

Health (Abortion Law Reform) Amendment Bill 2016

Submission to the Health, Disability Services and Domestic and Family Violence Prevention Committee

By Women's Legal Service Queensland

About Women's Legal Service Queensland

The Women's Legal Service (WLS) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, and child protection. WLS provides State-wide assistance through our legal helpline, and have a designated Rural, Regional and Remote solicitor to increase women's access to our service in non-metropolitan regions. We undertake outreach work at the Brisbane Women's Correctional Centre and at Family Relationship Centres in Brisbane. We also conduct duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich. Our specialist domestic violence units in Brisbane and Southport provide intensive case work and Court representation for our most vulnerable clients.

We thank the government for the opportunity to provide this feedback.

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Domestic Violence and Reproductive Health

WLS is experienced in working with women facing domestic violence and over 90% of our legal casework clients and 98% of our social work clients from July 2014 – June 2015 identified experiencing domestic violence.ⁱ Research has shown that unplanned, unintended or unwanted pregnancy is more common for women experiencing domestic violence than for other women, and that the pregnancy itself can be used as a strategy by the perpetrator to control.ⁱⁱ We are aware of the high rates of sexual violence and reproductive coercion that occur in abusive intimate partner relationships.ⁱⁱⁱ The WLS social work team routinely screens for sexual violence and reproductive coercion due to the additional risk that pregnancy may pose for women in a domestic violence relationship. WLS values the rights of women, with particular reference to those in violent relationships, to exercise their discretion to use contraception, avoid pregnancy, or access termination services. Accordingly, WLS supports the decriminalisation of abortion in Queensland.

Reproductive coercion is the interference with a woman's reproductive autonomy that denies her decision-making and access to options. Reproductive coercion is a strategy of domestic violence and control that uses the woman's own fertility against her in promoting or preventing pregnancy against her wishes.^{iv} Such control may manifest in a number of ways, including physical or financial control limiting a woman's ability to purchase contraceptives; but also deliberate intentions and actions to impede her decision-making regarding her reproductive health. Such behaviours may include compromising her ability to consent to sex; rape; threats and use of physical violence if sex is refused; disposal of birth control pills; refusal to wear a condom, poking holes in them, or removing the condom during sex; refusing to provide money for emergency contraception; forceful removal of intrauterine devices and implanons; refusal to assist financially or practically with access to an abortion; and threats or use of violence if she has an abortion.^v The ultimate aim of such strategies is to cause the woman to fall pregnant, and consequently impact her ability or willingness to leave the relationship.

WLS is aware that concerns were raised during the Inquiry of the *Abortion Law Reform (Women's Right to Choose) Amendment Bill* that decriminalisation of abortion could place women at greater risk of pressure to terminate. We would respectfully submit again, that screening processes to ensure a woman provides full consent to the termination are adequately covered by the medical professionals performing the procedure. WLS believes that such safeguards are appropriately covered in medical practice guidelines and protocols, rather than under criminal law.

WLS is aware that pregnancy places women at an increased risk of domestic violence,^{vi} and research also shows that physical violence in abusive relationships often begins during pregnancy or, if violence already existed, increases in severity.^{vii} Pregnancy and co-parenting may impact on a woman's plans to leave the relationship despite violence due to childcare needs; fears she may lose her children in a custody battle, or that her violent partner will then have court-ordered unsupervised contact time with them; fears he may carry out threats to harm her, their children, or himself if she leaves; economic and financial concerns regarding supporting the children on her own.

This is the context in which women in violent relationships may make a decision to terminate their pregnancy. WLS respects that choice, and acknowledge that it must be supported and facilitated.

Domestic Violence and Abortion Law

Between 6 and 22 per cent of women seeking an abortion report recent violence from an intimate partner, and concern about violence is a major reason why some women decide to terminate their pregnancy.^{viii} Women who report violence as a reason for abortion describe not wanting to expose children to violence, and understand that continuing the pregnancy will tie them to an abusive partner.^{ix} At WLS we regularly support women whose children are used as tools of leverage and control, where perpetrators use the Family Law Courts and ongoing litigation as a means of continuing control.^x Contemporary media coverage has educated our community in a very real way of the lethal risks that perpetrators of violence pose to women's lives, and their own children's lives. A woman experiencing pregnancy, especially a pregnancy manipulated or forced on her by the perpetrator, may wish to terminate in those circumstances as a strategy of safety and out of concern for any future children.

Current criminalisation of abortion poses many barriers for women seeking abortion, with particular onus on women in violent relationships. Criminalisation and the current ambiguity of the common law negatively impacts provision of services due to uncertainty doctors face about liability and potential prosecution. Despite the implementation of the *Queensland Health Maternity and Neonatal Clinical Guidelines on Therapeutic Termination of Pregnancy* in 2013, these are not mandatory or enforceable, and provision and process varies between public hospitals. Women experiencing domestic violence may also be experiencing financial control and heavy financial scrutiny, and not be able to access funds for the procedure through a private clinic.

The American Turnaway Study has found in a study released in 2014 that women who sought but were denied an abortion were slower to end violent relationships.^{xi} These women were more likely to have sustained contact with the perpetrator over time and continue to experience physical violence than women who were able to access the abortion.^{xii}

Decriminalising abortion will contribute to keeping many women and children safe from further ongoing violence and control.

Recommendations

1. Sections 224, 225 and 226 of the *Criminal Code 1899 (Qld)* should be repealed.

WLS supports the decriminalisation of abortion in Queensland, and the repeal of sections 224, 225 and 226. We recognise the concerns expressed by the Committee that a blanket repeal lacks sufficient legislative guidance for health practitioners, women, and community members. We believe that the additional proposed reforms presented in this Bill will address those concerns,

and provide appropriate frameworks for the provision of abortion to Queensland women if passed in conjunction with the *Abortion Law Reform (Women's Right to Choose) Amendment Bill*.

Criminalisation of abortion poses many barriers for women regarding access to information and services, and medical practitioner willingness to provide terminations due to the legal ambiguity. These barriers are compounded for women experiencing domestic violence and reproductive coercion.

Today abortion is one of the safest medical or surgical procedures when performed by a qualified health professional.^{xiii} Current regulation of abortion through clinic and hospital licensing conditions and professional practice standards are sufficient to ensure best outcomes and safety for women and their doctors.

2. A woman does not commit an offence by performing, consenting to or assisting in an abortion on herself

WLS supports this amendment, which is inline with the removal of section 225 from the *Criminal Code 1899* (Qld). WLS understands that a woman who seeks an abortion does so for many varied and valid reasons, and must be able to do so without threat of criminal sanction.

3. An abortion on a woman who is more than 24 weeks pregnant may be performed only if two doctors reasonably believe the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated.

Currently, terminations after 20 weeks are rare, and are usually due to circumstances including domestic violence, difficulty in locating a provider, inappropriate referrals, financial and geographic barriers, or other practical reasons.^{xiv} With greater accessibility at earlier trimesters, the small number of later gestation terminations will decrease even further.

However, WLS supports this proposed amendment on the grounds that it recognises any greater risk to the pregnant woman, but also that clear gestational guidelines provides greater clarity for the medical profession around obligations and responsibilities.

WLS also understands it is important that the medical opinion is not required to be specialist or in a particular field. Such a specialist requirement would potentially place greater burdens upon women residing in rural and remote Queensland where access to medical consultations presents many barriers.

4. No one is under a duty to perform or assist in performing an abortion; however a doctor has a duty to perform an abortion if it is necessary to save a woman's life or prevent serious physical injury/

WLS believes that any legislation regarding conscientious objection must also include an obligation to refer a woman seeking information regarding abortion access to a practitioner or service who will provide the information or service that health professional is unwilling to give.

As WLS is a specialist domestic violence service, we hold grave concerns for women not being provided with accurate information at a first point of contact with a medical professional. Domestic violence impacts a woman's ability to access services, but particularly if repeat or multiple appointments need to be hidden or explained away to a controlling perpetrator. Domestic violence may also compromise a woman's access to finances, which impacts her ability to pay for multiple medical appointments.

5. A protected zone of at least 50 metres must be declared around an abortion facility. Publishing images of a person entering, leaving, or trying to enter or leave an abortion facility is prohibited.

WLS supports this proposed amendment. WLS is aware that for many women seeking an abortion in violent or abusive relationships are not able to disclose the procedure to their partner due to concerns for their safety if he was made aware of it. Prohibitions on any publication of images of a person entering, leaving or trying to enter or leave an abortion facility will assist in a woman's safety in such circumstances.

WLS supports both the *Health (Abortion Law Reform) Amendment Bill* and the *Abortion Law Reform (Women's Right to Choose) Amendment Bill* and urge the Committee to recommend both Bills are debated and voted on together as a package on the floor of Parliament, to reflect the intent of the two pieces of legislation.

Thank you for the opportunity to provide comment. We are available and happy to participate in any public hearings to assist understanding of these matters.

ⁱ Women's Legal Service "Annual Report: Our Year in Review 2014-2015".

ⁱⁱ Corrine M. Williams, Ulla Larsen and Laura A. McClosky, 'Intimate Partner Violence and Women's Contraceptive Use' (2008) 14 *Violence Against Women* 1382; Ann M. Moore, Lori F. Frohwirth and Elizabeth Miller, 'Male Reproductive Control of Women who have experienced Intimate Partner Violence in the United States' (2010) 70 *Social Science and Medicine* 1737.

ⁱⁱⁱ Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra; World Health Organisation (2005) *Multi-Country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses*.

^{iv} Elizabeth Miller, Michele R. Decker, Heather L. McCauley, Daniel J. Tancredi, Rebecca R. Levenson, Jeffrey Waldman, Phyllis Schoenwal and Jay G. Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 316; Miller, Jordan, Levenson and Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457.

^v Elizabeth Miller, Beth Jordan, Rebecca Levenson and Jay G. Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457; Linda Chamberlain and Rebecca Levenson, *Addressing Partner Violence, Reproductive and Sexual Coercion: A Guide for Obstetric, Gynecologic and Reproductive Health Care Settings* (2nd edn) (2012) Futures Without Violence (online).

^{vi} Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra.

^{vii} Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra; Lois James, David Brody, and Zachary Hamilton, 'Risk Factors for Domestic Violence During Pregnancy: A Meta-Analytic Review' (2013) 28(3) *Violence and Victims* 359.

- ^{viii} Karuna S. Chibber, M. Antonia Biggs, Sarah C. M. Roberts, Diana Greene Foster 'The role of intimate partners in women's reasons for seeking abortion' (2014) 24 *Women's Health Issues* 131; M. Antonia Biggs, Heather Gould, Diana Greene Foster, 'Understanding why women seek abortions in the US' (2013) 23 *BMC Women's Health* 39; Lawrence B. Finer, Lori F. Frohworth, Lindsay A. Dauphinee, Susheela Singh, Ann M. Moore 'Reasons US Women have abortions: quantitative and qualitative perspectives' (2005) 37 *Perspectives on Sexual and Reproductive Health* 110.
- ^{ix} Karuna S. Chibber, M. Antonia Biggs, Sarah C. M. Roberts, Diana Greene Foster 'The role of intimate partners in women's reasons for seeking abortion' (2014) 24 *Women's Health Issues* 131.
- ^x Rosie Batty, 'Speech to the National Press Club' (Speech delivered at the National Press Club, Canberra, 15 June 2016).
- ^{xi} Sarah C. M. Roberts, M. Antonia Biggs, Karuna S. Chibber, Heather Gould, Corinne H. Rocca and Diana Greene Foster, 'Risk of Violence from the Man Involved in the Pregnancy after receiving or being denied an abortion' (2014) 12 *BMC Medicine* 144.
- ^{xii} Sarah C. M. Roberts, M. Antonia Biggs, Karuna S. Chibber, Heather Gould, Corinne H. Rocca and Diana Greene Foster, 'Risk of Violence from the Man Involved in the Pregnancy after receiving or being denied an abortion' (2014) 12 *BMC Medicine* 144.
- ^{xiii} World Health Organisation, 'Safe Abortion: Technical and Policy Guidance for Health Systems' (2003); Caroline de Costa, 'Medical abortion in Australia' (Paper presented at Unplanned Pregnancy: Prevention, Responses and Options, Brisbane, Queensland 17 September 2012).
- ^{xiv} Katharine Betts, 'Attitudes to Abortion: Australia and Queensland in the Twenty-First Century' (2009) 17(3) *People and Place* 25; E.A. Drey, D.G. Foster, R.A. Jackson, S.J. Lee, L.H. Cardenas and P.D. Darney, 'Risk Factors Associated with Presenting for Abortion in the Second Trimester' (2006) 107 *Obstetgynocol*: 128; Lawrence B. Finer, Lori F. Fronwirth, Lindsay A. Dauphinee, Susheela Singh, and AnnM. Moore, 'Timing of steps and reasons for delay in obtaining abortions in the United States' (2006) 74 *Contraception* 344; Diana Greene Foster, Rebecca A. Jackson, Kate Cosby, Tracy A. Weitz, Philip D. Darney, and Eleanor A. Drey 'Predictors of delay in each step leading to an abortion' (2008) 77:4 *Contraception* 289.