

Health and Other Legislation Amendment Bill (No. 2) 2023

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15 December 2023

Mr Aaron Harper MP
Member for Thuringowa
Chair, Health and Environment Committee
Parliament House
George Street
Brisbane QLD, 4000
Via: hec@parliament.qld.gov.au

Dear Mr Harper,

I am writing to the Health and Environment Committee on behalf of the Queensland Aboriginal and Islander Health Council (QAIHC), regarding the Health and Other Legislation Amendment Bill (No.2) 2023 introduced to Parliament on 30 November 2023 and subsequently referred to the Health and Environment Committee for consideration.

QAIHC supports most of the proposed amendments to the *Termination of Pregnancy Act 2018* and *Criminal Code Act 1899*. In particular, QAIHC supports changes to allow additional health practitioners to perform early medical terminations of pregnancy using a registered termination of pregnancy drug. This important reform has the potential to increase Aboriginal and Torres Strait Islander women's access to medical termination of pregnancy, particularly in rural and remote areas.

In terms of clinical practice, QAIHC recommends that specific precautions are taken when prescribing MS-2 Step for Aboriginal and Torres Strait Islander women that account for the higher incidence of sexually transmitted infections and lack of medical follow-up, when compared to non-Indigenous women. Given the significant role of Aboriginal and Torres Strait Islander Community Controlled Health Organisations (ACCHOs) in the health system, particularly in the provision of comprehensive primary health care, vaccination programs and other health programs for Indigenous Queenslanders, QAIHC would welcome the opportunity to be consulted about the practical implementation of these amendments if passed. This consultation will give QAIHC the opportunity to help ensure ACCHOs continue to provide safe comprehensive primary health care and to ensure Aboriginal and Torres Strait Islander women receiving care in other health settings receive safe care.

While QAIHC accepts proposed amendments for inclusive language to acknowledge trans and gender diverse people are well-intentioned, it does not support achieving inclusivity by simply replacing 'woman' with 'person' in legislation.

Historically, Indigenous cultures around the world have supported diverse identities that do not conform to traditional Western understandings of gender. In Australia, Sistergirls (Sistagirls) and Brotherboys (Brothaboy) are inclusive terms used to describe trans and non-binary Aboriginal and Torres Strait Islander peoples in some communities.

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These terms are used with affection and appreciation of the contribution that transgender and non-binary people make to their communities.

However, for many Aboriginal and Torres Strait Islander peoples including trans and non-binary people, part of their cultural identity is linked to sex, gender and stages of life. Babies grow into girls, culturally learn Women's Business, and grow into women, as boys grow into men with Men's Business. This identification as woman or man is fundamental and has strong cultural significance for many Aboriginal and Torres Strait Islander people.

For this reason, the proposed amendment, intended to be inclusionary in a Western cultural context, may have the unintended consequence of excluding Aboriginal and Torres Strait Islander women and trans and gender diverse people who have a different concept of what it means to be a woman.

QAIHC recommends that the term woman is retained in recognition of the cultural significance that this word has for Aboriginal and Torres Strait Islander peoples. To enable inclusion for those who may identify differently to the sex they were assigned at birth, QAIHC recommended that legislation be amended to refer to "a woman or person who is pregnant but does not identify as a woman".

For example, section 5 of the Termination of Pregnancy Act would be amended to read:

5 Termination by medical practitioner at not more than 22 weeks

A medical practitioner may perform a termination on a woman or person who is pregnant but who does not identify as a woman who is not more than 22 weeks pregnant.

Similar amendments would be made to relevant provisions of the Termination of Pregnancy Act or Criminal Code Act.

QAIHC accepts that this construction will not comply with best practice drafting principles – which generally require gender neutral language - but believes if this legislation is to be truly inclusive, it is an appropriate compromise that balances Western constructs of gender and inclusivity with Aboriginal and Torres Strait Islander cultural considerations and notes that drafting principles are not always strictly observed. Here, the Bill's aim of inclusivity would be better achieved by departing from drafting principles.

Alternatively, the definition of woman, for the relevant parts of the Acts, could be amended to expressly include all people who identify as a woman including those who are transgender, intersex, gender diverse or gender fluid. This approach would be consistent with the Queensland Women and Girls' Health Strategy. However, QAIHC recognises that not all people who are pregnant identify as a woman and, for this reason, recommends that legislation refer to "a woman or person who is pregnant but does not identify as a woman".

QAIHC is happy to give evidence regarding its response if this would assist the committee. If you have any questions regarding QAIHC's feedback, please do not hesitate to phone me on [REDACTED] or email [REDACTED]

Yours sincerely,

[REDACTED]

Matthew Cooke
Chairman
Queensland Aboriginal and Islander Health Council

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