

29TH JUNE 2016

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

To the Parliamentary Committee

Please accept this submission, author Belinda Lindel, Manager representing the Womens Health Centre, Rockhampton on the law governing termination of pregnancy in Queensland.

Our comments considering the terms of reference are:

1. EXISTING PRACTICES IN QUEENSLAND CONCERNING TERMINATION OF PREGNANCY BY MEDICAL PRACTITIONERS

Public hospitals are expected to assess patients under the Therapeutic Termination of Pregnancy Guidelines. However, we know of several cases where women have been turned away in Rockhampton, when we thought they would be able to access the hospital system. In Qld 1 % of abortions are carried out in public hospitals, and 99% are in private facilities, however in Victoria, these statistics are reversed. (1)

The private day surgery clinic in Rockhampton operates one day a week with clinicians flown in from interstate. The out of pocket costs start at \$700. This amount of money is very difficult for a woman experiencing disadvantage to secure on short notice, especially when there is vulnerability such as age, violence and / or homelessness.

There are no GPs providing this service in Rockhampton, let alone Central Queensland, however several GP's are very interested and have attended an education session on Medical terminations held by the Womens Health Centre in conjunction with MSHealth (1). GP provision is a safe and cost effective way of increasing women's access to early abortion, particularly in rural and remote areas, but doctors are not clear on the legal situation and this has acted as a deterrent.

Current practice creates system of access where women in regional centres with knowledge and money can access procedures, and women facing disadvantage have extremely high barriers to negotiate in order to access the same services. The cost of a rural women flying to Rockhampton or Brisbane to access an abortion is incredibly high when you take this into account - flights, child care, accommodation, and time away from their employment – this impacts the family as a unit.

2. EXISTING LEGAL PRINCIPLES THAT GOVERN TERMINATION PRACTICES IN QUEENSLAND

Current provision is governed by a combination of Criminal Code statutes from 1899 and case law from a District Court ruling in 1986. No defence is available for a woman charged under s225. She is not able to make a legal defence argument that she formed a reasonable belief that an abortion was in her best interests. Leaving women in this legal position is not acceptable in a modern non-discriminatory society.

A government might well be in violation of the right to equal protection of the law by denying health services ie abortion service, that only women need, as it is unfair to those that are entitled to the benefit of the law and thus a denial of the right to equal protection. (3) Therefore it's a violation for the government to be making laws and holding abortion in the criminal code thus imposing fear and reprisal of a conviction and jail sentence rather than allowing women to have a choice about their health and wellbeing.

Statutes relating to abortion should be removed from the Criminal Code – lets bring Qld up to date and in line with most of Australia;

South Australia – Regulated by section 82A Criminal Law Consolidation Act 1935, requiring 2 qualified medical practitioners to personally examine the women then be of the opinion that either: continuing the pregnancy would involve greater risk of injury to the physical or mental health of the women, or involve greater risk to the life of the women than termination: or there is a substantial risk that if the child, if born, would suffer from such physical or mental abnormality as to be seriously handicapped. (4)

Northern Territory – The NT reformed its abortion laws in 2006 setting out the circumstances in which an abortion is lawful in the Medical Services Act, stating that termination up to 23 weeks is lawful if immediately necessary to prevent serious harms to a woman's physical or mental health. (5)

Western Australia –The law on termination of pregnancy in WA was reformed in 1998, stating that the procedure must be carried out in good faith and with reasonable care and skill, and lawful for a medical practitioner to perform the termination of pregnancy up to 20 weeks as long as one of 4 conditions are met. (6)

Tasmania – Criminal Code was amended in 2001 to clarify the circumstances in which a medical termination would be lawful. Medical Terminations are now lawful if the woman has provided informed consent, and two medical practitioners certify that continuations of the pregnancy would involve greater risk of injury to the woman's physical or mental health than termination. (7)

Australian Capital Territory - Abortion was decriminalised in the ACT in 2002, and the Health Act 1993 now regulates termination of pregnancy stating that a woman seeking or receiving a termination of pregnancy faces no legal sanction. There is no restriction on abortion because of medical, social or other reasons. (8)

The Qld Criminal Code statutes on abortion date from 1899, based on UK legislation from 1861.....

Old, outdated and archaic !

3. THE NEED TO MODERNISE AND CLARIFY THE LAW (WITHOUT ALTERING CURRENT CLINICAL PRACTICE), TO REFLECT CURRENT COMMUNITY ATTITUDES AND EXPECTATIONS

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. On average, only approximately 4% of the Australian community are opposed to abortion in every circumstance; Betts states that "Such opposition as there is concentrated among a few religious groups and among people aged 75 and over." (9)

In late 2011, United Nations Special Rapporteur for Health, Anand Grover, released a report examining the interaction between the right to health and criminal laws relating to sexual and reproductive health. In it, he stated that the right to sexual and reproductive health is a fundamental part of the right to health. He also stated that criminal and other legal restrictions on abortion violate the right to health, and that the application of such restrictions as a means to achieving public health outcomes is 'often ineffective and disproportionate'. The report urged all UN member states to decriminalise abortion. (10)

PRIORITISING this reform for women in regional and remote communities is a major issue !

It is the expectation of our community that access to abortion should be available to all women, not just those who are financially capable and have the knowledge. In the regional and remote areas not only is the cost of abortion difficult, however it's also humanising the experience, considering the stigma and reputation of the women within these small towns. I know of women that without financial assistance and support would have attempted self abortion or have previously attempted self abortion – this is not ok in today's society, we need to get with the times and allow women to HAVE A CHOICE without fear of being incarcerated!

4. LEGISLATIVE AND REGULATORY ARRANGEMENTS IN OTHER AUSTRALIAN JURISDICTIONS INCLUDING REGULATING TERMINATIONS BASED ON GESTATIONAL PERIODS

The World Health Organisation (WHO) states that policy law and practice should be based on best available evidence accounting for the needs and preferences of women seeking abortions which has a positive impact on healthy outcomes and reduced abortion related morbidity and mortality. There is an inextricable link between women's health and human rights and the needs for laws and policies that promote and protect both. The guidance provided by WHO finds that legal restrictions on abortions do not result in fewer abortions nor do laws that facilitate access increase the rate or numbers of abortions. Legal status does make a difference to the safety of abortion. Barriers to safe abortions, deter, delay and increase the cost for women seeking care. (11)

**These barriers are a violation to human rights because they
jeopardise women's access to safe, legal abortion care and therefore
jeopardise women's health**

Women in regional areas experience delays in treatment and difficulties in access to health services. The current private clinic in Rockhampton is offered on a weekly fly-in, fly-out model, and only provides treatment to 17 weeks. We are concerned that having a gestational limit below 24 weeks would disadvantage regional women, where delays are regularly experienced within the health system. We know many cases where a woman has had to travel for an abortion due to delays in ultrasound or in even getting a consultation with their GP.

Central Queensland experiences high rates of domestic violence. Women who experience domestic violence are more likely to present later in pregnancy, so therefore low gestational limits will adversely impact on these women.

Women who experience intimate partner violence often experience birth control sabotage, forced sex and partner's unwillingness to use condoms. Thiel de Bocanegra et al stated that in their study of 53 women, there was a total of 68 unplanned pregnancies, of which 17 ended in induced abortions – the pressure to carry a pregnancy to term against the women's desire suggests that the abusers expressed desire for children is likely to represent an additional way for the partner to exert control over a woman's life. (12)

Miller et al also stated that recent evidence suggests that partner violence and unintended pregnancies co-occur with reproductive control i.e male partner's attempts to control a woman's reproductive choices. "Abused women face compromised decision-making regarding, or limited ability to enact, contraceptive use and family planning, including fear of condom negotiation." Women's lack of control over her reproductive health is increasingly recognised as a critical mechanism underlying abused women's elevated risk for unintended pregnancy. (13)

5. PROVISION OF COUNSELLING AND SUPPORT SERVICES FOR WOMEN.

Independent and unbiased counselling should be **free** and readily available but not mandatory. Whether this is carried out face to face, or via the telephone, is a choice for the client to decide upon. Often women seek assistance from our service for post abortion counselling and support, but not every woman needs or requires this. I have seen throughout our practice that women access counselling and support straight after, weeks, months or years after having an abortion. It is all relative to the particular woman and what she feels is needed at the time.

I know of a young female who was sexually assaulted and became pregnant as a result. We assisted in financially contributing to accessing an abortion as she was going to self-abort due to several reasons. Cost was a huge factor, due to her age and circumstances she was not in a position to afford the abortion. Under the current law, I as well as the doctor doing the procedure could be held accountable for assisting with procuring an abortion, not acknowledging that if this young woman was forced to have the child, issues such as neglect and abandonment could have been an unfortunate result.

The current legislation does not take into account women's human rights, thoughts, feelings or circumstances – this decision should be between the doctor and the patient – **NOT** for a criminal court to decide.

Many stories such as this one are not reported, or the perpetrator charged as the victim does not wish to proceed any further for fear of being traumatised.

OUR community is ready for reform !

Please decriminalise accessing an abortion for all women !

Yours Sincerely

Belinda Lindel
Manager

Judie Pettitt
Chair, Board of Directors

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- (2) Medical Termination Education Session, MSHealth and Womens Health Centre, 6 – 9.30 pm , WHC, Rockhampton 28th April, 2015
- (3) Shaw D, (2010) "Abortion and human rights"
- (4) Criminal Law Consolidation Act 1935 (SA)s 82A(1)(a)
- (5) Medical Services Act (NT)s 11(3)
- (6) Criminal Code (WA)s199(1)(a), Health Act 1911 (WA)s334(3)
- (7) Criminal Code Amendment Act (No 2) 2001 (Tas)
- (8) Health Act 1993 (ACT) s 80
- (9) Reference here
- (10) Right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Available in full on the United Nations website at http://un.org/ga/search/view_doc.asp?symbol=A/66/254
- (11) World Health Organisation (WHO), (2013) "Update WHO guidance on safe abortions; Health and human rights"
- (12) Thiel de Bocanegra, Rostovtseva, Khera and Godhwani, (2010) "Birth Control Sabotage and Forced Sex: Experiences reported by women in Domestic Violence Shelters"
- (13) Miller E, Decker M R, McCauley H L, Tancredi D J , Levenson R R, Waldman J, Schoenwald P, & Silverman J G. (2010) "Pregnancy coercion, intimate partner violence and unintended pregnancy"