

September 25th 2016

Submission to

Parliamentary Enquiry into the

**Health (Abortion Law Reform) Amendment Bill  
2016 and Inquiry into laws governing termination  
of pregnancy in Queensland**

Submission by

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Dear Committee members

I write in support of the proposal to reform Abortion Law in Queensland.

My submission consists of two parts: Firstly, a statement of the particular concerns that I have in relation to the Law as it currently operates in respect of minors, and secondly, comments in relation to some of the submissions, findings and recommendations of the earlier Enquiry in relation to the Abortion Law Reform Amendment Bill.

I thank you for taking the time to read and consider my submission.

David MacFarlane

**Part One:**

Abortion Law Reform has become a matter of urgency in Queensland as a result of the recent decision of Judge McMeekin in relation to “Q”, a minor seeking an abortion. (*Central Queensland Hospital and Health Service v Q* [2016] QSC 89)

His ruling was that a pregnant minor aged 12 was not capable of giving informed consent. He described the person involved as ‘quite a mature child’, he acknowledged that she ‘had a very good understanding of the risks attendant on the procedures’, and said the evidence in favour of her case was ‘all one way’. Additionally all the medical and allied health workers involved in her care, and her mother agreed that continuation of the pregnancy would be a disaster, and that she was able to give valid informed consent. Never-the-less the Judge described her referral by Central Queensland Health administration to the Supreme Court as ‘appropriate’.

Who will now be prepared to offer pregnancy termination to a 12 year old even if she seemed a mature child, had a good understanding of the risks involved and was fully supported in her request by her parents, her GP, two Gynecologists, social workers and other allied health staff who had known her for a long time? Such was the case of Q, yet her referral was deemed ‘appropriate’. To offer an abortion to such a person without application to the Supreme Court now more than ever, with this ruling, invites prosecution for performing an illegal abortion.

Indeed to offer an abortion to any 13 or 14 year old would likely also carry the same risk under McMeekins ruling.

This means that from now on every 12 year old who is pregnant and wanting an abortion must apply for permission from the Supreme Court.

Significantly, and of importance to the Committees deliberations, mainstream and social media reaction to this case, when the decision was made public was an overwhelming expression of dismay that “Q” had been forced to endure this indignity to obtain something which Australians generally regard as a woman’s right. This case is a perfect illustration of how completely the current law is out of touch with the needs and views of modern Queenslanders.

According to Children by Choice Queensland, every year there are at least 50 such cases involving young women aged 12, and many more 13 and 14 years old in the same predicament. This ruling means that none of them will be able to seek appropriate abortion care in Queensland as long as the Law remains as it is, because no practitioner or parent would want to subject any of these vulnerable young women to the necessary delays, let alone the gross intrusion of the Queensland Supreme Court into such a deeply private, personal and already harrowing dilemma, and in addition, no reasonable practitioner can any longer feel safe to offer it , and risk performing an illegal abortion.

The only advice such women could sensibly be given would be to seek care in a different state, something the Health Minister ought to regard as disgraceful.

Queensland abortion law presently works against the interests of young women in an extremely vulnerable situation, at considerable risk of emotional and physical harm, and effectively, by its punitive approach forces them to seek health care in another state. This matter needs urgent redress.

## **Part Two**

**i)** I fully support and endorse the Submission of the Royal Australian and New Zealand College of Obstetricians and Gynecologists (RANZCOG) to the first Enquiry into abortion law reform in Queensland.

In particular I support the view that a woman's need for privacy and sensitivity be protected by allowing the decision of the woman and her Doctor to be sufficient to permit abortion. I also support the College view that no gestational age restrictions be placed on abortion, because the very uncommon later term abortions involve peculiar and rare circumstances that legislation could only complicate and make more traumatic for the families involved in making terribly difficult decisions about these pregnancies. Removing gestational limits and the involvement of additional third parties in the process respects the high quality of RANZCOG membership, their judgment and their professionalism. Never the less, as part of the provision for termination after 24 weeks, I agree involving multi-disciplinary Panels in these decisions can be beneficial. I also believe there ought to be some sort of oversight and audit of late term abortion, so at the very least, the Public can be reassured in respect of the frequency, the indications and complications of these rare interventions.

In regard to 'Gillick' competence and minors, I again support the College view. I also believe the Bill ought to make it mandatory that assessment of Gillick competence be undertaken before Court referral is embarked upon. I say this because "Q" mentioned above was denied this opportunity, and though she was determined by the Court NOT to be competent, this was on the basis of a particular understanding of consent adopted by Judge McMeekin. He accepted a suggestion from Counsel for Central Queensland Health that for consent to be valid, it requires the consequences of both options be 'fully apparent' to the patient. I am not sure that this concept has been thoroughly thought through because it sets the standard for informed consent impossibly high: 'fully' is an almost limitless term, and no person, whatever they are consenting to could ever reach the place where it was 'fully apparent' to them what all consequences of their decisions could be. It is simply humanly impossible. RANZCOG also expressed the same concern in their submission: "this case sets a precedent for definitions of "properly informed consent" and will further restrict access to termination of pregnancy for those under 18 years of age."

A more realistic approach to 'informed consent' needs to be supported in regard to Gillick competence than the one used by McMeekin. In fact, Queensland Health's own published guideline in regard to abortion includes them, and it would make sense to adopt that interpretation in preference to McMeekin's in regard to who can make assessments of Gillick competence, and how.

However, where it is not achieved a parent or legal Guardian should be the person to turn to, not the Supreme Court. Abortion should NOT continue to be regarded as one of the special conditions like elective sterilization, where a parent's consent is not regarded as sufficient. Instead like other emergency procedures, informed parents ought to be regarded as sufficient in the context of a pregnant minor deemed not to be 'Gillick' competent, requesting termination of an unplanned pregnancy. It is extremely unlikely that a Court would make a different decision to the one she herself, in conjunction with her parents and Doctors would make, and order a minor to continue with an unwanted pregnancy, and therefore one has to ask what possible benefit can there be to subjecting her to the delays and intrusions of the Court into her private life to achieve exactly the same outcome? In the case of Q the pregnancy was prolonged unnecessarily by three additional weeks and at significant cost to the State for no gain other than to satisfy an outdated piece of legislation.

The Courts involvement should be restricted to cases where there are conflicts that parents, doctors and the Gillick incompetent minor cannot resolve, perhaps for example when a minor's wishes for the pregnancy differ from her parents or legal guardians.

When everyone is in agreement however, as in the case of "Q", referral to the Supreme Court is an expensive intrusive time-wasting emotionally damaging and wholly unnecessary violation that one hopes won't ever be repeated in Queensland.

**ii)** A number of submissions to the previous Abortion Law Reform Enquiry were made by individual doctors and by organizations representing doctors who argued not only for their right not to participate in pregnancy termination, but also for the right to decline to refer women seeking an abortion to providers of such services, or even to a fellow practitioner who would. Whilst I accept the right of anyone not to perform pregnancy termination for private ethical reasons, I do not believe the personal views of 'pro-life' doctors ought to be allowed to outweigh the practitioners ethical duty of care toward his patient so completely that even a simple referral would not be provided. Providing a referral is not a violation of the Hippocratic oath, but denying women access to needed and legal health services because of a personal ethical position probably is.

I believe medical practitioners have a duty of care that transcends their own personal beliefs in so far as it concerns subjects which are legal, and thus 'pro-life' doctors should be obliged at the very least when asked about abortion to refer to someone who is 'pro-choice'. Legislation should not exempt 'pro-life'

doctors from fulfilling their duty of care. In fact, to discourage women from making inadvertent enquiries about abortion services from antagonistic 'pro-life' doctors, and to protect women from patronizing lectures about morality and the damaging and loaded language of the 'pro-life' practitioner, the legislation could make it an offence for them to decline to offer women requesting abortion services at the very least a referral to someone who would. The legislation could also mandate that 'pro-life' practitioners clearly identify themselves.

In summary the issues I want to draw to the Committee's attention are

1. The recent ruling regarding 'Q' means Abortion Law reform is now urgent as minors can no longer get an abortion in Queensland without going to the Supreme Court, an intolerable and unacceptable situation.
2. Doctors performing abortion on minors under 14 are now at serious risk of prosecution because of the "Q" case, if they proceed without the Courts permission. This cannot continue.
3. Gillick competence assessment should be mandatory for minors. This will stop the arbitrary denial of the right of some women to be assessed, as has happened recently.
4. Parent or legal guardian can give consent for a minor to obtain an abortion where a minor is deemed not Gillick competent. Abortion is more akin to a social and medical emergency than an elective sterilization or hysterectomy. Parents are able to consent to many drastic interventions in emergency situations involving their children, and abortion should be regarded in the same way.
5. Abortion should not be regarded as a special condition in respect of a parents right to give consent for it to a minor under their care.
6. Gestational age limits, and the indications under which abortion is permitted should not be defined by legislation.
7. There should be no right of "pro-life" Doctors to 'conscientious objection' to referral to "pro choice" doctors.