Core to our work is an evidence base drawn from a wide range of members working in public health practice, research, administration and related fields who volunteer their time to inform policy, support advocacy and assist in capacity building within the sector. The PHAA has been a key proponent of a preventive approach for better population health outcomes championing such policies and providing strong support for the government and for the Preventative Health Taskforce and National Health and Medical Research Council (NHMRC) in their efforts to develop and strengthen research and actions in this area across Australia.

The PHAA has Branches in every State and Territory and a wide range of Special Interest Groups. The Branches work with the National Office in providing policy advice, in organising seminars and in mentoring public health professionals. This work is based on the agreed policies of the PHAA. Our Special Interest Groups provide specific expertise, peer review and professionalism in assisting the National Organisation to respond to issues and challenges as well as a close involvement in the development of policies. In addition to these groups the Australian New Zealand Journal of Public Health draws on individuals from within the PHAA who provide editorial advice, review and who edit the Journal.

In recent years the PHAA has further developed its role in advocacy to achieve the best possible health outcomes for the community, both through working with all aspects of government and promoting key policies and advocacy goals through the media and other means.

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# Submission on abortion law reform in Queensland

The Public Health Association of Australia welcomes the proposed legislation. Our position on abortion is described in the PHAA abortion policy, provided in Appendix A.

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

**Equity** and **access** should be central in all law governing termination of pregnancy in Queensland.

The current law in Queensland is based on laws of the United Kingdom and Ireland from the nineteenth century. Although subsequent amendments have been made to allow for circumstances where an abortion would be considered lawful, these amendments have not kept up with advances in medical practices, community expectations, or attitudes towards women recognising their competence to make their own decisions. Furthermore, the current legislation and case law have created uncertainty among women and doctors about how the law works in practice. The threat of criminal prosecution acts as a deterrent to women and doctors alike, impeding the provision of a full range of **safe, accessible and timely** reproductive services for women.

Currently in Queensland, few women access terminations through public hospitals. The 2013 Queensland Health Maternity and Neonatal Clinical Guideline for the Therapeutic Termination of Pregnancy obligates hospitals to assess women presenting for termination to determine their eligibility for a procedure, recognising that termination of pregnancy is lawful where there is a serious risk to the woman's physical and/or mental health if the pregnancy continues.[1] However, varying degrees of implementation of the Guideline in public hospitals mean that most women in Queensland access abortion through a private day surgery with high out-of-pocket costs. Financial access is a particular issue for vulnerable groups, such as those who are young, financially disadvantaged, or living in rural or remote areas. Furthermore, most of the ten private clinics that offer abortion services in Queensland are situated in the southeast corner of the state. The lack of access to services causes difficulty, inconvenience and cost (of travel, accommodation, child care, and loss of income) for those in other areas. The availability of medical abortion using mifepristone (commonly known as RU486) and misoprostol through some GPs has helped to alleviate the regional disadvantage to a small degree. However, medical abortion is only available up to nine weeks gestation, and requires women attending a follow-up appointment with their provider two weeks later. Women who cannot afford the costs of a surgical or medical abortion and other incidental costs cannot access safe and legal termination services and are then faced with continuing an unwanted pregnancy.

## *2. What legal principles should inform the law governing termination of pregnancy?*

PHAA believes that all reference to abortion should be removed from the criminal laws. Abortion should be regulated, as are all other medical services, under existing health care legislation – there is no case for singling out the abortion procedure in any area of legislation. The regulation of abortion

[1] State of Queensland (Queensland Health) 2013. Queensland Maternity and Neonatal Clinical Guideline: Therapeutic termination of pregnancy. www.health.qld.gov.au/qcg/documents/g-ttop.pdf

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services should be informed by considerations of **autonomy** and **informed consent**, which acknowledge a woman's right to control all aspects of her own health, and in particular, her own fertility. Decisions about whether to have children, the number of children and the spacing of children all impact on a woman's education, work and other life goals.[2]

## 3. What factors should be taken into account in deciding if a termination of pregnancy is lawful?

The only factor that should be taken into account in deciding if a termination of pregnancy is lawful is **consent** of the woman. This will ensure that women have the right to choose, and are not dependent on the views of doctors or others.

A number of groups oppose any abortion based on their moral values. These groups are entitled to their values, but alternative views should be respected. The decision making process around this issue is complex and the scenario is different for every woman. It is the woman herself who should have the right to decide whether or not to terminate a pregnancy.

## 4. Should termination of pregnancy be regulated according to the period of gestation? If so, how should the law apply to particular gestational periods?

It is important to note that terminations after 20 weeks are rare, occurring in only 0.7% of cases[3]. Such terminations occur in exceptional circumstances such as foetal abnormalities observed on the 20 week ultrasound scan. Decisions to abort a pregnancy at a late stage are made in close consultation with medical practitioners.

Theoretically there does not need to be a different regulation for termination after a certain period. The determination of gestational cut-offs is somewhat arbitrary, impedes generally on a women's right to choose, might lead to continuing controversy and might require further legislative review with evolving medical technology. Gestational limits may lead to rushed decisions because women are advised that if they do not make a decision before the limit that they will lose the ability to make the decision.

## 5. Should the law in Queensland provide for conscientious objection by health providers?

There is a general expectation that healthcare providers will provide medical services. Clauses in some Australian states and some international situations excuse people from providing services when they have strong religious or ethical objections to the practice. It is essential that any such clause applies only in non-emergency situations (for example, that it not apply to save the life of the pregnant woman), and does not apply to treating the results of an abortion (for example, providing after-care for women who have had abortions). If a healthcare provider has a conscientious objection to providing abortion services, it is essential that they make an **effective referral** to another healthcare provider to ensure equity of access.

[2] Cannold, L. (1998). *The Termination Myth: Feminism, Morality and the Hard Choices Women Make*. Wesleyan University Press, referencing Faludi, S. (1992) *Backlash: The Undeclared War against Women*. Vintage.
[3] Victorian Law Reform Commission (2008). *Law of Abortion: Final Report*. Melbourne: Victorian Law Reform Commission.

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## 6. What counselling and support services should be provided for women before and after a termination of pregnancy

Good quality, non-directive, voluntary counselling that includes all options including abortion should be available to all women as part of a comprehensive reproductive health strategy. However, it is essential that counselling requirements are not used with the aim of limiting women's access to abortions, as has occurred in some jurisdictions overseas. If a woman has already reached a decision, by definition she does not need to receive support to make a decision. Trying to force such a service upon her would violate her **dignity, autonomy and consent**; this also goes against the professional standards of the Psychotherapy and Counselling Federation.[4]

It is important to also note that terminations are not associated with subsequent mental health issues, which some anti-choice activists have asserted in an attempt to direct mandatory counselling. Analyses of the Australian Longitudinal Study on Women's Health[5] and a 2009 review of all international literature[6] concluded that terminations are not a risk factor for psychiatric illness when good quality research, which takes into account psychiatric history, violence exposure, social support, personal characteristics and circumstances at the time of termination, barriers to access and other influences on mental status, is examined. This conclusion is also consistent with the findings of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists in its review of 72 studies and 27 review articles concerning the psychological consequences of terminating pregnancy.[7] The review concluded that legal and voluntary termination of pregnancy rarely causes immediate or lasting negative psychological consequences in healthy women.

## 7. Other aspects of the Bill and the terms of reference

PHAA urges the committee to consider including in the Bill legal safeguards to protect patients and staff from harassment by anti-choice activities. This abuse affects women's access to services, privacy and safety. **Safe access zones** that make it illegal to harass people, impede their access, or film people without their consent, ensure a safe environment for patients to access health care facilities and for staff to be able to carry out their jobs free from intimidation and violence. In Victoria, the Public Health and Wellbeing Amendment (Safe Access Zone) Bill 2015 established a 150 metre zone established around hospitals, GP clinics and health services that perform abortions, making it an offense to engage in behaviour that harasses or intimidates women seeking to access an abortion and their families. Providing such zones does not restrict people's right to protest, merely restricts the location of protests, in order to protect women accessing termination services and health professionals performing their clinical roles.

[4] Psychotherapy & Counselling Federation of Australia (2015). *Interim Code of Ethics*. http://www.pacfa.org.au/wp-content/uploads/2014/04/Interim-Code-of-Ethics-2015.pdf
[5] Taft AJ and Watson L (2008). "Depression and termination of pregnancy (induced abortion) in a national cohort of young Australian women: the confounding effect of women's experience of violence." BMC Public Health 8(75).
[6] Robinson GE, Stotland NL, et al. (2009). *"Is there an "Abortion Trauma Syndrome"? Critiquing the Evidence."* Harvard Review of Psychiatry 17(4): 268-290.
[7] Royal Australian and New Zealand College of Obstetricians and Gynaecologists. *Termination of pregnancy: a resource for health professionals.* East Melbourne, Australia: RANZCO, 2005.

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## Conclusion

PHAA supports the proposed legislation. Under the current legislation there is a fear of criminal charges for medical practitioners and for patients, which has occurred in a recent high profile case in Queensland. The current legislation creates ambiguity and adversely affects access to termination services. It is hoped that the new legislation will overcome the current ambiguity and will protect both medical practitioners and patients.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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## *Appendix A. PHAA Abortion Policy*

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**Public Health Association of Australia: Policy-at-a-glance – Abortion Policy**

**Key message:**

1. Rates of unplanned pregnancy and abortion could be reduced by increased education, fertility awareness, uptake of effective contraception and respectful relationships. This may be assisted through a comprehensive national sexual and reproductive health strategy.
2. While the primary public health goal in the area of unintended pregnancy is prevention, even with good prevention strategies abortion services will always be needed.
3. Abortion is a common part of many women's reproductive experience with one quarter to one third of all Australian women having an abortion at some point in their life.
4. In the Australian setting, abortion is an extremely safe procedure. Internationally, access to safe, legal abortion significantly reduces maternal mortality.
5. Abortion should be regulated in the same way as other health procedures, without additional barriers or conditions. Regulation of abortion should be removed from Australian criminal law.
6. States and territories should actively work toward equitable access (including geographic and financial access) to abortion services, with a mix of public and private services available.

**Summary:** Abortion is a safe, common medical procedure which should be regulated in the same way as other medical procedures. Both medical and surgical abortion should be included in health service planning.

**Audience:** Australian, State and Territory Governments, policy makers and program managers.

**Responsibility:** PHAA's Women's Health Special Interest Group (SIG)

**Date policy adopted:** September 2014

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# ABORTION POLICY

***The Public Health Association of Australia notes that:***

1. Access to safe, legal abortion is essential to optimal reproductive health outcomes and to minimizing maternal morbidity and mortality globally[1].

2. The primary public health goal in the area of unintended pregnancy is prevention. Improved access to and uptake of contraception is associated with lower rates of unintended pregnancy and abortion[1].

3. Even with good access to and uptake of contraception, there will always be a need for abortion services. Contraceptive failure, sexual violence and other factors can lead to unintended pregnancies[1] while new or progressing maternal illness or diagnosis of fetal anomaly or illness may lead to consideration of abortion in intended pregnancies.

4. When performed by skilled providers using correct medical techniques and drugs, and under hygienic conditions, particularly if performed within the first 14 weeks of pregnancy, induced abortion is a very safe medical procedure[1].

5. Abortion is one of the most commonly performed gynaecological procedures with an estimated 25-30% of Australian women having an abortion at some stage in their lives[2].

6. The registration in 2012 of therapeutic agents capable of medically (as distinct from surgically) inducing abortion presents an opportunity to develop service models which may improve geographic and economic access to abortion, particularly early abortion.

7. There are good quality comprehensive evidence based guidelines to support abortion service delivery[3].

8. While there are diverse views on many aspects of abortion, the majority of Australians support of women's access to safe, legal abortion[4].

9. There is a lack of systematic data collection on abortion in Australia[5].

10. The law pertaining to abortion is still located in the criminal statutes and codes in some states and territories[6]. This creates uncertainty and places women and health professionals at risk of criminal sanctions for obtaining or delivering health care.

11. Australian and international experience shows that removing legal barriers to abortion does not affect abortion rates7.

12. Laws which criminalise and/or restrict abortion are not associated with lower abortion rates, but are associated with higher maternal mortality and unsafe abortion rates internationally1,6.

13. Internationally, barriers to safe and timely abortion may include legal restrictions, inability to pay, lack of social support, delays in seeking health-care, providers' negative attitudes, and poor quality of services. These barriers may be particularly pronounced

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for young women and for women experiencing violence, resulting in abortion being accessed later than would otherwise be the case[1].

***The Public Health Association of Australia affirms the following principles:***

14. A comprehensive sexual and reproductive health strategy8 can be expected to deliver the best health outcomes by addressing elements including:
    - school-based education for safe, respectful relationships
    - increasing health literacy with respect to contraception and prevention of unintended pregnancy
    - a social determinants framework which takes account of factors such as partner violence and access to financial resources
    - service development and planning which ensures equitable access to good quality services
    - workforce development for health professionals, educators and others
    - monitoring, evaluation and research

15. The criminal law is an inappropriate vehicle - both in principle and practice - for regulating the provision of abortion.

16. Increasing gestation increases the complexity and risks of abortions as well as the costs to women and to the health system: therefore timely and affordable access to abortion services is extremely important.

17. Both medically and surgically induced abortion should be available throughout Australia including in rural and remote regions where geographical distance and limited services often hinder health care provision.

18. Australian overseas aid should support the provision of pre and post abortion care and abortion provision where appropriate.

***The Public Health Association of Australia believes that the following steps should be undertaken by legislators, policymakers, funding bodies and health services:***

19. Organisations should support and collaborate in the development of a comprehensive national sexual and reproductive health strategy.

20. Organisations working at public health and individual health care levels should address fertility control and informed decision making. This should include education and information about access to abortion services and choice of method where available.

21. Women should be supported at both individual and population levels in their right to choose the fertility control options that are most appropriate to their individual circumstances and without coercion.

22. Research, training and workforce development should be adequately funded, as for other areas of health practice, to promote evidence based quality care, adequacy of and access to service provision and service improvement.

23. Regulation of abortion should be removed from the criminal laws and codes of the States and Territories of Australia. Abortion should be regulated, as are all other medical services, under existing health care legislation.

24. Barriers and restrictions to access such as requirements for multiple opinions or mandated counselling should not be applied through legislation, regulation or policy. Care should be delivered in accordance with evidence based standards of best practice and informed consent.

25. Abortion services should be included in service planning for all state and territory health authorities

26. Service development and funding arrangements should increase access to medically induced abortion in the interests of improving access to earlier abortion and increasing women's capacity to choose the care most appropriate to their circumstances. This is especially important in rural and remote areas where surgical abortion is not readily available.

27. A mix of private and public services should be available in all jurisdictions as for other reproductive health services; adequate public services must be available for women experiencing financial disadvantage and limited access, so that cost is not a barrier to access.

28. Routine, complete and systematic data collection on abortion should be implemented in Australia to increase understanding of how services may be improved, including how to improve strategies to reduce unintended pregnancies.

29. Medicare rebates for abortion procedures should be sufficient to prevent cost presenting a barrier to access.

30. Counselling offered to women considering abortion should always be non-judgmental, professional and provide advice on all options including referral pathways.

31. Abortion service providers should always offer optional, comprehensive pre and post-abortion counselling.

32. Any health professional with a conscientious objection to personal participation in abortion care should inform their patients of this and refer patients wanting to consider or discuss abortion to another health professional without such objection (this does not have to be an abortion service provider). Registration, professional and educational bodies should reinforce this responsibility.

33. Legal protection should safeguard clients and staff of legal abortion services from harassment.

***The Public Health Association of Australia resolves to undertake the following actions:***

34. The Board, Women's Health Special Interest Group and State/Territory Branches of the Association will endeavour to keep federal, state and territory members of parliament aware of the importance to health of safe affordable accessible abortion services and the adverse health consequences of restriction of access. They will advocate for:

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- The development of a comprehensive sexual and reproductive health strategy, addressing the domains identified in the Melbourne Proclamation[9] and the Association's earlier call to action and sexual and reproductive health background paper[10]
- the removal of abortion from criminal codes in all states and territories and the treatment of abortion as a health issue in legislation and regulation
- the availability of abortion within public health services with equivalent quality of care and equity of access to other health services
- improved timely access to safe appropriate abortion procedures, both medical and surgical, for Australian women, especially those experiencing disadvantage.

**ADOPTED 1989, REVISED AND RE-ENDORSED IN 1996, 2005, 2008, 2011 & 2014**

First adopted at the 1989 Annual General Meeting (AGM) of the Public Health Association of Australia (PHAA). Revised and re- endorsed at the 1996, 2005, 2008, 2011 & 2014 PHAA AGM.

References

[1] WHO (2012) Safe abortion: technical and policy guidance for health systems – 2nd ed. http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/

[2] Royal Australian and New Zealand College of Obstetricians and Gynaecologists (2005) Termination of Pregnancy A Resource for Health Professionals, p.5 https://www.ranzcog.edu.au/termination-of-pregnancy-booklet.html

[3] Royal College of Obstetricians and Gynaecologists (2011) The Care of Women Requesting Induced Abortion: Evidence-based Clinical Guideline Number 7 http://www.rcog.org.uk/files/rcog-corp/Abortion%20guideline_web_1.pdf

[4] Victorian Law Reform Commission (2008) *Law of Abortion Final Report.* Victorian Law Reform Commission, Melbourne: pp 57-68 http://www.lawreform.vic.gov.au/all-projects/abortion

5 AIHW NPSU: Grayson N, Hargreaves J & Sullivan EA 2005. *Use of routinely collected national data sets for reporting on induced abortion in Australia*. AIHW Cat. No. PER 30. Sydney: AIHW National Perinatal Statistics Unit (Perinatal Statistics Series No. 17).

[6] Children by Choice (Qld) maintains a current list of state & territory law and practice with links to legislation http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice

[7] Sedgh, G. et al (2007) Induced abortion: estimated rates and trends worldwide, *The Lancet, Vol* 370: 1338–45

[8] Public Health Association of Australia (2008): Time for a national sexual and reproductive health strategy for Australia: a call to action http://www.phaa.net.au/documents/SRH_call_to_action.pdf and background paper http://www.phaa.net.au/documents/SRH_background_paper.pdf

[9] PHAA, SHFPA, MSI (2012) Melbourne Proclamation http://www.phaa.net.au/documents/DR0208%20Melbourne%20Proclamation.pdf

[10] PHAA 2008 background paper http://www.phaa.net.au/documents/SRH_background_paper.pdf