



youth affairs network qld

28 June 2016

Dear Sir/Madam,

I am writing on behalf of Youth Affairs Network of Queensland (YANQ) the peak body for the youth issues and youth sector in Queensland. With over 460 individual and organisation members from across Queensland as well as 25 years of consulting and representing the sector at policy and advocacy level, YANQ is the main voice for issues faced by young people. Our main focus is on issues impacting on the lives of young people 12-25 years old however this age group at times extends to 10-30 year olds.

YANQ promotes the interests and well-being of young people across the state by:

- [disseminating information to members, the youth sector, and the broader community](#)
- [undertaking campaigns and lobbying](#)
- [making representations to government and other influential bodies](#)
- [resourcing regional and issues-based networks](#)
- [consulting and liaising with members and the field](#)
- [linking with key state and national bodies](#)
- [initiating research projects](#)
- [hosting forums and conferences](#)
- [input into policy development](#)
- [enhancing the professional development of the youth sector](#)

YANQ has been involved in campaigning to change the laws in regards to access to abortion for young women across Queensland. For many years our members from across the State have raised with us their serious concern about the health and wellbeing of young women who do not have access to legal abortion. Many young women have been forced to travel interstate or engage in dangerous and unlawful methods which are totally preventable.

Unplanned pregnancy has a life-long impact on young women as they face discrimination in education, training and employment settings and simply are left behind by society. With the recent medical progress in containing HIV, and reduced investment by Governments in promoting safe sex, more and more young people are having sex without the use of condoms which has increased the

chances of pregnancy significantly in this cohort of population. Again this impacts more on young people in rural and isolated parts of the State.

Of specific concern to us are young women in rural and isolated parts of the State with limited knowledge and support systems around them. The current legal status of abortion in Queensland prevents health practitioners or other support workers to assist young people with making informed choices about their pregnancy. This is in total contradiction to United Nation's Convention on the Rights of the Child which Australia is a signatory to.

We urge the Queensland Government to meet its obligation towards young women in our society and provide the legal mechanism for young woman's right to choose.

The vast majority of terminations in Queensland are provided by private clinics, of which there are ten across the State. These day surgeries have strict licensing criteria by which they must abide in order to practice. There are additional conditions which must be met in order to provide services for patients under the age of 14, including:

- mandatory psychological counselling from a qualified health professional, which must be fully documented in the patient's medical record;
- involvement of paediatric and mental health services for assessment of capacity to consent; and
- a paediatric license.³

Only two clinics in Queensland hold the necessary paediatric license to treat young women aged under 14 years old. Unless these young women can access one of these clinics (located in Nambour and Cairns), a public hospital is their only possible avenue for access.

Provision of abortion services in public and private hospitals in Queensland is regulated through the Maternal and Neonatal Clinical Guideline on the Therapeutic Termination of Pregnancy (TTOP). This Guideline was released in 2013 by Queensland Health and aims to provide guidance to medical professionals working in public and private hospitals on when termination may be lawfully provided and how to follow best clinical practice.

The Guideline is also very clear in relation to providing abortions to young women, including those aged under 14, and sets out best practice standards for assessing young women for capacity to consent to a procedure.² However, hospital legal advice on several occasions has differed to the parameters set out in the Guideline, indicating ongoing confusions about the requirements of law. This was very clearly illustrated by the recent and highly-publicised case of 'Q', a 12 year old forced to seek Supreme Court approval in Rockhampton in April for an abortion.³

¹ Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy available on the Queensland Health website at <https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf>.

² Page 11 of the Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy available on the Queensland Health website at <https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf>.

³ See for example 'Queensland doctor in abortion case says more teenagers face 'appalling' choice', The Guardian Australia, 16 June 2016. Online at https://www.theguardian.com/world/2016/jun/16/queensland-doctor-abortion-more-teenagers-face-appalling-choice?CMP=share_btn_fb.

Q had spoken extensively with several practitioners at her local hospital, who all supported her request for an abortion and believed she had the necessary capacity to provide informed consent. They were not permitted by a hospital executive to provide Q with an early abortion at the hospital, with the executive in question claiming there was 'no evidence' that the legal test for abortion had been 'formally met' and it was therefore necessary to obtain a court order before the termination could be performed. Dr David MacFarlane, the obstetrician involved in Q's case, has made a submission to this inquiry with extensive information on this case, which we will not repeat here for the sake of brevity. However, we fully endorse Dr MacFarlane's submission, and applaud him for being willing to speak publicly about the injustices Q faced as a direct result of the unclear nature of Queensland's abortion law and his concern for other young women who may be forced to seek court approval as a result of the precedent set by Q's case. Our conversations with clinicians and allied health staff in public hospitals since the case became public indicate a heightened sense of confusion about the legal and regulatory requirements for young women of her age, creating an urgent need for clarity and law reform.

As noted earlier in this submission, only two private clinics in Queensland are legally able to offer services to young women aged under 14, and as demonstrated by Q's case, the conditions some hospitals force them to meet are onerous and damaging.

Parental consent or notification requirements

In Queensland, it is accepted that minors may be capable of providing informed consent for medical procedures if they are sufficiently mature, using the Gillick competency model. This model is based on the United Kingdom's *Gillick v West Norfolk & Wisbech Area Health Authority* case, which has been approved by the High Court of Australia through a 1992 case known as *Marion's Case*.⁴

Medical practitioners are able to provide contraception or abortion to young women aged 18 and under if they are deemed Gillick competent. This means they have a "sufficient understanding and intelligence to enable him or her to understand fully what is proposed".⁵ Practitioners are able to make this assessment on a case by case basis, often using the HEADSSS assessment.⁶

Practitioners may encourage a young person seeking access to contraception or abortion to involve her parents or guardians, but when a competent young person refuses to include them in her consultation or treatment this must be respected. Where parents or guardians are involved it is important that the medical consultation allows space for the young person's consent to be discussed without a parent or guardian present, in order to manage potential issues of coercion.

While a parent or legal guardian generally would have legal authority to consent to most treatment on behalf of a young person deemed not Gillick competent, termination of pregnancy generally requires a court, acting in the best interests of the young person, to authorise the treatment in

⁴ Can young people under 18 make their own decisions? Fact sheet by the Youth Advocacy Centre, online at <http://www.yac.net.au/wp-content/uploads/2012/10/Can-YP-make-their-own-decisions.pdf>.

⁵ *Gillick v. West Norfolk & Wisbech Area Health Authority* (1985) 3AU ER 402.

⁶ An overview of the HEADSSS assessment tool is available on the website of the Royal Children's Hospital Melbourne, at http://www.rch.org.au/clinicalguide/guideline_index/Engaging_with_and_assessing_the_adolescent_patient/#headds.

Queensland.⁷ As such a young person's parents are not able to consent to a termination of pregnancy on her behalf.

The law in Western Australia stipulates that a young woman aged under 16 must meet additional requirements to access a termination of pregnancy:

Either a custodial parent of the minor must have been informed that an abortion is being considered and given the opportunity to participate in counselling, or an order from the Children's Court of Western Australia must be obtained dispensing with the requirement to inform and include the custodial parent in the process.⁸

A review into the workings of the WA law, published in 2002 by the state health department, found that in the four years to 2002, 26 applications to the Children's Court for an order had been made, and all had been approved – ie, the requirement for parental notification had been waived, proving that when young people seek to avoid parental involvement, authorities recognise there is just cause for this approach. The review states:

Reasons given for granting an order to exclude custodial parents from being informed of the intended abortion were varied and included fears of violence, retribution, cultural and religious reasons.⁴⁹

The review goes on to note that:

Concerns were raised that although the Children's Court procedures were working well for urban dwelling dependant minors, this may not be the case for all rural and regional areas. One example cited is that it is particularly difficult for dependant minors in far north Western Australia, where the magistrates visit only once every four weeks, to make timely applications. Other examples were provided in relation to difficulties that minors, without the benefit of a female custodial parent, may experience if they are from a culture where men are not traditionally involved in issues which are seen as "women's business". Additionally, minors in some areas do not have knowledge of legal aid services to assist them in the legal processes.

It is our position that similar barriers would apply in Queensland were a parental notification clause to be legislated as part of the reform of abortion law and we do not therefore support the inclusion of any such requirement.

In support of this, we also submit that the Victorian Law Reform Commission, which examined the issue of parental notification and consent in 2008, and found that:

⁷ *Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy* p11. Queensland Health, 2013. Available on the Queensland Health website at <https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf>.

⁸ *Report to the Minister for Health on the Review of Provisions of the Health Act 1911 and the Criminal Code relating to abortion, as introduced by the Acts Amendment (Abortion) Act 1998*. Western Australian Department of Health, June 2002, p25. Online at <http://www.health.wa.gov.au/publications/documents/ABORTIONREVIEWmaster180602.pdf>.

*'The existing law governing consent and confidentiality for young people is adequate. No further legislative reform is required.'*⁹

In addition, most young women involve a parent already without such a legislative requirement. Research from the UK in 2005 found that over 70% of young women aged under 16 presenting to abortion services had informed one or both of their parents of the pregnancy and their decision, and that reasons given for not informing a parent had included fear of reactions or repercussions.¹⁰

If you require any further information and/or clarification, please do not hesitate to contact me on _____ or email director@yanq.org.au

Your sincerely

Siyavash Doostkhah

Director

Youth Affairs Network of Queensland

⁹ *Law of Abortion: Final Report* Victorian Law Reform Commission, Melbourne, 2008, Available through the Commission's website at <http://www.lawreform.vic.gov.au/projects/abortion/law-abortion-final-report-pdf>.

¹⁰ Abortion and young women: issues of confidentiality Marie Stopes International United Kingdom, London, 2005. Online at <http://www.shnwales.org.uk/Documents/485/Abortion%20%26%20young%20women%2C%20issues%20of%20confidentiality%20Marie%20Stopes.pdf>.