Health Consumers Queensland submission

Queensland Law Reform Commission

Review of termination of pregnancy laws

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About us

Health Consumers Queensland is the peak organisation representing the interests of health consumers and carers in the state. Health Consumers Queensland is a not-for-profit organisation and a registered health promotion charity and we believe in improving health outcomes for people in Queensland.

Consumers are people who use, or are potential users, of health services including their family and carers. Consumers may participate as individuals, groups, organizations of consumers, consumer representatives or communities.

Our priority focus is on consumer engagement that influences and leads improvements and delivers better health outcomes for all Queenslanders. We achieve this through our Queensland-wide health consumer network, tailored training and skills development programs, and maximising opportunities for consumer representation at all levels of the health system.

Consumer engagement is when health consumers actively participate in their own healthcare and in health policy, planning, service delivery and evaluation at service and agency levels.

OUR MISSION

Health Consumers Queensland empowers Queensland consumers to lead and drive better health outcomes.

OUR GUIDING PRINCIPLES:

Health Consumers Queensland is committed to:

- Influencing individual and system change in health services through ensuring the consumer perspective is central in the planning, design, delivery, monitoring and evaluation at all levels.
- Partnerships and collaboration with organisations, service providers and stakeholders.
- Quality, safe, affordable, timely and accessible services that deliver the right care, at the right time and the right place.

DIVERSITY

All people have a right to affordable and accessible health services that meet all of their physical, social, emotional and cultural preferences.

Health Consumers Queensland focus on increasing the voices of vulnerable population groups and assist them to understand how they can have a voice in developing health services. With access and equity in mind, we partner with people and organisations with a focus on the following:

- Culturally and linguistically diverse (CALD)
- Physical and intellectual disability
- Lived mental health experience
- Socially and geographically isolated
- Socioeconomically disadvantaged

Consultation questions

Please refer to our organisation's previous two submissions to the Queensland Parliament's Health, Communities, Disability Services and Family Violence Prevention Committee's:

- **Inquiry into Abortion Law Reform (2016)**
- **Health (Abortion Law Reform) Amendment Bill (2016)**

Also note we endorse the submission to the Queensland Law Reform Commission by Children by Choice Inc (2018).

Who should be permitted to perform or assist in performing terminations

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

In order to safeguard the public and ensure quality of practice, a registered health or medical practitioner should be able to legally perform or assist in performing terminations of pregnancy.

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

Principles of dignity, equal access to reproductive healthcare, adherence to our international legal obligations and nationally consistent legislation must be upheld in our state to ensure a pregnant woman or person is never be liable to be criminally charged for a termination of pregnancy that they consented to.

Gestational limits and grounds

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

Q-4 If yes to Q-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?

We do not have Queensland legislation that covers every aspect of medical care and decision making in our system – that is the role of clinical guidelines, professional codes of conduct and professional scope of practice documents.

Queensland has guidelines[1] [2] in place to support decision making around pregnancy termination sitting in its rightful place: between a woman, her doctor and supportive counselling services if she wishes to access them. We understand it is already current practice that two (or more) doctors document the decision making process for terminations after 24 weeks.

[1] Queensland Maternity and Neonatal Clinical Guideline on Therapeutic Termination of Pregnancy (*https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf)*

[2] Clinical Services Capability Framework (*Queensland Government, Centre for Health Care Improvement. Maternity services. In: Clinical services capability framework for public and licensed private health facilities v3.0. Brisbane: Queensland Government Department of Health; 2011*).

If the Queensland Law Reform Commission recommends that current clinical practice be reflected in legislation, Queensland could consider adopting the Victorian model, where legislation stipulates that access to termination services are unrestricted up to 24 weeks, and after this point, a woman makes a decision with information and support from two doctors.

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

We agree with Children by Choice's submission[3] that:

If a staged gestational approach to law reform is legislated then informed consent should be the only basis for grounds for a lawful termination of pregnancy prior to 24 weeks.

Q-6 If yes to Q-5, what should the specific ground or grounds be? For example:
(a) a single ground to the effect 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;

(b) one or more of the following grounds:
(i) that it is necessary to preserve the life or the physical or mental health of the woman;
(ii) that it is necessary or appropriate having regard to the woman's social or economic circumstances;
(iii) that the pregnancy is the result of rape or another coerced or unlawful act;
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(iv) that there is a risk of serious or fatal fetal abnormality?

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

After 24 weeks gestation as well as informed consent, the only grounds to be satisfied should be that a termination was found to be 'appropriate in all the circumstances' as per 6a. Nothing in 6b should apply. Terminations of pregnancy after 24 weeks gestation are sought for complex reasons and already under existing clinical guidelines are seriously considered from all angles by doctors and pregnant women.

<u>Consultation by the medical practitioner</u>

Q-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?

Should a staged gestational approach to law reform be pursued, legislation could mandate consultation with another medical practitioner after 24 weeks as per current clinical practice in

[3] Children by Choice Submission to the Queensland Law Reform Commission January 2018

Queensland, under the Queensland Maternity and Neonatal Clinical Guideline on Therapeutic Termination of Pregnancy.

Prior to this, as previously stated, the decision should be between a woman or pregnant person, and their health professional.

If yes to Q-8:
Q-9 What should the requirement be? For example:
(a) consultation by the medical practitioner who is to perform the termination with:
(i) another medical practitioner; or
(ii) a specialist obstetrician or gynaecologist; or
(iii) a health practitioner whose specialty is relevant to the circumstances of the case; or
(b) referral to a multi-disciplinary committee?

See Q-8.

Q-10 When should the requirement apply? For example:
(a) for all terminations, except in an emergency;
(b) for terminations to be performed after a relevant gestational limit or on specific grounds?

See Q-8.

Conscientious objection

Q-11 Should there be provision for conscientious objection?

Yes.

The Queensland Maternity and Neonatal Clinical Guideline on Therapeutic Termination of Pregnancy makes provision for health professionals whose personal beliefs are not in alignment with women's choices, to refer women on to a health professional who doesn't conscientiously object.

Legislation should mandate both 1) a clinician's right to decline their involvement in termination of pregnancy (except in a life threatening emergency or to prevent serious physical injury) and 2) their responsibility to refer a woman or pregnant person to an appropriate, named service provider and patient travel subsidy services if required.

This provision should not be applicable to those not directly involved in assessing for or providing a termination procedure ie. administrative staff, services, facilities, organisations, or corporate entities.

Q-12 If yes to Q-11:
(a) Are there any circumstances in which the provision should not apply, such as an emergency or the absence of another practitioner or termination of pregnancy service within a reasonable geographic proximity?

See Q-11.

(b) Should a health practitioner who has a conscientious objection be obliged to refer or direct a woman to another practitioner or termination of pregnancy service?

See Q-11.

Counselling

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

No, this should not sit in legislation.

As stated in current QH guidelines, decision making around pregnancy termination sits in its rightful place: between a pregnant person, their doctor and supportive counselling services if they wish to access them.

Protection of women and service providers and safe access zones

Q-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?

Yes.

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

Yes. We support the legislation of a 150m safe exclusion zone and unimpeded access at all times around facilities providing abortion services, including penalties for harassment or intimidation and recording/publishing images of a person entering or leaving an abortion facility.

If yes to Q-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
(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?

See above.

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

See above.

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

See above.

Q-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?

See above.

Collection of data about terminations of pregnancy

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

Yes. Timely and accurate collection of data of all health service provision in Queensland is vital in order to be able to plan, design, deliver, monitor and evaluate health services.

This is especially important when access to termination services in our state is so inequitable.

As stated in our submission to Queensland Parliament's Health, Communities, Disability Services and Family Violence Prevention Committee's Inquiry into Abortion Law Reform in the context of our outdated laws, Queensland has guidelines[4] [5] in place to support decision making around pregnancy termination sitting in its rightful place: between a woman, her doctor and supportive counselling services if she wishes to access them. Despite this, there is an unacceptable inconsistency in how the Clinical Guideline is applied across Queensland's sixteen Hospital and Health Services (HHSs). Anecdotally this is due to continued fear of legal repercussions against health professionals as well as personal/religious beliefs of health professionals.

It is unacceptable that Queenslanders' access to safe, affordable and locally provided abortion services is based upon where they happen to live and in some cases, their ability to pay for private

[4] Queensland Maternity and Neonatal Clinical Guideline on Therapeutic Termination of Pregnancy (*https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf)*

[5] Clinical Services Capability Framework (*Queensland Government, Centre for Health Care Improvement. Maternity services. In: Clinical services capability framework for public and licensed private health facilities v3.0. Brisbane: Queensland Government Department of Health; 2011*).

services and transport. The large majority of providers are located in the Southeast corner of the state, creating significant barriers for women living in rural and remote areas. Cost of procedures is significantly affected by location.

Legislation alone will not address this inequity. Queensland Health must act upon its responsibility to provide statewide access to reproductive services, as per international human rights obligations. Without mandatory, publicly available data on termination of pregnancy in Queensland these inequities cannot be effectively addressed.