Submission No. 828
Received 30 June 2016

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**Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016**

**and Inquiry into laws governing termination of pregnancy in Queensland**

I am very grateful for the opportunity to make a submission in support of this Bill. Any discussion of abortion is substantially impacted by personal values and experiences and ethical and religious principles, and this often creates an environment of dispute and contest from groups with opposing views.

The current context of abortion legislation in Queensland:

Currently, abortion is the only health service contained within the Criminal Code in Queensland. This Bill, should it be passed in the House, will not change the basic principles and regulation of abortion provision by qualified practitioners, who are clearly constrained by a) ethical considerations b) the most appropriate care for their patients and c) the scrutiny and registration requirements for doctors in Queensland.

"Women in Queensland continue to be controlled by a law that is more than 100 years old, contrived before they even had the vote, and based on English legislation that was revoked in England 40 years ago". (Ford, 2009) Despite a few minor adjustments, the legislation is fundamentally the same as was established in the nineteenth century.

In 1996, a taskforce was formed within the area of the Queensland Office of Women's Policy to consider and provide recommendations relating to how the criminal code impacted on women's lives and health and well-being .(Office of Women's Policy. 2000). In discussing the results of this taskforce, researcher Katherine Kerr ((2014, p 25) detailed how "[T]he criminalisation of abortion

Submission No. 828
Received 30 June 2016

exacerbates potential social and emotional impacts of unplanned pregnancy and abortion for a woman" and the stigma that criminality implies infringes on women's human rights. It effectively criminalises a third of Queensland women, as it is estimated that one in every three women terminates a pregnancy during her reproductive life.

Abortion law, human rights and discrimination

Promoting women's human rights and equality is certainly significant, particularly when considering the discrimination faced by Queensland women, relative to other states. Ethicists Lachlan de Crespigny and Juliabn Savulescu (2004) believe that all women should have access to abortion without the threat of criminal prosecution through clearly defined health policy, and that it is ". . . . unreasonable that Australian women's access to abortion depends on where they live . . . ". There is persuasive argument that regulations surrounding access to abortion should be included in national health policy, to ensure that all Australian women - despite location, economic and social status, education, ethnicity, age and ability - are not subject to discrimination.

Joyce Arthur (2007) , writing about the Canadian experience affirms that Canada is the only democratic country world-wide that institutes no civil or legal restrictions on abortion: abortion has the same legal status as any other health procedure. She argues that since 1988, when all abortion laws in Canada were struck down by the Supreme Court, abortions have ". . . become earlier and safer, and the number of abortions has become moderate and stable" (Arthur, 2009).

The Canadian Medical Association [CMA] (1988) supports the position that ' . . . the decision to perform an induced abortion is a medical one, made confidentially between the patient and her physician . . . " and the CMA provides professional guidelines to ensure ethical and appropriate support services (like counselling, contraception and informed choice) are available. Overall, the rate of induced abortions tends to decrease (as evidenced in Victoria and Tasmania also) and 2nd and 3rd trimester abortions continue to be a very small percentage of procedures, and then only for critical circumstances.

Submission No. 828
Received 30 June 2016

The Canadian Supreme Court identified abortion as a human right, a position that was upheld by the United Nations, describing the manner in which denying a woman's access to abortion violated articles in the International Covenant on Civil and Political Rights (Grimes, 2016).. This validated an earlier report from the UN Human Rights Council (Sylva, 2011) that recommended that all nations acknowledge access to abortion is essential for the full human rights of women and girls.

In the report, UN Special Rapporteur Anand Grover concluded the "[C]riminal laws penalizing and restricting induced abortions are the paradigmatic examples of impermissible barriers to the realization of women's rights to health and must be eliminated". Further, the report obligated states to actively provide the legal and physical conditions to ensure that all women have access to safe and good quality abortions (ibid).

Purpose of existing laws:

Retaining abortion within the criminal code continues to stigmatise and disempower women. In fact the law does not reduce the number of women having the procedure but does determine the extent of injury, pain, humiliation, suffering and delay women have to undergo to access the health services they need (Cannold, 2010). Conservative Senator George Brandis (2010), recognised for his unquestioned legal acuity, identified the substantial discrepancy between the law and how abortion is practised in Queensland and contended that this required law reform to bring legislation into line with community expectations. Consistently independent surveys that are rigorous, scientifically designed and ethically conducted confirm that community expectations support decriminalisation (for example see Crespigny and Savulescu, 2004; MJA, 2004).

In a peer reviewed study in 2010 a significant majority of Australians supported accessible and lawful abortion in the first trimester, and demonstrated positive support for terminations after 24 weeks gestation in most circumstances. Inherent in these findings was a general support from indemnity for doctors providing late-term abortions (Crespigny et al, 2010). As public opinion can have a major impact on

Submission No. 828
Received 30 June 2016

government policy, relying on simple yes/no surveys by those with vested interest in negative outcomes are an unreliable tool for measuring community support (ibid).

Making ethical decisions:

In an address to the Adelaide University Democratic Club, Minister Tony Abbott asserted that ' . . . abortion is the easy way out. It's hardly surprising that people should choose the most convenient exit from awkward situations' (Abbott, 2004). Inherent in this statement is an ethical theory which represents women as less than competent moral agents, as evident in the attitudes and policy-making of male MPs in 1899. Health care ethicist Susan Sherwin (1991) however maintains that "Women must be acknowledged as full moral agents with the responsibility for making moral decisions about their pregnancies". Abstract moral dictates are important but do not over-ride the subjective experiences of pregnant women: the impact and implications of pregnancy are experienced by individual women in vastly different ways. Women are not only responding to their own needs but those of partners, other family members and the community, as well as the existence and well-being of another potential human (ibid).

The Australian practice of abortion is not 'reducing an objectively grave matter to a matter of a mother's convenience' (Abbott. 2004) an observation which displays an extremely disrespectful attitude towards the integrity of women.. Women need the opportunity to work through their particular circumstances, with support from health professionals, to reach a response 'in context'. Abortion is not a legal matter, it is first and foremost a health issue.

Perceptions and misconceptions: Some of the myths

The decision to terminate a pregnancy provokes different reactions for women, according to their personal circumstances. What is required is accurate, quality information to ensure that women are empowered to pursue the correct action for them. Carol Ryan (2010) outlined how anti-choice activism had become more aggressive and included unsustainable 'information' to bully and frighten women

Submission No. 828
Received 30 June 2016

seeking an abortion. Although Ryan was describing the situation in Ireland, there is evidence that uninformed and misleading information and advice is being provided through some anti-choice counselling services for women in Australia (Jabour, 2014). It is imperative that women are provided with accurate, factual and non-judgemental information as a basis for their decisions

a) *There is a link between abortion and breast cancer:*

The supposed link between abortion and breast cancer is particularly odious, as it obviously preys upon women, frightening them with emotive propaganda. In the USA the National Cancer Institute [NCI] convened a symposium in 2003, comprised of more than 100 world experts in the field, which concluded from their review of all the existing research that 'having an abortion does not increase a woman's subsequent risk of developing breast cancer'. More recently, and closer to home, the Australian National Breast and Ovarian Cancer Centre produced a risk factor analysis in 2009, which emphasised that the existing evidence does not support the notion of an increased risk from pregnancy termination or abortion. Similarly, a study of more than 1.5 million women in Denmark concluded that this ". . . population-based cohort uncovered no overall increased risk of breast cancer among women with a history of induced abortion" (Kelly et al,1997). Louise Keogh from the Centre for Women's Health at the University of Melbourne argues, '. . . it is not [just] whether there is a link between breast cancer and abortion but when will women's health cease to be a political football, and their right to correct information be prioritised ahead of the conservative agenda'.

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b) *Abortion is a threat to women's mental health:*

The difficulties some women encounter in accessing abortions increases the medical risks of abortion, and the implications of criminality causes psychological and physical distress (Arthur, 2007). Katherine Kerr (2014) explains that the criminalisation of abortion ' . . . exacerbates potential social and emotional impacts of unplanned pregnancy and abortion for a woman . . . . .Women are very aware of the stigma that surrounds abortion'. While the women may have some negative feelings, they still perceive their decisions as the right choice in the situation (Rocca et al,

Submission No. 828
Received 30 June 2016

2013). The American Psychological Association (2010) after evaluating the empirical evidence available to them from a decade of peer-reviewed studies suggested that some women felt sadness and/or grief after an abortion, but to suggest that women suffered on-going mental health problems was misleading and did not accommodate the range of other contributing factors. There is no evidence of a 'post-abortion syndrome', a term invented by anti-choice advocates. What quality research does appear to indicate is that depression after abortion is no more prevalent than after childbirth, and both are related to temporary hormone change.

c) *Abortions are already freely available in Queensland:*

Generally many Queenslanders are surprised that abortion is part of the criminal code in this state. Because they 'know someone who had an abortion' there is an almost universal belief that abortion is legal. However, the threat of criminal conviction is a potential outcome for doctors, medical staff, women and their partners if they participate in terminations (Law Teacher, 213). [See the case of T.L. in Cairns in 2009-2010]. The General Practitioners Association (2004) commented that "Given the legal confusion it is perhaps unsurprising that a national survey found only 54% of Queensland GPs were confident that they fully understood abortion laws"... As a result, abortion services are rarely available through public hospitals, and rural and regional women have extreme difficulty accessing timely abortions due to remoteness, financial imposts and the availability of medical staff competent in providing these services. Shelley Glare (2010) stated that ". . . whether an Australian woman can access an abortion easily is something of a lottery in this country that boasts some of the most advanced and some of the most backward laws in the world". Unfortunately, Queensland is in the latter group.

d) *Late term abortions cannot be justified*

In recent weeks media focus has been on the controversial circumstances of 'late abortion, that is, abortions that occur in the second and third trimesters. The evidence is that fewer than 2% of abortions occur at 20 weeks or later (de Crespigny et al 2010).. The Victoria Health Report (2010, 3) concurs that terminations after 20 weeks are very rare, and usually involve psychosocial reasons related to a risk to the

Submission No. 828
Received 30 June 2016

mother's physical or mental health, or terminations based on diagnosis of critical foetal abnormalities. Terminations with live birth outcomes, although statistically very low in the overall context of abortions, are none-the-less very distressing. What I believe is even more distressing are attempts by anti-choice activists to exploit these tragic cases by emotive and misleading commentary (eg.Joshua Bavas, 2016). Accusations that babies surviving late-term abortions are inherently viable but routinely abandoned are inaccurate and lacking credible evidence. Such accusations are insulting and disrespectful to both the medical staff and women . To gain greater understanding of the reality ProChoice Queensland sought the opinion of Dr Carol Portman, a maternal fetal specialist, who provided a personal summary from a professional viewpoint. Her observations included

- some media articles are inflammatory, uninformed and written to evoke negative public opinion
- the terminations were not provided in 'clinics, as only hospitals have the necessary accreditation
- care is provided by credentialed, trained obstetricians
- babies born after induced abortion post 22 week gestation may have a heart beat (live birth) but because of their severe and significant abnormalities which cannot be treated, they are not viable births
- these babies are provided with palliative care which means they pass away peacefully, respectfully and without pain
- the terminations are performed within stringent guidelines implicit in the public and private health systems
- parents are permitted to share time with their babies until they pass away

e) *The conscience of health professionals is not recognised*

This is an important issue for health professionals, and provision is made within the Victorian legislation to assure their rights are respected. However even before changes to the abortion law, hospitals made provisions to ensure health professionals were never required to perform or assist in procedures contrary to their conscience or beliefs (Zwartz, 2010). Doctors who choose not to provide abortion

Submission No. 828
Received 30 June 2016

services and/or advice are, however, required to provide details to the patient of a health professional who will. I imagine the same responsibility would apply in other circumstances: for example a doctor whose personal and/or religious beliefs are in conflict with blood transfusions or circumcision]. .

f) *Exclusions zones outside family planning centres limit freedom of speech:*

In a democracy, freedom to express support or dissent is permitted through peaceful action in public spaces. Frequently, women's health clinics that provide abortion services are subject to picketing by objectors.

I would like to advocate in support of exclusion zones based on my personal experience.

> *Forty-one years ago during my first pregnancy, my baby died at about 18-19 weeks gestation, but was not expelled. I was encouraged by my doctor 'to wait for nature to take its course', but after two or three weeks it seemed that this was not going to happen. Due to the advanced state of my pregnancy, he referred me to the Bertram Wainer East Melbourne Clinic for specialist care. At that particular time, protestors outside his clinic routinely jostled patients, threw fake blood at them; took close-up photos of them and accused them of being 'murderers'. Having a missed abortion was very emotionally distressing, and my husband and I agreed that I would probably not cope with being subjected to such personal assault and harassment by the (mainly male) blockade. In this circumstance, the rights of protestors to 'freedom of speech' prevented me from accessing the urgent health care I required. I cannot think of any other situation where the deplorable actions of protestors would be permitted to interfere with a patient in this manner.*

In seems that, based on media reports and anecdotal evidence these tactics persist in contemporary Australia. I respect the right of people to express their views but they should be required to do so from outside a mandatory exclusion zone and not impede in any way women's access to health care.

Concluding remarks:

I am a socio-political researcher and make no claim to expert medical knowledge.. Wherever possible I have supplied legitimate referenced support for my views. As a

Submission No. 828
Received 30 June 2016

wife, mother, grandmother and friend, I petition your Committee to remove abortion from the criminal code, and integrate it into state health policy. Victoria, Tasmania and the ACT have already implemented legislative change and I urge the Committee to decriminalise abortion and to seriously consider using existing models for the basis of abortion law reform.

*It is not 1899. Abortion should not be a crime..*

Submission No. 828
Received 30 June 2016

**References:**

Abbott, Tony (2004) 'Speech to the Adelaide University Democratic Club' The Australian 17/3/04

Arthur, Joyce (2006) 'The Case for Repealing Abortion Laws' Abortion Rights Coalition of Canada Accessed at www.arcc-cdac.ca

Arthur, Joyce (2007) 'Repeal all abortion law ' Pro+Choice Forum Accessed online at < http://;prochoiceforum,org.uk/ocrabortionlaw13.php>

Bracken, H., Lohr, PA., Taylor, P>, Moroni, C., Winikoff, B. (2014) "RU OK? The acceptability and feasability of remote technologies for follow-up after early RU abortion' Contraception. 2014 Jul;90(1):29-35. doi.10 1016/doi10.1016/j.contraception.2014.03.016. Epub 2014 Apr 13

Brandis, Senator George (2010) Quoted from Q & A ABC Australia 2/7/2010

Canadian Medical Association 1988) 'Induced Abortion' CMA Policy Online Retrieved from www.cma.ca

Cica, Natasha (1998) "Abortion Law in Australia' Parliament of Australia Research Paper 1 1998-99

de Costa, Caroline (2005) 'Medical abortion for Australian women: it's time' Medical Journal of Australia No.183. pp378-380

de Costa, Caroline (2011) "Queensland abortion law - entrenched in the 19th century', Crikey

de Crespigny, Lachlan (2004) 'Abortion: time to clarify Australia's confusing laws' Medical Journal of Australia 2004 181(4)201-203

Submission No. 828
Received 30 June 2016

de Crespigny, Lachlan; Wilkinson, Dominic; Douglas, Thomas & Savulesxo, Julian (2010) 'Australian attitudes to early and late abortion' The Medical Journal of Australia 193 (1) pp 9-12

Culp-Pressler (2012) 'Denying women abortion access increases their risk of falling into poverty' Thinkprogress Accessed online at http://thinkprogress.org/health/2013/11/13/11832231/delaying-abortion-poverty/

Ford, Carole (1995) 'Feminism and ethics: What do they bring to each other?' Unpublished paper, Deakin University

Ford, Carole (2009) 'Silence the shrill voices' Viewpoint p26 The Courier Mail, September 2nd 2009

General Practitioners Association (3-14) 'Attitudes to abortion' Quantum market Research & Marie Stopes International Australia NHovember, 2004.

Gerdts, Caitlin (2013) Global Turnaway Study Update, ANSIRH

Glare, Shelley (2010) quoted in Marie Clare (Date unknown)

Grimes, David (2016) 'United Nations Committee Affirms Abortion as a Human Right' Huffington Post 1/2/16 Accessed at http://huffington post.com/davis-a-grimes/United-nations-committee-affirms-abortion-as a human right__b_9020806.html

Jabour, Bridie (2014) 'Anti-abortion websites masquerade as pregnancy counsellors' The Guardian 4/9/2014 Accessed at <http://the guardian.com/world/2014/sup/03/ant-abortion-websites-masquerde-as-pregnncy-counsellors>

Harries, Jane; Gerdts, Caitlin; Mombereg, Mariette; Green Foster, Diana (2014) Reproductive Health Journal BioMed Central Accessed at <http://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-015-0014-y>

Submission No. 828
Received 30 June 2016

Keogh, Louise (2014) Abortions don't cause cancer any more than parties do' Conversation 26/8/2014 Accessed at <http://theconversation.com/abortions-don't-cause-cancer-any-more-than-parties-d-20294>

Kerr, Katherine (2014) 'Queensland abortion laws criminalising one in three women;' QUT Law Review Vol.14 No.2

Law Teacher, UK. (November 2013). 'Queensland Abortion Laws' Retrieved from http://www.lawteacher.net/free-law-essays/human-rights/queensland-abortion-laws.php?cref=1

Major, Brenda; Applebaum, Mark; Beckman, Linda; Dutton, Mary Ann; Felipe Russo, Nancy & West, Carolyn (2008) 'Mental health and abortion' American Psychological Association , Boston

Medbye, Mads; Wolfhart, Jan; Olsen, Jergon; Morlan, French; Westerguard, Tina; Helwig; Larsen, Karin; Kragh Andersono (1997)., N.Eng J Med pp386-385

National Cancer Institute (2010) 'Abortion, miscarriage and breast cancer' US Department of Health and Human Services 12/1/10 Accessed at http://www.cancer.gov/types/breast/abortion-miscarriage-risk

Petchesky, Rosalind (1991) Abortion and Women's Choice: The state, sexuality and reproductive freedom Northeastern University Press, Boston

Phillips, Kelly-Anne; Bruinsma, Fiona & Milne, Roger (2014) 'Abortion and breast cancer risk for Australian women' Medical Journal of Australia 2014, 201 (7) p381

ProChoice Qld (c2010) 'At the ballot box: pro-choice politicians and electoral support' and 'Abortion law in Queensland: the facts' ProChoice Qld Online occasional papers. Acessed at <www.ProChoiceQld.org.au>

'Queensland Taskforce on Women and the Criminal Code' (2000) Office of Women's Policy Queensland Queensland Government Printer, Brisbane

Submission No. 828
Received 30 June 2016

Rocca, CH; Kimport, K: Foster,DG (2013) 'Women's emotions one week after receiving or being denied an abortion in the United States Perspect Sex Reproductive Health vol.45,no3 pp120-121

Ryan ,Carol (2010) 'Alarm over pregnancy advice by "rogue" agencies' The Irish Times 29/6/2010 p. 6

Seaward, Daphne (2016) 'My experience as a nurse left me with an unshakeable belief in legal abortion' The Guardian 26 May 2016

Sherwin, Susan (1991) "Abortion through a feminist lens' pp 127-142 Dialogue No.. XXX

Sylva, Douglas (2011) 'United Nations Back Report Calling Abortion a Human Right' Life News Accessed at http://lifenews.com/2011/08/23/un-secretary-general-backs-report-calling-abortion-a-humna-right/

Victoria State Government (c2014) 'Abortion - emotional issues and counselling', Better Health accessed 16/6/2016 http//;;www.betterlealth.vic.gov.au/healthylivingabortion-emotional-issues-and-counselling

Women's Health Victoria,(2010) Women and Abortion Women's health Issues Paper No.. 6

Zwartz, Barney (2010) "Aborted babies "being left to die" The Age 7/10/2010