



5 September 2018
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Committee Secretary
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: health@parliament.qld.gov.au

Dear Committee Secretary

RE: *Termination of Pregnancy Bill 2018*

Australian Lawyers for Human Rights (**ALHR**) thanks the Health, Communities, Disabilities Services and Domestic and Family Violence Prevention Committee for the opportunity to make this submission to the Inquiry into the *Termination of Pregnancy Bill 2018 (the Bill)*.

ALHR refers to our previous submissions to the Queensland Law Reform Commission¹ and to this Committee regarding the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016* and Inquiry into laws governing termination of pregnancy in Queensland.

It is ALHR's view that criminal provisions relating to termination of pregnancy should be repealed and that, in order for Australia to comply with its international human rights law obligations,, termination of pregnancy services should be safe, legal and accessible. Accordingly, ALHR strongly supports the recommendations of the Queensland Law Reform

¹ ALHR Submission to the *Queensland Law Reform Commission Review of Termination of Pregnancy Laws* <https://alhr.org.au/wp/wp-content/uploads/2018/02/ALHR-Sub-to-QldLRC-review-on-pregnancy-termination.pdf>

Commission as contained in its Review on Pregnancy Termination Laws (2018), and the Bill in its current form.

1. International Human Rights Law

United Nations Human Rights Bodies have provided States with clear guidance on when there is a need to decriminalise abortion and have emphasised that ensuring access to safe and legal abortion services in accordance with human rights standards is part of State obligations to eliminate discrimination against women and girls and ensure their right to health as well as other fundamental human rights.

Reproductive rights are recognised in multiple human rights instruments. They are protected by the rights to life (including the right not to die from preventable, pregnancy-related causes), health, personal freedom, security and integrity, to privacy, equality and non-discrimination, consent in marriage and equality, to education and information, and the right to benefit from academic/scientific progress.² The United Nations Human Rights Committee has stated that the denial of access to safe and legal abortion is a breach of the fundamental human rights of women and girls, specifically under several articles of the *International Covenant on Civil and Political Rights* (“ICCPR”) including the right to an effective remedy, prohibition on torture and cruel, inhuman and degrading treatment, right to private life and right of minors to measures of protection. Reproductive rights are explicitly recognised under the *Convention for the Elimination of Discrimination Against Women*.³

The Committee on the Elimination of Discrimination Against Women 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.*”⁴ The Committee has also more recently requested that

² See *Universal Declaration of Human Rights [1948]*, Arts 2-3, Arts 5-6, Art 25, Art 27(1); *International Covenant on Civil and Political Rights [ICCPR]*, Art 2, Art 6, Art 7, Art 17; *International Covenant on Economic, Social and Cultural Rights [ICESCR]*, Art 1, Art 3, Art 11(2), Art 12, Art 15; Julia Gebhard and Diana Trimiño Mora, Reproductive Rights, International Regulation, Max Planck Encyclopedia of Public International Law (Oxford Public International Law Online, August 2013).

³ Convention for the Elimination of Discrimination Against Women in Article 16 (1) (e): ‘the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, as well as to attain the highest standard of sexual and reproductive health’.#

⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health*, A/54/38/Rev 1 (1999) [11].

States “*remove punitive measures for women who undergo abortion*” and has stated that the criminalisation of practitioners who provide abortion services also violates women’s rights⁵

Similarly, the Special Rapporteur on the right to health has argued that laws criminalising abortion “*infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health*”. The Rapporteur has called on States to decriminalise abortion.⁶

The United Nations Committee on Economic, Social and Cultural Rights has also established that the right to health – which comprises reproductive and sexual health – requires health services, including legal abortion services, which are available, accessible, acceptable and of good quality.⁷ The Committee on the Rights of the Child has recommended that “*States ensure access to safe abortion and post abortion care services irrespective of whether abortion itself is legal*”.⁸

ALHR welcomes the Bill as consistent with these international standards and legal obligations.

2. Conscientious Objection

ALHR acknowledges the rights of practitioners to conscientiously object to performing or advising on terminations of pregnancy, provided that they are able to refer the patient to an alternate provider, as contemplated in s 8(3) of the Bill. Practitioners should be free to conscientiously object to performing pregnancy terminations on religious or moral grounds including in accordance with Article 18 of the International Covenant on Civil and Political Rights.

However, ALHR emphasises the need to balance the rights of practitioners to conscientiously object to performing or advising on termination procedures with the rights of patients to access medical advice and healthcare services. The Convention on the Elimination on all forms of

⁵ Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para. 36; Statement on sexual and reproductive health and rights: Beyond 2014 ICPD Review (2014).

⁶ UN Secretary-General, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/66/254 (2011), para. 21

⁷ General Comment 14 (2000) on the right to the highest attainable standard of health, paras. 8, 12, 27.

⁸ General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 70.

Discrimination Against Women Committee considered the refusal to treat women based on conscientious objection to be an infringement on women's reproductive rights.⁹ The United Nations Human Rights Committee has made the following comment in relation to laws that limit the rights of those who may hold different religious beliefs:

*If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc, or in actual practice, this shall not result in any impairment of the freedoms under Article 18 [of the International Covenant on Civil and Political Rights] or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.*¹⁰

Consideration must be given to whether section 8(3) of the Bill will be practical in all circumstances – that is, as to how conscientious objection by medical practitioners will impact people in rural and remote areas with limited choice in medical providers, especially as the exemption applies not only to the carrying out of a termination but the provision of advice in relation to termination options.

The United Nations Human Rights Committee has expressed concerns about situations where terminations, while being theoretically legally available, are practically inaccessible due to the operation of conscientious objection principles and practitioners' consequent refusal to perform legal terminations.

3. Gestational limits

The gestational limit proposed by the Bill¹¹ is consistent with many of the recommendations of medical and legal experts and with termination of pregnancy laws in other jurisdictions.[4] The Bill reflects the attitudes and expectations of the community in Queensland by providing for a greater level of medical oversight for terminations performed after 22 weeks gestation. ALHR therefore supports the Bill in allowing for terminations of pregnancy to be performed on request until 22 weeks' gestation.

⁹ Committee on the Elimination of all forms of Discrimination Against Women, concluding comments on Croatia UN Doc. A/53/38, Part 1 (1998), [103].

¹⁰ Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) UN Doc CCPR/C/21/REV.1/Add 4 (30/07/93), [10].

¹¹ Termination of Pregnancy Bill 2018 s 5.

In this respect the Bill is consistent with the recommendations of the Queensland Law Reform Commission in providing for terminations to be performed after 22 weeks gestation if two medical practitioners consider a termination is appropriate in all the circumstances. In considering whether a termination should be performed on a woman, a medical practitioner must consider:

- all relevant medical circumstances;
- the woman's current and future physical, psychological and social circumstances; and
- the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.¹²

ALHR considers the process for determining whether a termination should be performed after 22 weeks to be reasonable and appropriate. The relevant considerations reflect those in other similar jurisdictions, such as Victoria. While the Bill does not offer guidance on what might be considered as a 'social circumstance',

ALHR submits this is appropriate and should be interpreted broadly. This would allow for factors such as the impact of a pregnancy which is the result of rape or reproductive coercion, domestic and family violence, substance abuse, or homelessness and financial disadvantage to be considered.

4. Safe access zones

ALHR strongly supports safe access zones of at least 150m around abortion clinics as a way of protecting and promoting human rights and the safety and dignity of patients and clinic staff. Victoria¹³ Tasmania¹⁴, the ACT¹⁵ and the Northern Territory¹⁶ have all successfully introduced safe access zones around reproductive health clinics.

Generally, behaviour should not be protected by Australian law where that behaviour itself infringes other human rights. There is no hierarchy of human rights – they are all interrelated,

¹² Termination of Pregnancy Bill 2018 s 6.

¹³ Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015 (Vic).

¹⁴ Reproductive Health (Access to Terminations) Act 2013 (Tas) – section 9

¹⁵ Health Act 1993 (ACT) - Div 6.2, sections 85-87.

¹⁶ Termination of Pregnancy Law Reform Act 2017 (NT) – Part 3 sections 14-16

interdependent and indivisible. Where protection is desired for particular behaviour it will be relevant to what extent that behaviour reflects respect for the rights of others .

Women seeking abortions and staff working at these clinics report routinely experiencing harassment and intimidation from anti-abortion protesters outside the clinics. Such behaviour is potentially criminal and also clearly infringes women's right to privacy and dignity when accessing health services. The recent media attention surrounding anti-abortion protesters at termination clinics in Brisbane highlights the impact on patients and the need for reform.¹⁷

UN human rights bodies as well as courts in similar countries such as America and Canada have all found that sensible measures to ensure safe access to women's health services do not unreasonably limit the rights to freedom of expression and assembly.

Under international law and under most jurisdictions, the right to freedom of speech has never been an unqualified right. By contrast, access to safe and legal abortion services, in accordance with human rights standards, is part of a State's obligations to eliminate discrimination against women and girls, and to ensure their right to health and other fundamental human rights.

We note the matter of *Clubb v Edwards* (M46/2018) which is currently before the High Court. In that matter, Kathleen Clubb (the Appellant) seeks to challenge the safe access zone laws in Victoria on the basis that the law impermissibly burdens the implied freedom of political communication. ALHR endorses the submissions of the Attorney-General for the State of Victoria and the Attorney-General for the State of Queensland (as an intervenor) filed in that matter. In particular, we endorse the submissions of the Queensland Attorney-General in outlining that the actions of anti-abortion protesters outside clinics do not fall within the category of communications on political or government matters, rather, they are behaviours directed towards influencing the reproductive decisions of individuals.¹⁸

Claims that safe access zones interfere with freedom of speech or religion misunderstand the very concrete terms, standards and norms enshrined in international human rights law, particularly the interdependent and indivisible nature of *all* human rights.

¹⁷ Stephanie Bedo, 'Woman begs Christian Protesters to leave outside Queensland abortion clinic', News.com.au (4 June 2018). See full article at: <https://www.news.com.au/lifestyle/real-life/news-life/woman-begs-christian-protester-to-leave-her-alone-outside-queensland-abortion-clinic/news-story/d209c09c11a5d8df9a66db6e44096f67>

¹⁸ Submissions by the Attorney-General for the State of Queensland, dated 25 May 2018, p. 17.

5. Conclusion

Those who seek abortions should not be treated as criminals and the majority of Australians recognise that our laws need to change to reflect this. Data from the Australian Survey of Social Attitudes found that 82 per cent of Australians believe a woman should have the right to choose to have an abortion.¹⁹ A survey conducted by Auspoll in 2009 of over 1000 Queenslanders found that almost 4 out of 5 voters wanted the law changed so abortion is no longer a crime.²⁰ A poll of 1200 Queenslanders commissioned by national campaign group Fair Agenda in February 2017 found that 82% agreed it should be legal for a woman, in consultation with a medical professional, to terminate her pregnancy.²¹

It is estimated that 1 in 3 women in Australia have at least one abortion in their lifetime. Over 92% of these occur in the first 14 weeks of pregnancy. Based on limited available data, the highest rate of induced abortion occurs in women aged 20-24 years, although this has declined, and the rate in women aged 35 years or more has increased slightly in the period 1995 to 2008.²²

ALHR strongly supports the Bill in its current form and its policy objectives. The proposed reforms are consistent with the recommendations of international human rights bodies, Australia's international legal obligations, community standards, and with the laws relating to the termination of pregnancy in other Australian states.

¹⁹ K Betts "Attitudes to Abortion in Australia: 1972 to 2003" *People and Place* 22, 2004. Available online at http://tapri.org.au/wp-content/uploads/2016/02/v12n4_3betts.pdf.

²⁰ Queensland voters' attitudes towards abortion Report prepared by Auspoll, May 2009. Polling commissioned by Children by Choice. <https://www.childrenbychoice.org.au/factsandfigures/attitudestoabortion#r1>.

²¹ Queensland abortion law reform poll; February 2017. Polling and report carried out by Essential Media, and commissioned by Fair Agenda. Report available in full at http://www.fairagenda.org/blog_abortion_polling.

²² Family Planning NSW (2011) *Reproductive and sexual health in New South Wales and Australia: Differentials, trends and assessment of data sources*. FPNSW: Sydney

If you would like to discuss this submission, please contact Kate Marchesi, Chair of the Women's and Girls Rights Sub-committee at wgr@alhr.org.au.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Kerry West', written over a light blue textured background.

Kerry West

President

Australian Lawyers for Human Rights

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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas