

Submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee regarding the Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016

Introduction

Pro Choice Queensland is a grassroots group of organisations and individuals campaigning for the removal of abortion from Queensland's Criminal Code. We believe that laws criminalising abortion are the single biggest barrier to women's reproductive choice in this state. For further information please visit our website [Pro Choice Queensland](#).

We seek changes to the law which would:

- maximise women's reproductive rights and freedoms,
- provide the legal certainty necessary for doctors to provide best patient care for Queensland women, and
- reflect advances in medical practice and community attitudes.

Our supporters include individuals and organisations from health, community and women's groups, including:

- Australian Association of Social Workers (AASW)
- Australian Sex Party
- Australian Women's Health Network
- Australian Manufacturing Workers Union (AMWU)
- Brisbane Rape and Incest Survivors Support Centre
- Cairns Doctors
- Centre Against Sexual Violence
- Children by Choice
- Domestic Violence Resource Service (Mackay and Region)
- Dr Caroline de Costa, Professor of Obstetrics and Gynaecology, James Cook University
- EMILY's List Australia
- Fair Agenda
- Family Planning Alliance Australia
- Gold Coast Centre Against Sexual Violence Inc.
- Greenslopes Day Surgery
- Gympie & District Women's Health Centre
- Health Consumers Queensland
- Human Rights Law Centre
- Humanist Society of Queensland
- James Cook University College of Medicine Dept of O&G
- Logan Women's Health and Wellbeing Centre
- Marie Stopes International Australia
- Maternity Choices Australia
- National Foundation for Australian Women
- National Union of Students
- North Queensland Women's legal Service
- One Woman Project
- Pro Choice Cairns
- Queensland Council for Civil Liberties
- Queensland Women's Health Network Inc
- Public Health Association of Australia (Queensland)

- Reproductive Choice Australia
- Salisbury Day Surgery
- Senator Larissa Waters (Queensland Greens)
- Sexual Health Society of Queensland
- Sisters Inside
- Sunnybank Hills Family Practice
- Sustainable Population Australia (Queensland)
- True Relationships & Reproductive Health
- The Services Union
- The Women's Community Aid Association
- Union of Australian Women
- WESNET
- WWILD- Sexual Violence Prevention Association
- Women's Centre Cairns
- Women's Electoral Lobby Australia
- Women's Health Queensland Wide
- Women's Health Information & Referral Service Central Queensland
- Women's Information and Referral Exchange (WIRE)
- Women's Legal Service Queensland
- Women's House – Shelta
- Young Queenslanders for the Right to Choose
- Youth Affairs Network Queensland (YANQ)

Key submission points

Pro Choice Queensland strongly supports the passing of the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 to decriminalise abortion in Queensland. Pro Choice Queensland supports the bill for the following reasons:

1. Queensland abortion law is archaic and unclear

The Queensland Criminal Code statutes on abortion date from 1899, and were based on UK legislation from 1861 – before women had the right to vote, before commercial flights, space travel and flushing toilets, and before doctors started washing their hands to prevent the spread of disease.

The law is so old it even makes abortion unlawful 'whether or not she is with child', because there were no pregnancy tests or ultrasounds so the only way a pregnancy could be confirmed was when women started to 'show' or felt fetal movement. Medical practice has come a long way since then and these laws no longer reflect the reality of clinical service provision.

The laws governing termination of pregnancy in Queensland are a combination of state legislation and case law, which has created a situation where many health professionals and women are unclear as to what falls within the law.

2. The law impedes access – and it's worse for disadvantaged women than for others

Because the laws are unclear to most people, doctors are reluctant to become involved in abortion, limiting the potential number of women the service is available to. In reality, the current legal situation creates a two-tier system of access: women in metropolitan areas who are well-resourced are generally able to access a termination (albeit with a high out-of-pocket cost), while those in regional or remote areas, and those with limited financial resources or other disadvantage, experience extremely high barriers to access.

3. Unplanned pregnancy is a reality for Australian women – and therefore so is abortion

It is estimated that half of all pregnancies in Australia are unplanned, and that around one quarter of all pregnancies are terminated [1]. Women will experience between 30 and 45 fertile years on average, or between 370 and 530 menstrual cycles [2].

No contraception is 100% effective and contraception can fail even when used correctly and consistently. The most common contraceptive in Australia, the oral contraceptive pill, is around 91% effective at typical use, meaning that up to nine women out of every hundred using it will fall pregnant in a year. The World Health Organisation estimates that even if all contraceptive users used contraception perfectly in every sexual encounter, there would still be six million unintended pregnancies every year [3]

Studies of Australian and New Zealand women seeking abortion have shown that over half of women presenting for abortion had been using contraception prior to becoming pregnant [4],[5].

At least one in four Australian women will have abortion at some point in their lifetime. Laws which criminalise abortion risk criminalising over a quarter of the female population of Queensland.

Additionally, there are strong links between domestic violence, reproductive coercion and unplanned pregnancy, with unplanned pregnancy more commonly occurring among women experiencing domestic violence [6]. This correlation exists because reproductive coercion often occurs as a direct tool of domestic violence where pregnancy and reproductive health outcomes are used as a deliberate strategy to entrench power and control over the woman [7].

4. The community is ready for reform

Reliable opinion polling consistently shows that the community supports a woman's right to choose. A survey of Queensland voters' views on abortion carried out by Auspoll in 2009 found that 79% of the population wanted the law changed so abortion is no longer a crime, and that 85% of the population did not believe that the Government should be involved in the abortion decision.

Responses to the Terms of Reference

While undertaking this review we would strongly recommend that the committee refer to the Victorian Law Reform Commission enquiry into abortion law reform from 2008. This inquiry and report resulted in the decriminalisation of abortion in Victoria and provided a comprehensive overview of issues including public opinion, clinical practice, mandatory counselling and related issues. This enquiry applied similar terms of reference and the report, *Law of Abortion: overview of inquiry and full documentation* – is available on the Victorian Law Reform Commission website.

Existing practices in Queensland concerning termination of pregnancy by medical practitioners;

Pro Choice Queensland supports the availability safe and accessible abortion services to all Queensland women especially those experiencing the most disadvantage and we believe that laws criminalising abortion are the single biggest barrier to women's access to abortion services.

Abortion provision is highly regulated by Queensland Health but it is the only health procedure that is contained in the Criminal Code. In Queensland abortion provision is provided predominantly in private clinics, all of these clinics must adhere to the Queensland Health's Clinical Services Capability Framework for Licensed Private Health Facilities, which provides clear regulations on the abortion provision. The small number of abortion procedures carried out in public hospitals is provided under the Queensland Health's state-wide Clinical Guideline for the Therapeutic Termination of Pregnancy . Since the release of this very comprehensive guideline in April 2013, its implementation in hospitals varies considerably across the state. Doctor's providing medication abortion for termination of pregnancy must be registered with the MS 2 Step™ Prescribing Program and must complete a comprehensive training program with MS Health.

There is no data collection on abortion in Queensland, but it's estimated that only around 1% of the state's approximate 14,000 abortions each year take place in public hospitals. The remainder is provided by specialist private day surgeries – of which there are ten statewide – and some GPs who are trained to provide medication abortion.

Medication abortion through a GP generally has an out of pocket cost of between \$250 and \$400 depending on the provider, and a surgical procedure can cost between \$350- 4650 depending on a woman's location and the gestation of her pregnancy. Women in rural and regional areas of the state often face long travel distances and additional costs for accommodation on top of higher procedural costs, as well as having to take time off work and arrange for care of children or family members. It's not uncommon for a first trimester surgical abortion to cost a woman from rural or regional Queensland in excess of \$2000 with all these things taken into account. A further issue for these women is that the private clinics in Cairns, Rockhampton and Townsville only operate one day a week, which can have an impact on cost and all stress for the woman.

Further complexity is noted in that women can access a Medicare rebate (the figures above are the out-of-pocket cost) and MS 2 Step™ (medication abortion drug regime) is listed under the Pharmaceutical Benefits Scheme (PBS). Both of these federal schemes support a women's right to access an abortion yet in Queensland abortion still remains in the Criminal Code.

The current provision of abortion has created a two-tier system which impacts disadvantaged women most. This is particularly the case for:

- women in rural and remote areas of the state, who face long travel distances to even access an ultrasound in pregnancy, let alone a termination procedure if that is what they want;
- women in violent relationships, who often experience controlling behaviour and surveillance from the perpetrator of the violence, and can also have limited access to household finances;
- younger women, who have less financial resources, do not have their own transport, may not have access to their own Medicare card, and who may be reluctant to involve parents or guardians; and
- women living in poverty.

[Children by Choice's Annual Report 2014-15](#), states that women pregnant after sexual assault, those with serious health conditions, those experiencing severe violence, and women who are homeless, are regularly turned away from Queensland public hospitals when requesting abortion.

Information on abortion services and legality can be hard to find, and GPs and other health professionals are under no obligation to refer women onwards if they themselves are personally opposed to abortion.

In short, the state of access currently means that women living in metropolitan areas that are financially well resourced and can find the information they need are generally able to have an abortion in Queensland.

Existing legal principles that govern termination practices in Queensland;

Pro Choice Queensland supports the decriminalisation of abortion in Queensland to remove the risk of prosecution for medical professionals and women; and bring our current legal principles into step with current termination practices.

In Queensland, abortion is a crime for women and doctors according to the 1899 Criminal Code. Sections 224, 225 and 226 provide for criminal sanctions and jail terms for women 'unlawfully' having abortions and doctors 'unlawfully' providing them, they give no definition of what constitutes a lawful or unlawful abortion. Section 228 provides a defence for the doctor providing the procedure but there is no such defence for a woman or those who are supporting her to access the abortion. This is what occurred in the Leech/Brennan case in 2010, they were charged under sections 225 and 226.

The Criminal Code combined with case law from 1986 is generally accepted to mean abortion is regarded as lawful if performed to save a woman's life or to prevent serious harm to her physical or mental health – but it's all very much open to interpretation. There is no standard definition of what constitutes a 'risk of serious harm' which doctors and hospitals can refer to.

There is no standard definition of what constitutes a 'risk of serious harm' which doctors and hospitals can refer to. Personal interpretation of the law, as opposed to a clearly written piece of legislation, is what determines women's access to procedures. This means that rape, incest and fetal anomaly, for example, are not grounds in or of themselves for a lawful abortion – only their impact on a woman's health is able to be taken into account. These laws have remained virtually unchanged since 1899, while medicine and society have moved on. For more details see our [Queensland abortion law page](#).

It is still possible for women and doctors to be criminally prosecuted for accessing or providing abortion. This happened in 1985, with the prosecution of two Brisbane abortion providers, and in Cairns in 2009-10, where a young couple was charged with procuring an abortion. More recently in April 2016, we saw confusion about the legality of abortion and the rights of young women to access an abortion, result in a 12 year old girl having to go to the Rockhampton Supreme Court in the "Q" case.

These existing legal principles create a situation where many health professionals are unclear as to what falls within the law and what does not. This has resulted in increased anxiety and reluctance on the part of doctors to be involved in performing abortions, even though we know that around half of all pregnancies in Australia are unplanned. (Caroline de Costa and Heather Douglas <https://www.crikey.com.au/2016/05/02/abortion-ruling-queensland-rockhampton/>)

There is an urgent need for legislative uniformity across Australia so that the law is in step with modern medical practice, and so that women, regardless of where they live, have equal access to abortion services. [8]

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

Pro Choice Queensland like the vast majority of the community believe abortion should not be a crime and support a woman's right to choose abortion. Reliable opinion polling consistently shows a large majority of Australians support abortion decriminalisation.

In a survey published in the [July 2010 issue](#) of the Medical Journal of Australia, almost 90% of Australians were found to be in favour of legal abortion in the first trimester of pregnancy. The data also showed that a significant majority support legal abortion being available to women into the second trimester.

A survey of [Australian Obstetricians and Gynaecologists](#), also published in July 2010's Medical Journal of Australia, found that a large majority supported the availability of abortion services in public hospitals.

A [2009 review of Australian attitudes to abortion](#), undertaken by Swinburne University researcher Dr Katharine Betts, found that 'more than half the electorate in Australia and in Queensland support freedom of choice, and a further third support the availability of abortion in special circumstances... Such opposition as there is, is concentrated among a few religious groups and among people aged 75 and over. As far as attitudes are concerned, Queensland is no different from the rest of Australia'.

A survey of Queensland voters' views on abortion was carried out by Auspoll in May 2009. It found that 79% of the population wanted the law changed so abortion is no longer a crime, and that 85% of the population did not believe that the Government should be involved in the abortion decision. The full report is available to download as a pdf: [Auspoll 'Attitudes to Abortion' report – Queensland, 2009](#)

The Victorian Law Reform Commission considered public opinion in its inquiry into the decriminalisation of abortion in that state in 2008. Their analysis of attitudes to abortion was that given some limitations in data, the available evidence suggests that a majority of Australians support a woman's right to choose. Their [final report is available online](#).

In May 2016 the Australian Family Association released a Galaxy Poll claiming the majority of Queenslanders did not support abortion. Interestingly, the questions used as the basis of this polling (you can find them on the [Abortion Rethink website](#)) were almost identical to those used in a 2005 survey commissioned by the Australian Federation of Right To Life Associations (AFRTLTA). The Victorian Law Reform Commission examined the AFRTLTA survey as part of their inquiry in 2008 (Chapter 4 of the final report, [available to download here](#)) and concluded that it 'raises concerns about question design' and that some of the questions were 'negatively loaded' and 'not balanced'.

"This approach to question design increases risks that the survey question itself will shape responses, particularly among respondents without strong or well-formed views on the matter....In other words, because of the way some questions were framed and worded...AFRTLTA results may tend to overstate opposition to abortion."

One question from the AFRTLTA survey which was absent from the Galaxy Poll of May 2016 was "Do you support abortion for any reason whatsoever, that is, abortion on demand?" We wonder if it's because the Australian Family Association didn't want to risk the results coming back the same as the AFRTLTA survey, where 60% of respondents said they did support abortion on demand.

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

Pro Choice Queensland would ideally like to see no gestational limits imposed. However, we would support the introduction of the Victorian model: legal to 24 weeks on request and legal post-24 weeks with two doctors' approval. Currently Victoria is the only state providing procedures to 24 weeks and women from across Australia, including Queensland, access services in Victoria.

The bill currently before Queensland Parliament is a straight repeal to decriminalise abortion and therefore does not detail regulations. It is envisaged that this detail may be part of the recommendations from the parliamentary health committee. There are already existing mechanisms in place to regulate abortion services in Queensland, including gestational limits for provision namely the Queensland Health's Clinical Services Capability Framework for Licensed Private Health Facilities and Queensland Health Clinical Guideline for the Therapeutic Termination of Pregnancy (discussed above).

A lot of the [commentary](#) around the decriminalisation bill currently before Queensland Parliament has centred around 'late-term' abortion, with many anti-choice commentators and lobby groups claiming law reform would encourage women to have abortions 'for any reason at all right up to the day of birth'. This commentary is both inaccurate and misleading.

There is no agreed medical definition of a 'late-term' abortion. Those undertaken after 20 weeks gestation are generally defined as 2nd or 3rd trimester terminations.

The number of abortions performed at 20 weeks gestation or later makes up a very small proportion of all abortions. Statistics from the [South Australian Department of Health](#) (the only state with mandatory data collection and publicly available reports on abortion) show that over 90% of terminations are performed within the first trimester, and only around 2% or less are performed at 20 weeks gestation or later. [9]

Women may be present later for abortion for a number of reasons. These include diagnosis of fetal abnormality in a wanted pregnancy, difficulty in accessing abortion, failure to recognise the pregnancy earlier (often due to extreme immaturity or maturity, mental disability, or incompetent medical care) or catastrophic changes in personal circumstances (including death or serious illness of partner or child, loss of a job, partner violence or desertion). For

The decision to abort in any of these circumstances is a difficult one, and often made more complex by the lack of available termination services for post-20 week abortion.

In Queensland, there are only two private clinics in the entire state which provide terminations between 17 and 20 weeks gestation. All abortion clinics in Queensland are licensed by Queensland Health under the same clinical framework, which allows them to offer procedures to certain gestations depending on their facility. There is no private clinic in Queensland providing abortion services over 19 weeks and 6 days.

This means that women seeking abortion after 20 weeks gestation – as already mentioned, a small number of women and always in extreme circumstances – can only do so at a public hospital or by travelling to Victoria, where the only clinic in Australia that can provide procedures between 20 and 24 weeks gestation is located. After 24 weeks a public hospital is women's only option in any jurisdiction in Australia.

Recently there has been some inflammatory coverage around the provision of later terminations in Queensland hospitals, like this article from the ABC following a Question on Notice to the Health Minister Cameron Dick:

Rise in Queensland babies surviving late-term abortions and being left to die, figures show – ABC News, 16 June.

The question asked of and the response given by the Minister for Health was reasonable, though lacking in insight and specific knowledge regarding second trimester termination of pregnancy in Queensland. As we've stated above, terminations at or above 20 weeks gestation are rare in Queensland, are only provided in tragic circumstances, and are all provided in hospitals. Further insight is provide blewo by Dr. Carol Portmann a maternal fetal specialist

"There is no "clinic" in Queensland that is accredited to provide second trimester medical termination of pregnancy where live birth may occur. The private, non-hospital associated clinics/day surgeries do not provide termination of pregnancy above 20 weeks of gestation, and do not use second trimester medical termination of pregnancy methods. All second trimester medical terminations of pregnancy occur in registered/credentialed hospitals be they private or public. In all cases, the care is provided by credentialed, trained Obstetricians under the oversight of medical administration. In the vast majority of circumstances there is significant fetal abnormalities (physical or genetic), or significant medical problems that constitute reasonable risk to the mothers current or future medical or psychological wellbeing. Continuing the pregnancy would significantly affect the mothers medical wellbeing and life eg kidney failure, heart problems, severe blood pressure complications, psychosis; or the baby suffers from significant physical problems with major long term consequences or are lethal"

The articles below provide more insight from experts,

<http://www.brisbanetimes.com.au/queensland/fact-and-reason-needed-in-abortion-debate-trad-20160625-gprkkn.html>

<https://www.theguardian.com/world/2016/jun/22/live-births-after-abortion-misleading-queensland-legal-reform-debate-says-specialist>

In the ACT, where abortion has been completely decriminalised and there are no legislative gestational limits, second trimester abortion is only available in the public system and is still extremely difficult to access, and third trimester procedures are virtually unheard of.

Gestational limits for legal abortion have had extremely negative outcomes for women in other jurisdictions, including in WA where a 20-week limit has resulted in women having to make a very fast decision on whether to abort after receiving a diagnosis of fetal abnormality later in pregnancy. Currently, in Western Australia, women requesting termination past 20 weeks are referred to a committee, which either grants their request, or denies them access to the procedure. The results of this regimen, according to an official report on the workings of the law, have been:

- women and couples feeling pressured to make a quick rather than considered decision when a negative fetal diagnosis occurred just prior to 20 weeks lest they lose control after 20 weeks of the choice
- women and couples feeling pressured to terminate even in the face of medical advice to 'wait and see' for fear of being denied a termination by the panel after 20 weeks if the fetal diagnosis remained poor
- women and couples feeling a diminished sense of personal control in making important life decisions
- women/couples who are denied a termination feeling unique issues of guilt and grief associated with being compelled to continue a pregnancy but having conflicted feelings about using counselling services to resolve such issues at the institution that denied them the abortion
- women/couples and medical professionals feeling concerned about the objectivity of the panel decision and of having their choice judged by its unknown members experts caring for women/couples expressing concern about the risk of self-harm and failure to bond with the baby faced by women denied an abortion.

Read the Western Australia Department of Health and Department of Justice's [Review of the Amendments \(PDF 369KB\)](#).

Provision of counselling and support services for women

It is the position of Pro Choice Queensland that counselling should never be mandatory and any new abortion law should not contain a requirement for mandatory counselling or mandatory referral to counselling.

The availability of counselling and support services for women experiencing an unplanned pregnancy is important, however it is important that the committee take into account the following points.

Most women talk to friends, family, their partner and/or doctor before undertaking a termination. In a 2006 survey of 1000 women who had experienced an unplanned pregnancy, three out of four respondents said they did not want professional counselling before having a termination. What 81% of respondents did want was balanced information about, and referrals for, all three options: pregnancy, abortion, adoption and parenting. [10]

In Australia, abortions are performed by highly qualified health care professionals in very sanitary conditions, and a pregnancy termination is one of the safest medical procedures, and complications are rare [11].

The anti-choice lobby use the supposed 'risks' of abortion in an attempt to scare women out of having a termination – the three most often used in misinformation campaigns are that an abortion will affect a woman's future fertility, that it causes breast cancer, and that there are long-lasting psychological impacts of abortion [12].

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, or RANZCOG, states that serious complications after abortions are rare, and that mortality and serious morbidity occur less commonly with abortions than with pregnancies carried to term. While minor surgery or the administration of medication does carry some risks, both surgical and medical methods of abortion should not have any adverse effect on future fertility [13].

Around the world, reproductive health and anti-cancer organisations have rejected any association between abortion and an increased risk of breast cancer. This rejection is based on reliable scientific investigation, documented in reputable medical publications, and has been endorsed by the World Health Organisation [14].

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) reviewed the evidence on the psychological impact of abortion and concluded that 'Psychological studies suggest that there is

mainly improvement in psychological wellbeing in the short term after termination of pregnancy [and that] there are rarely immediate or lasting negative consequences' [15].

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Reviews of studies into how women cope after an abortion have found a number of consistent trends:

- The legal and voluntary termination of a pregnancy rarely causes immediate or long-lasting negative psychological consequences in healthy women; [16]
- Greater partner or parental support improves the psychological outcomes for the woman and that having an abortion results in few negative outcomes to the relationship; [17]
- Some studies have reported positive outcomes, such as feelings of relief, for women [18].

Risk factors for adverse psychological effects are consistently identified as

- Perceptions of stigma, need for secrecy, and low or anticipated social support for the abortion decision;
- A prior history of mental health problems; and
- Characteristics of the particular pregnancy, including the extent to which the woman wanted and felt committed to it [19].

Anti-choice counselling services do not refer for abortion, though deceptive advertising practices may make it difficult for women to know that the agency they have called is anti-choice and will not help her to find an abortion provider, even if she requests this assistance. These services should be required to clearly advertise that they do not provide all options support.

Pregnancy counselling, like other forms of counselling, is ineffective unless the patient wants the service. Compelling a woman or couple who are clear about her/their decision to undergo counselling undermines her/their dignity and is a waste of tax-payer resources. For information on what an unbiased pregnancy counselling service provides visit [Children by Choice](#).

Conclusion

We urge that the committee recommends the passing of the *The Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*.

The Queensland Government has committed itself to the *My health, Queensland's future: Advancing health 2026* to deliver high quality and evidence-based care, supported by best practice and the recognition that healthcare systems are stronger when consumers are at the heart of everything we do, and they can make informed decisions.

All Queensland woman should be able to access an abortion if that is their preferred option when experiencing an unplanned pregnancy and the committee should be aware of the detrimental outcomes for woman who cannot access this option, evident from the US longitudinal Turnaway Study. Early analyses suggest that women who carry unwanted pregnancies to term are more likely to be in poverty. We also know that women who are unable to obtain an abortion are more likely to stay tethered to abusive partners. There are also early indications that women have reason to worry about the impact of an unintended birth on that child as well as on their existing children.

We acknowledge that this is a very contentious area of health however; we trust that the committee will not place undue merit to value based or religious arguments in this enquiry. These arguments and opinions are often presented as fact in an attempt to influence public policy. Health law and regulation should be based on the best available evidence, not a values system which not everybody subscribes to. We encourage the committee to relay only on accurate up to date evidence based information, which is not misleading or emotive in this enquiry process. It is in the state government's interest to represent all of the values of its peoples, including a women's right to choose.

It is not 1899, abortion should not be a crime for doctors, women or support people.

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