



Queensland Parliament

Health (Abortion Law Reform) Amendment Bill 2016

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Submission 6 October 2016

Background

On 10 May 2016 the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016* was submitted to Queensland Parliament as a Private Member's Bill by Rob Pyne MP, the Member for Cairns. The Family Planning Alliance Australia (FPAA) provided a written submission to the Health Communities Disability Services and Domestic and Family Violence Prevention Committee (Health Committee) dated 29 June 2016.

On 17 August 2016 the *Health (Abortion Law Reform) Amendment Bill 2016* was submitted to Queensland Parliament as a Private Member's Bill by Rob Pyne MP. This submission provides additional information in response to the current Health Committee consultation on the second Bill.

As the nation's peak body in reproductive and sexual health, FPAA promotes advances in public health through policy, insight and advocacy and represents leading health and education agencies across Australia. FPAA supports relevant partners and advocates promoting abortion legalisation.

FPAA's position on abortion^a is:

- Abortion must be legal, safe and accessible to all women in Australia.
- Better access to abortion services will reduce mortality and morbidity as a result of unsafe and illegal abortion.
- Women must have access to accurate, unbiased information needed to exercise self-determination enable informed decision making and management of their health.
- Abortion provision needs to be a visible and required component of health professional undergraduate education.
- A National database needs to be established to provide evidence and inform policy directions.
- Where a health practitioner conscientiously objects to abortion, they must refer the client to another health professional or doctor who does not conscientiously object so that the woman's needs are met.

Abortion is criminalised to some extent in most state and territories of Australia, other than the Australian Capital Territory and Victoria^b. Safe access to abortion in Australia will only be achieved if abortion is legalised in every state and territory^c.

This document has been structured to respond to the five key areas of inquiry listed on the Inquiry Overview^d.

Executive Summary

FPAA offers in principle support to the proposed *Abortion Law Reform (Abortion Law Reform) Amendment Bill 2016*. Abortion should not be regulated without decriminalisation^e. Existing legal principles^f that govern abortion in Queensland fail to provide adequate protection to practitioners who provide abortion services.

The provision of gestational limits is not ideal. Late term abortion should be a matter of clinical rather than legal expertise that is governed by clinical guidelines^g. Proposed conscientious objection legislation is supported^h. The provision of 'safe zones' could be strengthened with a radius extension to 150 metres, reflective of Tasmanian legislationⁱ.

These two current Bills before the Queensland Parliament should be considered and debated in unison. The FPAA supports the *Health (Abortion Law Reform) Amendment Bill 2016* to be passed alongside *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*.

1. Only a doctor may perform an abortion: a person who is not a doctor (or a registered nurse administering a drug to perform an abortion under the direction of a doctor) would commit an offence.

The Bill is consistent with World Health Organisation recommendations that: "Abortion services should be integrated into the health system, either as public services or through publicly funded, non-profit services, to acknowledge their status as legitimate health services and to protect against stigmatization and discrimination of women and health-care providers."^j

Existing legal principles^k that govern termination practices in Queensland fail to provide adequate protection to medical practitioners who provide abortion. If this Bill is passed, to omit sections 224, 225 and 226 of the *Criminal Code 1899* would provide clarity regarding the governance of abortion regulation.

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

The only two remaining jurisdictions where a woman can be charged for accessing an abortion are Queensland and New South Wales^l. Queensland is the only state with a recent case where a woman has been charged for procuring an abortion^m.

Section 20 of this Bill could potentially protect a woman against allegations of illegal procurement, such as the Cairns case of *R v Leach and Brennan (2010)*.

Criminal statutes in Queensland and New South Wales remain based on the *English Offences against the Person Act 1861*ⁿ. If this Bill is passed, to omit section 225 of the *Criminal Code 1899* would provide clarity regarding regulation of women seeking abortion.

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.

Legislation prescribing gestational limits is unnecessary. The proposed model introduces a regulatory framework similar to that of Victoria^o. The Royal Australian and New Zealand

College of Obstetricians and Gynaecologists (RANZCOG) provide evidence based clinical guidance to medical professionals regarding late term abortion^p.

4. Conscientious objection: 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. Also, a registered nurse has a duty to assist in such circumstances.

FPAF supports the proposed conscientious objection legislation. Conscientious objection by any doctor should not hinder a woman's access to pregnancy options, including abortion. Referral onwards following conscientious objection does not need to be legally enforced given relevant clinical guidelines^q.

5. Patient protection or 'safe zones': a protected zone of at least 50 metres must be declared around an abortion facility; certain behaviour, e.g. harassment and intimidation, is prohibited within a protected zone. Publishing images of a person entering, leaving or trying to enter or leave an abortion facility is prohibited.

Sections 24 and 25 of the Bill are supported. 'Safe zones' provide a model of community safety for both patients and health practitioners that can define and police prohibited behaviour within a geographical zone^r. Women should be able to access the service free from judgement, harassment, intimidation or harm. Clinicians who care for patients should be able to do so without fear of prosecution, retribution, harassment or threats.

Opportunities exist to strengthen regulation of safe zones. An ideal model for Queensland could be based upon the Tasmanian Government *Reproductive Health (Access to Terminations) Act 2013*^s. The Act prohibits behaviour such as 'besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person' within the exclusion zone defined as 'an area within a radius of 150 metres from premises at which a termination is provided'^t. At a minimum, the radius of the safe zones in Queensland could either be consistent with or surpass the Tasmanian regulations of 150 metres.

^a Family Planning Alliance Australia (2016), *Position Statement: Access to Abortion Services in Australia* available online at < <http://familyplanningallianceaustralia.org.au>>.

^b De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015;
De Costa, C., Douglas, H., Hamblin, J., Ramsay, P., and Shircore, M., (2015), 'Abortion law across Australia- A review of nine jurisdictions,' in *Australian and New Zealand Journal of Obstetrics and Gynaecology* 55: 015-111.

^c Public Health Association Australia (PHAA) (2014), *Abortion Policy* accessed online on 22 June 2016 at <<https://www.phaa.net.au/documents/item/845>>;

Kerr, K., (2014), 'Queensland abortion laws: criminalising one in three women', *Queensland University of Technology Law Review*, 14:2.

^d Queensland Parliament (2016), 'Health (Abortion Law Reform) Amendment Bill 2016' accessed 28 September 2016 at < <https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/18-HealthAbortion>>.

^e De Costa, C., Douglas, H., Hamblin, J., Ramsay, P., and Shircore, M., (2015), 'Abortion law across Australia- A review of nine jurisdictions,' in *Australian and New Zealand Journal of Obstetrics and Gynaecology* 55: 015-111; and

Kerr, K., (2014), 'Queensland abortion laws: criminalising one in three women', *Queensland University of Technology Law Review*, 14:2.

^f Queensland Government (2016), *Criminal Code Act 1899*.

^g Victorian Law Reform Commission (2008), *Law of Abortion : Final Report*, Victorian Government.

^h The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2013), *Termination of Pregnancy College Statement (C-Gyn 17)*;

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), *Late Termination of Pregnancy (C-Gyn 17a)*; and

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), *Late of Pregnancy: A Resource for Professionals* (C-Gyn 15).

ⁱ Tasmanian Government (2013), *Reproductive Health (Access to Terminations) Act 2013*, accessed online 20 June 2016 at

<http://www.thelaw.tas.gov.au/tocview/content.w3p;doc_id=72++2013+AT@EN+20150627000000;rec=0>.

^j World Health Organization, (2012). *Safe abortion: technical and policy guidance for health systems 2nd Edition*. World Health Organisation.

^k Queensland Government (2016), *Criminal Code Act 1899*.

^l De Costa, C., Douglas, H., Hamblin, J., Ramsay, P., and Shircore, M., (2015), 'Abortion law across Australia- A review of nine jurisdictions,' in *Australian and New Zealand Journal of Obstetrics and Gynaecology* 55: 015-111.

^m Supreme Court Library Queensland (2016), 'R v Leach and Brennan 2010 QDC10-329' accessed online on 15 June 2016 at <<http://www.sclqld.org.au/caselaw/QDC/2010/329>>.

ⁿ Kerr, K., (2014), 'Queensland abortion laws: criminalising one in three women', *Queensland University of Technology Law Review*, 14:2.

^o Victorian Law Reform Commission (2008), *Law of Abortion : Final Report*, Victorian Government.

^p The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2013), *Termination of Pregnancy College Statement* (C-Gyn 17);

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), *Late Termination of Pregnancy* (C-Gyn 17a); and

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) (2016), *Late of Pregnancy: A Resource for Professionals* (C-Gyn 15).

^q Victorian Law Reform Commission (2008), *Law of Abortion : Final Report*, Victorian Government; and Australian Medical Association (2013). *Conscientious Objection - 2013*. Accessed online 21 September 2016

<<https://ama.com.au/position-statement/conscientious-objection-2013>>.

^r De Costa, C., Douglas, H., (2015), 'Abortion Law in Australia: it's time for national consistency and decriminalisation', in *The Medical Journal of Australia*, Issue 9 2015.

^s Tasmanian Government (2013), *Reproductive Health (Access to Terminations) Act 2013*, accessed online 20 June 2016 at

<http://www.thelaw.tas.gov.au/tocview/content.w3p;doc_id=72++2013+AT@EN+20150627000000;rec=0>.

^t Tasmanian Government (2013), *Reproductive Health (Access to Terminations) Act 2013*, accessed online 20 June 2016 at

<http://www.thelaw.tas.gov.au/tocview/content.w3p;doc_id=72++2013+AT@EN+20150627000000;rec=0>.



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Access to Abortion Services in Australia

Position Statement

Background

Access to and information about abortion services in Australia varies across States and Territories. This is a significant hurdle for women seeking to manage their reproductive and sexual health.

Safe abortion services are those where women have timely access to health service providers who are appropriately equipped and trained in the correct technique and standards. When abortion is provided in this way, it is one of the safest medical procedures availableⁱ.

The method used to terminate a pregnancy is partly determined by the stage of the pregnancy. Medication abortion, for early pregnancies, involves the use of prescribed drugs to induce an abortion, including the foetus and the products of conception. Surgical abortion involves a surgical procedure in which the foetus and the products of conception are removed from a woman's uterus.

There is no consolidated national data on abortion in Australia. Without this data it is difficult to reliably determine abortion rates and trends. However, it is estimated that approximately 1 in 4-5 (20-25%) women in Australia will have an abortion during their lifetime and approximately 80,000 induced abortions are performed annually in Australiaⁱⁱ.

There are significant gaps in the provision of guidelines, education and training, and professional development for abortion health care providersⁱⁱⁱ.

There is no consistent legal framework for the provision of abortion in Australia. Each state and territory has different legal requirements with different levels of complexity. See Appendix 1 for full details regarding abortion laws in each State and Territory.

FPAA's Position

- Abortion must be legal, safe and accessible to all women in Australia
- Better access to abortion services will reduce mortality and morbidity as a result of unsafe and illegal abortion.
- Women must have access to accurate, unbiased information needed to exercise self-determination, enable informed decision making and management of their health.
- Abortion provision needs to be a visible and required component of health professional undergraduate education.
- A National database needs to be established to provide evidence and inform policy directions.
- Where a health practitioner conscientiously objects to abortion, they must refer the client to another health professional or doctor who does not conscientiously object so that the woman's needs are met.



FPAA will advocate for improved access to abortion for women in Australia by:

- Advocating for the development and implementation of a national process for the collection of consistent data on abortions for the purpose of informing policy
- Supporting relevant partners and advocates to promote the legalisation of abortion
- Supporting awareness and education campaigns for women regarding abortion legality, access and options
- Providing access for general practitioners to appropriate training in the provision of medication abortion
- Advocating for improved access to contraception following abortions

References

- ⁱ World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems* (Geneva: WHO, 2003).
- ⁱⁱ Family Planning NSW, *Report: Reproductive and Sexual Health in New South Wales and Australia: Differentials, Trends and Assessment of Data Sources* (Sydney: Family Planning NSW, 2011).
- ⁱⁱⁱ E. C. Mulligan, 'Striving for Excellence in Abortion Services', *Australian Health Review* 30, no. 4 (2006): 468–473.
- ^{iv} Sexual Health and Family Planning: Australian Capital Territory (SHFPACT) 2013, Pregnancy Options, viewed 30 July 2015, [REDACTED]
- ^v Family Planning New South Wales 2012, Fact Sheet: the law on abortion in NSW, Family Planning NSW, viewed 30 July 2015, [REDACTED] >
- ^{vi} Family Planning Welfare Association of Northern Territory Inc. (FPWANT) n.d., Unplanned Pregnancy, viewed 30 July 2015, [REDACTED]
- ^{vii} Sexual Health Information Networking and Education South Australia (SHineSA) 2015, Information on Abortion South Australia, viewed 30 July 2015, < [REDACTED] >
- ^{viii} Department of Health and Human Services 2014, Pregnancy Terminations: Summary of the new law, viewed 30 July 2015, < [REDACTED] >
- ^{ix} Children by Choice 2015, Fact Sheet: Queensland Abortion Law, viewed 30 July 2015, < [REDACTED] >



^x Better Health Channel 2015, Abortion, viewed 30 July 2015,

< [REDACTED] >

^{xi} Sexual and Reproductive Health Western Australia 2012, Unplanned Pregnancy
Considering Abortion, viewed 30 July 2015, < [REDACTED]

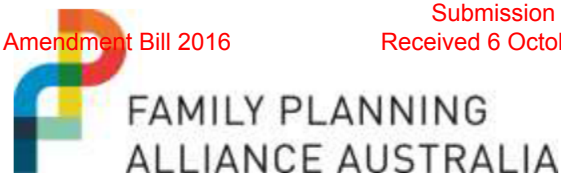
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Appendix 1

Table 1: Summary of State Laws regarding abortion in Australia

State	Summary of Current State Laws
Australian Capital Territory ^{iv}	<p>Since decriminalisation in 2002, abortion in the ACT is regulated as a health service, and is legal if provided:</p> <ul style="list-style-type: none"> • by registered medical practitioner • in an approved medical facility (approved by Minister of Health) <p>ACT legislation does not impose a limit or restriction on gestation. In practice, however, services for abortion are only available up to 15 weeks gestation for surgical abortion or 9 weeks gestation for medical abortion. ACT law also specifies that no person is required to assist in or perform an abortion.</p> <p>Legislation: <i>Health Act 1993 (ACT)</i></p>
New South Wales ^v	<p>Abortion is a crime for women and doctors (women are not entitled to an abortion on demand). The exception is when a doctor believes that the woman's physical/mental health is in serious danger due to pregnancy and they must consider social, economic and physical risks to the woman in the absence of a safe abortion. If a woman is deemed to require an abortion, NSW law allows for terminations up to 18-20 weeks gestation. Women must give informed consent for the termination to be performed. Women under 16 years can provide valid consent without the parent/guardian being consulted if the doctor deems the woman mature enough to understand the implications of terminating a pregnancy. Women with an intellectual disability have the same rights as women who are under 16 years of age.</p> <p>Legislation: <i>NSW Crimes Act 1900, sections 82, 83, 84.</i></p>
Northern Territory ^{vi}	<p>Legal up to 14 weeks if 2 doctors (including a gynaecologist) agree that the woman's physical/mental health are under threat, or if there is a serious foetal abnormality. The abortion must be performed in a hospital with the woman's consent. If the woman is under 16, the hospital requires consent from a parent/guardian. Legal up to 23 weeks in case of emergency.</p> <p>Legislation: <i>Medical Services Act, section 11.</i></p>

State	Summary of Current State Laws
South Australia ^{vii}	<p>Legal given that a medical assessment has been performed (requirement). For women who are 16 years old or younger, parental or guardian consent is required, however if circumstances are such that the woman feels they cannot discuss their pregnancy with parents/guardians, services are available to assist with individual cases (counselling, social workers, doctors). Abortions are performed in a hospital or at the Pregnancy Advisory Centre up to 12 weeks without doctor's referral. Although they are more complicated than early gestation, abortions between 14-20 weeks gestation are also provided at the Pregnancy Advisory Centre.</p> <p>Legislation: <i>Criminal Law Consolidation Act 1935 (amended 1969), sections 81(1), 81(2) and 82.</i></p>
Tasmania ^{viii}	<p>Before the end of 16 weeks gestation, a woman can legally terminate a pregnancy by giving consent to a medical doctor who can perform the abortion. The woman does not need a referral, and is not required to seek counselling regardless of gestation period. Beyond 16 weeks, the doctor may provide an abortion if there is a greater risk of injury to the woman's physical/mental health. A second doctor must be consulted and agree, and at least one of these doctors has to be a specialist in obstetrics or gynaecology (post 16 weeks only). The doctors must consider the woman's physical, psychological, economic and social circumstances. If a doctor who has been approached for an abortion has a conscientious objection to abortions, they are required by law to refer women to alternative clinics that offer information about all pregnancy options. In an emergency situation where the woman's life is at stake, or there is a risk of serious physical injury, all doctors, nurses and midwives are required to terminate a pregnancy if necessary. It is illegal for women accessing terminations to be protested against, intimidated or harassed within 150m 'Access Zone' of a clinic/service. It is also illegal for recordings to be taken/distributed of women accessing these services without their consent.</p> <p>Legislation: <i>Reproductive Health (Access to Terminations) Bill 2013.</i></p>
Queensland ^{ix}	<p>Abortion is currently contained in the <i>Queensland Criminal Code 1899</i>, and both women for whom the abortion is performed, and the doctor providing it, can be criminally prosecuted. Women can be jailed for 7 years and doctors for up to 14 years. Suppliers of any noxious substances that can result in a miscarriage could also be jailed for 3 years. The exception for when an abortion is legal is when a doctor believes that the woman's physical/mental health is in serious danger due to pregnancy, and they consider the physical, mental and economic circumstances of the woman.</p> <p>Legislation: <i>Criminal Code 1899, sections 224, 225 and 226.</i></p>



State	Summary of Current State Laws
Victoria ^x	<p>The <i>Abortion Law Reform Act 2008</i> decriminalised abortion and determined guidelines for when abortions can take place. Although services beyond 17 weeks gestation are limited, abortions are available upon demand (with the woman's consent) throughout Victoria. Beyond 24 weeks gestation, two doctors must agree to the abortion being appropriate and they must consider the woman's medical, current and future physical, psychological and social circumstances. Conscientious objection by any doctor must not hinder a woman's access to all pregnancy options, including abortion. Doctors are required by law to provide referrals to doctors who will perform an abortion. Any nurses and doctors who are treating a pregnant woman in an emergency must perform an abortion if it is deemed appropriate in order to protect the woman's life or prevent serious physical injury. The Public Health and Wellbeing Amendment (Safe Access Zone) Bill 2015 was passed in the Victorian Parliament in November 2015. The Bill supports women's reproductive health choices by ensuring that all women can access health services that provide abortions without fear, intimidation, harassment or obstruction.</p> <p>Legislation: <i>Abortion Law Reform Act 2008; Public Health and Wellbeing Amendment (Safe Access Zone) Bill 2015.</i></p>
Western Australia ^{xi}	<p>Legal up to 20 weeks with informed consent and must be carried out by a qualified doctor. Beyond 20 weeks, women must gain support of two out of 6 appointed doctors from a panel appointed by Minister for Health (woman must have severe medical condition to justify termination). Women under 16 must involve a parent/guardian in decision making, but final decision is ultimately made by the pregnant woman.</p> <p>Legislation: <i>Acts Amendment (Abortion) Act 1998, section 119; Health Act 1911, sections 334 and 335.</i></p>