Submission No. 836
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NSW Women submission to

Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland

Executive Summary

Queensland law is currently out of step with community expectations, as well as national and international evidence regarding abortion and reproductive health care. These laws should be modernised, beginning with the decriminalisation of abortion. Community attitudes to abortion consistently support the reproductive rights of pregnant people. Australian and international policy and medical evidence all favour decriminalisation and law reform in this area.

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Committee terms of reference

The Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 was referred to the committee on 10 May 2016 for detailed consideration. On 26 May 2016 the Parliament agreed that concurrent with its consideration of the Bill, the committee is to consider, report and make recommendations on aspects of the law governing termination of pregnancy in Queensland to the House on options regarding:

1. Existing practices in Queensland concerning termination of pregnancy by medical practitioners;
2. Existing legal principles that govern termination practices in Queensland;
3. The need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations;
4. Legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods, and
5. Provision of counselling and support services for women.

Questions for consideration

The questions below are optional, and are intended to assist in preparation of a submission.

1. What policy objectives should inform the law governing termination of pregnancy in Queensland?
2. What legal principles should inform the law governing termination of pregnancy?
3. What factors should be taken into account in deciding if a termination of pregnancy is lawful? (e.g. consent of the woman, serious danger to the woman's life, the woman's physical and mental health, other factors?)
4. Should termination of pregnancy be regulated according to the period of gestation? If so, how should the law apply to particular gestational periods?
5. Should the law in Queensland provide for conscientious objection by health providers?
6. What counselling and support services should be provided for women before and after a termination of pregnancy
7. Please inform the committee about your views on any other aspects of the Bill and the terms of reference.

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ToR1: Existing practices in Queensland concerning termination of pregnancy by medical practitioners

ToR2: Existing legal principles that govern termination practices in Queensland

Having the benefit of reading the submissions of Dr Caroline de Costa, we commend those submissions[1] to the Committee with respect to the first two terms of reference.

ToR3: The need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations

A number of studies establish a high level of support amongst Australians for access to abortion. De Crespigny, Wilkinson, Douglas, Textor and Savulescu found 87% of respondents supported lawful abortion in the first trimester: 61% unconditionally and 26% conditionally. This survey also found a majority of respondents indicated doctors should not face sanctions for performing abortions after 24 weeks' gestation[2].

As Betts found, 79% of Queenslanders support abortion decriminalisation[3]. Queensland reflects Australian attitudes in this respect[4].

As the Victorian Law Reform Commission noted, the " strongly expressed opinions of interest groups tend to dominate the public discourse about abortion, although public opinion is not limited to the views of the best organised or best resourced lobby groups[5].

After analysing five studies, including from anti-choice lobby groups, Professor David Studdert (commissioned by the Victorian Law Reform Commission) found:

- A majority of Australians support a woman's right to choose whether to have an abortion;
- A subset of supporters regard the right as capable of limitation (ie can be limited in some circumstances), with restriction of choice based on factors such as gestational age and women's reasons for seeking the abortion[6].

A 2010 survey found 85% of practicing obstetricians and gynaecologists support abortion, and 90% believe abortion should be available through the public health system in all states and territories[7].

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1 https://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/AbortionLR-WRC-AB2016/submissions/116.pdf
2 Crespigny, Wilkinson, Douglas, Textor and Savulescu , 'Australian attitudes to early and late abortion', *Medical Journal of Australia,* 193(1) 5 July 2010.
3 Betts, Katharine, 'Attitudes to Abortion: Australia and Queensland in the Twenty-first Century' *People and Place,* 17(3), 2009.
4 Ibid.
5 http://www.lawreform.vic.gov.au/content/4-surveys-attitudes
6 Ibid.
7 Costa, Russell and Carrette, 'Views and practices of induced abortion among Australian Fellows and specialist trainees of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists', *Medical Journal of Australia,* 193(1) 2010.

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ToR4: Legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods

Historically, the colonies that constituted pre-Federation Australia prohibited abortion based on laws replicating 19th century British criminal prohibitions[8]. Australian abortion law was, and in some States still is, based on the Imperial *Offences against the Person Act (1861)*[9]. As noted by Crespigny, *"*These laws may suggest that the role of the law is to place obstacles in the way of a woman seeking an abortion, making doctors the gatekeepers"[10].

These criminal statues were replicated in the States and Territories after Federation. After Menhennitt J's decision in *R v Davidson* (1969) in Victoria's Supreme Court, other jurisdictions adopted his Honour's reasoning, including Levine DCJ in *R v Wold*[11] in NSW (1971) and McGuire DCJ in *R v Bayliss and Cullen* in Queensland (1986). The general legal defense of necessity held that abortion was lawfully justified if "necessary to preserve the physical or mental health of the woman concerned, provided that the danger involved in the abortion did not outweigh the danger which the abortion was designed to prevent"[12]. Since these cases, some State and Territories have modernised their criminal statutes but others have not, creating inconsistencies across jurisdictions and geographic silos.

'Abortion' in this submission will refer to both surgical and medical abortion.

Victoria

In Victoria, abortion is not a criminal offence following the passage of the *Abortion Law Reform Act 2008*[13]. It is a woman's decision to obtain an abortion up to 24 weeks gestation[14]. After 24 weeks, at least two doctors must agree to an abortion after considering all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances.

Queensland

In Queensland, abortion remains a criminal offence under the *Criminal Code 1899*[15]. However, abortion is generally regarded as lawful if performed to prevent serious danger to the woman's physical or mental health. Women and doctors can be criminally prosecuted for unlawfully accessing or providing abortion,[16] and charges were laid against a woman and her partner as recently as 2008 under the *Criminal Code 1899*[17].

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[8] Gleeson, K, 'Still keeping women out: a short history of Australian abortion law', *The Conversation,* 24 January 2016. http://theconversation.com/still-keeping-women-out-a-short-history-of-australian-abortion-law-11732
[9] Crespigny, L and Savulescu, J, 'Abortion: time to clarify Australia's confusing laws', *The Medical Journal of Australia,* 181(4), 2004.
[10] Ibid.
[11] Cica, N, 'Abortion Law in Australia', Research Paper 1 1998-99, Law and Bills Digest Group, Parliament of Australia, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9899/99rp01
[12] Ibid.
[13] *Abortion Law Reform Act 2008* (Vic) Lhttp://www.fpv.org.au/assets/Victorian-Abortion
[14] Ibid.
[15] *Criminal Code 1899* (Qld)
[16] Ibid, §224, 226, 226.
[17] Walker, J, 'RU486 abortion trial without precedent in Australia', *The Australian,* 28 June 2010. http://www.theaustralian.com.au/news/latest-news/ru486-abortion-trial-without-precedent-in-australian-court/story-fn3dxity-1225885065067

New South Wales

In NSW, abortion remains a crime under the *Crimes Act 1900*[18]. Abortion is generally regarded as lawful if performed to prevent serious danger to a woman's mental and physical health, which includes economic and social pressures, however penalties of up to 10 years imprisonment for women, doctors and anyone who assists in an abortion still apply.[19]

ACT

In 2002, the *Crimes (Abolition of Offence of Abortion) Act 2002* was passed, and it amended the *Crimes Act 1900* to remove abortion[20]. Pregnant women do not need to establish any grounds for an abortion. A registered medical practitioner must provide the abortion and the abortion must be performed in an approved medical facility[21].

Tasmania

Tasmania decriminalized abortion in 2013, with the passage of the *Reproductive Health (Access to Terminations) Act 2013*[22]. Up to 16 weeks gestation, a medical practitioner may perform an abortion with a woman's consent. After 16 weeks, a medical practitioner must confer with another practitioner and establish the reasonable belief the continuation of the pregnancy would involve greater risk or injury to the physical or mental health of the pregnant woman than if the pregnancy was terminated[23].

Northern Territory

Termination is lawful up to 14 weeks gestation, when performed in a hospital by a specified medical practitioner where than practitioner and another practitioner are both of the opinion that the continuation of the pregnancy would involve greater risk to a woman's life or greater risk of injury to her physical or mental health, or the child would have or would suffer from serious handicap. Up to 23 weeks gestation, a medical practitioner must be of the opinion that an abortion is necessary to prevent grave injury to a woman's physical or mental health, or at any stage for preserving a woman's life[24].

South Australia

The *Criminal Law Consolidation Act 1935* provides for medical termination of pregnancy where two male ('he', though presumably in practice this is not enforced) legally qualified medical practitioners have personally examined a woman and have formed the opinion the continuation of the pregnancy

[18] *Crimes Act 1900* (NSW) §82.
[19] Ibid.
[20] *Crimes (Abolition of Offence of Abortion) Act* 2002 (ACT).
[21] *Health (Patient Privacy) Amendment Act 2015* (ACT).
[22] *Reproductive Health (Access to termination) Act2013* (Tas).
[23] Ibid, §4.
[24] *Medical Services Act* (NT)

would involve greater risk to the life of the pregnant woman or greater risk of injury to the physical or mental health of the pregnant woman than in the regency were terminated, or there is substantial risk the child born to the pregnant woman would suffer a serious handicap. The abortion must take place in a prescribed hospital and the pregnant woman must have resided in South Australia for two months prior to the termination[25].

Western Australia

In 1998 the *Acts Amendment (Abortion) Act 1998* was enacted to amend the *Criminal Code 1913* and the *Health Act 1911*. An abortion is lawful in Western Australia where the abortion is performed by a medical practitioner in good faith and with reasonable care and skill if the woman has given informed consent and will suffer serous personal family or social consequences if the abortion is not performed, or there is serious danger to the physical or mental health if the abortion is not performed, or the pregnancy is causing serious danger to her physical or mental health. 'Informed consent' requires a medical practitioner has provided counselling and is not the medical practitioner who will perform the abortion, or any practitioner who assist in the performance of abortion. After 20 weeks, two medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister must have agreed that the 'mother', or the 'unborn child', has a severe medical condition that, in the clinical judgment of those two medical practitioners, justifies the procedure and the abortion is performed in a facility approved by the Minister for the purposes of this section[26]. There is only one such facility.[27]

Crespigny notes, "the identity of the hospital committee members is anonymous. It includes health administrators, but there is no lawyer or ethicist. The committee can decide on whether a woman can have an abortion without meeting her. Abortion is one of the few medical interventions in which the doctor–patient relationship is regularly overridden by uninvolved third parties — in this case, an anonymous committee"[28].

As noted by the member for Cairns, later term abortions are the exception[29]. As the Committee will be aware from the submissions already made, those who are anti-choice often seize upon this small percentage of abortions to argue for continued criminalisation (or, in the case of the United States, further criminalisation and restriction). We submit that while the Committee should be mindful of the variance of the restrictions in other jurisdictions in this area, there appears to be no consensus on the placement of such restrictions. Given the majority of abortions are performed in the first trimester, in our submission it would be advisable to focus in this area.

[25] *Criminal Law Consolidation Act 1935* (SA) §82A.
[26] *Health Act 1911* (WA) §334.
[27] 'Termination of pregnancy: Information and legal obligations for medical practitioners', Department of Health WA, 2007, https://www.health.wa.gov.au/publications/documents/Termination_of_Pregnancy_Info_for_Medical_Practitioners_Dec_07.pdf
[28] Crespigny et al.
[29] https://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/AbortionLR-WRC-AB2016/14-trns-15June2016.pdf

ToR5: Provision of counselling and support services for women

The Committee should not assume there is a need for counselling after abortion at any greater rate than exists a need after other medical procedures. A 2015 study found that 99% of women who had an abortion reported it was the right decision: "Women experienced decreasing emotional intensity over time, and the overwhelming majority of women felt that termination was the right decision for them over three years" was the finding[30].

Another US study found "women who received an abortion had similar or lower levels of depression and anxiety than women denied an abortion. Our findings do not support the notion that abortion is a cause of mental health problems"[31].

Abortion does not reduce self-esteem and life satisfaction[32], "assertions that having a termination leads women to increase alcohol use to cope with having had a termination are not supported"[33], and receiving an abortion is not associated with an increase in tobacco use over time[34].

It should also be noted that no such claims of poor health outcomes are mounted for spontaneous abortion (miscarriage) by those who would prefer pregnant people do not have access to safe abortion.

[30] Rocca, Kimport, Roberts, Gould, Neuhaus, Foster, "Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study", 2015, via PLOS One, http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0128832
[31] Foster, Steinberg, Roberts, Biggs, "A comparison of depression and anxiety symptom trajectories between women who had an abortion and women denied one", *Psychological* Medicine, 45(10), January 2015.
[32] Biggs, Upadhyay, Steinberg, Foster, "Does abortion reduce self-esteem and life satisfaction?, *Quality of Life Research Journal,* 23, April 2014.
[33] Roberts, Delucchi, Wilsnack, Foster, "Receiving versus being denied a pregnancy termination and subsequent alcohol use: a longitudinal study", *Alcohol,* 50(4), July 2015.
[34] Roberts, Foster, "Receiving versus being denied an abortion and subsequent tobacco use", *Maternal and Child Health*, 19(3), March 2015.

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Questions for consideration

Q1. What policy objectives should inform the law governing termination of pregnancy in Queensland?

It is the view of NSW Women that the evidence is clearly in favour of abortion decriminalisation and law reform. As a survey of the submissions made prior to the closing date will show, a number of assertions (mostly following a clear template) are made against decriminalisation. These can be summarised as:

1.1 Abortion causes (usually unspecified) 'serious physical and psychological' harm to pregnant people;
1.2 Medical practitioners should be able to conscientiously object to providing abortions;
1.3 There is an 'overwhelming community opposition' to abortion;
1.4 Adoption has some relationship to abortion (with some references made to the difficulty of accessing adoption);
1.5 Pregnant people should be able to access 'other options'.

We also take the opportunity to object to, and record our disgust at, the submissions that advocate for harm to MPs who may elect to vote (or otherwise exercise their functions) in favour of this Bill. Similarly, the submissions comparing abortion to slavery and the Holocaust are hyperbolic and outrageous, and should be dismissed accordingly.

Q1.1 Abortion causes (usually unspecified) 'serious physical and psychological' harm to pregnant people

There are a number of common myths peddled by those who believe in forced pregnancy and forced birth. Most of these centre on fallacies of 'serious harm' that pregnant people will suffer if they are allowed to control their reproduction, and abortion access must be outlawed for pregnant peoples' 'own good'. This "woman-protective anti-abortion argument," as Siegel points out, "mixes new ideas about women's rights with some very old ideas about women's roles.[35]"

These myths include:

- Abortion causes depression and suicide;
- Abortion causes cancer;
- Abortion is unsafe;
- Reducing access to abortion reduces demand for abortion.

[35] Siegel, R, 'The Right's reasons: Constitutional conflict and the spread of woman-protective antiabortion argument', 2007 Brainerd Currie Lecture at Duke Law School. http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1361&context=dlj

- Depression and suicide

One forced pregnancy and birth group asserts that abortion causes sexual dysfunction, sadness, guilt, hallucinations, suicidal thoughts, increased alcohol and drug use, and difficulty maintaining close relationships"[36]. Another similar group makes the claim that "abortion causes suicide and depression"[37] and another that abortion is more harmful than unplanned birth[38]. These claims are utterly without foundation.

The invention of a post-abortion syndrome is most frequently traced to an anti-choice American psychotherapist, Vincent Rue, who initially made this claim in the 1980s[39]. The scientific evidence, however, is quite clear; abortion does not cause such problems. A number of studies have confounded the purported link between abortion and poor mental health.

The American Psychological Association Task Force on Mental Health and Abortion found:

> *Across studies, prior mental health emerged as the strongest predictor of postabortion mental health. Many of these same factors also predict negative psychological reactions to other types of stressful life events, including childbirth, and, hence, are not uniquely predictive of psychological responses following abortion*[40];

Steinberg and Finer also specifically debunked claims of increased mental health issues in an 2010 paper, demonstrating the results Coleman, Coyle, Shuping and Rue referred to were not replicable[41]. Steinberg and Finer found:

> *When prior mental health and violence experience were controlled in our models, no significant relation was found between abortion history and anxiety disorders*[42].

As submitted above, 99% of women who had an abortion reported it was the right decision.

- Cancer

A number of forced birth and pregnancy advocates put the position that abortion causes breast cancer[434445]. This claim is also false. As the Cancer Council notes, this myth recently resurfaced following a meta-analysis of studies of women in China. However, in this meta-analysis, only the studies with the weaker research design suggested a link between abortion and breast cancer. Both of the studies with the stronger design did not find evidence of such a link[46]. The Cancer Council

[redacted]

[37] By, it should be noted, attempting to capitalize on the publicity surrounding the suicide of a celebrity. http://prolife.org.au/abortion/abortion-depression-suicide

[38] http://www.fava.org.au/news/2013/study-finds-abortion-more-harmful-than-unplanned-birth/

[39] Bazelon, E, "Is there a post-abortion syndrome?", *New York Times,* 21 January 2001 http://www.nytimes.com/2007/01/21/magazine/21abortion.t.html?_r=1

[40] American Psychological Association, "Mental Health and Abortion", http://www.apa.org/pi/women/programs/abortion/

[41] Steinberg, Finer, "Examining the association of abortion history and current mental health: A reanalysis of the National Comorbidity Survey using a common-risk-factors model", *Social Science and Medicine,* 72(1), October 2010.

[42] Ibid.

[43] http://prolife.org.au/abortion/abortion-and-breast-cancer, http://newsweekly.com.au/article.php?id=4360

[44] http://www.cherishlife.org.au/cherish-life/466-the-abortion-breast-cancer-link

[45] http://www.fava.org.au/news/2014/abortion-is-a-breast-cancer-risk-shhh/

[46] Cancer Council, "Cancer Questions and Myths", http://www.cancercouncil.com.au/100629/cancer-information/general-information-cancer-information/cancer-questions-myths/medical-and-injuries/abortion-does-not-cause-breast-cancer/#Bf4I6c6HzG1VU9B7.99

Victoria and the Breast Cancer Network Australia called such ideas "misinformation" and said "such commentary flies in the face of scientific evidence and only increases the distress and anxiety faced by women grappling with the complex emotions and issues associated with either abortion and breast cancer[47]".

Professor Phillips, a co-author of the *Medical Journal of Australia* research letter and head of the Breast and Ovarian Cancer Risk Management Clinic at the Peter MacCallum Cancer Centre, said the recent controversy was surprising, particularly given that such a link had been ruled out by an analysis of data from 53 studies a decade ago[48].

As noted by on Peter Mac's website:

> *"Lead author and Cancer Council Victoria epidemiologist Dr Roger Milne says the findings are robust because they are based on a large prospective cohort study: women aged between 40–69 were recruited to the Melbourne Collaborative Cohort Study between 1990 and 1994, asked about all their pregnancies and other potential breast cancer risk factors, and then followed until 2012.*
>
> *'Retrospective case–control studies tend to give biased results, because women with breast cancer are more likely to report previous abortions than women who do not have cancer.*
>
> *'Our prospective study avoided this bias because the information on abortion was collected before any of the women developed cancer."*[49]

- Unsafe

One group advocating for forced birth states the possible physical side effects of abortion are "haemorrhage, infection, perforation of the uterus, ectopic pregnancy, breast cancer, death."[50] Another lists 'general anaesthetic, haemorrhage, infection, future fertility, cervical incompetence, ectopic pregnancy, and breast cancer as abortion risks[51]. These assertions fail to quantify the likelihood or incidence of such complications- either relative to other surgical procedures or to the alternatives, illegal abortion or childbirth.

Childbirth is 14 times more dangerous than abortion. [52] This may be an under-estimate of the safety of abortion compared to childbirth; it has been found that studies comparing abortion mortality overestimate abortion mortality relative to the risk from childbearing[53]. The overall morbidity (death

[47] Cancer Council, "No reliable evidence exists of an association between abortion and breast cancer", http://www.cancervic.org.au/about/media-releases/2014-media-releases/august-2014/statement-breast-cancer-abortion.html
[48] MacKee, N, "Cancer-abortion link quashed", *MJA InSight,* 29 September 2014, https://www.mja.com.au/insight/2014/36/cancer-abortion-link-quashed
[49] Peter McCallum Cancer Centre, http://www.petermac.org/news/large-victorian-study-confirms-abortion-not-breast-cancer-risk-factor
[50] http://www.righttolife.com.au/life-issues/abortion
[51] http://opendoors.com.au/unplannedA.htm
[52] Raymond, Grimes, "The comparative safety of legal induced abortion and childbirth in the United States", *Obstetrics and Gynecology,* 119(2 Pt1), February 2012.
[53] Cates, Smith, Rochat, Grimes, "Mortality from Abortion and Childbirth: Are the Statistics Biased? *Journal of the American Medical* Association, 248(2), July 1982.

rate) associated with childbirth far exceeds that of abortion[54]. Pregnancy-related complications are also more common with childbirth than with abortion[55].

Unfortunately for those who advocate for criminalising abortion (like those laws still in place in Queensland and New South Wales) the safest abortions are legal ones. Abortion legality is a predictor of abortion safety, and the abortion mortality correlates precisely with abortion legality:

> *The same correlation appears when a given country tightens or relaxes its abortion law. In Romania, for example, where abortion was available upon request until 1966, the abortion mortality ratio was 20 per 100,000 live births in 1960. New legal restrictions were imposed in 1966, and by 1989 the ratio reached 148 deaths per 100,000 live births. The restrictions were reversed in 1989, and within a year the ratio dropped to 68 of 100,000 live births; by 2002 it was as low as 9 deaths per 100,000 births*
>
> *Every year, worldwide, about 42 million women with unintended pregnancies choose abortion, and nearly half of these procedures, 20 million, are unsafe. Some 68,000 women die of unsafe abortion annually, making it one of the leading causes of maternal mortality (13%). Of the women who survive unsafe abortion, 5 million will suffer long-term health complications. Unsafe abortion is thus a pressing issue. Both of the primary methods for preventing unsafe abortion—less restrictive abortion laws and greater contraceptive use—face social, religious, and political obstacles, particularly in developing nations, where most unsafe abortions (97%) occur[56].*

Given the demand of pregnant people to no longer be pregnant is inelastic relative to legality (ie pregnant people seek out abortions whether or not they are legal) those concerned with the safety of pregnant people in relation to abortion should advocate for better, legal, abortive services.[57] "Generally, where abortion is legal it will be provided in a safe manner," notes Dr. Van Look. "And the opposite is also true: where it is illegal, it is likely to be unsafe, performed under unsafe conditions by poorly trained providers.[58]"

It should also be noted that abortion access does not only affect the health of the pregnant people. As the 'Turnaway' study found, being unable to access abortion lead to worse outcomes for pregnant people's existing children.[59] In the United States, between 61 and 72% of those seeking an abortion are already parents[60].

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[54] Raymond and Grimes, "The comparative safety of legal induced abortion and childbirth in the United States", 2012.
[55] Ibid.
[56] Haddad, Nour, "Unnecessary maternal mortality", *Reviews in Obstetrics and Gynecology,* 2(2)"122-126, 2009.
[57] Grime, D, "Abortion Denied: Consequences for Mother and Child", *The Huffington Post,* 2 April 2015. http://www.huffingtonpost.com/david-a-grimes/abortion-denied-consequences-for-mother-and-child_b_6926988.html
[58] Rosenthal, E, "Legal or Not, Abortion Rates Compare", *New York Times,* 12 October 2007, http://www.nytimes.com/2007/10/12/world/12abortion.html?_r=0
[59] http://www.ansirh.org/sites/default/files/publications/files/2014-9foster-unwanted-pregnancy-effects.pdf
[60] Sandler, L, "The Mother Majority", *Slate,* 17 October 2011, http://www.slate.com/articles/double_x/doublex/2011/10/most_surprising_abortion_statistic_the_majority_of_women_who_ter.html

- Reducing demand by reducing access

One forced birth website begs, "Lets (sic) be the generation that ends Abortion (sic)[61]" and goes on to outline a mission of lobbying 'our' legislators for laws to protect life- usually a euphemism for criminalising and restricting abortion access.

There is no evidence that criminalising abortion (reducing access) reduces abortion rates. All the international data show "restrictive laws have much less impact on stopping women from ending an unwanted pregnancy than on forcing those who are determined to do so to seek out clandestine means"[62].

Lower abortion rates are achieved with higher contraceptive use rates[63] and better sex education[64], rather than criminalising abortion. Sedgh puts this baldly in the *Lancet*: "Restrictive abortion laws are not associated with lower abortion rates[65]."

As Sedgh notes,

> *"Highly restrictive abortion laws are not associated with lower abortion rates. For example, the abortion rate is 29 per 1,000 women of childbearing age in Africa and 32 per 1,000 in Latin America—regions in which abortion is illegal under most circumstances in the majority of countries. The rate is 12 per 1,000 in Western Europe, where abortion is generally permitted on broad grounds.*[66]

Even if there is an argument that governments should regulate some behaviours that are not in an individual's best interests, or 'for their own good', abortion is not such a thing. Abortions does not cause harm to those pregnant persons who have them- unless the harm comes from a government making abortion illegal, and therefore unsafe. Such abortions are harmful to pregnant people and to their children.

Restrictions on access to abortion- be they criminal or otherwise (for example, where a State public health system will not perform abortion) – all limit a pregnant person's personal freedom and control over their life. In theory, governments should place a high premium on personal liberty and the right of citizens to live their lives as they see fit. Laws that prevent harm should only be enacted where some demonstrable harm to another citizen, or other citizens, or a collective harm, exist. No such circumstances exist with abortion.

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[61] http://www.prolife.org.au/
[62] Cohen, S, "Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide", *GPR,* 12(4), November 20 2009, https://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html
[63] Marston, Cleland, "Relationships between Contraception and Abortion: A Review of the Evidence", *International Perspectives on Sexual and Reproductive Health,* 29(1) March 2003, https://www.guttmacher.org/pubs/journals/2900603.html
[64] Ketting, Visser, "Contraception in the Netherlands: the low abortion rate explained", *Patient Education and Counseling*, 23(3):161-71, July 1994.
[65] Guttmacher Institute, https://www.guttmacher.org/fact-sheet/facts-induced-abortion-worldwide
[66] Guttmacher Institute, http://www.guttmacher.org/pubs/fb_IAW.html

Q1.2 Medical practitioners should be able to conscientiously object to providing abortions

This will be covered below, in response to 'questions for consideration'.

Q1.3 There is an 'overwhelming community opposition' to abortion

As our submissions in relation to the third term of reference make clear, this is a fallacy. There is no evidence for this proposition, and much evidence to the contrary.

Q1.4 Adoption has some relationship to abortion (with some references made to the difficulty of accessing adoption)

Adoption is not an alternative to abortion. Adoption is an alternative to parenting after a pregnancy and birth have taken place. The alternative to pregnancy and birth is abortion where contraception has failed (noting the objections of those who anti-choice to contraception[67], despite the obvious link between contraception access and fewer unwanted pregnancies).

Such conflation attempts to minimise the effect of pregnancy and birth on pregnant people, and to reduce them to 'carriers' or 'bearers' of children whose rights to personal autonomy extinguish upon conception. While this may accord with an individual's beliefs, it should not find a home in statute, particularly given (as submitted above) the health risks of childbirth and pregnancy.

It should be noted a number of the submissions made before the close of submissions to the Committee endorse the notion of pregnant people as a means of production for infants to be adopted. Pregnant people are referred to as the 'place of residence' and pregnant people only have 'perceived' [not actual] rights.

Infertile people are also referred to as a reason to continue to criminalise abortion. Despite the evidence that legality make no different to abortion rates (as outlined above) some submissions refer to the 'tragedy' of abortion juxtaposed with infertility, to imply some relationship. One submission even suggests that 'couples' (presumably heterosexual married couples) are going childless because of an 'abortion epidemic'. This is a nonsense. There is no right, legal or moral, to have a child. Put plainly, these submissions suggest pregnant people should be forced to remain pregnant and give birth against their will, at great personal risk, as someone who is infertile has some right to a child.

While infertility might be individually tragic, it confers no rights to impose a pregnancy and birth upon another individual. Submissions in this line should be rejected.

[67] https://www.righttolife.com.au/resources/article-archive/46-your-taxes-at-work-making-and-destroying-babies

Q1.5 Pregnant people should be able to access 'other options'

Rarely do any of these submissions outline what these 'other options' might be. Adoption and 'counselling' seem the most obvious. Our submissions above at Q1.4 deal with adoption.

As far as 'counselling' goes, services peddling anti-abortion myths[68], sometimes government funded, exist to attempt to steer women away from abortion and push an forced pregnancy and birth position in the guise of 'assistance'[69]. These 'support options' do a disservice to pregnant people and have no place in an evidence-based examination of reproductive health.

[68] http://www.pregnancysupport.com.au/resources/abortion-2/abortion-procedures/
[69] Stott Despoja, N, "Making counselling honest on the abortion option", *The Age,* 22 February 2006, http://www.theage.com.au/news/opinion/making-counselling-honest-on-the-abortion-option/2006/02/21/1140284065805.html

Q2. What legal principles should inform the law governing termination of pregnancy?

It is our submission the Committee could be guided by the principles of the London Declaration of prochoice principles[70].

As Denbow[71] notes, 'the right to choose to have an abortion is viewed as essential to ensuring that a woman has both the right to choose what happens to her own body, as well as the right to determine when and if she wants to bear children'.

Decriminalising abortion enables all abortion decisions to be made on an equal (legal) footing. Those who wish to obtain an abortion can. Those who do not, will not. It allows all parties to exercise their individual autonomy and freedom of conscience without legal impediment. The same cannot be said where abortion is a criminal offence.

Q3. What factors should be taken into account in deciding if a termination of pregnancy is lawful? (e.g. consent of the woman, serious danger to the woman's life, the woman's physical and mental health, other factors?)

Abortion should be treated no differently to any other medical procedure. Informed consent must be obtained, but no patient should have to justify acting in their own best interests, as determined by them. Conversely, governments should have no part in restricting the choice of pregnant people to determine their medical choices in this area.

Q4. Should termination of pregnancy be regulated according to the period of gestation?

There is no policy consensus on this matter in Australia. Clinical expertise applied to individual cases should determine this, rather than statute, noting that late term abortions are rare.

Q5. Should the law in Queensland provide for conscientious objection by health providers?

It is the view of NSW Women that if medical practitioners are able to obviate their duties without penalty in some instances through 'conscientious objection', it should only possible where it does not reduce patient access, autonomy and care.

[70] http://www.catholicsforchoice.org/topics/abortion/LondonDeclaration.asp
[71] Denbow, J, "Abortion: When Choice and Autonomy conflict", *Berkeley Journal of Gender, Law and Justice,* 20(1), September 2013, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1237&context=bglj

Some States and Territories currently enable medical practitioners to 'conscientiously object' to providing some forms of health care, namely abortion, to pregnant people. We take this opportunity to note that inherent irony of those who share the attitude that Tasmania and Victoria's reforms were the 'worst in the world'[72] (though how two differing statutes can both be 'the worst in the world' is unexplained) are now positioning in such a way as to endorse the spirit of these parts of the reforms, ie conscientious objection. The Bill before the Committee is now the 'worst in the world', if some of the submissions already made are to be believed.

If such a provision was considered necessary (and we do not submit that) then it's drafting should follow the principles set out by Milligan:

> *It's certainly not such a special case that collective professional standards should be lowered, legal precedents dismissed, and special exemptions given to accommodate individual practitioners' moral values at the expense of upholding common standards of patient care*[73].

Q6. What counselling and support services should be provided for women before and after a termination of pregnancy?

This topic has been traversed throughout our submission, and we draw the Committee's attention to the submissions above at Tor5, Q1.1 and Q1.5 in particular.

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[72] Lee, J, "Abortion laws 'among the worst in the world'", *The Age,* 12 February 2014, http://www.theage.com.au/victoria/abortion-laws-among-worst-in-the-world-20140212-32ife.html , http://www.dlp.org.au/blog/amend-victorian-abortion-laws-starting-with-section-8/, https://www.righttolife.com.au/blog/72-tasmania-s-day-of-shame

[73] Millian, E, "Doctor's moral objections don't justify denying abortion access", *The Conversation,* 3 December 2013, https://theconversation.com/doctors-moral-objections-dont-justify-denying-abortion-access-20196