



## Queensland Parliament

### Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016

#### Submission 29 June 2016 to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

This is a submission to Queensland Parliament 'Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee' in regards to the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*. The Private Members Bill was submitted by Rob Pyne MP on 10 May 2016.

#### True Relationships and Reproductive Health

True Relationships and Reproductive Health (True) is a non-profit organisation that provides expert reproductive and sexual healthcare. For over 40 years, True has been prominent in the delivery of clinical services and professional training for medical practitioners, teachers and sector professionals.

True has nine offices and five community gynaecology clinics across Queensland. Community gynaecology clinics are positioned between general practitioners and hospitals, providing accessible expert care and formal referral pathways to hospitals for surgical intervention. The service has been modelled on the United Kingdom's community gynaecology and is the first of its kind in Australia.

True offers a wide range of workforce development solutions that are tailored for specific needs and groups. In 2015-2016 True provided professional development and adult education to over 21,500 people. True is a member of Family Planning Alliance Australia, the nation's peak body in reproductive and sexual health<sup>1</sup>.

#### Executive Summary

True supports the decriminalisation of abortion. It will facilitate safe, essential medical treatment, resulting in improved health outcomes for Queensland women and their families. Moreover, it will remove barriers to the delivery of healthcare to women, especially in areas of greater social need.

The proposed changes to the Criminal Code will enable clinicians to provide health services in the best interests of patients without risk of criminal proceedings. It will also facilitate data collection and facilitate the development of informed and evidence-based health policy and practice to prevent unintended pregnancy.

The right to a safe abortion will require safeguards, in the form of clinical guidelines. Cases must be assessed on merit following clinical guidelines<sup>2</sup>. To ensure that the purpose of the Bill is not subverted, laws will also be required

to ensure that women in Queensland can receive health service free from judgement, harassment, intimidation and harm. The introduction of 'exclusion zones'<sup>3</sup> will help to prevent such behaviour.

The following submission is structured in accordance with the five areas of inquiry referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee. True welcomes the Committee to engage legal and clinical expertise to review the integrity and reliability of evidence referenced in this submission.

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

Knowledge of existing practices in Queensland concerning termination of pregnancy by medical practitioners is limited by the lack of data<sup>4</sup>. It is not feasible to collate consistent and thorough data whilst abortion remains a crime<sup>5</sup>.

Existing practices in Queensland are informed by clinical guidelines published by Queensland Health<sup>6</sup>. The vast majority of abortions in Queensland take place in private clinics rather than public hospitals<sup>7</sup>.

In Queensland any procedure beyond 19 weeks and 6 days can only occur within public hospitals or interstate<sup>8</sup>. Some medical practitioners in public hospitals conscientiously object to abortion so abortion 20 weeks and beyond can be more accessible interstate.

Access to abortion in Queensland is largely influenced by a woman's geographical location and access to resources. For women in regional, rural and remote areas it can be more cost-effective to travel interstate. The cost of the procedure can range between \$400 and \$4000 depending on gestation.

Some women living in Queensland on residency visas (both recent migrants and long term diaspora) have had to travel overseas to access abortion. Clients have told us that they have travelled from Queensland to locations such as China, Thailand and New Zealand in search of affordable (and potentially unsafe) access to abortion.

If abortion is decriminalised, it is likely that more hospital-based clinicians would treat patients on site rather than referring onwards to a private clinic. Clinicians concerned about the risk of prosecution would be able to follow clinical guidelines and provide quality and evidence based healthcare without uncertainty or fear of criminal proceedings. Clinicians who conscientiously object to abortion could refer patients to another medical practitioner. Data could be collated to inform policy and practise to increase access to contraceptive choices and reduce the number of unintended pregnancies<sup>9</sup>.

## **2. Existing legal principles that govern termination practices in Queensland**

Existing legal principles<sup>10</sup> that govern abortion in Queensland do not provide protection to clinicians who provide abortion within Queensland Health Clinical Guidelines<sup>11</sup>.

Sections 224 to 226 of the *Criminal Code 1899*<sup>12</sup> states penalties that can apply to anyone who procures an abortion, provides medicine or instruments to procure abortion, including a woman attempting an unsafe self-abortion.

Section 282 of *Criminal Code 1899*<sup>13</sup> offers a defence for doctors charged with procuring or providing unlawful abortion. However, it does not provide protection against the instigation of criminal proceedings and the personal and professional costs that result. There is also no similar defence for women seeking an abortion.

All practitioners who conscientiously object to abortion should have the option to refer clients onwards. If conscientious objection clause(s) are included, Victorian legislation provides a useful framework<sup>14</sup>, referrals should be made to a clinician who does not conscientiously object, so that women's needs are met as soon as possible.

Any conscientious objection legislation should include an exception that a practitioner cannot object to a termination procedure if a pregnant woman's life is in immediate danger due to pregnancy. These circumstances are very rare.

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

The changes effected by the Bill reflect current community attitudes and expectations. Queenslanders are ready for law reform<sup>15</sup>.

The *Australian of Survey of Social Attitudes 2003* found that 81% of Australians agree with 'a woman's right to choose (abortion)'<sup>16</sup>. A poll in 2009 found that 79% of Queenslanders agree that abortion should be legalised<sup>17</sup>. A study of tertiary students in Far North Queensland in 2011 found that young health consumers feel that legislation related to abortion is unclear<sup>18</sup>.

Half of pregnancies in Australia are unintended<sup>19</sup>. Further, approximately 1 in 4 Australian women with a known pregnancy have experienced an abortion<sup>20</sup>.

For many clients at True, this Bill has come as a surprise. Many of our clients have asked how women have accessed abortion for decades without prosecution. Patients are asking clinicians if they will now be at risk of prosecution for *previous* abortions.

There is a widespread perception that abortion was already legal. Community attitudes not only support abortion being decriminalised, there is a sense of entitlement to abortion as a woman's reproductive right.

Modernising and clarifying the law requires legislation that protects community safety<sup>21</sup>. Legislation needs to not only legalise abortion, it needs to enable people to access clinics without fear for their safety. Women in Queensland should have the right to access health services free from judgement, harassment, intimidation and harm. Likewise, clinical staff in Queensland should have the right to work at health services, free from harassment, intimidation or harm.

An opportunity exists for new, independent and unbiased research to design and propose a model for exclusion zones in Queensland. Exclusion zones provide a model of community safety that can define and police prohibited behaviour within a geographical zone<sup>22</sup>. An ideal model for Queensland would be similar to the Tasmanian Government *Reproductive Health (Access to Terminations) Act 2013*<sup>23</sup>. The Act prohibits behaviour such as 'besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person' within the exclusion zone defined as 'an area within a radius of 150 metres from premises at which a termination is provided'<sup>24</sup>. True would welcome a proposal for exclusion zones in Queensland with a radius of 200 metres or greater.

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

Criminal statutes in Queensland remains based on the *English Offences against the Person Act 1861*<sup>25</sup>. As recently as 2010 Queensland has experienced a court case where a woman was charged for procuring abortion<sup>26</sup>. In comparison to other states and territories, Queensland legislation is severely outdated<sup>27</sup>.

A very small number (0.4%) of abortions in Australia occur beyond 20 weeks<sup>28</sup>. Abortions between 20 and 24 weeks only occur in limited circumstances such as severe fetal abnormality, reproductive coercion and domestic violence, sexual assault or severe maternal illness.

No private clinician in Australia provides abortion beyond 24 weeks. Abortions post 24 weeks gestation only occur in public hospitals. The question of gestational limits for an abortion should be a matter of medical judgement<sup>29</sup>. A patient's case must be assessed on merit by clinical experts<sup>30</sup>.

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) provide evidence-based clinical guidance to medical professionals regarding late term abortion<sup>31</sup>.

#### 5. Provision of counselling and support services for women

Four out of five (81%) women who experience an unintended pregnancy appreciate referral to a counselling service that would discuss all reproductive choices<sup>32</sup>. When deciding whether to continue with a pregnancy, 1 in 4 Australian women (25%) choose to access a counsellor<sup>33</sup>. Counselling should not be mandatory.

Women need safe, healthy and informed access to information in order to exercise self-determination in decision making. All women who experience unintended pregnancy should have optional access to free, client-centred, unbiased and non-directive counselling. Counselling providers should be transparent about their organisational values and share this information with new clients.

---

<sup>1</sup> Family Planning Alliance Australia (2016), *Position Statement: Access to Abortion Services in Australia* available online at < <http://familyplanningallianceaustralia.org.au>>.

<sup>2</sup> Queensland Maternity and Neonatal Clinical Guidelines Program (2013), Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy (MN 13.21-V1-R18), Queensland Health.

<sup>3</sup> De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015.

<sup>4</sup> Tring, L., McGeechan, K., (2013), 'Induced Abortion' in *Reproductive and Sexual Health in Australia*, Family Planning New South Wales.

<sup>5</sup> De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015.

<sup>6</sup> Queensland Maternity and Neonatal Clinical Guidelines Program (2013), Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy (MN 13.21-V1-R18), Queensland Health.

<sup>7</sup> Marsh, K., (2013), 'A matter for women and their doctors? If only' *The Drum*, accessed 15 June 2016 at <<http://www.abc.net.au/news/2013-05-13/marsh---abortion/4682464>>.

<sup>8</sup> Queensland Maternity and Neonatal Clinical Guidelines Program (2013), Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy (MN 13.21-V1-R18), Queensland Health.

<sup>9</sup> Birgisson, N.E., Zhao, Q., Secura, G.M., Madden, T. and Peipert, J.F., (2015). 'Preventing unintended pregnancy: the contraceptive CHOICE project in review', *Journal of women's health*, 24:5,349-353; and

- Lucke, J., Herbert, D., Loxton, D. and Weisberg, E., (2011). 'Unintended pregnancies: reducing rates by improving access to contraception,' *Australian Family Physician*, 40:11, 849.
- <sup>10</sup> Queensland Government (2016), *Criminal Code Act 1899*.
- <sup>11</sup> Queensland Maternity and Neonatal Clinical Guidelines Program (2013), Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy (MN 13.21-V1-R18), Queensland Health.
- <sup>12</sup> Queensland Government (2016), *Criminal Code Act 1899*.
- <sup>13</sup> Queensland Government (2016), *Criminal Code Act 1899*.
- <sup>14</sup> Victorian Law Reform Commission (2008), Law of Abortion: Final Report, Victorian Government.
- <sup>15</sup> Betts, K., (2009), 'Attitudes to abortion: Australia and Queensland in the twenty-first century,' in *People and Place*, 17:3, 25-39.
- <sup>16</sup> The Australian National University (2016), *The Australian Survey of Social Attitudes 2003 data*, accessed online 15 June 2016 at <<http://aussa.anu.edu.au/data.php>>.
- <sup>17</sup> Betts, K., (2009), 'Attitudes to abortion: Australia and Queensland in the twenty-first century,' in *People and Place*, 17:3, 25-39.
- <sup>18</sup> Phillips, T., Eltherington, J., De Costa, C., Woods, C., (2012), 'Knowledge of abortion law and provision of abortion services amongst tertiary students in Far North Queensland' in *Australian and New Zealand Journal of Obstetrics and Gynaecology* 52: 299-301.
- <sup>19</sup> Tring, L., McGeechan, K., (2013), 'Induced Abortion' in *Reproductive and Sexual Health in Australia*, Family Planning New South Wales.
- <sup>20</sup> Tring, L., McGeechan, K., (2013), 'Induced Abortion' in *Reproductive and Sexual Health in Australia*, Family Planning New South Wales.
- <sup>21</sup> Kerr, K., (2014), 'Queensland abortion laws: criminalising one in three women', *Queensland University of Technology Law Review*, 14:2.
- <sup>22</sup> De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015.
- <sup>23</sup> Tasmanian Government (2013), *Reproductive Health (Access to Terminations) Act 2013*, accessed online 20 June 2016 at <[http://www.thelaw.tas.gov.au/tocview/content.w3p;doc\\_id=72++2013+AT@EN+20150627000000;rec=0](http://www.thelaw.tas.gov.au/tocview/content.w3p;doc_id=72++2013+AT@EN+20150627000000;rec=0)>.
- <sup>24</sup> Tasmanian Government (2013), *Reproductive Health (Access to Terminations) Act 2013*, accessed online 20 June 2016 at <[http://www.thelaw.tas.gov.au/tocview/content.w3p;doc\\_id=72++2013+AT@EN+20150627000000;rec=0](http://www.thelaw.tas.gov.au/tocview/content.w3p;doc_id=72++2013+AT@EN+20150627000000;rec=0)>.
- <sup>25</sup> Kerr, K., (2014), 'Queensland abortion laws: criminalising one in three women', *Queensland University of Technology Law Review*, 14:2; and An exert from - Family Planning Alliance Australia (2016), *Position Statement: Access to Abortion Services in Australia* available online at <<http://familyplanningallianceaustralia.org.au>>.
- <sup>26</sup> Sumpreme Court Library Queensland (2016), 'R v Leach and Brennan 2010 QDC10-329' accessed online on 15 June 2016 at <<http://www.sclqld.org.au/caselaw/QDC/2010/329>>.
- <sup>27</sup> Family Planning Alliance Australia (2016), *Position Statement: Access to Abortion Services in Australia* available online at <<http://familyplanningallianceaustralia.org.au>>.
- <sup>28</sup> Tring, L., McGeechan, K., (2013), 'Induced Abortion' in *Reproductive and Sexual Health in Australia*, Family Planning New South Wales.
- <sup>29</sup> Public Health Association Australia (PHAA) (2014), *Abortion Policy* accessed online on 22 June 2016 at <<https://www.phaa.net.au/documents/item/845>>; The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), Late Termination of Pregnancy (C-Gyn 17a);
- <sup>30</sup> Black, K., Douglas, H., De Costa, C., (2015), 'Women's access to abortion after 20 weeks' gestation for fetal chromosomal abnormalities: Views and experiences of doctors in New South Wales and Queensland', in *Australian and New Zealand Journal of Obstetrics and Gynaecology*, 55: 144-148; The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), Late Termination of Pregnancy (C-Gyn 17a).
- <sup>31</sup> The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2013), Termination of Pregnancy College Statement (C-Gyn 17); The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), Late Termination of Pregnancy (C-Gyn 17a); and The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), Late of Pregnancy: A Resource for Professionals (C-Gyn 15).
- <sup>32</sup> Marie Stopes International (2006), *What Women Want: when faced with an unplanned pregnancy*, Australia.
- <sup>33</sup> Marie Stopes International (2006), *What Women Want: when faced with an unplanned pregnancy*, Australia.