

## Young Queenslanders for the Right to Choose

Dear Research Director,

RE: *Health (Abortion Law Reform) Amendment Bill 2016*

Young Queenslanders for the Right to Choose thanks the Committee for the opportunity to make this submission to the inquiry.

Young Queenslanders for the Right to Choose is a student based collective established by Griffith University law students in 2016 to support the decriminalisation of abortion in Queensland. We are not politically aligned; we represent a diverse range of young (and not so young) Queenslanders. We advocate for the right to reproductive choice and the decriminalisation of abortion in Queensland through education, awareness and activism, working in partnership with other organisations and student bodies.

**We strongly support the current Bill to amend the *Health Act 1937* and allow for abortion to be available on demand up until the 24<sup>th</sup> week of pregnancy, and with the agreement of two medical practitioners after this point. We also strongly support the enactment of protection areas around clinics.**

We refer the Committee to our previous submission made in response to the *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016* as well as the evidence given by us at the Brisbane public hearing. In that submission we recommended that the Victorian model of regulation be adopted, which reflects the amendments made by the current Bill.

**It is the submission of our members that these regulations represent best practice and reflect community expectations as well as meeting international human rights standards.**

We would also like to draw the Committee's attention to our website, available at [REDACTED], which contains the anonymous stories of Queensland women and their abortion experiences. Since the first Bill, we have received numerous stories from women across Queensland wanting to share their story. Abortion remains

If you would like to discuss this submission, please contact Kate Marchesi or Olivia King at [REDACTED] We are happy to be called for further consultation.

Kind regards,

Kate Marchesi and Olivia King  
President and Vice President  
**Young Qld for the Right to Choose**

**Executive summary**

We support the Bill to decriminalise abortion in Queensland. We recommend a repeal of all sections criminalising abortion in Queensland for both the patient and the practitioner. We also recommend an adoption of the Victorian model of regulation as the best model. This includes unrestricted and legal access to abortion until 24 weeks, after this point, referral by two practitioners is needed. We also recommend exclusion zones be put in place, to ensure the safety of patients and clinic employees. We recognize the importance of unbiased, independent counseling, and therefore also recommend disclosure requirements for counseling services to declare their stance on abortion to patients. We defer to the expertise of Children by Choice on the issue of provision of counseling services and support their submission and recommendations.

The law surrounding abortion is archaic and redundant. Criminalising abortion serves no justifiable public purpose except to stigmatize a vital health service. People seeking terminations are labeled as criminals under the current law. Practitioners also face criminal liability for acting according to their duty to provide care in the best interests of the patient.

Laws restricting access to vital health services are out of touch with modern community standards and expectations. The law must be reformed to reflect current community values. The majority of Queenslanders does not support these restrictive laws and agree that abortion should be legal, at least in some circumstances. There are many reasons why people may need to access abortion services, and this decision should be between a patient and their doctor. Arguments against decriminalisation do not reflect the lived experiences of people seeking abortions. The focus on late term abortions without giving consideration to the context in which they are performed, and the many reasons why this procedure may be necessary, only further stigmatizes people in desperate situations.

We strongly urge the Committee to support access to health services and this Bill. Decriminalisation is the first step in providing quality and accessible health care.

Further regulation is needed to ensure consistency and affordability for all Queenslanders. While there may not yet be consensus surrounding the details of regulation, this should not discourage, or detract from the aim of decriminalisation.

### **Recommendations**

Young Queenslanders for the Right to Choose recommends the following in regards to abortion law reform:

1. Immediate repeal of sections 224, 225 and 226 of the *Criminal Code 1899*.
2. Adoption of the Victorian model of regulation.
3. Abortion to be unrestricted and accessible until 24 weeks of gestation.
4. After 24 weeks, abortion should be available, with the consultation and referral of two practitioners.
5. Practitioners should be given the option to object to treatment on the basis of conscientious objection. However, if a practitioner chooses this option, they must refer the patient to a practitioner who is known not to have an objection to treatment.
6. Exclusion zones set up around abortion clinics and counseling services to ensure the safety of patients and workers. These should reflect the Victorian provisions.
7. Regulations should not be gender specific and should use gender neutral language.
8. Pregnancy counseling services should be required to disclose their position on reproductive choice, and whether they provide referrals for termination services. Advertising of pregnancy counseling services must be truthful and transparent.

### **Existing legal principles that govern termination practices in Queensland<sup>1</sup>**

The existing legal principles that govern termination practices in Queensland are unclear and out of touch with community standards. Abortion, and the provision abortion services are criminal offences under the *Criminal Code 1899* (Qld), in any

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<sup>1</sup> ToR 1.

circumstance.<sup>2</sup> The legislation makes it an offence to attempt to procure an abortion, and proscribes a penalty of 14 years imprisonment.<sup>3</sup> It is also illegal for a woman to procure her own abortion. If convicted, the woman faces imprisonment of up to seven years.<sup>4</sup> The Act also makes it an offence to supply drugs or instruments for the purpose of procuring an abortion, attracting a penalty of up to 3 years imprisonment.<sup>5</sup> This offence was originally drafted in the 1861 English statute, *Offences Against the Person Act* and has not been altered since its adoption in the Code in 1899.

The common law provides exceptions in rare circumstances where there is a danger to the woman's physical or mental health. The case of *R v Bayliss & Cullen*, decided in 1986, provided that a defence under section 282 of the Act, 'Surgical operations and medical treatment', meant that abortions may be lawfully performed where continuing with the pregnancy would pose serious harm to mental or physical health of the woman.<sup>6</sup> In 2010 the law was tested again when a couple from Cairns was charged with procuring a miscarriage using misoprostol and mifepristone. The couple had consulted three doctors before administering the drug, with an OB/GYN stating that the drugs were not harmful to the person taking them and were routinely used by thousands of women worldwide.<sup>7</sup> The jury took less than an hour to find the couple not guilty.

The current legal framework regarding abortion is redundant and insufficient. The law is unclear and means that patients and practitioners continue to operate in legal uncertainty.

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<sup>2</sup> ss 224, 225, 226.

<sup>3</sup> *Criminal Code 1899* (Q d) s 224.

<sup>4</sup> *Criminal Code 1899* (Q d) s 225.

<sup>5</sup> *Criminal Code 1899* (Q d) s 226.

<sup>6</sup> [1986] QDC 011.

<sup>7</sup> *R v Leach and Brennan* [1896] QDC 011.

## **Legislative and Regulatory Arrangements in other Australian Jurisdictions including regulating terminations based on gestational periods**

Abortion law reform has taken place in Western Australia, South Australia and the Northern Territory. Abortion has been legalized in Victoria, Tasmania and the ACT. Abortion is still illegal in New South Wales.

### **New South Wales**

The law surrounding abortion in New South Wales states that abortion is only legal if the procedure is performed in order to prevent a serious danger to the woman's mental and physical health. This closely matches the current law in Queensland however New South Wales also allows economic and social pressures to be considered by a medical practitioner when assessing whether or not a woman is eligible to have an abortion.<sup>8</sup> Aside from Queensland, this law is the most restrictive law on abortion in the country. It presents similar problems as to what is currently seen in Queensland. Even with of social and economic factors being examined, abortion is still a criminal offence with punishments that can deter doctors from referring their patients and prevent patients from knowing all of their options when confronted with an unwanted pregnancy; mostly impacting women living in rural areas due to sorely restricted access to termination services. Consequently, 'abortion tourism' takes place between NSW and Victoria.<sup>9</sup>

### **Western Australia**

In Western Australia abortion is legal until 20 weeks' gestation.<sup>10</sup> There are limitations to this practice for women who are under 16, however these limitations relate more to the practices surrounding abortion itself such as counselling and

<sup>8</sup> de Costa C, Douglas H, Black K. 'Making it legal: abortion providers' knowledge and use of abortion law in New South Wales and Queensland.' *Australian and New Zealand Journal of Obstetrics and Gynaecology*. January 24 2013. Available at <http://www.ncbi.nlm.nih.gov/pubmed/23347292>; *R v Wald* [1971] 3 DCR (NSW) 25.

<sup>9</sup> de Costa C, Douglas H. 'Abortion law in Australia: It's time for national consistency and decriminalisation' *Medical Journal of Australia*. 2015. At <https://www.mja.com.au/journal/2015/203/9/abortion-law-australia-it-s-time-national-consistency-and-decriminalisation>

<sup>10</sup> *Acts Amendment (Abortion) Act 1998* s 7; *Health Act (Abortion) Amendment Act 1998* s 334 (3).

competency.<sup>11</sup> Once the 20<sup>th</sup> week of gestation has passed two medical practitioners are selected from a panel of six, all of whom the Minister of Health have appointed, to assess whether or not an abortion is necessary. The test is whether or not mother or fetus has a serious medical condition that would make continuing on with the pregnancy harmful.<sup>12</sup> This system has been subject to multiple criticisms by legal and medical professionals alike.<sup>13</sup> There is known 'abortion tourism' between WA and Victoria as a result of the strict termination laws in WA for late term abortions.<sup>14</sup>

### Northern Territory

Abortion law in the Northern Territory is legal until the 14<sup>th</sup> week of gestation provided that a 'maternal health ground' or the 'fetal disability ground' can be met as stipulated in their Act.<sup>15</sup> There have been multiple calls for reform so as to increase accessibility to abortion services in the state.<sup>16</sup> Doctors at the Menzies School of Health Research in Darwin have stated repeatedly that termination providers in the Northern Territory are scarce. Currently there is only one public hospital in the state located in Alice Springs that provides surgical abortions and only two or three doctors can provide them. There is also one private hospital at which only a few doctors can provide surgical abortions<sup>17</sup>. It is also increasingly difficult to access medical abortion in the Northern Territory, as there is a requirement for a doctor's referral to access mifepristone (the RU486 pill), and often travel to a

<sup>11</sup> *Children by Choice*, 'Facts and Figures: Australian Abortion Law', 2015. At <http://www.childrenbychoice.org.au/info--a--resources/facts-and-figures/australian-abortion-law-and-practice#VIC>

<sup>12</sup> *Acts Amendment (Abortion) Act 1998* (WA) s 7(7)(a).

<sup>13</sup> de Crespigny, Savulescu J. 'Abortion: Time to Clarify Australia's confusing laws', *Medical Journal of Australia*, 2004. <https://www.mja.com.au/journal/2004/181/4/abortion-time-clarify-australias-confusing-laws>

<sup>14</sup> de Costa C, Douglas H. 'Abortion law in Australia: It's time for national consistency and decriminalisation' *Medical Journal of Australia*. 2015. At <https://www.mja.com.au/journal/2015/203/9/abortion-law-australia--its-time-national-consistency-and-decriminalisation>

<sup>15</sup> *Medical Services Act 2015* (NT) s11.

<sup>16</sup> *Medical Journal of Australia*, 'Abortion reform needed in the Northern Territory', Menzies Institute for Medical Research. 4 May 2016. At <https://www.scimex.org/newsfeed/abortion-reform-needed-in-the-northern-territory>

<sup>17</sup> *Ibid.*

hospital is necessary.<sup>18</sup> These laws and restrictions are discriminatory to those who live in rural areas, and also those who are financially disadvantaged, homeless or living with abuse.

### **South Australia**

Whilst South Australia was the first state or territory in Australia to reform abortion laws, there are still sections within state law that list possible criminal penalties for unlawful abortions. Abortion is only legal in South Australia, until 28 weeks gestation, if the mother's health and/or life is in danger, or if there is a fetal disability.<sup>19</sup> These laws, however, are still highly restrictive to a person or couple's ability to terminate, or continue a pregnancy.

### **Australian Capital Territory**

Abortion in the Australian Capital Territory is currently legal, after the *Crimes (Abolition of Offence of Abortion) Act 2002* (ACT) repealed sections of the *Crimes Act 1900* (NSW). This was later confirmed in 2004, with the *Human Rights Act 2004* (ACT) declared that preborn human life did not enjoy the right to life, which meant that full term abortions on demand are legal.<sup>20</sup> There are currently no gestational limits in place.

### **Tasmania**

Abortion in Tasmania is currently legal until the 16<sup>th</sup> week of gestation as provided by the *Reproductive Health (Access to Terminations) Act*.<sup>21</sup> After the point of 16 weeks, two medical practitioners must agree that an abortion is necessary in order

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<sup>18</sup> Abort on Australia. 'Abort on Countries in Northern Territory'. 2016.

<sup>19</sup> *Criminal Law Consolidation Act 1935* (SA) s 82A(a)( ).

<sup>20</sup> *Human Rights Act 2004* (ACT)

<sup>21</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas) s 4.



to preserve the mother's future physical, psychological and social health.<sup>22</sup> Less than 2% of abortions are carried out past the 20<sup>th</sup> week of gestation and the most common reasons for needing an abortion this late in a pregnancy are fetal abnormality or disability or an abusive partner barring access to abortion.<sup>23</sup> Whilst abortion being legal in Tasmania are better than the current Queensland law, the gestational limits are highly restrictive.

## Victoria

Currently, Victorian laws provide the most accessibility. Termination services are legal and unrestricted, up to 24 weeks.<sup>24</sup> This is a result of the abortion law reform movement that occurred in 2008 and resulted in the *Abortion Law Reform Act 2008* (Vic). After the 24<sup>th</sup> week of gestation a woman can have an abortion if two medical practitioners reasonably believe that abortion is "*appropriate in all circumstances*".<sup>25</sup> More often than not abortion past the 24 week mark are performed to save the life of the woman and are very rare in practice.<sup>26</sup> As a result of the legal status of abortion, access is much better in the public health system, as opposed to states where abortion is illegal, as well as many private clinics where abortions can be performed.<sup>27</sup>

**Young Queenslanders for the Right to Choose recommends the adoption of the Victorian model in Queensland. The laws in Victoria provide optimum access and support for people and couples seeking termination services and are not discriminatory to women living in rural areas, poverty or victims of sexual assault.**

<sup>22</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas) s 5(1)(b).

<sup>23</sup> Bagg, A, Buckmaster, L, Pratt A. 'How many abortions are there in Australia? A discussion of abortion statistics, the reasons for abortions, and options for improved statistical collection.' Department of Parliamentary Services. 14<sup>th</sup> February 2015.

<sup>24</sup> *Abortion Law Reform Act 2008* (Vic) s 5.

<sup>25</sup> *Abortion Law Reform Act 2008* (Vic) s 5(a).

<sup>26</sup> Women's Health Victoria, 'Abortion after 24 weeks Q&A', (2016). Available at [http://whv.org.au/statistics/assets/639c6f2c/Abortion after 24 weeks Q A .pdf](http://whv.org.au/statistics/assets/639c6f2c/Abortion%20after%2024%20weeks%20Q%20A.pdf)

<sup>27</sup> Chrenbycho, 'Facts and Figures: Australian Abortion Law', 2015. At <http://www.chrenbycho.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice#VIC>

**The need to modernise and clarify the law (without altering current clinical practices), to reflect current attitudes and expectations<sup>28</sup>**

### **Changing values**

The law should reflect current community standards and values. There is currently a significant disconnect between law, practice, and community standards with regard to abortion. According to a 2004 study on attitudes to abortion, 81% of Australians believed a woman should have the right to choose whether or not she has an abortion.<sup>29</sup> An Auspoll conducted in 2009 also found that 4 out of 5 Queensland voters wanted the law changed so that abortion is no longer a crime.<sup>30</sup> Further, the majority of opposition to abortion law reform comes from religious minority groups and those over 75 years old.<sup>31</sup>

Medical professionals also support access to abortion. A study by Professor De Costa found that 85% of practicing obstetricians and gynaecologists are not opposed to abortion, and 90% of the doctors surveyed agreed that abortion should be available through the public health system in all states and territories.<sup>32</sup> The Australian Medical Association has said that current abortion laws are unclear and do not provide certainty for doctors or for patients. The AMA also stated that 'abortion laws are a barrier to a doctor's first duty; best patient care'.<sup>33</sup>

When the law on abortion was drafted, women did not have the right to vote, were not entitled to equal pay and were considered to be property; property that does

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<sup>28</sup> ToR 3.

<sup>29</sup> Katherine Betts, 'Attitudes to Abortion in Australia: 1972 to 2003' *People and Place* 22, 2004.

<sup>30</sup> Katherine Betts, 'Attitudes to Abortion: Australia and Queensland in the Twenty-first Century', *People and Place* 17(3), 2009.

<sup>31</sup> *Ibid*

<sup>32</sup> CM de Costa, DB Russell and M Carrette 'Views and practices of induced abortion among Australian Fertility and specialist trainees of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists' *Medical Journal of Australia* (2010; 193 (1): 13-16). (Available online at [mja.com.au](http://mja.com.au)).

<sup>33</sup> Australian Associated Press "Doctors call for abortion law certainty" *Brisbane Times*, 27 October 2010.

not have a right to autonomy, freedom and self government. Society has progressed beyond these views of women, and so should the law.

### **Changing practice**

Not only does the law fail to reflect community values, it fails to reflect practice. Despite the criminalisation of abortion in all circumstances, there have been no convictions, or prosecutions of abortion in Queensland since 2010. According to data from South Australia, around 14, 000 abortions take place every year in Queensland and up to 1 in 3 people with a uterus will have an abortion in their lifetime.<sup>34</sup> The law is redundant and does not reflect the reality of abortion being a common procedure, carried out routinely throughout the state. Because of the availability of procedures, for patients of means living in the south eastern region of Queensland, there is a general expectation, that abortion is legal and accessible. We have found this to be the case within our member base of Young Queenslanders, who are often unaware of the legal status of abortion.

In 2010, a couple in Cairns was charged with procuring an abortion and supplying drugs, after police found a empty pill packet containing the 'RU486' pill, used to procure a medical abortion.<sup>35</sup> A jury took less than an hour to find the young couple not guilty. In his closing address, defence barrister Kevin McCreanor criticised the law criminalising abortion. Prosecutor Michael Byrne, made an interesting address to the jury, aware of modern community standards, urging them to put personal feelings aside about the fairness of the law, stating to the jury, 'you are sitting in a court of law, not a court of morals'.<sup>36</sup>

### **Access to termination services as a human right**

Leading Australian human rights lawyers have supported the decriminalisation of abortion, stating that 'the United Nations have declared access to safe and legal abortion as a fundamental human right. The right to health, including reproductive

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<sup>34</sup> Children by Choice Annual Report.

<sup>35</sup> *R v Leach and Brennan* [2010] QDC 329.

<sup>36</sup> Sydney Morning Herald (online) 'Abort on coup e not gu ty', (14 October 2010) <http://www.smh.com.au/nat on a /abort on-coup e-not-gu ty-20101014-16kv0.htm>

health, is central to human rights protection and promotion'.<sup>37</sup> We refer to the submission of Australian Lawyers for Human Rights on the issue of abortion and human rights and endorse their submissions and expertise on this point.

International human rights bodies have recognised reproductive choice as a human right. Denying access to termination services and the forced continuation of an unwanted pregnancy constitutes a violation of human rights.<sup>38</sup> The Committee on the Elimination of Discrimination Against Women (CEDAW) has specified that it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women'.<sup>39</sup> Recently, the United Nations Human Rights Committee also found Ireland to be violating human rights after failing to allow a woman to abort a foetus with a congenital heart defect. The UN Human Rights Committee declared Ireland's criminalisation of abortions to have led to cruel, inhuman and degrading treatment of a woman who was forced to choose between carrying her foetus to term, knowing it would not survive, or seeking abortion overseas.<sup>40</sup> The United Nations has also included gender equality as part of their 'Sustainable Development Goals (SDG)'. Ensuring universal access to sexual and reproductive health has been named as forming part of this goal.<sup>41</sup>

### **Impacts of restricted access for disadvantaged Queenslanders**

The criminalisation of abortion has significant impacts for disadvantaged Queenslanders. While there are many abortion clinics located in Queensland, only three of these clinics are located outside of the Southeast region (Rockhampton,

<sup>37</sup> Rebecca Cook and Bernard Dickens, 'Human Rights Dynamics of Abortion Law Reform' (2003) 25 *Human Rights Quarterly* 1, 24.

<sup>38</sup> Committee on the Elimination of Discrimination Against Women, *LC v. Peru*, CEDAW/C/50/D22/2009, para 8.15.

<sup>39</sup> ALHR press release

<sup>40</sup> United Nations Office of the High Commissioner of Human Rights, 'Press release: Ireland and abortion ban subjected woman to suffering and discrimination – UN experts', 9 June 2016. See press release <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20077&LangID=E> and findings of the Committee [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2324/2013&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2324/2013&Lang=en)

<sup>41</sup> United Nations Development Programme, 'Goal 5: Gender equality'. Available at <http://www.undp.org/content/undp/en/home/sdgoverview/post-2015-development-agenda/goal-5.htm>

Townsville and Cairns). This poses a significant barrier to access of health services for people living in rural and remote areas. For patients, the number of practitioners available also limits access for those living in remote and rural areas access. Some communities may only have one practitioner operating in the area; access for patients living in those communities is therefore extremely limited. The only option for patients then is to travel long distances to the nearest provider, at significant expense to the individual. Here, it should be noted that in these remote and rural areas where there is a limited number of medical practitioners a duty to refer patients put to doctors is of paramount importance. Upon investigating this issue the UN Committee on the Elimination of Discrimination against Women (CEDAW) found that a refusal to treat a patient on the grounds of conscientious objection interfered with women's reproductive rights.<sup>43</sup>

Financially disadvantaged individuals are also limited in their ability to access abortion services. Of the abortions carried out in Queensland, the vast majority of these are performed in private clinics, with only 1% being carried out in public health facilities.<sup>42</sup> First trimester termination services performed in private clinics have an out of pocket cost between \$350 and \$950, depending on the location of the clinic. Surgical abortions performed on or after 16 weeks can cost up to \$3950.<sup>44</sup> Young women are also disadvantaged by the criminalisation of abortion and lack of regulation. The decriminalisation of abortion services would improve access by allowing more procedures to be performed in public hospitals and by removing the threat of prosecution for practitioners.

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<sup>42</sup> Dr Tony O'Conne , Chief Executive of Qld Health Centre for Healthcare Improvement, 2010,

<sup>43</sup> Committee on the Elimination of Discrimination against Women, Concluding Comments on Croatia UN Doc. A/53/38, Part 1 (1998) para 103.

<sup>44</sup> Children by Choice Annual Report, 2015.

**Addressing arguments against reproductive choice**

Opponents of abortion law reform often point to two main reasons why abortion laws should remain untouched:

- I. The right to life applies to the foetus; and
- II. Decriminalising or legalising abortion will increase abortions.

**The right to life does not apply to a foetus**

Some commentators have argued that right to access abortion services conflicts with a foetus having a right to life. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that 'every human being has the inherent right to life'. However international human rights law has never supported the view that this right extends to the unborn.<sup>45</sup> Live birth has been recognised as the point at which this right applies.<sup>45</sup> Equally, the *Convention on the Rights of the Child* also does not subordinate the rights of the woman in favour of the unborn.<sup>47</sup>

There have been many challenges to liberal abortion laws internationally. So far none have been successful. Canadian, UK, and South African courts have all stated that the right to life does not protect fetuses because they lack legal personhood.<sup>48</sup>

The case of *Paton v British Pregnancy Advisory Service Trustees* discussed the

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<sup>45</sup>Rebecca Cook, 'International Protection of Women's Reproductive Rights' 24 *NYU International Journal of Law and Politics* 545-727 at 647; Louis Warner, 'Any Reasonable Creature is Being' (1987) 13 *Monash University Law Review* 37-55.

<sup>46</sup>*Ibid.*

<sup>47</sup>Philip Aston, 'The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child', 12 *Human Rights Quarterly* 156, 173 (1990); Janoff AF, 'Rights of the pregnant child vs. rights of the unborn under the Convention on the Rights of the Child', *Boston University Law Journal*, 22(1), 2004, 163-188 at 171. Available at <http://www.bu.edu/aw/journals-arch/ve/nternational/volume22n1/documents/163-188.pdf>; Luisa Blanchfield, 'The United Nations Convention on the Rights of the Child: Background and Policy Issues', Congressional Research Service, 2010. Available at <http://fpc.state.gov/documents/organization/153279.pdf>; 'The International Law Implications of Australian Abortion Law' (2000) 23(2) *University of New South Wales Law Journal* 1, 16; Rebecca Cook and Bernard Dickens, 'Human Rights Dynamics of Abortion Law Reform' (2003) 25 *Human Rights Quarterly* 1, 24.

<sup>48</sup>*Christian Lawyers Association of SA and Others v Minister of Health* 1998 (11) BCLR 1434 (T); *Tremblay v Daigle* [1989] 2 SCR 530; *Burton v Islington Health Authority* [1993] QB 204; *Paton v British Pregnancy Advisory Service Trustees* [1979] 1 QB 276.

definition of 'everyone' and held that it should be interpreted as persons already born, and cannot be applied to the foetus.<sup>49</sup>

### **Decriminalising abortion does not lead to more abortions**

Anti choice groups have commonly argued that legalising or decriminalising abortion services leads to an increase in the number of abortions. However, this has proven to be false, according to a recent study by the Guttmacher Institute and The World Health Organisation.<sup>50</sup> The most effective measure to decrease the number of abortions, is accessible and affordable contraception. Dr Gilda Sedgh from the Guttmacher Institute said that 'In developed countries, the continued fall in abortion rates is largely due to increased use of modern contraception that has given women greater control over the timing and number of children they want'.<sup>51</sup> Dr Bela Ganatra from the WHO said that 'nearly \$300 million is spent each year on treating complications from unsafe abortions'. Professor Diana Greene Foster from the University of California commented on the findings, saying that 'the obvious interpretation is that criminalising abortion does not prevent it but, rather, drives women to seek illegal services or methods'.<sup>52</sup> There is no such thing as no abortion, only safe and unsafe.

### **Provision of counselling and support services for women.**

Anyone seeking abortion services should have access to counselling and support if they wish to access these services. With over half of pregnancies in Australia being unexpected it is an imperative that the appropriate counselling services be provided and that these services be transparent. The availability counselling services are highly important when deciding whether or not to terminate a pregnancy. However,

<sup>49</sup> *Paton v United Kingdom* (1980) 3 EHRR 408 at 415.

<sup>50</sup> Joerg Dreweke, 'New Car ty for the U.S. Abort on debate: A steep drop n un ntended pregnancy s dr v ng recent abort on dec nes', The Guttmacher Inst tute, (2016). Report ava ab e on ne at <https://www.guttmacher.org/about/gpr/2016/03/new-c ar ty-us-abort on-debate-steep-drop-un ntended-pregnancy-dr v ng-recent>

<sup>51</sup> The Lancet, 'Abort on rates at a -t me ow n deve oped countr es but rema n unchanged n deve op ng countr es', (11 May 2016). Art c e ava ab e at <http://www.eureka ert.org/pub re eases/2016-05/t -t a051016.php>

<sup>52</sup> The Lancet, 'Abort on rates at a -t me ow n deve oped countr es but rema n unchanged n deve op ng countr es', (11 May 2016). Art c e ava ab e at <http://www.eureka ert.org/pub re eases/2016-05/t -t a051016.php>

many people seeking abortions do not wish to seek counselling.<sup>53</sup> People wishing to terminate a wanted pregnancy after being diagnosed with a fetal disability often require extreme amounts of support from not only their personal circle of friends and family but often from counsellors and social workers as well.<sup>54</sup>

Independent, unbiased and non judgmental pregnancy counselling is essential and scarcely provided in Queensland. Currently, Children by Choice is the only independent pregnancy counselling service Queensland, not religiously affiliated or operated by a termination provider. Counselling and information services should present all options to patients, including parenting, termination and adoption.

Many anti choice counselling services use false and misleading advertising techniques to pose as independent and unbiased. These services will more likely try to convince a woman to continue on with the pregnancy as opposed to presenting her with the option of abortion as a viable one. Most of these services are provided by religious organisations.<sup>55</sup>

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<sup>53</sup> Royal College of Obstetricians and Gynaecologists, London, 2011. The care of women requesting induced abortion. Evidence Based Clinical Guidance no 7.

<sup>54</sup> Royal Australian and New Zealand College of Obstetricians and Gynaecologists. Late term nation of pregnancy. Statement C-Gyn-17a. Melbourne, 2016. At [www.ranzcog.edu.au](http://www.ranzcog.edu.au)

<sup>55</sup> Children by Choice, 'About us: What we do', 2014. At <http://www.childrenbychoice.org.au/about-us/what-we-do>



**Appendix 1: Individual submissions from members of Young Queenslanders for the Right to Choose****1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

I do not believe that existing services in Qld regarding termination of pregnancy are adequate. It is women's human rights to be able to control if, when and how many children she has. It is unacceptable that women's autonomy over our own bodies is determined by our financial position and our geographic proximity to providers of termination. It is grossly unacceptable that women need to prove that we are at physical or mental risk to be able to access a termination. Women are the experts in our own lives, and a decision to terminate a pregnancy should be the sole decision of the woman and her doctor – specifically a doctor who does not let their anti-choice views obfuscate their medical duty to their patients. Faith-based hospitals should not be allowed to let their own views dictate the level of medical care that women in Queensland receive. GPs should not be allowed to let their own views be an obstacle to proper medical care based on women's own wishes. Government funded pregnancy counselling services should be legally obliged to provide the full range of options available to women including termination. The accessibility of medical terminations (via RU486) also needs to be broadened, so that women across Qld, no matter where they live, how much money they have, and on the sole basis of their own decision and agency, can access terminations.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

Abortion should not be a crime. Abortion is a medical procedure. It is the fundamental human right of women to be able to decide if, when, how many, and the timing of children that she has. Women's bodies are not the property of the state, and it is not for the state to decide what women should do with their bodies. It is unacceptable that in 2016 that we still need to fight for fundamental women's rights. Providing abortion services should not be a crime. It is a medical procedure that is provided by licensed and qualified medical practitioners and should not be

criminalised. The best way to ensure women stay safe and healthy, and can exercise their reproductive choice and autonomy is to decriminalise and legalise abortion.

**3. Any other comments?**

Queensland, it's time. It's well past time. It's not 1899, abortion should not be a crime. Do the right thing by Queensland women, and get rid of these antiquated laws, and decriminalise abortion.

**Danieka**

**Postcode:**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

I do not believe the services are adequate because abortion is still considered a crime. The services are also provided from a white male perspective so they do not address the needs of women, particularly in rural communities.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

Absolutely not. I believe it should be legal under a regulated and funded system to ensure women have access to reproductive health solutions.

**Mike**

**Postcode: 4122**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

The existing services in Queensland regarding the termination of pregnancy are not adequate in meeting the needs of Queenslanders because Queenslanders have similar abortion needs to those of other states in Australia and there should be a consistent law within Australia regarding these issues. Currently, Queensland is the only state in Australia to still have abortions to be 'illegal' under the Criminal Code and this sees those in Queensland at a significant disadvantage compared to those in other states around Australia.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

Abortion and providing abortion services should not be a crime in this day and age, and the current law is very out of touch with today's society. In today's society, women have certain rights, which they traditionally did not have such as a right to vote. It seems almost barbaric that they are not even given rights to choose what they do with their own body. Criminalising abortion and abortion services can be detrimental to the physical and mental health of women as they may feel as though they are left with no one to help them and may take matters into their own hands.

**3. Any other comments?**

There is supposed to be separation of state and church within Australia and Australia is a multicultural country, with no one dominant religion that it runs under. Despite this, it seems that the current abortion laws are adopting traditional Catholic/Christian values, which are not so applicable in today's modern society.

**Grace**

**Postcode: 4116**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

I am a woman. I do not want children. That is my choice. Fortunately for me, I am also a well educated, middle classed, white woman of means who can afford to exercise that choice freely and without judgement or scrutiny within the realm of the private health system. For many other Queenslanders, this is not the case. The current system operates as a two tiered system, where access is determined by your means and your postcode. This is unacceptable of a developed country in 2016.

The lack of transparency, and blatantly misleading advertising in pregnancy counselling is appalling. Counselling services should be obliged to declare their stance on abortion. The psychological manipulation, shaming and guilt invoking tactics employed by these services are very deliberately designed to prevent women from making free and informed decisions based on evidence based, independent advice.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

I believe the law in Queensland regarding abortion does a great disservice to the people of Queensland. The law stands absolute, and relentlessly grounded in out dated Christian values, that are no longer part of our political society or part of our legal system. Criminalising abortion serves no public purpose, other than to continue to control and regulate women's bodies and to shame and demonise women for failing to conform to a preconceived gender role where her worth and role in society is solely dependant on the functioning of her reproductive system and desire to be a mother.

Abortion should never be a crime, under any circumstances. A safe and regularly performed health procedure has no place in the Criminal Code. Regardless of anyone's moral view on abortion, proscribing criminal sanctions for women who

have decided to exercise their right to reproductive freedom serves no justifiable purpose.

Laws criminalising abortion do not reduce the number of abortions. They only force women in vulnerable positions into an even worse situation. There is no such thing as no abortion, only safe and unsafe.

### **3. Any other comments?**

I am shocked and appalled at the conduct of some of the MP's in response to the Bill, and the misleading content published on the issue in the media, in particular around the issue of late term abortions. Healthy debate in a democratic society is necessary, but it must be based in evidence. I encourage the Committee to look past the headlines of 'abortion until the day of birth', to the truth of the experiences of these women and the decisions made by medical professionals.

**Kate**

**Postcode: 4170**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

Queensland's current services are inadequate in meeting the needs of Queenslanders who wish to terminate their pregnancy due to out dated abortion laws that create barriers to doctors providing quality reproductive health care for women, and restrict women's capacity to make decisions regarding their reproductive health and fertility.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

Both abortion and providing abortion should not be a crime – having access to abortion is should not have to be a challenge. Every women should be able to exercise their right to bodily autonomy and therefore access to abortion services should be a readily available option, and definitely not a criminal activity.

It also should not be a crime as current abortion law dates from 1899 – times have changed and the law needs to change to reflect current community attitudes and clinical practice.

**3. Any other comments?**

It is harrowing to know that a woman who falls pregnant from rape, incest or has a severe foetal anomaly during her pregnancy is not eligible for a legal abortion. These vulnerable individuals in particular need access to abortion providers.

**Name: Nirupama**

**Postcode: 4130**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

No, because abortion is currently illegal and is therefore the decision to have an abortion isn't reliant upon the personal choice of a woman.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

No I do not. It should be a choice between a woman and her doctor. It is a health and emotional decision. I don't think people should be forced to have children they don't want to have and possibly can't take care of.

**1. Any other comments?**

The work of the pro choice movement in Queensland has been fantastic and this change in the law is long over due

**Matthew**

**Postcode: 4170**



**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

Almost certainly not, I believe that the current services are severely limited in the provision of services due to the criminal liability imposed by the Criminal Code for services conducted outside of the strict scope within the relevant sections. These legal principles must be re evaluated and re considered with the needs of Queensland women in mind in order for the provision of these services to be able to be administered fairly and effectively.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

I believe that criminalising abortion imposes liability on a very wide class of ordinary citizens, and that this thereby greatly decreases the scope for the provision of these services, in turn causing a disproportionate amount of supply versus demand. The effects of this are:

- un regulated and otherwise illegal service centres arising to fill the gaps for those women who may fall outside the scope;
- an increased chance of failed and/or dangerous abortions; and
- an increasingly severe stigma being attached to what should otherwise be a medical issue discussed solely between medical practitioners, women and their partners.

**Hunter**

**Postcode: 4122**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

I believe that the existing services in QLD in regards to the termination of pregnancy are grossly inadequate in meeting the needs of Queenslanders. The current laws in place are archaic and serve to deprive women of personal autonomy. As abortion is only legal under circumstances where carrying the child to term may pose significant physical or psychological harm to the mother, there will be instances where this fact will be contested in court, which can be traumatic for the mother and compound the already difficult mindset inherent of a woman carrying a child against her wishes.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

Abortion and provision of abortion services should not be a crime. Every person has a right to personal autonomy, it is not a government's place to regulate how an individual should use their own body in relation to themselves.

**Andrew**

**Postcode: 4109**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

No. At current while Queensland does have a number of inner city abortion clinics, rurally there is an inadequate number to provide women considering abortion with the support and care they may need. There is also not enough support post and pre abortion in regards to support centres. With Children by Choice being the only pro choice support service offered in Queensland. Because abortion is considered a criminal act under Queensland Law, support offered by general practitioners or hospitals in regards to options for women, can be difficult to seek out. The current services in Queensland are completely inadequate at meeting the needs of women or families that feel termination of a pregnancy is what is in their best interest.

**2. Do you believe that abortion, and providing abortion services, should be a crime? Why or why not?**

No, I do not believe that abortion and providing abortion services should be a crime. I believe this because it is a woman's right to choose whether or not she believes she is ready to become a mother and bring a life into the world. I also believe it should not be a crime because at current criminalising abortion may lead to health and safety concerns in regards to women who cannot easily access abortion services, or they may seek out dangerous alternatives because of the fear of the negative judgement and connotation such a crime would imply onto them in regards to their own personal choices to terminate an unwanted or unplanned pregnancy.

**Chloe Mills**

**Postcode: 4127**

**1. Do you believe that existing services in Queensland, concerning termination of pregnancy, are adequate in meeting the needs of Queenslanders? Why?**

I am a 21 year old woman who at a later stage in life wants children. I am very lucky that I am in a position where I am able to make the choice as to when I start a family. As a well educated young woman I am lucky to know about my options if I am ever confronted with an unwanted pregnancy. However, abortion is illegal in this state and whilst it is still accessible for some I do not think that I, or any other woman, should be viewed as a criminal in any way shape or form simply for deciding when I want to have children. No contraception is 100% effective and our fertility cannot be turned on and off at will. Until the development of such a drug unwanted pregnancies will occur. As mentioned earlier in this submission half of all pregnancies in Australia are unwanted.

The law at the moment in Queensland does not do enough to provide safe and accessible termination services in Queensland. Women who are not as lucky as I am in terms of finances and geographical location are often finding themselves without the means or ability to access an abortion.

Any argument against abortion does not accurately reflect the majority community values which call for reform. Many women find themselves seeking an abortion if unexpectedly pregnant as the result of a failed contraceptive or sexual assault. These women do not deserve to be forced into motherhood which is a life time commitment which very few are ready for without the proper preparation and mental readiness to take on such an important role. Other women who seek abortions are doing so because of a fetal abnormality or due to a serious health risk from continuing a pregnancy. These women should not have to face the furthered complication of the law on top of what would be an incredibly distressing situation for the woman and all others involved.

The lack of accurate information provided by so called pregnancy counselling services is horrendous. All services offering pregnancy counselling should be legally obliged to declare their position on abortion

**2. Do you believe that abortion and providing abortion services should be a crime? Why or Why not?**

I do not think that having an abortion or providing an abortion (as a registered medical practitioner) should be a criminal offence. The law as it stands currently is not reflective of community values throughout Queensland nor is it reflective of the bodily autonomy most Australians presume that we have.

Having abortion listed as illegal does nothing to prevent the number of abortions carried out however it will decrease the number of unsafe abortions performed. There are multiple reports of women attempting to carry out their own abortions which is incredibly dangerous and can lead to multiple medical side effects.

**3. Any other comments?**

Australia is a secular nation. The separation of church and state is something that many Australians are proud of however it is not being reflected at all here in making abortion illegal based on a 'sacred' argument of the sanctity of life for the unborn. The law makes no necessary protections for victims of sexual assault, domestic violence or those living in rural areas or homeless. Abortion should not only be decriminalised but should also be changed in order to protect those who are not fortunate enough to have 'easy' access to an abortion service.

**Olivia**

**Postcode: 4170**