QLD DOMESTIC VIOLENCE SERVICE NETWORK(QDVSN) SUBMISSION TO THE QUEENSLAND LAW REFORM COMMISSION JANUARY 2018:

REVIEW INTO TERMINATION OF PREGNANCY LAWS

Queensland Domestic Violence Service Network (QDVSN) is a network of Queensland regional Domestic Violence Services, the Centre for Domestic and Family Violence Research, DV Connect and the Immigrant Women's Support Service.

- QDVSN works collaboratively and strategically to advance understanding of, and works to eliminate gender, structural, political, economic, legal and cultural inequalities and inequities which result in gender based violence in all its forms;
- Provide peer support, information sharing and debriefing within our membership;
- Be a change agent by providing education, a reference point and a collective voice to Government, non-government and member services on State and National issues relating to domestic and family violence.

This submission is submitted by all services of the QDVSN excluding services under auspice of Centacare.

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Q-1:

QDVSN recommend that the Commission remove the criminalisation of registered medical practitioners or Health Care Practitioners performing terminations. Registered medical practitioners or health care practitioners who are trained and have appropriate qualifications should be able to perform and assist in performing lawful terminations of pregnancy in QLD. (For medical terminations where medications are used as the tool for termination this includes Nurse practitioners, ATSI Health Workers, and Pharmacists)

QDVSN recommend that it remains a criminal offence for unregistered and unqualified persons to perform or assist in performing lawful terminations of pregnancy in QLD.

RATIONALE

"Excepting Queensland and New South Wales, legislation in every other Australian state or territory exempts medical practitioners from criminal offences for performing terminations of pregnancy.

As the Commission states in the consultation paper for this review, 'as a matter of clinical practice, other health practitioners, such as nurses and midwives, Aboriginal and Torres Strait Islander health practitioners, and pharmacists, may also assist in performing terminations of pregnancy'.

Legislating for registered medical practitioners to provide, and health practitioners to assist in providing, lawful terminations of pregnancy, therefore seems reasonable.

This approach would also support the principles of providing clarity and certainty, consistency with modern clinical practice, and national harmonisation, provided by the Commission as guiding this review into termination of pregnancy laws.

We would, however, encourage the Commission to consider the longevity of any new legislation proposed as a result of this review. Permitting registered health practitioners with appropriate qualifications and training to provide, as well as assist in providing, terminations of pregnancy, may help future-proof the legislation for changes in the delivery of medication abortion in particular.

In some overseas jurisdictions, mid-level providers of medication abortion are lawfully permitted and appropriately trained to offer terminations of pregnancy. Evidence exists to support the safety and efficacy of these services when provided by health practitioners, including Nurse Practitioners or pharmacists, without direct supervision by a medical practitioner, and the willingness of these mid-level service providers to provide medication abortion in this way. [1, 2, 3]

At present the clinical guidelines on the provision of medication abortion require them to be prescribed by a registered medical practitioner;[4] *were this to change, the legislation would also have to be updated in future to reflect this.*

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1 Berer M "Provision of abortion by mid-level providers: international policy, practice and perspectives" *Reproductive Health Matters* 2008, cited in *Bulletin of the World Health Organization* 2009;87:58-63. Online at http://www.who.int/bulletin/volumes/87/1/07-050138/en/.
2 Kishen M, Stedman Y "The role of Advanced Nurse Practitioners in the availability of abortion services" *Best Practice and Research: Clinical Obstetrics and Gynaecology* 2010 Oct;24(5):569-78. Online at https://www.ncbi.nlm.nih.gov/pubmed/20385513.
3 Lyons E *Provision Of Reproductive Health Care Services By Nurse Practitioners And Certified Nurse Midwives: Unintended Pregnancy Prevention And Management In Vermont* (2014). University of Vermont: Graduate College Dissertations and Theses. Paper 375. Online at https://scholarworks.uvm.edu/cgi/viewcontent.cgi?referer=https://www.google.com.au/&httpsredir=1&article=1374&context=graddis.
4 Guidelines for the approved indications and availability of termination medications in Australia are available on the Therapeutic Goods Administration website at https://www.tga.gov.au/registration-medicines-medical-termination-early-pregnancy.

In 2009, the advent of the availability of medication abortion and a subsequent criminal charge involving its use in Queensland necessitated an adjustment to s282 of the 1899 Criminal Code, in order to add the words 'medical treatment' and thus place medical and surgical terminations of pregnancy on the same legal footing – albeit an unclear one – as medical termination of pregnancy had been an unforeseen development when the legislation was originally inculcated in 1899.[5]

In order to prevent similar discrepancies between law and practice arising due to the impossibility of predicting developments in access, future-proofing termination of pregnancy legislation as far as is possible for future developments seems reasonable and rational, although we recognise that other Australian jurisdictions have not progressed this far as yet.

Permitting registered health practitioners to provide lawful terminations of pregnancy could also help address workforce shortages and geographic isolation as barriers to accessing terminations of pregnancy for Queenslanders, particularly those in rural and remote parts of the state; however we recognise that this aspect of provision is outside the terms of reference for this review". Rationale taken from the Children by Choice Submission to the Queensland Law Reform Commission January 2018.

Q2:

QDVSN recommend that women not be criminally responsible for the termination of her own pregnancy. We recommend that the clause making it possible to charge pregnant people seeking or procuring abortion be removed from the legislation. (refer to UN treaty bodies recommendation)

RATIONALE

"Queensland is one of only three jurisdictions in Australia where it is still possible for women to be charged for procuring a termination of pregnancy.6 That is, in every jurisdiction where the law has been modernised since the 1970s, this statute has been removed as an offence. Removing it from Queensland legislation would align with the Commission's stated goal of national legislative consistency as one of the guiding principles underpinning this review.[7]

The Victorian Law Reform Commission recommended as part of their report into termination of pregnancy in that jurisdiction in 2007 that it should not be an offence for a woman to perform or attempt to perform an abortion on herself, or to allow someone else (qualified or otherwise) to perform one (lawful or unlawful) upon her.[8] *There is no reason this same principle would not apply in a different Australian jurisdiction.*

The argument that termination of pregnancy should remain an offence for women and pregnant people in order to deter 'backyard' or 'self-administered' procedures is a fallacy. Until the advent of safe clinical procedures in the 1970s, unsafe and unlawful termination was one of the main causes of maternal mortality in Queensland (and indeed the rest of Australia).[9] *The legal status of termination of pregnancy was the same then as it is now.*

International research shows conclusively that 'legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates',[10] *that countries where terminations of pregnancy are highly restricted by law have slightly higher rates of termination than those with more liberal lawful access,*[11] *and that restrictive law often leads to worse health outcomes for women and pregnant people seeking termination.*[12]

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5 A summary of the R v Leach and Brennan case and the subsequent changes to s282 of the Criminal Code is available on our website at https://www.childrenbychoice.org.au/factsandfigures/queenslandabortionlaw.
6 Overview of termination of pregnancy law by jurisdiction on the Children by Choice website at https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice.
7 Review into termination of pregnancy laws: Consultation Paper Queensland Law Reform Commission. December 2017; WP No 76; 30. Online at http://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/547165/qlrc-wp-no-76-2017.pdf
8 Law of Abortion: Final Report Victorian Law Reform Commission, Melbourne, 2008: 8. Online at http://www.lawreform.vic.gov.au/projects/abortion/law-abortion-final-report-pdf
9 De Costa C (2010) Never, Ever, Again: Why Australian Abortion Law Needs Reform. Boolarong Press; 39.
10 Sedgh G, et al. "Induced abortion: incidence and trends worldwide from 1995 to 2008." Lancet. 2012;379:625–632; Levine PB, Staiger D "Abortion policy and fertility outcomes: the Eastern European experience." Journal of Law and Economics. 2004;XLVII:223–243. Quoted in [2].
11 Cohen SA (2009) "Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide" Guttmacher Policy Review New York: Guttmacher Institute. Online at https://www.guttmacher.org/gpr/2009/11/facts-and-consequences-legality-incidence-and-safety-abortion-worldwide.
12 Safe Abortion: Technical and Policy Guidance for Health Systems. 2nd ed; 2012. Geneva: World Health Organization. Available to view online at https://www.ncbi.nlm.nih.gov/books/NBK138197/.

We note that the Queensland Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, despite finding itself unable to recommend the passing of the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016, noted in their 2016 report that "the bill's provisions, in decriminalising abortion, effectively align the law of Queensland with Australia's international legal obligations as a ratifying country to the UDHR, ICCPR, ICESCR, CEDAW and the CRC".[13]

We also support the Commission's statement that removing the offence of a woman or pregnant person causing their own termination would be 'appropriate for consistency with the removal of criminal responsibility for medical practitioners'". Rationale taken from the Children by Choice Submission to the Queensland Law Reform Commission January 2018. [14]

Q-3:

QDVSN recommend no gestational limits for a lawful termination of pregnancy. The decision should be based on the individual's circumstances and the recommendation of the doctor. The individual should have the option to seek alternative advice from another medical practitioner if not happy with the decision. QDVSN would note that this view aligns with that of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists [15] and other peak medical and legal groups.

Q-4:

N/A

Q-5:

The QDVSN recommends that the only requirement for a lawful termination should be the woman or pregnant person's informed consent. Imposing any other specific grounds for lawful termination of pregnancy takes away women's right to make a decision about their own body.

The QDVSN would like to re-emphasise the statement made by Children by Choice in their submission. The QDVSN strongly opposes the introduction of specific legislated grounds to be met for a termination of pregnancy to be considered lawful, for the following reasons:

- *"autonomy of decision making is removed from the pregnant person and placed in the hands of others;*
- *specific grounds along the lines of those listed above do not align with other Australian jurisdictions where termination of pregnancy legislation has undergone relatively recent reform (ie Victoria (2008), Tasmania (2013), Northern Territory(2017));*
- *(i) is in line with current case law and creates barriers to access due to the lack of an accepted medical definition over what constitutes a serious risk to health and who is responsible for deciding this;*[26]
- *(ii) again relies on someone other than the pregnant person to deem a procedure 'necessary or appropriate';*
- *(iii) presumably requires an evidentiary criteria to be met in order to satisfy the grounds of rape, coercion or unlawful acts, which places the burden on the survivor of these acts to prove their case and carries a significant risk of re-traumatising survivors. In international jurisdictions, criteria for satisfying these grounds can be onerous and may include the necessity of the survivor reporting to the police; evidence on sexual assault reporting in Australia suggests that fewer than 15% of offences are reported to the police;*[27] *and*

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13 Parliamentary Committee Report 24 (2016) Brisbane: Queensland Parliament; 33. Online at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1337.pdf

14 Review into termination of pregnancy laws: Consultation Paper Queensland Law Reform Commission. December 2017; WP No 76; 34. Online at http://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/547165/qlrc-wp-no-76-2017.pdf

15 Submission 845 to the Inquiry into the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland. 2016: 2. Online at https://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/AbortionLR-WRC-AB2016/submissions/845.pdf

26 Children by Choice Submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee – Inquiry into the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland. Brisbane; 2016: 14, 18-19. Online at https://www.childrenbychoice.org.au/images/downloads/ChildrenbyChoiceSubmission_HealthCommittee_AbortionLawReform_June2016.pdf

27 The law and sexual offences against adults in Australia Australian Institute of Family Studies ACSSA Issues No. 4 – June 2005, at https://aifs.gov.au/publications/law-and-sexual-offences-against-adults-australia/reporting-and-conviction-rates .

- *(iv) fetal anomaly, or risk of disability, as a grounds in and of itself for termination of pregnancy, is offensive to people living with a disability and their family, as stated by many submitters to the Queensland parliamentary inquiries in 2016, including the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.*[28]

We strongly support RANZCOG's assertion that '[n]o specific clinical circumstance should qualify or not qualify a woman for termination' as the 'impact of any particular condition is highly individual and often complex'".[29]
Children by Choice Submission to the Queensland Law Reform Commission January 2018

Q-6 & Q7:

N/A

Q-8:

QDVSN recommends that consultation with one GP be enough and that under no circumstances should a panel be imposed. Should the individual not be satisfied with the recommendations from their GP they should maintain the right to consult another medical specialist.

Q-9:

N/A

Q-10:

N/A

Q-11:

QDVSN recommends that Individual clinical practitioners should be legally able to conscientiously object to involvement in the termination of a pregnancy. This provision should not be applicable to administrative staff, services, facilities, organisations, or corporate entities."

Q-12, a:

Conscientious objection should not apply in an emergency and the woman's life should take precedence at any time.

In all situations of conscientious objection the medical practitioner is obligated to refer on to relevant and appropriate services to ensure that the person is given all the required information to make an informed and supported decision. Health services should ensure that their patients' access to lawful procedures is not limited or removed due to conscientious objection.

Q-12, b:

Any practitioner with a conscientious objection should be legally obliged to refer a pregnant person to relevant and appropriate services to ensure that the person is given all the required information to make an informed and supported decision.

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28 Parliamentary Committee Report No 33a (2017), quoting Evidence to the Parliamentary Committee, Oct 2016 (Prof M Permezel, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists).
29 Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 'Termination of Pregnancy' (C-Gyn 17, July 2016), cited in *Review into termination of pregnancy laws: Consultation Paper* Queensland Law Reform Commission. December 2017; WP No 76; 48. Online at http://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/547165/qlrc-wp-no-76-2017.pdf

RATIONALE

This legislative requirement, though heavily protested by anti-abortion groups as being 'coercive', would align with the advice the Australian Medical Association provides to its members around conscientious objection,[32] as well as that provided in the Queensland Maternity and Neonatal Clinical Guideline on the Therapeutic Termination of Pregnancy.[33]

Legislation should also require conscientious objectors to publicly disclose this position (for example, on their clinic website and/or via signs on their premises), to allow them to practice as they choose while at the same time prioritising women's right to timely and supportive information and care.

Q-13:

QDVSN are strongly opposed to having any mandatory requirement to attend counselling.

RATIONALE

QDVSN echo the Children by Choice support for *"the availability of genuine, professionally provided, unbiased all options pregnancy counselling for anyone who wishes to access it.*

We also take this opportunity to state our strong opposition to any mandatory requirement for counselling before or after a termination of pregnancy. Professional counselling should always be freely available for those who choose to access it, but should not be mandatory.

We have concerns about legislating the requirement to offer counselling due to the lack of clarity in what this requirement would mean (for example, what sort of counselling and by whom), the lack of legislative requirements for transparency in pregnancy counselling, and the lack of necessity for the offer of counselling to be a legislative provision.

A survey of Australian GPs in 2004 found that 26% of Queensland GPs self-identify as being anti-abortion.[34] Some doctors are quite open about using their consultations with pregnant women to attempt to convince them to continue pregnancies despite their patient's express wish for termination: see for example the website of the Victorian group 'Doctors Conscience', who refuse to comply with the legislative requirement for referral.[35] We are concerned a legal obligation to offer counselling would provide a loophole for these practitioners to use their position to offer this counselling themselves, at cost to their patients.

Pregnancy counselling services in Australia are not legally required to disclose if they are run on an anti-abortion basis, and are not subject to the trade practices legislation that regulates misinformation and false advertising.[36] This allows services to provide inaccurate and sometimes intentionally misleading information on abortion and its availability to women experiencing an unplanned or unwanted pregnancy, and can make it extraordinarily difficult for women and pregnant people to know that they are accessing a genuine all options service, or for medical professionals to be confident that is what they are referring patients to, particularly when the names of such services provide no hint of their position.[37].

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32 *Conscientious Objection* Policy Statement, Australian Medical Association, 2013. Online at https://ama.com.au/position-statement/conscientious-objection-2013

33 *Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy*. Queensland Health, 2013. Available on the Queensland Health website at https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf

34 *General Practitioners: Attitudes to Abortion* Prepared by Quantum Market Research and Marie Stopes International Australia, November 2004.

35 The Doctors Conscience website is available at http://www.doctorsconscience.org/

36 *Transparent advertising and notification of pregnancy counselling services Bill 2005*: overview of the Inquiry by the Senate Community Affairs Legislation Committee is available on the federal parliament website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquirie s/2004-07/pregnancy_counselling/report/c01

37 For example, Pregnancy Counselling Link is a service funded by the Queensland Government which offers 'counselling by qualified professionals' and support with 'difficult decisions' and 'unplanned pregnancy' according to their website (http://www.pcl.org.au/). Their 'abortion information brochure' contains in small print at the bottom of the second page that 'Pregnancy Counselling Link does not provide referrals for abortion.' The brochure must be downloaded from their website as a pdf (http://www.pcl.org.au/assets/PCL-AbortionBrochure.pdf) and is not otherwise accessible. The information about refusal to refer is not stated in any other place on their website.

Informed consent counselling seeks to ensure that the patient understands the nature and the purpose of a medical procedure, its alternatives, the possible complications, and the likelihood of these complications occurring. It also ascertains that that the patient is making the decision to proceed with the treatment voluntarily. As with other medical procedures (arguably more so under our current legislative framework), informed consent counselling is a standard part of public and private termination of pregnancy services in Queensland, and is additionally addressed in the Queensland Maternity and Neonatal Clinical Guideline on the Therapeutic Termination of Pregnancy[38], the Clinical Services Capability Framework (CSCF) for Licensed Private Health Facilities and the relevant companion modules for terminations of pregnancy and day surgeries,[39] and the licensing and distribution conditions for medical abortion determined by the Therapeutic Goods Administration.[40] Any uncertainty, ambivalence, or distress regarding the decision would be identified and dealt with appropriately by termination providers as part of gaining informed consent, and it is therefore unnecessary for a mandatory offer of counselling to be included in any proposed legislative amendments". Children by Choice Submission to the Queensland Law Reform Commission January 2018

Q-14:

QDVSN recommends that it be unlawful to harass, intimidate or obstruct a woman who is considering, or who has undergone, a termination of pregnancy; or a person who performs or assists, or who has performed or assisted in performing a lawful termination of pregnancy at any time.

Q-14:

Yes. Any offensive, obstructive, harassing, or judgemental communication or behaviour by opponents of abortion outside abortion clinics should be made impossible by significant safe access zones (minimum of 250 meters) that apply at all times. There should be significant legal consequences for breaching these safety zones.

RATIONALE

This would align Queensland legislation with four other Australian jurisdictions which already have legislated safe access zones in place.

We are strongly supportive of the principle of safe access zones and agree with the statement by Victorian Health Minister Jill Hennessy that they are necessary "in order to prevent the harm and not just to respond to inappropriate conduct when it occurs."

Human rights law experts support the introduction of safe access zones around abortion provider premises, and state that enacting this legislation does not impose a burden on the implied right to freedom of political communication. [41]

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38 Queensland Maternity and Neonatal Clinical Guideline: Therapeutic Termination of Pregnancy. Queensland Health, 2013. Available on the Queensland Health website at https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf

39 'About the CSCF', available on the Queensland Health website at https://www.health.qld.gov.au/clinicalpractice/guidelines-procedures/service-delivery/cscf/about/default.asp

40 Australian Register of Therapeutic Goods ID 210574 (MS-2 Step composition pack) product information available online at the Therapeutic Goods Administration website: https://www.ebs.tga.gov.au/servlet/xmlmillr6?dbid=ebs/PublicHTML/pdfStore.nsf&docid=77FFC395C0EC491 DCA257E5F004236DF&agid=(PrintDetailsPublic)&actionid=1

41 See for example 'Safe Access Zones' presentation by Dr Ronli Sifris, Deputy Director of Castan Centre for Human Rights, at the second national Unplanned Pregnancy and Abortion in Australia Conference, August 2017, online at https://www.childrenbychoice.org.au/images/downloads/2017conference/Ronli-Sifris-Safe-access-zones.pdf ; also the Human Rights Law Centre submission to the Health (Abortion Law Reform) Amendment Bill 2016 at https://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/18-HealthAbortion/submissions/894.pdf

Q-16:

QDVSN recommends that a safety zone be established at all times. The provision should automatically establish safe zones of a radius of 250 meters around all premises providing termination of pregnancy services.

Q-17:

Any communications that relates to terminations and is likely to cause distress or anxiety, any intimidating, monitoring or harassing behaviour including attempting to block access, filming, noting licence plates and publicising persons accessing the termination service.

Q-18:

Prohibitions of the above mentioned behaviour should apply at all times.

Q-19:

Yes it should it be an offence to make or publish a recording of another person entering or leaving or trying to enter or leave premises where termination of pregnancy services are performed, unless the recorded person has given their consent. Making or recording the above mentioned material can potentially disadvantage, publically ostracise, create significant distress/anxiety or depression and is unquestionably be a severe breach of another person's right to privacy.

Q-20:

Yes there Should be mandatory reporting of anonymised data about terminations of pregnancy in QLD. Accurate data informs future practice, funding direction and identifies significant gaps and issues that need to be appropriately dealt with.

The QDVSN would like to extend our most sincere thank you to Children By Choice for their assistance with this submission.