



SEXUAL HEALTH SOCIETY
OF QUEENSLAND

The Sexual Health Society of Queensland's Submission to the Queensland Law Reform Commission's Review of termination of pregnancy laws

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Review of Termination of Pregnancy Laws



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The Sexual Health Society of Queensland (SHSQ) was formed in 1988 and currently has members from across the state. The Society aims to provide high quality educational opportunities for its members and encourages open and strong debate on issues in sexual health in Queensland. The society's objectives are as follows,

1. To advise and advocate for the improvement of all aspects of sexual health in Queensland.
2. To advance scientific, medical and psycho-sexual knowledge in the provision of sexual health services, and the promotion of sexual health in Queensland.
3. To disseminate authoritative information concerning sexual health issues for the community of Queensland.
4. To maintain liaison with similar professional societies and community organisations in Australasia and elsewhere

The Sexual Health Society of Queensland's position statement on abortion

The Sexual Health Society of Queensland endorses the Declaration of Sexual Rights of the World Association for Sexual Health which includes the rights to autonomy and bodily integrity, to the highest attainable standard of health, including sexual health and to decide whether to have children, the number and spacing of children, and to have the information and the means to do so.¹

The Society recognises that unplanned pregnancy is a reality of women's lives and believes that every woman has the right to make her own decision about an unplanned pregnancy and should be able to access an abortion if that is her choice. The values of autonomy, informed consent and choice must be respected.

It is important that women experiencing an unplanned pregnancy have access to accurate information and non-directive support about their options - parenting, abortion, adoption or alternative care arrangements.

The Society supports the removal of abortion laws from the Queensland Criminal Code and believes that all women should have access to safe and legal abortion regardless of race, geographical location, gestational stage of pregnancy, or financial situation, and it should not be restricted to those whose life is in danger.

The Society supports efforts to reduce the unplanned pregnancy rate in Australia, including expanding access to contraceptive methods (particularly Long-Acting Reversible Contraceptive methods).

¹ The WAS Declaration of Sexual Rights was originally proclaimed at the 13th World Congress of Sexology in Valencia, Spain in 1997 and then, in 1999, a revision was approved in Hong Kong by the WAS General Assembly and then reaffirmed in the WAS Declaration: Sexual Health for the Millennium (2008). This revised declaration was approved by the WAS Advisory Council in March 2014. www.worldsexology.org/resources/declaration-of-sexual-rights/. Accessed 18 March 2015.

RESPONSES TO THE CONSULTATION QUESTIONS

Who should be permitted to perform or assist in performing terminations

Question-1 Who should be permitted to perform, or assist in performing, lawful terminations of pregnancy?

Answer-1. Appropriately qualified and trained health practitioners.

Question -2 Should a woman be criminally responsible for the termination of her own pregnancy?

Answer -2. No

Rationale: Human rights groups around the world continue to advocate for the removal of laws criminalising abortion. Amnesty International has urged all countries still holding these laws to repeal them;¹ Human Rights Watch continues to document the result of criminalised abortion and lack of abortion access.²

The legislation regarding abortion in Queensland currently is discriminatory towards woman. The principles of non-discrimination inherent in international human rights mechanisms, characterises the refusal of medical procedures that only women require, such as abortion, as sex discrimination.³ Australia is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women.

The universality of abortion across history has shown that women choose to access abortion regardless of its legality in order to prevent childbirth or to control the numbers and timing of children. Highly restrictive abortion laws are not associated with changing a woman's decision or lowering abortion rates.⁴

There has been a worldwide trend towards the liberalisation of abortion laws in recent years⁵. Queensland and New South Wales are the only jurisdictions in Australia where abortion is still a crime. Abortion is the only medical procedure that is contained in the Queensland Criminal Code 1899 (sections 224-226), which sets out criminal penalties for doctors providing abortion, those assisting women to access abortion and for women accessing an abortion. The existing practices concerning termination of pregnancy in Queensland and its legal status, impact on women's ability to exercise their reproductive autonomy to access an abortion

The ambiguity of when an abortion is lawful or not and the criminal taint of abortion in Queensland has created an adverse environment regarding information and access for many women, doctors, nurses and counsellors in navigating the practical, social and emotional aspects of abortion⁶

It should be noted that despite abortion being in the criminal code stringent regulations for provision are in place currently. In Australia, where abortions are performed by highly qualified health care professionals in very hygienic conditions, a pregnancy termination is one of the safest medical procedures, and complications are rare.⁷

In Queensland, abortion is provided predominantly in private clinics. All of these clinics must adhere to Queensland Health's Clinical Services Capability Framework for Licensed Private Health Facilities, which provides clear regulations on the abortion provisions. The small number of abortion procedures carried out in public hospitals is provided under Queensland Health's state-wide Queensland Health Clinical Guideline for the Therapeutic Termination of Pregnancy.⁸

Gestational limits and grounds

Question -3 Should there be a gestational limit or limits for a lawful termination of pregnancy?

Answer 3- No

Although the SHSQ recommends that no gestational limits be imposed in legislation, The Society would support the introduction of the Victorian model regarding abortions over 24 week gestation.⁹

Question -4 If yes to Question -3, what should the gestational limit or limits be? For example:

- (a) an early gestational limit, related to the first trimester of pregnancy;
- (b) a later gestational limit, related to viability;
- (c) another gestational limit or limits?

Question -5 Should there be a specific ground or grounds for a lawful termination of pregnancy?

Answer -5 Yes

Question -6 If yes to Question -5, what should the specific ground or grounds be?

Answer -6 The only ground recommended for abortions under 24 weeks is the pregnant person's informed and freely provided consent. For terminations over 24 weeks the SHSQ would support that termination is appropriate in all the circumstances, having regard to:

- (i) all relevant medical circumstances;
- (ii) the woman's current and future physical, psychological and social circumstances; and
- (iii) professional standards and guidelines;

Question -7 If yes to Question -5, should a different ground or grounds apply at different stages of pregnancy?

Answer -7 No.

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Although the SHSQ recommends no different considerations different stages of pregnancy being imposed in legislation, we would support the introduction of the Victorian legislative model regarding abortions over 24 week gestation.¹⁰

Rationale: The SHSQ supports the introduction of an 'on request' approach; treating termination of pregnancy as a health matter, rather than a criminal matter, and to have no legally imposed gestational limits or grounds. Under this approach, the lawfulness of termination would be determined by the same principles as apply to any other health matter; if termination was medically indicated and there was informed consent, termination would be lawful.

This approach is supported by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) statement on Queensland abortion laws.¹¹

This approach is appropriate given that of the limited available data there are only a small number of abortions carried out post 20 weeks gestation in Australia. Figures from South Australia shows 91% of terminations were performed within the first 14 weeks of pregnancy¹² and figures from Western Australia State only 0.6% of all abortions were performed at 20 weeks or later.¹³

The small numbers of pregnancies terminated after 20 weeks gestation are done in extreme circumstances, such as severe maternal illness, diagnosis of a severe fetal anomaly, domestic violence or other exacerbating circumstances.

Gestational limits discriminate against the most vulnerable of women and women in the most difficult of clinical circumstances. Often disadvantaged women may not access diagnosis of lethal or serious fetal anomalies until later gestations.

Gestational limits discriminate against women who may have severe congenital infections such as cytomegalovirus which may not be apparent until later gestations or may only be diagnosed beyond 20 weeks.¹⁴

Consultation by the medical practitioner

Question -8 Should a medical practitioner be required to consult with one or more others (such as another medical practitioner or health practitioner), or refer to a committee, before performing a termination of pregnancy?

Answer -8 Yes but only for terminations of pregnancy over 24 week's gestation.

If yes to Question -8;

Question -9 What should the requirement be?

Answer -9 The SHSQ supports the Victorian legislative model regarding terminations of pregnancy over 24 weeks gestation,¹⁵ i.e. consultation by the medical practitioner who is to perform the termination with another medical practitioner.

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Question -10 When should the requirement apply?

Answer -10 Terminations of pregnancy over 24 weeks gestation

Rationale: The provision of termination of pregnancy services in Queensland is regulated by Qld Health within the Queensland Health's Clinical Services Capability Framework for Licensed Private Health Facilities and Queensland Health Clinical Guideline for the Therapeutic Termination of Pregnancy in hospitals. The Therapeutic Goods Administration and MS Health also play a role in medication abortion. These regulations, along with the professional standards and current practices, will ensure specialist involvement or consultation will occur where it is clinically indicated and appropriate. However if a legislative requirement is pursued, the SHSQ supports the Victorian legislative approach requiring consultation with other medical practitioner for terminations of pregnancy over 24 weeks gestation.¹⁶

The SHSQ opposes any requirement for a referral or approval to a committee as these processes are often time consuming, onerous on the woman and impede the woman's right to reproductive autonomy. This model is used in Western Australia where a review in 2002 found that the requirement has created further delays in accessing services where approved; and that pregnant women who received negative or inconclusive diagnoses not long before the 20 week limit, felt that decisions on whether to continue or terminate a pregnancy were more highly pressured and made in haste or with incomplete information, fearing that their options would be significantly limited once the limit was passed.¹⁷

Conscientious objection

Question -11 Should there be provision for conscientious objection?

Answer -11 No

Question -12 If yes to Question -11:

Rationale: The SHSQ believes the current professional standards on conscientious objection set out by bodies such as Australian Health Practitioner Regulation Agency (AHPRA) and the Australian Medical Association (AMA) provide excellent guidance for practitioners on this issue.¹⁸

We make particular reference that, the AMA stipulates in their position statement on this issue that; practitioners make every effort in a timely manner to minimise the disruption in the delivery of health care and ensuing burden on colleagues. The doctor needs to take whatever steps are necessary to ensure the patient's access to care is not impeded.¹⁹

This inclusion of a conscientious objection clause may increase the legitimacy of "opting out" of abortion provision as is evident in other jurisdictions.²⁰

Therefore we do not support the inclusion of a conscientious objection clause in the legislation.

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Counselling

Question -13 Should there be any requirements in relation to offering counselling for the woman?

Answer -13 No

Rationale: Rationale: The SHSQ supports the availability of and easy access to pro-choice, evidence-based pregnancy options counselling, including decision-making counselling and post-abortion counselling, to any person who wishes to access this service. However, we would have concerns about legislating the requirement to offer counselling due to the lack of clarity currently in this area and what this requirement would mean for pregnant people wishing to access non-bias, all options counselling. There are no regulations or legislative requirements for pregnancy options counselling currently, including counsellor qualifications and advertising of these services²¹.

Some counselling services are not pro-choice and may intentionally provide biased or misleading information. In order to identify which option is best for them, it is important for women to be presented with accurate information on all their options. In a 2006 survey of 1000 women who had experienced an unplanned pregnancy, [three out of four respondents said they did not want professional counselling](#) before having a termination. 81% of respondents did want balanced information about, and referrals for, all options: pregnancy, abortion, adoption and parenting.²²

In addition such a requirement legislation would be inconsistent with all other Australian jurisdictions.

We believe that mandatory counselling should not be include in any legislation.

Protection of women and service providers and safe access zones

Question -14 Should it be unlawful to harass, intimidate or obstruct:

- (a) a woman who is considering, or who has undergone, a termination of pregnancy; or
- (b) a person who performs or assists, or who has performed or assisted in performing, a lawful termination of pregnancy?

Answer -14 Yes

Question -15 Should there be provision for safe access zones in the area around premises where termination of pregnancy services are provided?

Answer -15 Yes

If yes to Question -15: Q-16 Should the provision:

- (a) automatically establish an area around the premises as a safe access zone? If so, what should the area be; or

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(b) empower the responsible Minister to make a declaration establishing the area of each safe access zone? If so, what criteria should the Minister be required to apply when making the declaration?

Answer -16 The provision should automatically establish a safe access zone, at a minimum distance of 150 meters around the premises, in line with the Victorian legislation.²³

Question -17 What behaviours should be prohibited in a safe access zone?

The SHSQ endorses the same prohibition of behaviours as set out in the Victorian Safe Access Zone legislation defined as,

- in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means;
- communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety;
- interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided;
- intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access, or leaving premises at which abortions are provided, without that other person's consent;²⁴

Question -18 Should the prohibition on behaviours in a safe access zone apply only during a particular time period?

Answer -18 No, the prohibition should exist at all times

Question -19 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?

Answer -19 Yes

Rationale: The introduction of safe access zones would bring Queensland in line with other jurisdictions such as Victoria, Tasmania and the Australian Capital Territory which have enacted legislation establishing safety zones around abortion provider premises²⁵

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.²⁶

The SHSQ currently has approximately 100 members who we strongly believe have the right to be able to enter and leave their work places without being harassed, intimidated, threatened, hindered, obstructed or impeded. This right should be afforded to all, including those working at abortion clinics or GP centres providing abortion services.

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Collection of data about terminations of pregnancy

Question -20 Should there be mandatory reporting of anonymised data about terminations of pregnancy in Queensland?

Answer -20 Yes

Rationale: This measure would enable better service planning and enhance policy responsiveness. For this to be most beneficial the SHSQ recommends that this data is made publically available as occurs in South Australia.

¹ Protecting the rights of women: Kate Gilmore speaks' *Human Rights Defender* 9 August 2007. Available online at <http://www.amnesty.org.au/svaw/comments/2420/>

² See for example *A State of Isolation: Access to Abortion for Women in Ireland* Human Rights Watch 2010. Available online at <https://www.hrw.org/report/2010/01/28/state-isolation/access-abortion-women-ireland>

³ R Cook, B Dickens (2003) 'Human Rights Dynamics of Abortion Law Reform' *Human Rights Quarterly* 25 (2003) 1-59, John Hopkins University Press

⁴ Dr Robin Gregory, 'Hardly her Choice: A history of abortion law reform in Victoria' (2007) 19 *Women Against Violence* 63, 69; Gilda Sedgh, 'Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008' (Research Paper, Guttmacher Institute and World Health Organisation, 2012) 1343

⁵ 5. Facts on Induced Abortion Worldwide Published by the Alan Guttmacher Institute, January 2012. Available online at http://www.guttmacher.org/pubs/fb_IAW.html.

⁶ Taskforce on Women and the Criminal Code, Parliament of Queensland, Report of the Taskforce on Women and the Criminal Code (2000) 354.

⁷ *Safe Abortion: Technical and Policy Guidance for Health Systems* World Health Organization, Geneva 2003 p12

⁸ https://www.health.qld.gov.au/data/assets/pdf_file/0018/140733/g-ttop.pdf Accessed online on 22 Jan 2018

⁹ http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/BB2C8223617EB6A8CA2574EA001C130A/%24FILE/08-58a.pdf Accessed online on 22 Jan 2018

¹⁰ http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/BB2C8223617EB6A8CA2574EA001C130A/%24FILE/08-58a.pdf Accessed online on 22 Jan 2018

¹¹ <https://www.ranzcog.edu.au/news/Queensland-abortion-law-reform> Accessed online on 22 Jan 2018

¹² Scheil W, Jolly K, Scott J, Catchside B, Sage L, Kennare R. *Pregnancy Outcome in South Australia 2013*. Adelaide: Pregnancy Outcome Unit, SA Health, Government of South Australia, 2015.

¹³ Straton J, Godman K, Gee V, & Hu Q. (2006). *Induced abortion in Western Australia 1999-2005*. Report of the WA Abortion Notification System. Department of Health. Perth, Western Australia.

¹⁴ RANZCOG, 'Queensland abortion law reform' (Media Statement, 15 February 2017). RANZCOG 'supports a multidisciplinary approach in assisting women in such circumstances and the availability of late termination of pregnancy for the rare situations where both managing clinicians and patient believe it to be the most suitable option in the circumstances': RANZCOG, 'Termination of Pregnancy' (C-Gyn 17, July 2016) [4.4]; See also RANZCOG, 'Late Termination of Pregnancy' (C-Gyn 17A, May 2016)

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- ¹⁷ Report to the Minister for Health on the Review of Provisions of the Health Act 1911 and the Criminal Code relating to abortion, as introduced by the Acts Amendment (Abortion) Act 1998. Western Australian Department of Health, June 2002. Online at <http://www.health.wa.gov.au/publications/documents/ABORTIONREVIEWmaster180602.pdf>
- ¹⁸ <https://ama.com.au/position-statement/conscientious-objection-2013> Access online on 23 Jan 2018
- ¹⁹ <https://ama.com.au/position-statement/conscientious-objection-2013> Accessed online on Feb 12 2018
- ²⁰ L Keogh et al, 'Intended and unintended consequences of abortion law reform: perspectives of abortion experts in Victoria, Australia' (2017) 43 *Journal of Family Planning and Reproductive Health Care*
- ²¹ <https://www.childrenbychoice.org.au/factsandfigures/pregnancycounselling> Access online on Jan 24 2018
- ²² Marie Stopes International, What women want: When faced with an unplanned pregnancy, Key Findings, p.4.
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- ²⁵ *Current law in Queensland and other Australian jurisdictions*, information paper published by the Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, June 2016. Online at <https://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/AbortionLR-WRC-AB2016/14->
- ²⁶ 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>