Parliamentary Committees



Termination of Pregnancy Bill 2018

Report No. 11, 56th Parliament
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
October 2018

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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[1] On 21 August 2018, the Leader of the House appointed the Member for Pine Rivers, Nikki Boyd MP, as a substitute member of the committee for the Member for Lytton, Joan Pease MP, for meetings held on Friday 24 August 2018.

On 5 September 2018, the Leader of the House appointed the Member for Pine Rivers, Nikki Boyd MP, as a substitute member for the Member for Rockhampton, Barry O'Rourke MP, to attend the committee's public hearings in Townsville, Cairns and Brisbane, and from Friday 14 September until the committee's conclusion of its consideration of the Termination of Pregnancy Bill 2018.

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Abbreviations

AMA Queensland	Australian Medical Association Queensland
Bill	Termination of Pregnancy Bill 2018
committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 56th Parliament
Criminal Code	*Criminal Code Act 1899*
DJAG	Department of Justice and Attorney-General
FLP	Fundamental legislative principle
former committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament
LSA	*Legislative Standards Act 1992*
QLRC	Queensland Law Reform Commission
QLRC Report	Queensland Law Reform Commission's Report, 'Review of termination of pregnancy laws, Report No 76, June 2018'
RANZCOG	Royal Australian and New Zealand College of Obstetricians and Gynaecologists
RACP	Royal Australasian College of Physicians
UN	United Nations
Victorian Health Department	Victorian Department of Health and Human Services
WHO	World Health Organization

All Acts listed are Queensland Acts, unless otherwise specified.

Chair's foreword

This report presents a summary of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Termination of Pregnancy Bill 2018.

The Bill is the third Bill presented to the Queensland Parliament since 2016 seeking to reform the State's pregnancy termination laws, and represents the culmination of a significant body of work.

The Deputy Chair and I were Members of the committee of the 55th Parliament that examined the previous Bills, the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and the Health (Abortion Law Reform) Amendment Bill 2016. The Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 simply sought to decriminalise the termination of pregnancies. The Health (Abortion Law Reform) Amendment Bill 2016 sought to establish a framework for terminations of pregnancies with caveats around key issues such as conscientious objection rights for health practitioners and the establishment of safe zones around termination service providers. Both Bills were withdrawn before they could be debated by the Queensland Parliament.

Out of the work of the former committee, the Queensland Law Reform Commission was tasked by the Government with conducting a thorough review and investigation into modernising Queensland's termination of pregnancy laws. The commission consulted widely on its review, releasing a detailed consultation paper and seeking public submissions. The commission's review attracted nearly 1,200 submissions.

The commission's report presented in June this year provides a thorough analysis of the issues, and made 28 recommendations to the Government. The commission's report also included a draft reform Bill. The key tenet of the commission's report is that termination of pregnancy is a health issue for women, not a criminal issue. The Government accepted all of the commission's recommendations, and the commission's draft Bill provided the genesis for the Termination of Pregnancy Bill 2018, introduced on 22 August 2018, and which the committee has now examined.

For our examination of the Bill, the committee invited written submissions and undertook public hearings in Cairns, Townsville and Brisbane. The committee used these hearings to hear from health practitioners, law and medical bodies, church groups and a range of other organisations and individuals. The committee also travelled to Victoria to gain insights from the Department of Health and Human Services and health practitioners from their ten years of experience working with Victoria's *Abortion Law Reform Act 2008* (Vic). The provisions of the Termination of Pregnancy Bill 2018 are similar to the Victorian reforms, and the committee found the Victorian officials' and practitioners' knowledge and experiences to be very useful to our work.

Through the examination of two previous Bills, the review by the Queensland Law Reform Commission and the committee's inquiry into the Termination of Pregnancy Bill 2018, nearly 10,000 Queenslanders, professional bodies such as the Australian Medical Association, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, church and law groups, health and community groups, women's support groups such as Children by Choice, and other groups such as Cherish Life and the Australian Family Association have now shared their views on termination of pregnancy reforms.

We have endeavoured to give a fair airing of the issues raised by a cross section of submitters on the Bill, and thank all witnesses who appeared before us. Of particular note, I wish to thank the many submitters who shared their deeply personal experiences. Clearly, the decision to terminate a pregnancy is one of the most difficult a woman can face, and no two cases are the same. I also want to especially acknowledge Ashleigh, Zena and Melanie who appeared at our public hearings willing to

share their personal stories of making the difficult decision to terminate a pregnancy due to severe foetal abnormalities. I can confidently say all committee members share my respect for the strength these women displayed.

Unsurprisingly as we heard in previous public hearings on termination of pregnancy Bills, we again heard from women located in western, regional and remote Queensland who continue to raise the issue of lack of access to termination services, including having to travel great distances or even interstate due to the current laws being within the Criminal Code.

The committee, after its deliberations, has recommended that the Bill be passed, to make the termination of pregnancy a health issue in Queensland.

To better inform members of the house, particularly new members, the committee's report includes a brief section about conscience votes or, as they are known in the Queensland Parliament, 'personal votes'. We hope this section of our report will inform members on all sides, including the crossbenches, about the role that conscience votes have played in the debates of similar Bills in other Australian jurisdictions, and how a conscience vote can now help the Queensland Parliament deal with one of the most sensitive issues it will ever consider.

As Chair of the committee, I believe it is entirely appropriate to discuss conscience votes in this report, and that conscience voting in parliament on issues like reforming termination of pregnancy laws is absolutely essential for maintaining public confidence in our democratic processes and institutions.

In light of the sensitive subject matter and the history of consideration of termination of pregnancy and other similar issues, the committee has recommended that the Termination of Pregnancy Bill 2018 be subject to a personal vote by members in accordance with SO 107 of the Standing Rules and Orders.

Whilst some may say this decision is outside the scope of the Bill, we have made the recommendation for a number of reasons. It is not intended to be provocative or, in any way politicise the Bill before us, but to better inform all Members across the Chamber of the importance of having a free vote on such a sensitive issue, particularly those members who have never experienced a personal or conscience vote.

Aaron Harper MP

Chair

Recommendations

Recommendation 1 **3**

The committee recommends the Termination of Pregnancy Bill 2018 be passed.

Recommendation 2 **62**

The committee recommends that, in light of the sensitive subject matter and the history of consideration of termination of pregnancy and similar matters, the Termination of Pregnancy Bill 2018 be subject to a personal vote, otherwise known as a conscience vote, by Members in accordance with section 107 of the *Standing Rules and Orders.*

1 Introduction

1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (Qld) and the Standing Rules and Orders of the Legislative Assembly.[2]

The committee's primary areas of responsibility include:

- Health and Ambulance Services
- Communities, Women, Youth and Child Safety
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Termination of Pregnancy Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 22 August 2018, to report to the Legislative Assembly by 5 October 2018.

1.2 Inquiry process

On 22 August 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. This invitation sought submissions via email as the committee has always done, and 808 submissions were received and accepted.

For the first time, the committee also invited views via an online platform that asked specific questions regarding the Bill and gave the opportunity to add any other views. A further 4,222 submissions were received via this method, although not all were accepted by the committee. The committee thanks those submitters for engaging in this way.

All submissions have been considered carefully, however the volume of submissions received has meant that the report has been unable to cover submissions in as much detail as is usually the case.

The committee received a public briefing about the Bill from the Department of Health and the Department of Justice and Attorney-General (DJAG) on 24 August 2018. A transcript is published on the committee's webpage (Appendix A lists the officials).

The committee received written advice from the department in response to matters raised in submissions.[3]

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2 *Parliament of Queensland Act 2001* (Qld), s 88 and Standing Order 194.

3 Department of Health, Correspondence dated 10 September 2018.

The committee held public hearings on 10 September in Townsville, 11 September in Cairns and 12 September 2018 in Brisbane (Appendix B lists the witnesses).

The committee held a further public briefing with the Department of Health and DJAG on 17 September 2018 in Brisbane, with a transcript published on the committee's webpage (Appendix A lists the officials).

The submissions, correspondence from the departments and transcripts of the briefings and hearings are available on the committee's webpage.

1.3 Policy objectives of the Bill

As outlined in the explanatory notes, the primary objectives of the Bill are to enable reasonable and safe access by women to terminations of pregnancy and to regulate the conduct of registered health practitioners in relation to terminations. The Bill achieves its objectives by:

- removing sections 224 – 226 of the *Criminal Code Act 1899 (Qld)* (Criminal Code), which prohibit unlawfully attempting to procure a termination of pregnancy, and
- establishing a framework for the legal provision of termination of pregnancy services, including a woman's right to obtain a termination of pregnancy 'on request' up to 22 weeks' gestation.

The committee's views at the conclusion of this inquiry align with the statements made by the QLRC – that the underlying principle of the Bill is that termination of pregnancy should be treated as a health issue between a woman and her treating doctor, not as a criminal matter.

More detail on the provisions contained in the Bill is provided in chapter 3.

1.4 Government consultation on the Bill

The Department of Health advised that the Bill is based on the Queensland Law Reform Commission (QLRC) Report, 'Review of termination of pregnancy laws, Report No 76, June 2018' (the QLRC Report) which included draft legislation to give effect to its recommendations. As such no specific consultation occurred in relation to the Bill.[4]

The Department of Health noted that the QLRC consulted widely in developing its recommendations, receiving almost 1,200 submissions on its consultation paper. The Department of Health also noted that the QLRC considered the work of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament (the former health committee) in its inquiries into the two Private Member's Bills introduced in 2016 that sought reforms in relation to termination of pregnancy. These inquiries produced two reports, numerous public hearings across Queensland and generated over 2,700 submissions.[5]

1.5 Consistency with legislation of other jurisdictions

As outlined in the explanatory notes, while the Bill is specific to Queensland and is not uniform with or complementary to legislation of the Commonwealth, the QLRC sought to achieve reasonable

4 Explanatory notes, p 16.

5 See *Report No 33, 55th Parliament – Health (Abortion Law Reform) Amendment Bill 2016*; and *Report No 24, 55th Parliament – Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland*.

consistency with reforms relating to termination of pregnancy made elsewhere in Australia.[6] Table 2 on page 6 summarises key features of termination laws in other states and territories.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Termination of Pregnancy Bill 2018 be passed.

[6] Explanatory notes, p 16.

2 Background

This section summarises key terms and concepts, outlines the availability of termination services across Australia and overseas and briefly explains the activities undertaken in Queensland in recent years to change the legislation regarding termination of pregnancy.

2.1 What is a termination of pregnancy

A termination of pregnancy is the medical process of ending a pregnancy so it does not result in the birth of a baby. The pregnancy is ended either by taking medications (a medical termination) or having a surgical procedure (a surgical termination).[7] A termination is different from a miscarriage, where the pregnancy ends without medical intervention.[8]

Medical terminations are usually performed in the early stages of pregnancy,[9] with surgical terminations performed in early through to later-stage pregnancies.

While every medical procedure carries some risk to the person undergoing it, terminations are considered a relatively low-risk procedure, with the National Health Service England stating they:

> *…are generally very safe and most women won't experience any problems.*[10]

Victoria's Better Health Channel considers termination to be:

> *…a very safe procedure when performed by a trained medical professional.*[11]

2.2 Current Queensland legislation regarding termination of pregnancy

2.2.1 Prohibition on unlawfully attempting to procure a termination of pregnancy

Sections 224 – 226 of the Criminal Code prohibit unlawfully attempting to procure a termination of pregnancy and prescribe penalties for breaching the Criminal Code. Section 313 of the Criminal Code prohibits the unlawful killing of an unborn child. More detail on these provisions is provided in Chapter 3.

2.2.2 When termination is permitted

The Criminal Code is silent on the definition of 'unlawful' for the purposes of sections 224 – 226. Section 282 of the Criminal Code does, however, provide an excuse from criminal responsibility for a person who performs a surgical or medical termination in certain circumstances.

Current case law on section 282 provides that a termination will be lawful where it is necessary to prevent serious danger to the woman's life, physical or mental health and is not out of proportion to the danger intended to be averted.[12]

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7 National Health Service England, *Overview, Abortion*, accessed 12 September 2018.

8 National Health Service inform, *Abortion*, page last updated 15 December 2017.

9 Before around 15 weeks' gestation, but this varies between countries.

10 National Health Service England, *Risks, Abortion*, accessed 12 September 2018.

11 Better Health Channel, Victoria, *Abortion procedures – surgical*, accessed 13 September 2018.

12 Explanatory notes, p 1.

2.2.3 Access to termination services in Queensland

The explanatory notes state:

- the current state of the law has created uncertainty among doctors and that the possibility of prosecution of health professionals and women potentially impedes provision of a full range of safe, accessible and timely reproductive services,[13] and
- the lack of certainty under the current provisions as to when a termination is lawful negatively impacts the accessibility and availability of termination services by causing fear and stigma for women, and reluctance by some health practitioners to provide such services. This may also disproportionately impact women who are already disadvantaged, including Aboriginal and Torres Strait Islander women, women in rural, regional and remote areas and women in low socio-economic groups.[14]

2.3 Reforms in other states and territories

Queensland's consideration of abortion law reform Bills, including the Termination of Pregnancy Bill 2018, follows reforms in most other Australian jurisdictions during the past decade. Table 1 lists recent reforms passed in each jurisdiction in relation to termination of pregnancy laws.

Table 1: Legislative reforms regarding termination of pregnancy in other states and territories

State/territory	Act passed
Australian Capital Territory	*Health (Patient Privacy) Amendment Act 2015* (ACT) *Crimes (Abolition of Offence of Abortion) Act 2002* (ACT)
Victoria	*Abortion Law Reform Act 2008* (Vic) *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015* (Vic)
Tasmania	*Reproductive Health (Access to Terminations) Act 2013* (Tas)
Northern Territory	*Termination of Pregnancy Law Reform Act 2017* (NT)
New South Wales	*Public Health Amendment (Safe Access to Reproductive Clinics) Act 2018* (NSW)

Reflecting the significance and nature of the legislation, all the reforms except the *Health (Patient Privacy) Amendment Act 2015* (ACT) were passed by way of conscience votes in their respective parliaments.

2.4 Arrangements in other states and territories

Table 2, from the QLRC Report, highlights the differing access to termination services across Australia.

[13] Explanatory notes, p 1.

[14] Explanatory notes, p 1.

Table 2: Access to termination services across Australia

	ACT	VIC	TAS	NT	WA	SA	NSW
Termination lawful on request	✓	✓ up to 24 weeks	✓ up to 16 weeks				
Termination lawful if medical practitioners satisfied of certain matters		✓ after 24 weeks, if appropriate in all the circumstances	✓ after 16 weeks, if risk to physical or mental health	✓ up to 14 weeks, if appropriate in all the circumstances; or at any time if emergency	✓ up to 20 weeks on specified grounds: after 20 weeks, if woman or fetus has severe medical condition	✓ if risk to life or health, fetal abnormality; or if emergency	✓ if risk to life or health; *common law*
More than one practitioner, or a committee, must be satisfied		✓ after 24 weeks, at least two registered medical practitioners	✓ after 16 weeks, two medical practitioners, one of whom is a specialist	✓ after 14 weeks and up to 23 weeks, at least two suitably qualified medical practitioners; except in emergency	✓ after 20 weeks, two medical practitioners from an appointed panel	✓ two medical practitioners; except in emergency	
Offences for unlawful termination	✓ but not for a doctor or if carried out an approved facility						
Conscience objection by medical practitioners recognised	✓	✓ except in emergency	✓ except in emergency	✓ except in emergency	✓	✓ except in emergency	
Medical practitioners who object to refer woman to other providers		✓	✓	✓			
Counselling requirement					✓ referral to counselling to be offered		
Safe access zones	✓	✓	✓	✓			✓

Source: Adapted from the Queensland Law Reform Commission Report, *Review of termination of pregnancy laws, Report No 76, June 2018*, Appendix E, p 275.

2.5 International perspectives on termination of pregnancy

2.5.1 United Nations

In 2015, the United Nations (UN) Office of the High Commissioner for Human Rights launched its information series on sexual and reproductive health and rights and published a series of fact sheets outlining its position on a number of issues, including termination. In this fact sheet, the UN stated:

Human rights bodies have provided clear guidance on when there is a need to decriminalize (sic) abortion, and have emphasized that access to abortion is a matter of human rights. Ensuring access to these services in accordance with human rights standards is part of State obligations to eliminate discrimination against women and to ensure women's right to health as well as other fundamental human rights.[15]

2.5.2 World Health Organization

The World Health Organization (WHO) has conducted work on the impact of unsafe terminations[16] and found that each year, globally:

- between 4.7 per cent – 13.2 per cent of maternal deaths can be attributed to unsafe termination
- around 7 million women are admitted to hospitals in developing countries as a result of unsafe termination, and
- the cost of treating major complications from unsafe termination is estimated at US $553 million.[17]

To avoid these, and many other adverse outcomes, the WHO considers that unsafe termination can be prevented through the 'provision of safe, legal abortion',[18] among other things.

2.5.3 Arrangements internationally

Countries around the world have varying levels of access to termination services. Appendix D outlines access to termination services in a selection of countries that are broadly comparable to Australia.

2.6 Previous attempts to change the law in Queensland

2.6.1 Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016

On 10 May 2016, the former Member for Cairns, Rob Pyne MP, introduced the above Bill as a Private Member's Bill, which was referred to the former health committee. On 26 May 2016, the Legislative Assembly expanded the committee's inquiry to include detailed terms of reference for the committee to consider and report on, concurrent with its examination of the Bill.[19]

In conducting its inquiry, the committee received over 1,400 submissions and held public hearings in Brisbane, Emerald and Cairns.

In August 2016, the former committee tabled its report. It did not recommend that the Bill be passed.

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15 United Nations, Office of the High Commissioner on Human Rights, *Information Series on Sexual and Reproductive Rights, Abortion*, p 1, accessed 10 September 2018.

16 The World Health Organization states that unsafe termination occurs, '…when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.' World Health Organization, *Preventing unsafe abortion*, last updated 19 February 2018.

17 World Health Organization, *Preventing unsafe abortion, Key facts*, last updated 19 February 2018.

18 World Health Organization, *Preventing unsafe abortion, Key facts*, last updated 19 February 2018.

19 The former committee was asked to consider, report and make recommendations on aspects of the law governing termination of pregnancy in Queensland on options regarding: 1. existing practices in Queensland concerning termination of pregnancy by medical practitioners; 2. existing legal principles that govern termination practices in Queensland; 3. the need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations; 4. legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods; and 5. provision of counselling and support services for women.

2.6.2 Health (Abortion Law Reform) Amendment Bill 2016

In August 2016, the former member for Cairns, Rob Pyne MP, introduced the above Bill as a further Private Member's Bill, which was again referred to the former health committee. The former committee had not commenced its inquiry into this Bill at the time of finalising its report on the first Bill.

The former committee received over 1,200 submissions and tabled its report in February 2017. It was unable to reach agreement on whether the Bill should be passed.

Neither Bill was debated in the Legislative Assembly.

2.7 Referral of termination of pregnancy laws to the Queensland Law Reform Commission

In February 2017, the Government announced it would refer current laws in relation to the termination of pregnancy to the QLRC. On 19 June 2017, the QLRC received terms of reference (at Appendix E) from the Attorney-General to conduct a review and investigation into modernising Queensland's laws relating to the termination of pregnancy.

In December 2017, the QLRC published its consultation paper on the issue. It received almost 1,200 submissions. On 30 June 2018, the QLRC provided its report, including 28 recommendations and draft legislation based on its recommendations, to the Attorney-General.[20] On 16 July 2018, the QLRC Report was tabled in the Legislative Assembly. The Government accepted all 28 of the recommendations in the QLRC Report.[21]

2.8 Termination of Pregnancy Bill 2018

On 22 August 2018, the Attorney-General and Minister for Justice introduced the Termination of Pregnancy Bill 2018. The Bill was referred to the committee for its consideration and review. As explained by the Department of Health, 'The bill incorporates the QLRC's draft legislation with some additional provisions to support its effective implementation'.[22]

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20 Queensland Law Reform Commission, 2018, *Report No 76 – Review of termination of pregnancy laws*, June 2018.

21 Department of Health, 2018, *Queensland Abortion Law Reform*, last updated 22 August 2018.

22 Brisbane public briefing, 24 August 2018, p 2.

3 Global trends in termination rates

As background to the Bill, this section briefly outlines the downward trend in termination of pregnancy rates from a range of countries, as well as commentary on why this may have occurred.

3.1 Global trends

3.1.1 Data from the World Health Organization

Chart 1, from the WHO, shows termination of pregnancy rates as defined as the number of terminations per 1,000 live births for groups of countries. The figures shown include induced terminations of all methods.

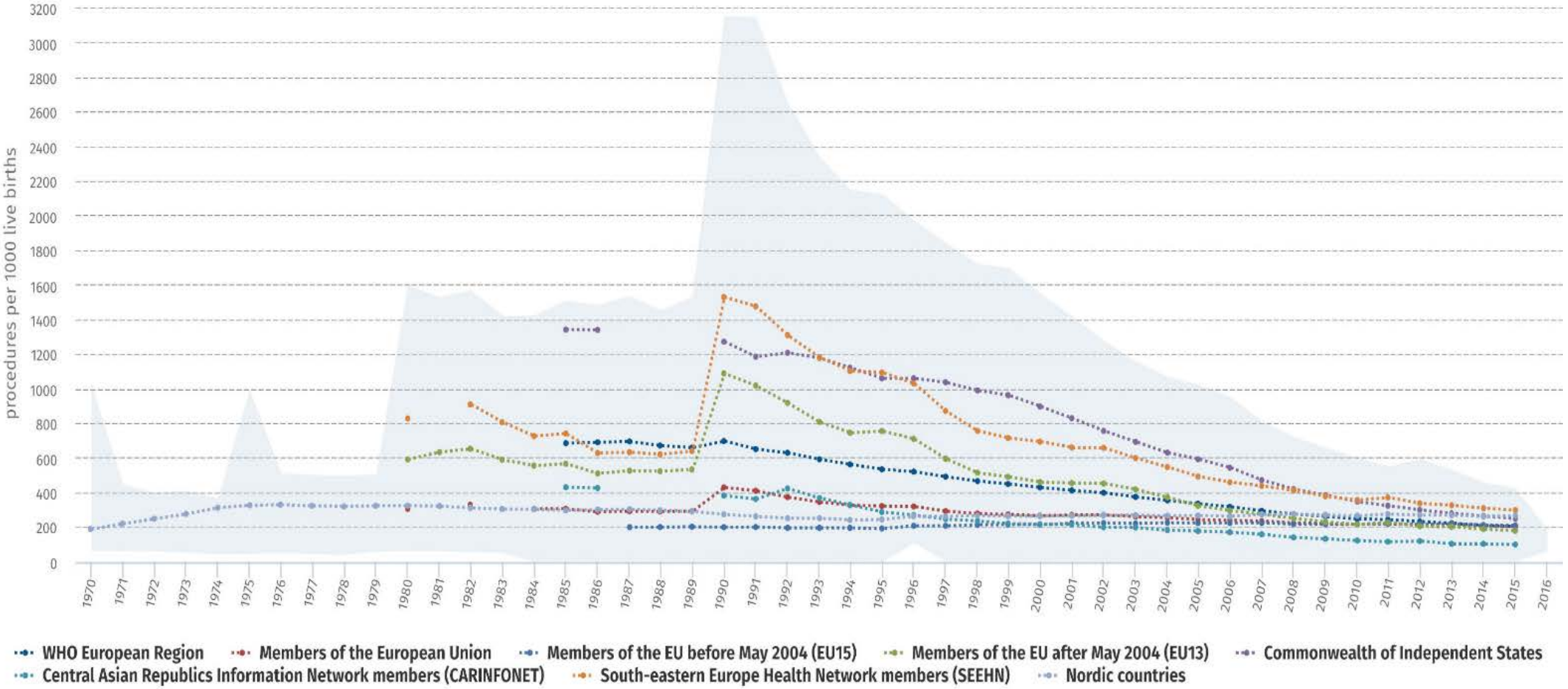
From 1990 – 2016, termination rates fell for the South-eastern Europe Health Network members, the Commonwealth of Independent States and Members of the European Union (EU) after May 2004. The rate fluctuated less for groups such as Members of the EU before 2004 and Nordic Countries.

Caution is required when comparing trends from so many different countries over such a long time period. Even comparisons of one country's rates over time will require some caution due to different methods of defining terms and changes to what is or is not included in the measure each year.[23] Some countries also made changes to their termination of pregnancy legislation during this period. More information on the underlying data can be found on the WHO, European Health Information gateway website.[24]

[23] For example in Belarus, before 1997 the data did not include terminations in the earlier gestation age performed by vacuum-aspiration method. From 1997, this method was included. In 2010, data from one termination clinic in the Netherlands was not available, so an estimate was calculated. In Sweden, the collection of termination statistics was temporarily stopped in 2012, so no data exists for 2013.

[24] World Health Organization, Regional Office for Europe, European Health Information Gateway, *Abortions per 1000 live births, Country notes*, data last updated 15 June 2018.

Chart 1 – Terminations per 1,000 live births for a selection of groups of countries



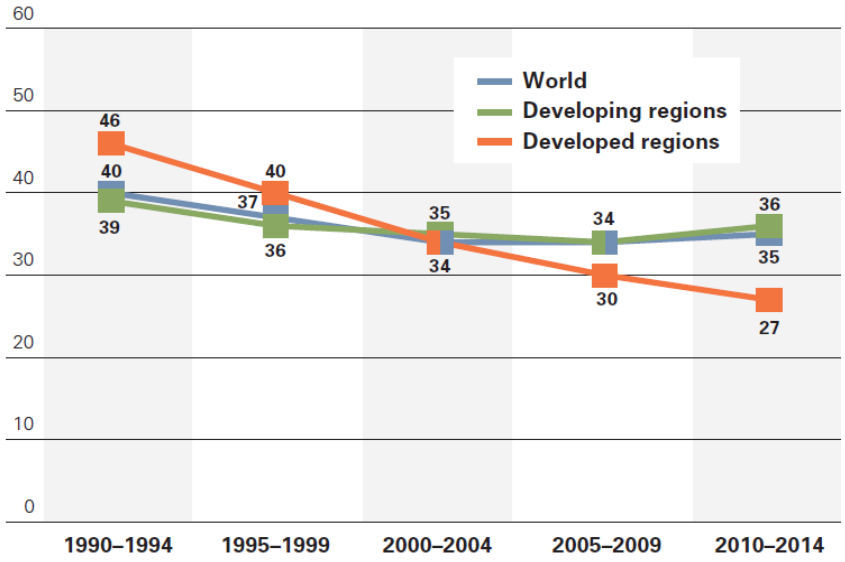
* The former Yugoslav Republic of Macedonia (MKD is an abbreviation by the International Organization for Standardization (ISO))

Source: World Health Organization, European Health Information Gateway, *Abortions per 1000 live births*, accessed 19 September 2018.

3.1.2 Data from the Guttmacher Institute

A recent and widely-cited study on termination of pregnancy trends was published in March 2018 by the Guttmacher Institute.[25] Chart 2 below is taken from this study, which found that in developed regions the number of terminations per 1,000 women aged 15 – 44 over the period 1990-94 – 2010-14 fell from 46 to 27. For developing regions, the rate kept falling slightly after 1990-94, with a minor increase in 2010-14.

Chart 2 – Terminations per 1,000 women aged 15 – 44 from 1990-94 – 2010-14



Source: Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018, p 10.

As with the WHO data presented above, caution must be exercised in interpreting the data in Chart 2. The Guttmacher Institute stated that reliable country-level data were only available for the countries with relatively easy access to termination services and comprehensive data reporting systems. It noted that official statistics on termination were difficult to obtain for countries where termination is highly legally restricted, so ways to estimate the number of terminations had to be developed.[26]

3.2 Termination rates in Victoria

Table 3 below outlines the Termination rate per 1,000 Victorian women aged 15 – 44 years in 2008 and 2017. These figures were provided to the committee by the Victorian Department of Health and Human Services (the Victorian Health Department).

The committee thanks Minister Hennessy for making this information available and thanks officers of the Victorian Health Department for sharing their expertise with the committee during a meeting to understand termination law reform in Victoria.

[25] Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018.

[26] Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018, p 9.

Table 3: Termination rate per 1,000 Victorian women aged 15 – 44 years in 2008 and 2017[27]

	2008	2017
Termination rate per 1,000 Victorian women aged 15-44 years	16.8	12.2

Source: Hon Jill Hennessy MP, Minister for Health and Minister for Ambulance Services (Victoria), Correspondence dated 27 September 2018.

3.3 Possible explanations for the falls in termination rates in developed countries

A range of factors are behind falling rates of termination of pregnancy in many countries, possibly including increased use of:

- effective contraception, especially in countries from the former Soviet Union,[28] and
- emergency contraception (also known as the morning after pill).

Regarding the fall in termination rates in Victorian, the Victorian Health Department advised:

> *The decrease in rates likely reflects several significant changes over the decade including: access to emergency contraception, greater uptake of long acting reversible contraception devices and greater education of women on reproductive health.*[29]

3.4 Whether restricting access to termination of pregnancy influences termination rates

Some organisations consider that restricting access to termination of pregnancy services does not impact the number of terminations performed. Some of these views are presented in Table 3.

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27 The rates include both planned and unplanned procedures such as those that were necessary for medical reasons such as a miscarriage or a foetal death in-utero.

The data includes activity data from public and private hospitals and day procedure centres for procedures related to termination of pregnancy codes and includes terminations for all reasons including unplanned procedures.

1. Victorian Admitted Episode Dataset (extracted 12/9/2018) for public and private hospitals and day procedure centres.
2. Medicare Australia Pharmaceutical Benefits Scheme Item Reports (customised table from Medicarestatistics.humanservices.gov.au, extracted 12/9/2018). Medical terminations of pregnancy are defined by the number of PBS code 10211K services (scripts) dispensed by pharmacies with a Victorian address. Services are classified by the date the service was processed by Medicare Australia, not the date of prescribing or the date of supply by the pharmacy
3. Australian Bureau of Statistics Quarterly Population Estimates (ERP), by State/Territory, Sex and Age (customised table from ABS. Stat extracted 12/9/2018)
4. Includes only surgical terminations provided to usual residents of Victoria.

28 Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018, p 4.

29 Hon Jill Hennessy MP, Minister for Health and Minister for Ambulance Services (Victoria), Correspondence dated 27 September 2018.

Table 3: Views on whether restricting access to termination of pregnancy impacts termination rates

Guttmacher Institute	World Health Organization	United Nations
… women living under the most restrictive laws (i.e., where abortion is prohibited altogether or allowed only to save a woman's life) have abortions at about the same rate as those living where the procedure is available without restriction as to reason (37 and 34 abortions per 1,000, respectively).[30]	Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates. [31]	Restricting access to abortions does not reduce the number of abortions.[32]

3.5 Outcomes for women where access to termination services is restricted

A range of sources consider that restricting access to termination services does not reduce the number of terminations that occur, but does increase the number of unsafe terminations performed, which leads to negative outcomes for women. Some of these views are in Table 4.

Table 4: Views on the link between access to termination of pregnancy and women's safety

Guttmacher Institute	World Health Organization	United Nations
Highly restrictive laws do not eliminate the practice of abortion, but make those that do occur more likely to be unsafe.[33]	Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality.[34] … laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle (sic) effect is to shift previously clandestine, unsafe procedures to legal and safe ones.[35] Restricting abortion to increase population has occurred in several countries. In each case, abortion restrictions resulted in an increase of illegal and unsafe abortions and pregnancy-related mortality, with insignificant net increase in the population.[36]	… in countries where abortion is completely banned or permitted only to save the woman's life or preserve her physical health, only one in four abortions were safe; whereas, in countries where abortion is legal on broader grounds, nearly 9 in 10 abortions were done safely.[37]

30 Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018, p 8.

31 World Health Organization, *Safe abortion: technical and policy guidance for health systems, Second edition*, 2012, p 90.

32 United Nations, UN News, *Some 25 million unsafe abortions occur each year, UN health agency warns*, 28 September 2017.

33 Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, March 2018, p 5.

34 World Health Organization, *Safe abortion: technical and policy guidance for health systems, Second edition*, 2012, p 90.

35 World Health Organization, *Safe abortion: technical and policy guidance for health systems, Second edition*, 2012, p 90.

36 World Health Organization, *Safe abortion: technical and policy guidance for health systems, Second edition*, 2012, p 90.

37 United Nations, UN News, *Some 25 million unsafe abortions occur each year, UN health agency warns*, 28 September 2017.

4 The importance of this issue in the community

Termination of pregnancy is one of the most emotive topics in the community, with passionately-held views among both those who believe it should be decriminalised, and those who do not wish to see any change to the status quo.

This passion was evident by the community providing well over 6,000 submissions and emails in expression of support for, or opposition to, the Bill. The committee thanks Queenslanders for this substantial contribution.

People's views on this issue are formed by a wide range of factors, such as personal values, certain strong religious views and beliefs and lived experience. This was clear from submissions, where many people shared deeply personal stories outlining the difficulty experienced in deciding whether to terminate a pregnancy. In some of these instances, people concluded that the termination of pregnancy was the correct choice for them at that stage in their lives. There were other examples where the choice to terminate a pregnancy was regretted.

People's values also play a crucial role in forming a view on this issue. It became clear to the committee that some people have objections to termination of pregnancy based on certain (though not all) religious or personal views, while others support the option of termination of pregnancy being available to allow women to have choice over their reproductive health and agency over their bodies.

The committee requested a respectful debate at the beginning of each hearing and in its considerable deliberations took the position that all views expressed to this inquiry, and the many reasons for them, were to be respected as emanating from the beliefs and values of the submitters sharing them.

5 The role of opinion polls

The committee is aware that various opinion polls conducted offer divergent representations of the community's opinion on whether the laws regarding termination of pregnancy should be changed and about termination of pregnancy generally.

This apparent disparity in people's views as measured by opinion polls was considered by the former committee in its examination of the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016. To assess the reliability of a number of opinion polls and community attitude surveys, the former committee commissioned external advice from Professor Matthew Gray and colleagues from the Australian National University.[38]

Professor Gray and his colleagues' work found that a range of factors influence the results and reliability of opinion polls on this issue, including:

- whether the preamble to a question has the potential to influence a person's answer to that question – for example, a statement suggesting that most people agree or disagree with termination may influence a person when they are asked their view on termination
- whether emotive questions about termination were asked early on in the survey, potentially 'priming' the person's answer to subsequent questions
- whether questions included misleading statements, such as that a baby born at 20 weeks can survive outside of the womb
- the survey design and methodology
- the sample size of the survey
- how people's views were gathered – a heavy reliance on gaining views via fixed telephone lines or postal surveys may mean respondents are skewed towards people of particular age groups, potentially impacting results, and
- whether the organisation commissioning the opinion poll supported or opposed termination of pregnancy.

The committee notes the range of results generated by opinion polls on this issue, as well as the inherent difficulties in designing opinion polls that minimise bias.

[38] Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, *Report No 24, 55th Parliament, Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland*, p 47, August 2016.

6 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill.

6.1 Changes to the *Criminal Code Act 1899* (Qld) to decriminalise termination of pregnancy

6.1.1 Proposed removal of sections 224 – 226 of the *Criminal Code Act 1899* (Qld)

Sections 224 – 226 of the Criminal Code state that it is a crime to unlawfully terminate a pregnancy for the person performing the termination, the pregnant woman and for any other person assisting the termination. Table 5 outlines these provisions, as well as the associated potential penalties for breaching each section.

Table 5: Summary of sections 224 – 226 of the Criminal Code

Section	Section	Potential penalty
224	Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime.	14 years' imprisonment
225	Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime.	7 years' imprisonment
226	Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour.	3 years' imprisonment

The Bill proposes to repeal sections 224 – 226 of the Criminal Code. If the Bill is passed, this repeal would be one of a number of legislative amendments with the overall result that termination of pregnancy would not be a criminal act.[39]

6.1.2 Proposed amendment of section 313 of the Criminal Code

Section 313 of the Criminal Code imposes a maximum penalty of life imprisonment for anyone who unlawfully kills an unborn child.

The Bill proposes to amend section 313 of the Criminal Code by clarifying that a person does not commit an offence if they perform or assist in a termination of pregnancy.[40]

[39] Termination of Pregnancy Bill 2018, cl 22.

[40] Termination of Pregnancy Bill 2018, cl 24.

6.1.3 Proposed amendment of section 282 of the Criminal Code

Section 282 of the Criminal Code currently provides an excuse from criminal responsibility for a person who performs a surgical or medical termination in certain circumstances.[41]

The Bill proposes to amend section 282 of the Criminal Code by stating that a person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child:

- if performing the operation or providing the treatment is reasonable, having regard to all the circumstances of the case,[42] or
- in an emergency if it is necessary to perform the operation or provide the treatment to save the mother's life or the life of another unborn child.[43]

6.1.4 Submitters' views regarding decriminalisation of termination

Many submissions offered broad opposition to, or support for, decriminalising termination generally, with passion and deep conviction that was understandable for such an important and emotive issue. Others made specific claims in relation to the impacts of termination. These are discussed below.

Whether there is a link between termination of pregnancy and breast cancer

Some submissions suggested that there was a link between termination of pregnancy and breast cancer, with many of these submissions stating that termination of pregnancy increased the risk of breast cancer. This included the Australian Family Association, who stated that risks of termination of include infertility and breast cancer[44] and Cherish Life Queensland, who stated that, 'some global studies show a 35% increased risk of breast cancer…'.[45]

Other submissions strongly refuted any causal link between termination of pregnancy and breast cancer, including the Young Women Advisory Group, who submitted that, '…research demonstrates there is no link to infertility, breast cancer or long-term mental health impacts associated with accessing termination.'[46]

Departmental comment

When asked to comment on the link between termination of pregnancy and breast cancer, Dr John Wakefield, Deputy Director-General of Queensland Health, replied, 'I am not aware of any such evidence.'[47]

41 Current case law on section 282 provides that a termination will be lawful where it is necessary to prevent serious danger to the woman's life, physical or mental health and is not out of proportion to the danger intended to be averted.

42 Termination of Pregnancy Bill 2018, cl 23, proposed new section 282 (1) of the *Criminal Code Act 1899* (Qld).

43 Termination of Pregnancy Bill 2018, cl 23, proposed new section 282 (1A) of the *Criminal Code Act 1899* (Qld).

44 Submission 100, p 9.

45 Submission 545, p 22.

46 Submission 130, p 6.

47 Brisbane public hearing, 17 September 2018, p 13.

Whether improved access to termination services will cause terminations of the basis of gender

Some submitters stated that improving women's access to termination services would lead to some terminations being carried out because a woman and/or her partner did not want a child of a particular gender.

The Australian Christian Lobby cited a La Trobe University media release regarding a study its staff had conducted. The study cited considered the male to female birth ratio in Victoria among specific ethnic groups between 1999 and 2015 and found for some groups, more boys than expected were born.[48] The paper's authors did not attribute this outcome to the 2008 change to termination of pregnancy legislation in Victoria.

Right to Life Australia cited the La Trobe University research and suggested a similar outcome would occur in Queensland if the Bill is passed.[49]

The Australian Family Association stated:

> *…the price of endorsing the removal of any restriction on abortion in the first 22 weeks of pregnancy is that abortion will be legal for sex selection.*[50]

The Uniting Church in Australia, Queensland Synod was of the view that the Bill will:

> *…in effect, as demonstrated in other jurisdictions, open the door to abortions based on sex selection and disability.*[51]

Other submitters did not consider that terminations on the basis of gender would occur if the Bill passes. Dr Carol Portmann, a private termination clinician, stated, '90% of terminations of pregnancy are performed under 11 weeks ie well before gender can be assessed.'[52] Dr Portmann also noted:

> *Gender selection for anything other than medical conditions is not supported by the NHMRC (National Health and Medical Research Council) – this was mostly in reference to artificial reproductive technologies. Doctors in principal abide by this recommendation in regards to abortion as well.*[53]

Children by Choice added:

> *There is no evidence to suggest that sex selective terminations of pregnancy are occurring in Australia. Additionally, terminations on the basis of the sex of the fetus may be undertaken for a number of reasons unrelated to cultural preferences, chief among these reasons being the potentially risk of transmitting a serious genetic illness or disease.*[54]

And:

> *According to a number of unplanned pregnancy counselling services in Australia, conversations about sex selective terminations are increasingly rare. Children by Choice interacted with over 1,600 clients in the financial year of 2017-2018. According to our data, only one client mentioned*

48 La Trobe University, *Gender bias leads to more male births*, media release, 12 August 2018.

49 Submission 124, pp 1 – 2.

50 Submission 100, p 4.

51 Submission 129, p 1.

52 Brisbane public hearing, 17 September 2018, p 2.

53 Brisbane public hearing, 17 September 2018, p 2.

54 Brisbane public hearing, 17 September 2018, p 16.

the sex of the pregnancy in relation to the pregnancy decision making. The woman presented to the service at less than 9 weeks gestation.[55]

Department of Health's comments on La Trobe University study cited by submitters

In advice to the committee, the Department of Health dismissed claims that the study by staff of La Trobe University was evidence that terminations based on gender selection increased when Victoria amended its termination of pregnancy laws:

The study identified there was a difference in ratios in certain subsets of the population but did not make findings about the reasons for the difference. For example, the use of Assisted Reproductive Technology was suggested as a possible reason for the variation in ratios for multiple births for mothers born in India.

And:

The study focussed on 1999 – 2015 and did not specifically consider the effect of the legislative reforms to termination laws in Victoria. There is no strong evidence to suggest the variations in ratios between population subsets can be attributed to legislative change. For example, the highest overall ratio for mothers born in China was observed in 2005-10. Most of that period was before terminations were decriminalised in Victoria.

The study's conclusion notes that 'we are unable to draw conclusions about the individual contribution of assisted reproductive technology versus pregnancy termination to our findings.'

The study recognises that women may be travelling overseas to access Assisted Reproductive Technology or termination services for sex selection purposes. The study does not make a conclusion about the impact of legislative changes for termination of pregnancy on the male to female ratio.[56]

Gender selection generally

Dr John Wakefield noted that the QLRC considered this issue in its report and had taken into account the WHO's statement on the prevention of gender-based sex selection, but ultimately decided not to include provisions regarding gender selection in the Bill. Dr John Wakefield stated that safeguards had been proposed to prevent terminations on the basis of gender:

If a woman does disclose that she is seeking termination based on sex selection before 22 weeks, the doctor may refuse on conscientious grounds. After 22 weeks, a lawful termination does require two medical practitioners to agree in all circumstances that the termination should be performed. If the doctor does follow the process in clause 6 and considers all relevant circumstances and concludes that the termination should not be performed, the doctor does not need to refer the patient to another practitioner or provider under the conscientious objection provisions.[57]

And:

In my experience as a doctor I would find it very difficult to imagine that doctors would agree to provide a termination purely on the grounds of sex selection. Practitioners—and this is covered

55 Brisbane public hearing, 17 September 2018, p 16.

56 Department of Health, Correspondence dated 21 September 2018.

57 Brisbane public hearing, 17 September 2018, p 5.

> *in the bill—must be guided by relevant ethical considerations and clinical guidelines. Again as a practitioner I would find it highly unlikely that two practitioners would agree to a termination of pregnancy post 22 weeks solely based on the sex of the baby. The key issue is whether a woman actually discloses that is the reason. It is not possible to address that through legislation. Before 22 weeks the woman is not required to provide a reason, so at that stage that is the case now.*[58]

When asked whether medical practitioners would be obliged to refuse to perform a termination of pregnancy of under 22 weeks' gestation if they become aware that the termination is for gender selection reasons, Dr John Wakefield explained:

> *The basis upon which they can refuse to offer a termination under 22 weeks is based on the conscientious objection provisions, and that would be the basis upon which they would object.*[59]

During the Brisbane public hearing, the Department of Health was asked whether the referring practitioner could disclose information about patient's reason for seeking a termination if the patient requests that the practitioner does not disclose this information. The Department of Health took this question on notice and in its response advised:

> *The Bill does not define refer or specify the information to be provided to the second practitioner when making a referral*.[60]

And:

> *If a written referral is required, it would generally include a patient's demographic details, the referring practitioner's details, relevant clinical information, the reason for the referral and other relevant information.*[61]

The Department of Health's advice outlines that a woman's health information should remain confidential:

> *Section 142 of the Hospital and Health Boards Act 2011 provides it is an offence for a designated person to disclose confidential information unless the disclosure is authorised under the Act. For example, confidential information includes information that may identify a person who has or is receiving a public sector health service.*[62]

Further:

> *Ethically, medical practitioners have a duty to protect their patient's personal information, including their medical records. Discussions between a patient and medical practitioner must be kept confidential unless there is a legal obligation or public interest purpose for disclosure.*[63]

The Department of Health's advice also explains that a woman's health information can be shared in appropriate circumstances:

> *However, under section 145 of the Hospital and Health Boards Act, a designated person may disclose confidential information if the disclosure is for the care or treatment of the person to*

58 Brisbane public hearing, 17 September 2018, p 5.

59 Brisbane public hearing, 17 September 2018, p 5.

60 Department of Health, Correspondence dated 21 September 2018.

61 Department of Health, Correspondence dated 21 September 2018.

62 Department of Health, Correspondence dated 21 September 2018.

63 Department of Health, Correspondence dated 21 September 2018.

whom the information relates. This means that if disclosing the reasons for the termination to the second medical practitioner is relevant to the patient's care or treatment, the disclosure is not prohibited under the Hospital and Health Boards Act. Whether the reason for a woman's termination is termination is relevant to her treatment and care is a clinical decision to be made by a referring medical practitioner based on the individual circumstances of each case.[64]

Further:

The AMA Code of Ethics provides that a medical practitioner should, when referring a patient, make available all relevant information about a patient and the treatment required for the patient's health care to their colleague, with the patient's knowledge and consent. The Good Medical Practice: A Code of Conduct for Doctors in Australia provides that good medical practice involves communicating sufficient information about the patient and necessary treatment to enable their continuing care.[65]

Committee comment

The committee is not aware of any evidence that gender-based terminations have ever occurred in Queensland. There are already a range of safeguards in place to prevent this practice. These safeguards will continue to exist if the Bill is passed. Accordingly, the committee does not consider that the Bill will increase the risk of gender-based terminations.

6.2 Establishing a framework for the provision of termination services

The Bill proposes to introduce reforms that create a framework for the provision of termination of pregnancy services. The purposes of the Bill are to:

- enable reasonable and safe access to termination of pregnancy for women, and
- regulate the conduct of registered health practitioners in relation to terminations of pregnancy.[66]

The Bill also proposes that a woman who consents to, assists in, or performs a termination on herself would not commit an offence.[67]

The key aspects of that framework are examined below.

6.2.1 Termination of pregnancy up to 22 weeks 'on request'

The Bill proposes to allow a woman to request a termination of pregnancy up to 22 weeks' gestation.[68] Consistent with the principle that termination of pregnancy is a health issue between a woman and her doctor, a woman does not need to provide reasons to obtain the termination. There is also no need for a woman to obtain any further medical input.

6.2.2 Why a gestation period of up to 22 weeks is proposed

The explanatory notes state that a gestational limit of 22 weeks is proposed because of the QLRC Report's recommendations, which found:

64 Department of Health, Correspondence dated 21 September 2018.

65 Department of Health, Correspondence dated 21 September 2018.

66 Termination of Pregnancy Bill 2018, cl 3.

67 Termination of Pregnancy Bill 2018, cl 10.

68 Termination of Pregnancy Bill 2018, cl 5.

- 22 weeks' gestation represents the stage immediately before the 'threshold of viability' under current clinical practice
- a limit of 22 weeks aligns with the Clinical Services Capability Framework for Public and Licensed Private Health Facilities, and
- a limit of 22 weeks aligns with the local facility level approval process adopted at the Royal Brisbane and Women's Hospital, which imposes additional requirements for terminations after 22 weeks gestation.[69]

The explanatory notes also cite the QLRC Report's comments that:

- a gestational limit below 22 weeks would be unduly restrictive and a potential barrier, particularly to vulnerable and disadvantaged women
- the recommended gestational limit recognises that terminations after 22 weeks involve greater complexity and higher risk to the woman, and
- as the foetus develops its interests are entitled to greater recognition and protection.[70]

Submitters' views

Submitters' views varied on whether a gestational limit of 22 weeks is appropriate, with some submitters considering the proposed limit to be:

- broadly appropriate
- too long, or
- too short.

Support for a gestational limit of 22 weeks

Dr Carol Portmann was of the view that the proposed gestational limit is:

> *…a reasonable balance when it comes to picking a gestational age. If you lower it, then you are going to have a significant number of people particularly with foetal abnormalities. There are people who unexpectedly find themselves much further along than they thought because of poor advice given to them based on a blood test, or who are still having periods while actually being pregnant...*[71]

Dr Portmann also noted:

> *All of (sic) sorts of reasons can come forward as to why someone may turn up and be in fact 20 weeks or 21 weeks. To lower it to something like 16 weeks or under will basically rule out most people with foetal abnormalities and a significant proportion of people whose circumstances have changed or who had unidentified pregnancies. Also, of course, there is that group of people who have to travel quite a lot and it takes them a couple of weeks to organise travel, organise child care, to get time off work and for their support person get time (sic) off work, and trying to narrow that into maybe a two-day time frame is almost impossible for these people.*[72]

69 Explanatory notes, p 4.

70 Explanatory notes, p 4.

71 Brisbane public hearing, 17 September 2018, p 6.

72 Brisbane public hearing, 17 September 2018, p 6.

When asked about the impacts of reducing the proposed gestational limit of 22 weeks, Dr Philip Goldstone, Medical Director at Marie Stopes, expressed support for the proposed limits and explained:

> *At the moment, we know that we have approximately one woman a fortnight travelling from Queensland to our Maroondah clinic. In the past 12 months, 21 women who were over 20 weeks travelled from Queensland. We would probably expect that the majority of those women would have accessed the service in Queensland if the legislation allowed them to access the service up to 22 weeks.*[73]

Dr Philip Goldstone also noted the practical benefits of a gestational limit of 22 weeks:

> *Apart from the lack of a service being available to women who have to travel, they often have to make other arrangements and sometimes that cannot be done in a day or so. They may have to arrange child care and there are additional costs incurred by transport. Having legislation that would allow women to terminate pregnancies up to 22 weeks would remove that transport barrier for women and allow them to access a service in their home state, where they can have the support of their family and partner and less emotional stress associated with the whole process, which is already difficult for them.*[74]

Submitters who considered a gestational limit of 22 weeks is too long

The Australian Christian Lobby referred to an example of a baby who it claimed survived being born prematurely at 22 weeks and 2 days, stating:

> *Under the provisions of the proposed Bill, that child could have been aborted. Viability is not a valid measure as it continues to be pushed back further with medical advancements.*[75]

Mr Peter Pellicaan, appearing in his capacity as Private Secretary to Archbishop Mark Coleridge, Catholic Archdiocese of Brisbane stated at the Brisbane public hearing:

> *…in the proposed bill there is no protection for the unborn before 22 weeks and after that an assessment is made on broad criteria that includes future physical, psychological and social circumstances which in our view are not adequately defined.*[76]

And:

> *Therefore, is it a good thing culturally to say you can do this up to 22 weeks with no questions asked? We would say, no, because it says something about the lack of value on the unborn child. That is our concern there.*[77]

Submitters who considered a gestational limit of 22 weeks is too short

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), Children by Choice, Pro Choice Queensland, and the Sexual Health Society of Queensland considered that a gestational limit was not needed.

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73 Brisbane public hearing, 17 September 2018, p 4.

74 Brisbane public hearing, 17 September 2018, p 4.

75 Submission 97, p 5.

76 Brisbane public hearing, 17 September 2018, p 38.

77 Brisbane public hearing, 17 September 2018, p 42.

RANZCOG stated:

> *…the College believes there should not be a specified gestation range and that late termination of pregnancy must be an option available to women.*[78]

Departmental comment

Regarding why a gestational limit of 22 weeks was proposed, the Department of Health repeated the reasons given in the explanatory notes and added that limiting termination of pregnancy to circumstances where the woman's life or foetus's viability is in danger would not present a change from the existing legal framework in Queensland.[79]

In response to some submitters' view that the gestational limit should be higher than 22 weeks, or there should be no gestational limit at all, the Department of Health highlighted reasons included in the explanatory notes and advised:

- *the adoption of a gestational limit is consistent with most other Australian jurisdictions, and*
- *it recognises community concerns about making termination of pregnancy available on request without any limits, especially in late term pregnancies.*[80]

And:

> *The QLRC's recommended approach seeks to achieve a balance between a woman's autonomy and access to health care with the need to ensure later terminations are not performed without due consideration and oversight.*[81]

Committee comment

The committee notes the reasons provided for a gestational limit of 22 weeks, and the support from some submitters for it. The committee supports the proposed gestational limit of 22 weeks.

6.3 Termination of pregnancy after twenty-two weeks' gestation

The Bill proposes to allow a woman who is more than 22 weeks pregnant to obtain a termination of pregnancy if a medical practitioner considers that, in all the circumstances, the termination should be performed and that practitioner has consulted with another medical practitioner who also considers that, in all the circumstances, the termination should be performed.

When considering whether a termination should be performed, 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.[82]

78 Brisbane public hearing, 17 September 2018, p 2.

79 Department of Health, Correspondence dated 10 September 2018.

80 Department of Health, Correspondence dated 10 September 2018.

81 Department of Health, Correspondence dated 10 September 2018.

82 Explanatory notes, p 7.

Submitters' views

The provision relating to terminations after 22 weeks' gestation, sometimes referred to in submissions as 'late-term' terminations, was an aspect of the Bill many submitters were opposed to, while other submitters explained that they are relatively rare and only performed when the health of the mother and/or baby was under threat.

Arguments against allowing terminations after 22 weeks' gestation

Comments such as those from the Women's Forum Australia were fairly representative of submitters who opposed terminations after 22 weeks' gestation:

> *In addition to making abortion lawful for any reason, the Bill also removes protections for late term abortions, including abortions on viable babies up until full term.*[83]

And:

> *Removing protections against late term abortions is dangerous for women and for a Bill that seeks to 'modernise' the current law, it is out of step with common practice in other jurisdictions, with medical knowledge of foetal viability and pain, and with medical advances including progress in neonatal care*.[84]

Arguments for allowing terminations after 22 weeks' gestation

Dr Liz McKenna, a practising obstetrician and gynaecologist operating in the private health system in Cairns, highlighted that performing a termination of a foetus beyond 22 weeks' gestation was rare:

> *At no time in my career have I ever been asked to consider terminating a normal pregnancy over 22 weeks.*[85]

And:

> *In preparation for this hearing, I have taken the liberty of canvassing all of my colleagues here in Cairns both publicly and privately regarding this matter and at no time have any of them experienced these requests.*[86]

Regarding the circumstances in which a termination of pregnancy beyond 22 weeks' gestation can be conducted, Dr McKenna stated:

> *The termination of an abnormal foetus with a chromosomal or anatomical structural abnormality that is incompatible with life at a gestation beyond 22 weeks is the domain of the public hospital system. This procedure is then carried out after much consultation with fetomaternal specialists and paediatricians with the utmost dignity. It offers the family the certainty of a set delivery time in appropriately respectful circumstances where the grieving process can begin unhindered*.[87]

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83 Submission 511, p 2.

84 Submission 511, p 2.

85 Cairns public hearing, 11 September 2018, p 2.

86 Cairns public hearing, 11 September 2018, p 2.

87 Cairns public hearing, 11 September 2018, p 2.

RANZCOG strongly supported the proposal to allow terminations beyond 22 weeks' gestation, highlighting that such procedures are rare and that health considerations of the pregnant woman and baby are taken into account:

> *Decisions around timing of termination of pregnancy may become more complex in the presence of some specific fetal conditions, multiple pregnancy, late recognition of pregnancy, advancing gestational age and pre-existing maternal disease. The non-availability of late termination of pregnancy may place these women in an untenable position of having to make decisions at times when information is not available or a healthy co-twin is potentially endangered. The College 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.*[88]

Departmental comment

At the 17 September 2018 Brisbane public hearing, Dr John Wakefield, Deputy Director-General of the Department of Health's Clinical Excellence Division, responded to a question on this matter by saying:

> *Late-term terminations after 22 weeks are rare and constitute less than one per cent of the total terminations in Queensland. In 2016, of the 10,421 patient admissions for terminations, 76 occurred at 22 weeks gestation or later.*
>
> *Terminations after 22 weeks gestation generally involve complex medical circumstances, such as delayed diagnosis of serious foetal abnormalities, or complex medical or personal circumstances. After 22 weeks, the bill requires medical practitioners to take a broad range of factors into consideration and consult with a second medical practitioner before deciding if the termination should be performed. Decisions will be guided by ethical considerations and best practice requirements outlined in clinical standards and guidelines.*[89]

The Department of Health's response to issues raised in submissions stated:

> *Termination of pregnancy after 22 weeks gestation generally involves complex medical circumstances such as delayed diagnosis of serious foetal abnormalities or complex medical or personal circumstances.*[90]

And:

> *After 22 weeks, medical practitioners are required to take a broad range of factors into consideration and consult with a second medical practitioner, before deciding if the termination should be performed. This includes considering all the relevant medical circumstances, the woman's current and future physical, psychological and social circumstances and the relevant professional standards and guidelines that apply. Decisions will be guided by ethical considerations and best practice requirements outlined in clinical standards and guidelines. The QLRC also noted at paragraph 3.204 that where termination is accessible and lawful on broad grounds, unsafe outcomes from termination are reduced.*[91]

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88 Submission 137, p 2.

89 Brisbane public hearing, 17 September 2018, p 2.

90 Department of Health, Correspondence dated 10 September 2018.

91 Department of Health, Correspondence dated 10 September 2018.

Dr John Wakefield of Queensland Health also clarified that a medical practitioner is not required to perform a termination of a pregnancy of more than 22 weeks' gestation:

> *The Bill does not require a medical practitioner to perform a termination of pregnancy after 22 weeks. A medical practitioner may decide, having considered all the circumstances, that the termination should not be performed.*
>
> *Provided the medical practitioner makes this decision based on all of the circumstances, the medical practitioner does not need to refer the patient to another practitioner.*[92]

Committee comment

The committee notes that terminations beyond 22 weeks are rare; of the 10,421 patient admissions for terminations to the public hospital system, only 76 occurred at 22 weeks gestation or later in 2016. The committee also notes that they are usually only performed when the health of the pregnant woman or foetus is in danger.

The committee supports the provision to allow terminations to occur beyond 22 weeks' gestation.

6.4 Termination of pregnancy after twenty-two weeks' gestation in an emergency

The Bill proposes to allow medical practitioners to perform terminations of pregnancy that are beyond 22 weeks' gestation without adhering to the requirements outlined above if a medical practitioner considers the termination is necessary to save the woman's life or the life of another unborn child. This recognises that there may exist circumstances where it is not practicable to comply with the proposed requirements for terminations beyond 22 weeks' gestation.[93]

6.5 Who may perform or assist in a termination of pregnancy

The Bill proposes to allow a medical practitioner to perform a termination of pregnancy.[94] Under the *Acts Interpretation Act 1954* (Qld), a medical practitioner means a person registered under the *Health Practitioner Regulation National Law Act 2009* (Qld) to practise in the medical profession, other than a student.

The Bill proposes to allow the following registered health practitioners to assist in a termination of pregnancy:

- nurses
- midwives
- pharmacists, and
- Aboriginal and Torres Strait Islander health practitioners.[95]

6.6 Ability to expand list of health practitioners who can perform a termination

The Bill allows for the expansion of the list of registered health practitioners who may assist in the performance of terminations, outlined above, by regulation.[96] This ensures that other appropriately-

92 Department of Health, Correspondence dated 21 September 2018.

93 Termination of Pregnancy Bill 2018, cl 6(3).

94 Termination of Pregnancy Bill 2018, cls 5 & 6.

95 Termination of Pregnancy Bill 2018, cl 7.

96 Termination of Pregnancy Bill 2018, cl 7.

qualified health practitioners or emerging health professions may assist in a termination if it is within their scope of practice.[97]

6.7 Practitioners' right to hold and express a conscientious objection to termination of pregnancy

The explanatory notes recognise that some medical practitioners will not wish to provide, or participate in, a termination of pregnancy due to their personal beliefs and there is a need to balance these beliefs with the rights of women regarding their reproductive health.[98]

Given this, the Bill proposes to allow medical practitioners to hold, and express, a conscientious objection to termination of pregnancy but still provide for women seeking medical advice from such practitioners to gain the advice and services they seek.[99]

If a medical practitioner holds a conscientious objection to termination of pregnancy they are required to disclose their objection to the patient if they are asked to:

- perform a termination
- assist in the performance of a termination
- make a decision if they are consulted by another medical practitioner on whether a termination of a pregnancy of more than 22 weeks' gestation should occur, or
- advise the person about the performance of a termination.[100]

If the request is by a woman for the practitioner to perform a termination on the woman, or to advise the woman about the performance of a termination on her, the practitioner must refer the woman, or transfer her care, to:

- another registered health practitioner who, in the practitioner's belief, can provide the requested service and does not have a conscientious objection to the performance of the termination, or
- a health service provider at which, in the practitioner's belief, the requested service can be provided by another registered health practitioner who does not have a conscientious objection to the performance of the termination.

To refer a woman to a service that only offers counselling on termination of pregnancy is not sufficient to satisfy the provision in the Bill.

6.7.1 Conscientious objection cannot be expressed in medical emergencies

If a medical practitioner has a conscientious objection to a termination of pregnancy, in the event of a medical emergency the practitioner is still required to provide care.[101]

97 Explanatory notes, p 6.

98 Explanatory notes, p 9.

99 Termination of Pregnancy Bill 2018, cl 8.

100 Termination of Pregnancy Bill 2018, cl 8.

101 Termination of Pregnancy Bill 2018, cl 8(4).

6.7.2 Conscientious objection does not extend to tasks complementary to termination of pregnancy or to institutions

While individual practitioners are proposed to be allowed to hold a conscientious objection, the Bill does not propose to extend this provision to administrative, managerial or other tasks ancillary to the provision of termination services. The provision does not extend to hospitals, institutions or services, as the right to freedom of thought, conscience and religion is a personal and individual right.[102]

6.7.3 Compliance with the requirement to refer a woman to a practitioner without a conscientious objection

There are no specific offences or penalties if a practitioner fails to comply with the proposed requirement to refer a woman to a practitioner who does not hold a conscientious objection to termination of pregnancy, but a patient can make a complaint to the Office of the Health Ombudsman, as patients currently can regarding a range of health-related matters.

Submitters' views

Submitters expressed a range of views on the need for, and adequacy of, the proposed conscientious objection provisions.

The Anti-Discrimination Commissioner Queensland noted that, in the context of the sexual and reproductive health rights of women and girls (and in relation to termination specifically), treaty bodies have identified that the practice of conscientious objection by health professionals should be regulated to ensure that it does not inhibit access to services and requires referral to alternative health providers:

> *The UN Human Rights Committee has also observed that Article 18 of the ICCPR 'may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion'. The World Health Organization (WHO) Safe Abortion Guidance recommends that health professionals who claim conscientious objection should be required to refer the person to another provider so that access to lawful abortion services is not impeded*.[103]

The Queensland Council of Civil liberties supported the position of the Bill, in relation to conscientious objections, specifically in ensuring that conscientious objection does not apply in cases of emergency and that practitioners who do object have a duty to refer the woman to another registered health practitioner. In their submission, the council commented further:

> *At the individual level, the law ought to reflect the position that a person is not entitled to exercise a right in such a way as to do harm to another person. So the first question to be asked is whether or not conscientious refusal of a person to assist in provision of abortion would represent a threat to the safety or health of the woman. In that case the first duty of the health professional must be to the woman*.[104]

The Royal Australasian College of Physicians (RACP) acknowledged that some medical practitioners have a conscientious objection to termination of pregnancy. In line with guidance from the Medical Board of Australia and the Australian Medical Association (AMA), the RACP agreed that personal beliefs

[102] Explanatory notes, p 9.

[103] Submission 118, p 2.

[104] Submission 118, p 2.

should not impede patient access to treatments that are legal and referrals to alternative health professionals should be provided where required.[105]

The Public Health Association of Australia submission supported allowing practitioners to conscientiously object to the performance of a termination, except in emergencies, and commented that clause 8 provides a balance, ensuring safe access to termination for pregnant persons in Queensland, while respecting the right of individual medical practitioners to refuse to perform this service based on a conscientious objection.[106]

The Australian College of Nursing noted that two thirds of members who responded to a questionnaire about the Bill supported allowing health practitioners the right to conscientiously object to the performance of a termination, except in emergencies.[107]

The Queensland Council of Unions supported the provisions in the interest of pregnant women:

> *We advocate for the rights of the pregnant woman and her access to safe and legal health services wherever they live. Matters such as conscientious objection should also be subordinate to those fundamental rights, particularly in areas where women's access to GP's (sic) is limited.*[108]

The Queensland Nurses and Midwives Union advocated strongly for the rights of nurses and midwifes to refuse to participate in procedures which they judge, on strongly held religious, moral and ethical beliefs, to be unacceptable (conscientious objection). It also noted that nurses, midwives and assistants must take all reasonable steps to ensure that the person's preference, quality of care, safety and advanced care directives are not compromised.[109]

Health Consumers Queensland supported the conscientious objection provisions in their submission and also recommended that legislation should mandate provision of a patient travel subsidy if required.[110]

The Australian Medical Association Queensland (AMA Queensland) supported the inclusion of strong conscientious objection provisions in the Bill but raised concerns that practitioners may be required to provide terminations in an emergency for which they lack the requisite training. The AMA Queensland proposed an amendment to the Bill:

> *AMA Queensland believes that the bill should have very strong conscientious objection provisions. However, the AMA also believes it is important for the legislation to recognise that in an emergency situation, regardless of whether or not a medical practitioner has conscientiously objected to a termination, they may lack the appropriate skill or training to perform such a procedure safely. The bill as currently drafted could require a medical practitioner to perform a termination of pregnancy in an emergency which we believe would be clinically inappropriate. We would therefore recommend that the legislation be amended to expressly recognise this challenge. The bill otherwise is consistent with the national and international ethical guidelines*

105 Submission 74, p 2.

106 Submission 117, pp 5 – 6.

107 Submission 99, p 2.

108 Submission 119, p 2.

109 Submission 121, p 6.

110 Submission 110, p 5.

including the AMA's position statement on conscientious objection, specifically the universal principle of not impeding access to health care.[111]

The International Planned Parenthood Federation strongly supported clause 8(3) of the Bill.[112] Children by Choice stated that clause 8 draws on existing obligations that medical practitioners are already required to adhere to, such as the Codes of Conduct of the Australian Medical Association, the Nursing and Midwifery Board of Australia and the Pharmacy Board of Australia and does not require a conscientious objector to participate in a termination unless in an emergency situation.[113]

In their evidence at the committee's Townsville hearing, Children by Choice argued that medical professionals should be able to conscientiously object to participating in termination of pregnancy procedures but should not prevent a person accessing the health care they need, and that the changes in the Bill will provide certainty.[114]

I guess it comes down to doctors having a right to care for their patients, and that is access to health care and conscientiously objecting to delivering certain health care. Need to refer on is actually in the AMAQ guidelines, or the AMA guidelines, in terms of conscientious objection that doctors currently adhere to now for all services. I do not see why termination of pregnancy would be legislated to go to the top of those guidelines. I would be concerned if we were allowing doctors to not make sure that anybody gets the health care that they need.[115]

Pro Choice Queensland commented that their submission to QLRC advised it was not necessary to include a conscientious objection clause, however, support the inclusion of clause 8 as currently drafted, having read the QLRC report.[116]

Professor Caroline De Costa told the committee:

There are some genuine conscientious objectors of course whose views must be respected, but there are also many doctors at the moment who are hiding behind the excuse of the law.[117]

Dr Heather McNamee, a general practitioner based in Cairns, questioned the basis for conscientious objections:

I have some difficulties with the whole concept of conscientious objection, to be honest. In Scandinavian countries they have now removed it. If you are a gynaecologist in Scandinavia you are expected to offer the whole range of services for the pregnant woman in front of you, from managing her miscarriage to offering her termination to supporting her through antenatal care. I think it is getting to the point where if you are not able to offer the full range of services perhaps you should not be functioning in that specialty. That is where the northern Europeans have now gone with their regulations. We are decades behind them.[118]

111 Brisbane public hearing, 12 September 2018, p 9.

112 Submission 143, p 2.

113 Submission 108, p 12.

114 Townsville public hearing, 10 September 2018, p 27.

115 Brisbane public hearing, 12 September 2018, p 32.

116 Submission 116, p 6.

117 Cairns public hearing, 11 September 2018, p 34.

118 Cairns public hearing, 11 September 2018, p 10.

In further evidence, Dr McNamee clarified that her comments relate to the specialty of gynaecology, not general medicine, and added:

> *I think we are all uncomfortable with abortion. I think this is the thing that people who are not involved in this area of medicine do not understand. I would rather no Australian woman ever had to have an abortion ever again, but contraception is not perfect and lives are far from perfect. In fact, there is a lot of chaos in women's lives. I think it is an emotive issue.*[119]

The committee also heard views opposed to the conscientious objections provisions on other grounds. The Presbyterian Church of Queensland urged the committee to widen the conscientious objection provisions to cover nurses and pharmacists, and to remove the requirement for the practitioner to refer the patient to another practitioner or provider who can provide the termination of pregnancy service.[120] In arguing for the removal of the referral requirement, the church submitted:

> *Such a requirement violates the rights of practitioners who both feel such a referral makes them complicit in act of the termination and is contrary to their duty of care for patients.*
>
> *A genuinely secular society which does not privilege the beliefs of one over another should not demand that a patient's freedom of conscience and choice should override a practitioner's.*[121]

The Uniting Church in Australia Queensland Synod submitted that the conscientious objection provisions of the Bill:

> *…places those who don't have a conscious objection to abortion per se in a very difficult position, as its wide allowance of the grounds for an abortion post 22 weeks, would challenge the ethical framework of many practitioners.*[122]

Dr Philip Martin opposed the conscientious objection provisions, describing s 8(3) of the Bill as '… a fundamental denial of a medical practitioner's right to act according to conscience.' Dr Philip Martin further commented:

> *It is incomprehensible that within a society which purports to value human rights, there could be consideration of such a hideously heinous attempt to deny the freedom to save life, while imposing instead a requirement to cooperate in extinguishing the lives of the most vulnerable and powerless. The principles of democracy and human rights alone must sound an intolerably shrill warning siren against any such force being applied to medicos or to any citizen of a free country.*[123]

Mr Peter Pellicaan, when appearing at the Brisbane public hearing on behalf of Archbishop Mark Coleridge of the Catholic Archdiocese of Brisbane, objected to the fact that the conscientious objection provisions do not extend to hospitals, institutions or services:

> *We object to this, firstly, because our Catholic healthcare institutions must have the freedom to choose the services they provide and ensure that these services reflect the values of the institution. This is indeed a decision of the governance boards of these institutions and not merely the medical practitioners. Secondly, it is an overreach of government authority to be dictating to*

119 Cairns public hearing, 11 September 2018, p 11.

120 Submission 115, p 3.

121 Submission 115, p 6.

122 Submission 129, p 1.

123 Submission 504, p 1.

non-governmental institutions what services they must provide. This aspect of the proposed bill is flawed both with regard to the termination of pregnancy but more broadly with regard to the relationship between government and private enterprise.[124]

The Guild of Saint Luke noted that, at the time of the passing of the *Abortion Law Reform Act 2008* in Victoria, the Australian Medical Association stated that this law 'Infringes the rights of doctors with a conscientious objection by inserting an active compulsion for a doctor to refer to another doctor who they know does not have a conscientious objection'.[125]

The Catholic Women's League submitted:

…this particular provision is particularly draconian in that it would force medical practitioners, be it doctors or nurses to act against their religious and/or spiritual convictions. This proposed Bill seeks to legislate against the Hippocratic Oath. The suggested obligation on medical practitioners is a complete contravention of the Hippocratic oath to help human life and do no harm.[126]

The Australian Family Association described the conscientious objection provisions of the Bill as 'draconian' and, during questioning from the committee, disputed the AMA Queensland's interpretation of the Medical Board of Australia's guidelines for good medical practice and requirement for practitioners to refer patients to other practitioners in the event of a conscientious objection.[127]

Cherish Life recommended that the committee reject the Bill because they considered it discriminates against doctors of faith:

Another very concerning thing is the lack of full conscientious objection for doctors. Doctors with a conscientious objection still have to refer for abortion. This discriminates against doctors of faith. At the 2016 census, 62.2 per cent of Queenslanders identified as being Christian. I know Cherish Life has had a number of doctors contact us and say they will move interstate to New South Wales or they will leave medicine if this bill is passed because they simply cannot be complicit in the outcome of an abortion.[128]

During questioning by the committee, Dr Donna Purcell, a General Practitioner and President of Cherish Life, took issue with the AMA Queensland position on conscientious objections:

Ms BOYD: *In terms of conscientious objections, we have just heard from AMA Queensland that all doctors in fact have an obligation under the current standards and guidelines to refer patients on. As a medical professional yourself, doesn't this stand in stark contrast with what it is that you are recommending through this bill?*

Dr Purcell: *Yes, it is. There are a lot of doctors who do not agree with the AMA's position on that. They believe that they have a right to conscience not to be involved in the process.*[129]

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124 Brisbane public hearing, 12 September 2018, p 38.

125 Submission 127, p 2.

126 Submission 105, p 6.

127 Brisbane public hearing, 12 September 2018, p 34.

128 Townsville public hearing, 10 September 2018, p 11.

129 Brisbane public hearing, 12 September 2018, p 15.

The Queensland Sexual Health Society submitted that the inclusion of a conscientious objection clause in the Bill may '…increase the legitimacy of 'opting out' of termination provision as is evident in other jurisdictions'. It argued that current professional standards on conscientious objection set out by bodies such as Australian Health Practitioner Regulation Agency and the AMA provide excellent guidance for practitioners on this issue.[130]

Departmental comment

In written and oral evidence to the committee, the Department of Health responded to a number of concerns raised about the conscientious objection provisions of the Bill.

On the basis for including the provision in the Bill, the Department of Health advised:

> *The QLRC considered at paragraph 4.140 that the conscientious objection requirements balance the rights of health practitioners to freedom of thought, conscience and religion, with the rights of women, particularly the right to access health. The QLRC also recommended a requirement to inform and refer at paragraph 4.150 to ensure that women's access to lawful termination services is not impeded. The requirement to inform and refer or transfer care is generally consistent with codes of conduct and guidelines for health practitioners and with the Queensland clinical guideline. The codes of conduct and guidelines require a practitioner to offer information or alternatives, or to make a referral.*
>
> *The QLRC acknowledged at paragraph 4.159 that some health practitioners may consider referring a woman to another practitioner or health provider will make a practitioner 'complicit' in any subsequent terminations. The QLRC noted that a referral does not necessarily mean a termination will take place. It enables a woman to access a practitioner who can offer her a range of options, including termination.*
>
> *The QLRC also noted at paragraph 4.166 that it is a matter for individual health practitioners whether to publicly identify as having a conscientious objection to terminations and how to locate a practitioner or service to which a woman can be referred to or transferred.*[131]

In response to the concerns raised by the AMA Queensland, the Department of Health advised:

> *Clause 8(4) does not impose a positive duty to act. It simply states that the section does not limit any existing duty owed to a patient. The Department of Health does not consider changes are required to the Bill to address the AMAQ's concern.*
>
> *The QLRC recommended at paragraph 4.171 that the term 'emergency' is a matter for clinical practice and should not be defined. Defining the term could have the effect of limiting any other existing responsibility or obligation of registered health practitioners. Similarly, the QLRC recommended at paragraph 4.163 that the terms 'refer' and 'transfer of care' should not be defined as it will be a matter for the objecting practitioner to determine how to appropriately refer a woman to another practitioner or service, and how and when to transfer a woman's care.*[132]

130 Submission 122, p 3.

131 Department of Health, Correspondence dated 10 September 2018.

132 Department of Health, Correspondence dated 10 September 2018.

And:

> *The bill does not require a medical practitioner to perform a termination of pregnancy in an emergency. Clause 8(4) simply states that the conscientious objection provision does not limit any existing duty owed to a patient.*
>
> *Good medical practice: a code of conduct for doctors in Australia states that good medical practice involves offering assistance in an emergency that takes into account the practitioner's own safety, their skills, the availability of other options and the impact on other patients under their care. It involves continuing to provide assistance until the practitioner's services are no longer required.*
>
> *Practitioners faced with an emergency of any kind will need to consider what assistance they can provide based on an assessment of these factors. The bill simply notes that the conscientious objection provisions do not change this duty.*[133]

In response to the questions about the obligations on practitioners to refer patients in the event of a conscientious objection, the Department of Health advised:

> *The bill provides that, if a woman requests a registered health practitioner to perform or advise her on a termination and the practitioner has a conscientious objection, then they must disclose the obligation. The practitioner must also refer the woman or transfer her care to another registered health practitioner or health service provider who, in the first practitioner's belief, can provide the requested service and does not have a conscientious objection. Unless the practitioner has done this, they have not discharged their obligations under clause 8 of the bill. Referring the woman to a counsellor is not sufficient. The requirement to inform and refer or transfer care is in line with the codes of conduct and guidelines for health practitioners and with the Queensland clinical guidelines.*[134]

The Department of Health clarified the coverage of hospitals by the conscientious objection provisions of the Bill, and whether hospitals and other clinics would be compelled to provide terminations:

> *Some stakeholders raised concerns that the bill may compel private hospitals, entities or other practitioners to provide termination services. This is not the case. Practitioners have the ability to conscientiously object. The conscientious objection requirements do not apply to hospitals, institutions or health services. However, the bill also does not compel private hospitals to provide termination services. The services that private facilities provide is a matter for them.*[135]

In response to concerns about access to termination services for women in rural and remote areas, the Department of Health advised:

> *Barriers to termination of pregnancy services may arise for a range of reasons. The QLRC indicated at paragraph 2.115 that access to and availability of termination services vary according to where a woman is located, her financial resources, the gestation of her pregnancy. For example, women in rural, regional and remote areas may have to travel long distances to access services and face additional financial costs.*

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133 Brisbane public briefing, 17 September 2018, p 2.

134 Brisbane public briefing, 17 September 2018, pp 2 – 3.

135 Brisbane public briefing, 17 September 2018, pp 2 – 3.

Queensland Health is assessing the provision of termination services across Queensland and will implement arrangements to enable women to access these services. This will include consideration of how the public system can respond to access barriers, particularly for women in rural and remote areas or women who are socially and financially disadvantaged. Also, for terminations after 22 weeks, the second medical practitioner may consult about a women in rural remote and regional areas by telephone or video-conference. This will help facilitate access for women in these areas.[136]

Committee comment

The committee notes the compelling arguments presented for providing conscientious objection provisions in the Bill in recognition of the personal beliefs and values held by medical practitioners. The committee also notes the concerns expressed by major church and other groups and individuals that the requirement for doctors with conscientious objections to refer patients to other practitioners and service providers to access termination services may be deeply troubling for doctors of faith. These arguments were canvassed by the QLRC in its report.

The committee also notes the justification provided by the department in its advice for not extending conscientious objection rights to hospitals and other institutions. As noted by the department, the Bill does not compel private hospitals to provide termination services.

In relation to the contention by the AMA Queensland that clause 8(4) of the Bill places a duty on registered medical practitioners to perform a termination in an emergency regardless of whether they have the skills and training to safely do so, the committee accepts the department's advice that clause 8(4) simply states that that the section does not limit any existing duty owed to a patient. For this reason, the committee does not agree that the clause requires amendment, as advocated by the AMA Queensland.

The committee welcomes the work by the Department of Health to assess the provision of termination services for women across Queensland, and to implement arrangements to enable women to access these services.

6.8 Safe access zones

The Bill proposes to establish 'safe access zones' around the entrances of facilities that provide termination of pregnancy services. This is to protect the safety and wellbeing, and respect the privacy and dignity, of people accessing services provided at termination services premises, as well as people who need to access those premises in the course of their duties and responsibilities.[137] The Bill proposes penalties for engaging in prohibited conduct (explained below) within a safe access zone.[138]

6.8.1 Safe access zones – definition and size of zone

A place is in the safe access zone if it is:

- in the termination services premises, or

[136] Department of Health, Correspondence dated 10 September 2018.

[137] Explanatory notes, p 11.

[138] Termination of Pregnancy Bill 2018, cl 15.

- not more than 150 metres (or as varied under a Regulation by the relevant Minister) from an entrance to the premises.[139]

Termination services premises are defined as premises at which a termination of pregnancy is usually provided. While medication may be needed from a pharmacy as part of a medical termination, pharmacies are excluded from this definition.

6.8.2 Varying the size of the safe access zone

The Minister will have the power to vary the distance of 150 metres by regulation.[140] This power can only be used if the Minister is satisfied that, having regard to the location of the premises, a distance of 150 metres is more or less than is needed to ensure that women entering the premises to access a termination of pregnancy and staff working at the premises receive adequate protection and privacy.[141]

6.8.3 Prohibited conduct in safe access zones

The Bill proposes that prohibited conduct in a safe access zone is conduct that:

- relates to terminations or could reasonably be perceived as relating to terminations
- would be visible or audible to another person in, or entering or leaving, the premises, and
- would be reasonably likely to deter a person in the premises, or entering or leaving the premises, from:
  - entering or leaving the premises
  - requesting or undergoing a termination, or
  - performing, or assisting in the performance of, a termination.[142]

A person's conduct may be prohibited conduct even if another person does not see or hear the conduct or if they do not change their behaviour in any way as a result of it.

6.8.4 Penalties for engaging in prohibited conduct in a safe access zone

If a person engages in prohibited conduct in a safe access zone, the maximum penalty is 20 penalty units[143] or one year's imprisonment.[144]

The offence does not apply to any communications between a person employed to provide a service at the termination services premises and a woman who is attending the premises, in order to ensure that communication relating to the treatment of the pregnant person do not give rise to a breach of the section.

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139 Termination of Pregnancy Bill 2018, cl 14(1).

140 Termination of Pregnancy Bill 2018, cl 14(3).

141 Termination of Pregnancy Bill 2018, cl 14(4).

142 Termination of Pregnancy Bill 2018, cl 15.

143 One penalty unit equals $130.55 from 1 July 2018.

144 Termination of Pregnancy Bill 2018, cl 15.

6.8.5 Recording people in or near termination services premises

The Bill proposes to create offences for a person to make, publish or distribute, a 'restricted recording' of another person without that person's consent and without reasonable excuse.[145]

A restricted recording is defined as an audio or visual recording of a person while the person is in, or entering or leaving, a termination services premises, and that contains information that identifies, or is likely to lead to the identification of the person.[146] A visual recording can include a photograph.[147]

The Bill does not propose to prohibit recordings of a person made, published or distributed with their consent.[148] Neither does it propose to prohibit recordings made without a person's consent for security purposes, or for police officers performing their duties.[149]

The Bill also proposes that a person cannot, without reasonable excuse, publish or distribute a restricted recording of another person without the other person's consent.[150]

6.8.6 Penalties for making a restricted recording or publishing or distributing a restricted recording

The maximum penalty for making a restricted recording of another person without the other person's consent, without reasonable excuse, is 20 penalty units or one year's imprisonment.[151] The same maximum penalty applies for publishing or distributing a restricted recording of another person without their consent.[152]

To distribute a restricted recording can include:

- communicate, exhibit, send, supply or transmit (including by live streaming), whether or not to a particular person
- make available for access, whether or not to a particular person
- enter into an agreement or arrangement to do anything mentioned in the above bullets, and
- attempt to distribute.[153]

Publishing a restricted recording is defined as publishing to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.[154]

145 Termination of Pregnancy Bill 2018, cl 16.

146 Termination of Pregnancy Bill 2018, cl 16(1).

147 Termination of Pregnancy Bill 2018, cl 16(5).

148 Termination of Pregnancy Bill 2018, cl 16(2).

149 Termination of Pregnancy Bill 2018, cls 16(2) & 16(4).

150 Termination of Pregnancy Bill 2018, cl 16(3).

151 Termination of Pregnancy Bill 2018, cl 16(2).

152 Termination of Pregnancy Bill 2018, cl 16(3).

153 Termination of Pregnancy Bill 2018, cl 16(5).

154 Termination of Pregnancy Bill 2018, cl 16(5).

Submitters' views

6.8.6.1 Sufficiency of existing laws

A number of submitters did not support the introduction of safe access zones with associated penalties, referring back to the number of laws that already exist to prevent harassment of women considering or undergoing a termination and staff of facilities providing such services.

The Australian Family Association stated:

> *The current laws in this state allow the police to move on and arrest people for being a public nuisance. We believe that the police should be doing their job under the current laws to prevent women being harassed or intimidated in general cases of harassment and intimidation. We also think that that should apply to the staff.*[155]

The Anglican Diocese of Sydney stated:

> *The police have sufficient powers to detain any who are disrupting the peace or harassing clients wishing to use the services of such clinics.*[156]

Individual submitters also referred to the sufficiency of existing laws. For example, Ms Caroline Cavanagh stated:

> *There are already sufficient regulations under the Queensland Criminal Code such as laws relating to stalking, assault, public nuisance and breaches of peace to cover any unlikely, but possible altercation that might occur outside an abortion clinic. No further laws are required.*[157]

Mr Raymond Brown stated:

> *There are already laws that protect individuals in the pursuit of their private and individual liberties, to do with harassment and vilification. If this is happening, clinics are free to use those laws.*[158]

Finally, Mr Barry Binnie stated:

> *There is a range of existing laws in Queensland Summary Offences Act 2005, Criminal Code 1899, Police Powers and Responsibility Act 2000, Domestic and Family Violence Protection Act 2012, which adequately address harassing, intimidating behavior [sic] of persons in a public place and protecting them from entering or leaving termination premises… There are further laws such as the Weapons Act 1990, the Police Service Administration Act 1990 and the Transport Operations (Road use management) Road Rules Regulation 2009 which provide police officer powers to manage law and order in public places.*
>
> *These laws allow Freedom of expression and peaceful protests (which is protected under international human rights law) by persons in public places. As the current Queensland laws are adequate introducing safe access zone provisions are not considered reasonable and justified under the circumstances.*[159]

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155 Brisbane public hearing, 12 September 2018, p 36.

156 Submission 186, p 1.

157 Online submission 2243.

158 Online submission 145.

159 Submission 501, p 9.

Other submitters, however, noted that the existing laws were not sufficient to protect women seeking a termination of pregnancy, or the staff offering the service. In evidence at the Townsville public hearing, Maurice Blackburn noted the experience in Victoria:

> *From their perspective, other measures taken by the Melbourne city council and Victorian police just were not effective. Dr Allanson has spoken of cases in which police have issued convictions for assault, obscenity, threat to kill and murder, but nothing changed*.[160]

Further:

> *The evidence is that that simply does not work in terms of either the council authority or the police having the ability to prevent that type of behaviour … As I have said to this committee, existing legal protections just do not work. Safe access zones work and they should be supported*.[161]

The Queensland Law Society stated that their position regarding the Bill is that:

> *…safe access zones are important, because much behaviour that occurs outside a clinic, whether it is targeted at a patient or at a health worker, does not necessarily fit within many of the pre-existing provisions. For instance, protest would not amount to a public nuisance offence; harassment would not necessarily amount to a public nuisance offence; nor would prayers or displaying placards.*
>
> *It is difficult to see how that behaviour could be captured by other pre-existing criminal laws, such as stalking or an offence that is often referred to but rarely utilised, that is, use of a carriage service to menace, harass or cause offence.*[162]

In this respect a number of submitters also detailed the experiences of patients, staff and other support workers, in Queensland and other jurisdictions, in the absence of safe access zones.[163] This suggests that the existing laws have not prevented harassment and intimidation occurring at facilities. It was also submitted that the introduction of safe access zones in other jurisdictions curtailed this behaviour.

Doctor Phillip Goldstone of Marie Stopes Australia stated in relation to his work in NSW and the ACT:

> *Prior to a few months ago I used to face protesters on a weekly basis when arriving at my workplace at Westmead, and that has just completely stopped now. We used to have one woman in particular with very offensive, confronting photographs who would stand and almost block the pathway of women. Women would often come in upset and fearful about what they had to confront at the doorway.*
>
> *I also work regularly in Canberra. I have seen the introduction of safe access zones there in the time that I have been working, and I have seen the big difference that that makes there.*[164]

In relation to Victoria, Maurice Blackburn stated safe access zones:

> *…work for the specific and, I would argue, unique particular situation of circumstances as has been the experience with Victorian health clinics. Safe access zones in Victoria have been*

[160] Townsville public hearing, 10 September 2018, p 19.

[161] Townsville public hearing, 10 September 2018, p 19.

[162] Brisbane public hearing, 12 September 2018, p 22.

[163] See submissions 104, 108, 112, 138, 140, 263 & 495.

[164] Brisbane public hearing, 12 September 2018, p 4.

designed to address the particular sort of behaviour that was occurring outside the particular clinics. In terms of the zone of 150 metres and the type of behaviour that is prohibited, my answer to your question is that they do work and they have been shown to be extremely effective in Victoria.[165]

Broadly, in responding to submitters concerns about the necessity for the establishment of safe access zones, the Department of Health reiterated that the existing laws are inadequate, referring also to the QLRC report, which concluded:[166]

5.129 While existing laws, including public nuisance offences, may address some types of harassing, threatening or obstructing behaviour at or near termination services premises, they can only be enforced after the harmful behaviour has occurred. Safe access zone provisions are intended to promote public safety and public order and will provide a simple and effective mechanism for the protection of women and service providers. Similar provisions appear to have been effective in curtailing harassing and intimidating conduct at or near termination services premises in other jurisdictions.

5.130 Existing laws also do not adequately address the full range of behaviours engaged in by people who oppose terminations at or near termination services premises. Safe access zone provisions recognise that termination of pregnancy is a sensitive and personal issue. Although 'sidewalk counsellors' may view their behaviours as harmless, their presence at or near termination services premises interferes with the privacy and dignity of individuals who are accessing lawful terminations.[167]

6.8.6.2 Prohibited conduct to include peaceful and supportive activities

Submitters who argued against the introduction of safe access zones generally stated that they did not support women being harassed or intimidated. However, some expressed concerns that the definition of prohibited conduct not only applied to conduct such as harassment and intimidation but also extended to activities such as peaceful prayer and offering information and support (including financial).

Safe Communities Australia stated that it should be 'unlawful to harass, intimidate, and physically obstruct people from entering such a facility, on the basis that these laws are clearly codified.' However, that is should not be 'unlawful to offer hope and support to women facing a crisis'.[168]

Canberra Declaration stated:

This means that a peaceful presence such as a prayer vigil could become a criminal offence…

Many of us having taken part in such prayer vigils know that the prayers offered in view of the clinic are meant for the welfare of the mothers in difficult circumstances, the babies whose lives are in danger of being lost and for the clinic staff and employees who are caught up in a business that generates wealth through the killing of unborn babies. Many babies' lives have been saved through such peaceful prayer vigils and their mothers have been thankful.[169]

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165 Townsville public hearing, 10 September 2018, p 18.

166 Department of Health, Correspondence dated 10 September 2018.

167 QLRC Report, p 183.

168 Submission 499, p 24.

169 Submission 126, p 3.

Women's Forum Australia stated:

> *…by introducing 'safe access zones' around abortion clinics, the Bill prevents vulnerable women from accessing support or information in the very situation which they might need it most. Discussions about the abortion between a woman and her partner, relative or friend, or other person seeking to offer her support close to the clinic would become a crime. This isolates a woman intending to have an abortion by cutting her off from any support at all.*[170]

Mr Andrew Novic stated:

> *I have seen 8 women turn away and choose to keep their baby. We helped one family find a full-time job (the only reason for them going in for an abortion), we helped another with material support (continually providing them with all the supplies they need), we will be helping another when the baby arrives with cooking, cleaning and other services, and we have financially supported another with paying $1000 of their medical bills so far.*[171]

Other submitters however, expressed concerns with the impact of these activities, on women entering facilities as well as staff.

The Queensland Council of Civil Liberties submitted that 'demonstrations and 'footpath counselling' cause undue stress on persons visiting a facility, and that any counselling should be offered by qualified health practitioners.'[172]

Research undertaken by Monash University's Castan Centre for Human Rights Law (the Centre) indicated:

> *The protesters were observed by interviewees to have no insight into the distress they caused to women seeking abortions, staff and others. Their presence and activities created an undercurrent of fear. While some women were relatively unaffected by their conduct, others were extremely traumatised, angry and distressed.*[173]

The Centre also observed that the 'activities of protesters have also been associated with barriers to access emanating from service disruption in some regional areas.'[174] The Centre referred to an example in Bendigo where a service was closed from January 2012 to August 2013 as a result of no local doctors being willing to perform the service. Media reports suggested the unwillingness arose in part from extremely active and confrontational protesters who threatened to target the doctors directly and shame them publicly.

Dr Liz McKenna noted that when she relieved at a clinic performing procedures in Cairns:

> *The women who I was managing on the day were often more distraught about the treatment they received by a small group of protestors on the outside than the ordeal they were facing coming inside and having the procedure done. … It has not just been their treatment of us when we were coming to perform terminations. We have been hassled in the weekend world as well. I feel for the women. I think a 150-metre zone is a start. I think that everyone is able to have their*

[170] Submission 511, p 3.

[171] Online submission 3623.

[172] Submission 118, p 2.

[173] Submission 104, p 5.

[174] Submission 104, p 9.

own opinion but I do not think these people have a right to influence someone who has made a decision and is going ahead with that.[175]

Young Queenslanders for the Right to Choose state:

The protestors often yell at patients, words to the effect of 'God hates the hands who shed innocent blood', and 'please don't murder your baby'. Protesters also place toy foetuses in the hands of patients and throw inflammatory pamphlets. Patients are also shouted at by protesters through the windows of clinics…

These examples illustrate the fundamental problem with 'sidewalk counsellors'. Ethical counselling is unbiased, non-judgmental, not underpinned by personal beliefs, respectful of the autonomy of the patient, entered into freely, and conducted privately.[176]

In this respect, the QLRC report stated:

5.1 There is evidence that people who oppose termination of pregnancy sometimes engage in activities including protesting, holding prayer vigils, or providing 'footpath counselling', at or near premises at which a service of performing terminations on women is provided ('termination services premises'); and that such behaviour may impact on the safety, privacy and well-being of women who are accessing those premises and of service providers.[177]

Further, as noted above, that:

Although 'sidewalk counsellors' may view their behaviours as harmless, their presence at or near termination services premises interferes with the privacy and dignity of individuals who are accessing lawful terminations.[178]

Based on submissions received, the QLRC report referred to footpath or sidewalk counselling as including 'handing out information, telling women entering the clinic that there is an alternative to termination, praying or proselytising' and that footpath counsellors viewed themselves as 'providing support, assistance or alternatives to women and are generally opposed to terminations.'[179]

6.8.6.3 Construction of clause 15 - prohibited conduct

Submitters raised concerns with the scope of prohibited conduct as it is defined in clause 15 of the Bill, and possible unintended consequences.

For example, the Australian Family Association noted:

We received legal advice that the effect of this provision in the Bill would be to criminalise the actions, within 150 metres of an abortion facility, of a mother trying to persuade her daughter to continue with the pregnancy, and of a boyfriend offering support to his partner if she decided to have her child.[180]

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175 Cairns public hearing. 11 September 2018, pp 2 – 3.

176 Submission 138, pp 4 – 6.

177 QLRC Report, p 155.

178 QLRC Report, p 183.

179 QLRC Report, p 155, footnote 1.

180 Submission 100, p 8. See also online submissions 1430 and 1765.

On the proposed definition of prohibited conduct under clause 15, Professor Aroney states:

> *Section 15 prohibits anything that, among other things, would be reasonably likely to deter someone from undergoing a termination…*
>
> *Other Australian jurisdictions like the ACT say that the conduct must be intended to stop a person from having an abortion et cetera. Others like Victoria and Tasmania focus on conduct that is besetting or harassing et cetera or is reasonably likely to cause distress or anxiety. The current Queensland bill does not do any of this. It merely applies to conduct that is reasonably likely to deter a woman. Deter is a broader concept than to stop something from happening and reasonably likely is easier to satisfy than intended. On one view, reasonably likely to deter would be satisfied if a person within a safe access zone offers a woman reason merely to consider whether to have a termination.*
>
> *That is drawing a very wide net. For example, offering personal, financial or emotional support or offering information that such support is available might well deter a woman from deciding to have an abortion.*
>
> *…it is not necessary to prohibit conduct that is entirely unobtrusive, respectful and supportive. On the contrary, such conduct is supportive of the dignity and wellbeing of women.*
>
> *...My submission is that a more direct provision that was aimed at behaviour that is obstructive and uses those words that are in the other legislation would be more narrowly tailored to address actions and conduct which is likely to cause a great deal of distress to a woman who might be approaching a termination clinic, rather than a very broad net that the act currently casts over behaviour that, on one hand, could be harassing—and that is what should be targeted—but there could be behaviour that is supportive and respectful and unobtrusive, and the legislation captures that as well.*[181]

Conversely, some other submitters raised concerns that the proposed bar for prohibited conduct is too high, suggesting that consideration be given to using the approaches in Victoria, Tasmania or NSW (either through replacing or adding to clause 15).

For example, the Public Health Association Australia noted that:

> *Clause 15 of the Bill … puts the burden of proof on police and prosecutors to confirm that the actions of persons outside clinics reasonably deter patients from entering. The Victorian safe access zone laws strictly prohibit conduct such as harassment, intimidation, besetting, threatening, hindering, obstructing or impeding by any means of a person accessing or leaving, or attempting to access or leave a clinic (including obstructing or blocking a footpath or road in a safe access zone without reasonable excuse). Adoption of a similar approach in Queensland is recommended*.[182]

Children by Choice noted concerns with enforceability of clause 15 and 16 because it considered that the language used in clause 15 in particular is quite vague, and lacked specific examples. Children by Choice recommend the adoption of safe access zone laws that prohibit specific conduct as in section

[181] Brisbane public hearing, 12 September 2018, pp 18 – 19.

[182] Submission 117, p 6.

158B of the *Public Health and Wellbeing Act 2008* (Vic) and sections 98C and 98D of the *Public Health Act 2010* (NSW).[183]

Professor Heather Douglas stated:

> *The requirement at the moment is an objective assessment of deterring—behaviour that deters—and I think this sets a very high bar and it is likely that many women and workers confronted by protestors will not be deterred and ordinary people would not think that they would be deterred from going to work or getting a termination and yet the protestors' behaviour may make the woman or the worker feel harassed, intimidated, threatened and so on. I would probably prefer a wider approach such as the New South Wales approach which includes harass, intimidate, threaten, hinder or obstruct or impede by any means. I think the 'deter' word in the safe access zones might be setting the bar too high.*[184]

Maurice Blackburn proposed amended text based on the Victorian and Tasmanian legislation which expressly identifies the prohibited conduct. In this regard the organisation stated, 'section 15 of the Bill should be amended to prohibit certain conduct without the additional need to establish the impact on the victim.'[185]

In responding to concerns about the definition of prohibited conduct proposed under clause 15 the department referred to the recommendation made in the QLRC report, noting that the QLRC had considered the legislation in other jurisdictions in formulating its recommendations.[186]

In addition to reviewing the legislation in other jurisdictions, the QLRC report considered different positions of respondents as to what behaviour should be prohibited in a safe access zone, and noted that a number of respondents 'expressed a preference for the prohibition of behaviour in the same, or similar, terms as the Victorian legislation.'[187] However, the report does not elaborate on how the recommended definition of 'prohibited conduct' (noted in the previous section) was concluded.

6.8.6.4 Imposition on rights

The explanatory notes identify that the safe access provisions constitute a potential breach of fundamental legislative provisions, but that this breach is justified. The principles state that legislation is to have sufficient regard to the rights and liberties of individuals. With reference to the conclusions in the QLRC report, the notes state that safe access zones impede the freedom of political communication and freedom of assembly. However, that:

- the rights are not absolute and that they must be balanced with other rights, including the right to sexual and reproductive health and the right to privacy and personal autonomy, and
- the proposed 150 metre zone from an entrance to premises is sufficient without imposing an undue burden on the rights.[188]

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183 Submission 108, p 14

184 Cairns public hearing, 11 September 2018, p 30.

185 Submission 140, pp 8 – 9.

186 Department of Health, Correspondence dated 10 September 2018.

187 QLRC report, p 179.

188 Explanatory notes, p 14. See p 64 for further discussion of the fundamental legislative principles in relation to this matter.

The explanatory notes to the Bill also state that:

> *Consistent with the QLRC intention as expressed at paragraph 5.131, the safe access zone provisions override the operation of the Peaceful Assembly Act 1992. It would undermine the purpose of these provisions if, for example, an organiser of a protest in relation to terminations could hold an authorised public assembly in a safe access zone.*[189]

A number of submitters expressed concerns about imposition on their rights including freedom of speech, movement, assembly and religion, and that the Bill expressly excludes the operation of the *Peaceful Assembly Act 1992* (Qld) at clause 12.

Safe Communities Australia Inc. stated that "the restriction of free movement, and the removal of 'Freedom of speech, opinion and association' with regards to support and counselling is a contravention of basic human rights."[190]

Canberra Declaration stated:

> *We see this as a serious infringement of the freedom of movement, freedom of assembly and freedom of speech.*
>
> *Under the heading 'Religious Freedom' the Canberra Declaration states – "Religious freedom includes freedom of conscience and freedom of speech. The importance of these freedoms is shown in countries where they are threatened or absent. … We affirm the basic necessity of freedom of conscience … If these freedoms are removed – even in the name of supposed benefits – the prized values of democracy and liberty are seriously undermined. … Thus the signers of this declaration affirm the fundamental right of Australians to religious freedom and freedom of speech, and we oppose legislation which denies such freedoms."*
>
> *It is not our desire that any person entering or leaving an abortion clinic should feel harassed or intimidated. But the proposed exclusion zones poses a threat to the freedoms mentioned above.*[191]

Mr Jamieson Webb stated:

> *Free speech is essential in our society and democracy and should not be limited. Establishing a 150m zone will restrict the free speech and actions of people who wish to provide alternatives to expectant mothers other than abortion. I do not support violence or intimidation in any way, but the right to free speech, opinion and the ability to offer alternatives is essential.*[192]

Ms Jannelle Patch stated:

> *Freedom of speech is a hallmark of a democratic and free society such as Australia. We should encourage and accept robust debate and allow peaceful protest. For example, if I disagree with a grocery store undercutting farmers to give cheaper prices to the consumer, I should be able to hold up a placard or protest outside the said premise without fear of reprimand so long as I am*

[189] Explanatory notes, p 11. Note, the draft Bill to the QLRC report did not include clause 12 of the Bill expressly stating that the safe access zones provisions apply despite the *Peaceful Assembly Act 1992* (Qld). The Department advised the committee clause 12 was included as it is consistent with the intention of the report (Public briefing 24 August 2018, p 3).

[190] Submission 499.

[191] Submission 126.

[192] Online submission 1001.

> *behaving in a civil manner. My concern is that with the proposed safety zone around abortion clinics, as has happened in Tasmania and the ACT, people will be prosecuted for simply holding a placard or silently praying as they see fit outside an abortion clinic… it would be against the very substance of a free society to disallow peaceful protest outside abortion clinics.*[193]

Conversely, other submitters noted that such rights and freedoms are not absolute. Marie Stopes Australia stated that they support 'freedom of speech and a person's right to hold their chosen political, moral and/or ethical views', however, 'acknowledges that such freedom is not absolute.'[194]

The Queensland Council of Civil Liberties stated:

> *In our view, abortion laws can be clearly distinguished from laws against protesting outside a forest or a mine. People visiting these clinics are engaged in a deeply personal, private and no doubt an emotionally stressful activity. This justifies giving them some level of protection, whilst still allowing those with alternative views a fair and proportionate opportunity to express their views and opinions.*[195]

The Queensland Law Society stated:

> *It is the clear law in Australia, though, that the right to freedom of speech and freedom of communication is not an unqualified right and that safe access zones represent an extremely modest restriction on free speech. Anti-abortion campaigners are still free to protest anywhere else they like; they are just not able to protest within 150 metres of a person who is seeking to access an abortion.*[196]

Finally, Caroline de Costa stated:

> *There are plenty of platforms available where people opposed to abortion or to choice for women in regard to their reproductive health can air their opinions; this is not a question of free speech but one of respect and privacy for the women attending the services.*[197]

Referral of Victorian and Tasmanian safe access zone legislation to the High Court

Concerns were also expressed that the provisions were subject to possible judicial intervention, noting that the similar provisions in the Tasmanian and Victorian legislation are currently before the High Court.

Victoria's safe access zone laws are being challenged in the High Court by a person opposed to terminations who was convicted of communicating about termination to a person access a clinic.[198] The Tasmanian safe access zone provisions are also being challenged in analogous circumstances. The cases will consider the implied freedom of political communication, the relevant provisions of the respective legislation, and whether these provisions impermissibly burden implied freedom of political

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193 Online submission 1086.

194 Submission 112, p 2.

195 Submission 118, p 3.

196 Brisbane public hearing, 12 September 2018, p 22.

197 Online submission 688.

198 Human Rights Law Centre, *High Court case to defend laws that protect safe access to abortion clinics*, 31 August 2018.

communication.[199] A number of other jurisdictions, including the State of Queensland, are intervening in the matters in support of the respondents. The hearing date for the matters is 9 October 2018.

Dr Rachel Carling-Jenkins MLC noted:

> *…the constitutional validity of similar provisions in Victorian and Tasmanian law is currently the subject of a High Court case which is still under way. It would be constitutionally irresponsible for the Queensland Parliament to enact similar provisions before the High Court has determined this question.*[200]

Similarly the Australian Christian Lobby stated, 'It would be unwise to proceed down this path until we find out what the High Court in Australia is going to say about the constitutionality of that.'[201]

Dr Aroney states that the QLRC report's discussion of the constitutional freedom of political communication is incomplete and inadequate.[202] In particular, Dr Aroney considers that the QLRC report does not consider whether the law is necessary 'in the sense that there must be no obvious and compelling alternative, reasonable practicable means of achieving the same purpose which has less restrictive effect of the freedom.'[203]

In relation to the position of the High Court, Dr Aroney stated:

> *…I think there are signs that members of the High Court are taking an increasingly rigorous view about discerning whether legislation contravenes the implied freedom of political communication. It is my submission that the requirement of necessity, and that legislation must adopt the least intrusive means to achieve its objectives, is the particular aspect of the current test that at least a plurality of the members of the court appear to be adopting is where this proposed legislation is most vulnerable.*[204]

Further:

> *There does seem to be some indication in the High Court that freedom of political communication does involve understanding that political debate is a robust thing and that sometimes things are said that are subjectively hurtful and the High Court has to strike a balance with that.*[205]

With respect to specific concerns with the construction of the provisions, Dr Aroney stated that the Bill '… would capture behaviour that is unobtrusive and respectful and compassionate. That is where the legislation overreaches, in my submission.'[206] Dr Aroney also suggested that the safe access zone could be considered vague and difficult to apply in practice, for example, a person may not know that a medical practice has received accreditation and therefore, that the safe access zone is in place.[207]

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199 High Court of Australia, Clubb v. Edwards & Anor, case no. M46/2018, & Preston c. Avery & Anor, case no. H2/2018.

200 Submission 429, p 16.

201 Townsville public hearing, 10 September 2018, p 8.

202 Submission 93a, p 2.

203 Submission 93a, p 3.

204 Brisbane public hearing, 12 September 2018, p 19.

205 Brisbane public hearing, 12 September 2018, p 20.

206 Brisbane public hearing, 12 September 2018, p 20.

207 Brisbane public hearing, 12 September 2018, p 20.

Conversely, other submitters contended that the High Court matter noted the proposed provisions for Queensland are different, and that it is arguable that the safe access zone provisions will survive the High Court challenge.

In this respect, the Human Rights Law Centre stated:

> *The High Court is currently considering a challenge to Victoria and Tasmania's safe access zone laws. However, the specific provisions being challenged in the Victorian and Tasmanian laws are different to those in the Bill.*
>
> *The HRLC considers that sensible and proportionate safe access zones, enacted for a legitimate purpose, such as protecting women from violence, harassment and surveillance when accessing a health service, do not unreasonably restrict freedom of expression.*
>
> *Patients are a "captive audience" outside abortion clinics. People access such clinics because they need specialist reproductive healthcare and they may not be able to access it elsewhere, particularly in regional and remote parts of Queensland. In practical terms, they cannot escape the conduct directed at them.*[208]

The Human Rights Law Centre also referred to decisions in the United States and Canada, stating:

> *Courts in the United States and Canada have recognised that patients of abortion clinics should not be forced to endure anti-abortion activities where they cannot escape it. The Supreme Court of the United States has noted that "targeted picketing of a hospital or clinic threatens not only the psychological, but also the physical, well-being of the patient held "captive" by medical circumstance".*[209]

Maurice Blackburn stated:

> *Our position is—and we believe the court will find in favour of this position—that laws which prevent infringements of privacy, wellbeing and dignity within safe access zones constitute a legitimate restriction on freedom of expression as contained within the Australian Constitution. I would state to the committee that rights stemming from the Australian Constitution concerning freedom of expression and communication are not absolute. There is essentially a compatibility test that the High Court will have to undergo when reviewing these laws, but we are of a legal opinion that the Victorian laws are reasonably proportionate, appropriate and adapted to the advancement of a legitimate end and they are consistent with constitutionally prescribed representative government.*
>
> *…We argue that on a couple of bases—primarily that it is particular types of conduct that is limited in scope and it is also limited in terms of geographical scale. We are talking about a zone of 150 metres—the same as what is proposed in the Queensland legislation—around a specific and contained number of healthcare facilities.*[210]

The Department of Health did not provide comment on the matter before the High Court, noting that it would not be appropriate.[211] The QLRC report states:

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208 Submission 111, p 10.

209 Submission 111, p 10.

210 Townsville public hearing, 10 September 2018, pp 17 – 18.

211 Department of Health, Correspondence dated 10 September 2018.

5.125 To the extent that safe access zone provisions prohibit certain conduct (such as protest or communications in relation to terminations) at or near termination services premises, they restrict the implied freedom of political communication and the right to peaceful assembly. However, neither the freedom of political communication nor the right of peaceful assembly is absolute.

5.126 Legislation may place some restrictions on the free expression of political communication, including peaceful protest, provided they are reasonably appropriate and adapted to serve a legitimate purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. Similarly, the right of peaceful assembly may be subject to restrictions that are necessary and reasonable in a democratic society in the interests of public safety, public order, or the protection of the rights and freedoms of other persons.

5.127 The right to protest must be balanced with other rights and freedoms. They include a right to sexual and reproductive health and rights to privacy and personal autonomy.[212]

6.8.6.5 The definition of 'termination services premises'

Some submitters raised concerns with the definition of termination services premises which, under clause 13, means premises at which a service of performing terminations on women is ordinarily provided, but does not include a pharmacy.

Maurice Blackburn suggested that the definition of termination services premises be replaced with the definition used in NSW which includes 'any premises at which medical services relating to aspects of human reproduction or maternal health, including termination, are provided, but does not include a pharmacy' at section 98A of the *Public Health Act 2010* (NSW).[213] In this respect, they noted:

*We are concerned that the proposed definition of "**termination services premises**" is too narrow in scope and may exclude facilities that only occasionally provide terminations. For example, this definition may exclude the practices of General Practitioners who are authorised to provide prescriptions for medications which induce terminations.*[214]

Women's Health Victoria stated:

WHV strongly recommends that all services or premises that provide abortions should be protected by safe access zones of 150 metres. Safe access zones must effectively ensure that women accessing medical abortions (which may be provided in a GP clinic) as well as surgical abortions (more often provided in a hospital or specialist clinic setting) are equally protected.[215]

True – Relationships and Reproductive Health also stated that "[a]ny service offering termination of pregnancy should be considered a safe access zone.[216]

Finally, Ms Ailsa McKeon stated:

…the definition of 'termination services premises' should be extended to include premises at which information or advice regarding any service of performing terminations on women is

212 QLRC Report, pp 182 – 183.

213 Submission 140, p 7.

214 Submission 140, p 7.

215 Submission 134, p 3.

216 Submission 131, p 3.

ordinarily provided, and also to pharmacies, which are expressly excluded at present. The latter are particularly likely to be targeted if in the vicinity of premises at which terminations are performed, which are themselves protected by safe access zones.[217]

The explanatory notes, the Department of Health and the QLRC report do not expand on the basis for the wording used to define termination services premises, although the definition is reflective of the QLRC's report.[218]

6.8.6.6 <u>150 metre safe access zone and ministerial discretion</u>

The explanatory notes state that the Bill:

…provides that a place is in the safe access zone if it is in the termination services premises or not more than 150 metres (or as varied under a Regulation by the relevant Minister) from an entrance to the premises. Variation of the distance will ensure the objectives of the safe access zones provisions are maintained.[219]

Submitters expressed a number of concerns with the 150 metre zone. For example, Women's Health Victoria noted:

…the Queensland Bill allows for the distance of the safe access zone to be amended by regulation by the relevant Minister. WHV strongly recommends that the Bill enshrine a minimum distance of at least 150 metres for safe access zones. The distance should only be able to be increased by regulation, and not decreased. To provide certainty and consistency, the distance for safe access zones should be consistent for all service providers (and not amended in relation to individual services).[220]

Maurice Blackburn stated:

We are concerned that allowing the safe access zone radius to be set by regulations makes it vulnerable to reduction by future governments to an extent that it is rendered ineffectual.

The safe access zone radius should also factor in potential attempts by anti-abortion protestors to stop patients entering clinics by accosting them at pedestrian access points.[221]

True – Relationships and Reproductive Health stated:

The establishment of 'safe zones' around any facility should consider line of sight and contextual factors. Set distances may be contestable. A minimum radius of 200 metres is preferred to 150 metres.[222]

Expressing concern with the ability of the Minister to increase or decrease the safe access zone, Pro Choice stated:

217 Submission 517, p 3.

218 QLRC report, p 184.

219 Explanatory notes, p 11.

220 Submission 134, p 3.

221 Submission 140, p 7.

222 Submission 131, p 3. A number of submissions suggested that the distance be increased including further than the 200 metres suggested in this submission (see online submissions 610, 575 and 810 for example).

> *…we believe this ministerial discretion potentially allows for a Minister's personal belief and ideology to override measures intended to prioritise the best interests of patients and staff of abortion provider premises.*[223]

Mr Drew Koppe also expressed concern with the proposed ministerial discretion, noting:

> *Under the Bill the Minister may, by regulation, extend these zones at her discretion and without reference to any criteria other than her belief in what is necessary to achieve the purpose of the Part. It is very troubling that these areas of free speech and free assembly exclusion may be expanded under the power of a Minister (with Governor in Council approval) and without further consideration by Parliament.*[224]

The explanatory notes refer back to the QLRC report which states:

> *5.136 The distance should be 150 metres, unless otherwise prescribed by the Minister by regulation. A distance of 150 metres is consistent with the majority of other Australian jurisdictions that have enacted safe access zone provisions. In most cases, this should be sufficient to ensure the privacy and unimpeded access of any person entering or leaving the premises, without imposing an undue burden on the implied freedom of political communication or the right of peaceful assembly.*
>
> *5.137 However, there may be cases where, due to the particular location or features of the premises, it is necessary to alter the distance of 150 metres (for example, if the termination services premises is part of a multi level, multi complex building). For this reason, the draft legislation should also provide that the Minister may prescribe another distance by regulation. The Minister's power is not limited to extending the distance, as there may be circumstances where it is appropriate to reduce it (for example, if the termination services premises is located near Parliament House or another public place where protests ordinarily occur).*
>
> *5.138 To ensure that the objectives of the safe access zone provisions are upheld, the draft legislation should provide that the Minister may recommend to the Governor in Council the making of the regulation only if satisfied that, having regard to the location of the premises, a distance of 150 metres is insufficient, or greater than is necessary, to ensure the privacy and unimpeded access of persons entering or leaving the premises.*[225]

The explanatory notes also identify that allowing the Minister to the discretion to increase or decrease the distance of a zone constitutes a potential breach of fundamental legislative provisions, however, that this breach is justified. The principles state that legislation is to have sufficient regard to the institution of Parliament. The notes refer to the ability to prescribe certain matters by regulation (as per the discretion of the Minister to change the safe access zone) as the possible breach.[226]

Referring to the QLRC report, the explanatory notes state:

> *The QLRC recommended (recommendation 5-3) providing flexibility to vary the automatic safe access zone of 150 metres around termination services premises. This recognises there may be cases where, due to the particular location or features of the premises, it is necessary to alter the*

223 Submission 263, p 8.

224 Submission 343, p 3.

225 QLRC report, pp 184 – 185.

226 Explanatory notes, p 15.

distance of 150 metres (for example, if the termination services premises is part of a multi-level, multi-complex building). The regulation making power is not limited to extending the distance, as there may be circumstances where it is appropriate to reduce it. The power can only be exercised if the Minister is satisfied a change is needed to ensure the privacy and unimpeded access of persons. The ability to vary the distance by regulation is a practical step in order to ensure the objectives of the safe access zone provisions are upheld (paragraphs 5.137 – 5.138 of the QLRC Report).[227]

6.8.6.7 Penalties relating to clause 15 and 16

The explanatory notes state that clause 15:

…creates the offence to engage in prohibited conduct in the safe access zone for termination services premises. The offence is a simple offence to be heard and decided in the Magistrates Court under the Justices Act 1886. The offence carries a maximum penalty of 20 penalty units or one year's imprisonment. The offence does not apply to communications between a person employed to provide a service at the termination services premises and a woman who is attending the premises. This is to ensure that communications relating to the treatment of the pregnant person do not give rise to a breach of the section.[228]

The explanatory notes state that clause 16:

…creates offences in relation to the making, publishing or distributing of a restricted recording without consent and without reasonable excuse. The offences are simple offences to be heard and decided in the Magistrates Court under the Justices Act. Each offence carries a maximum penalty of 20 penalty units or one year's imprisonment. The offences do not apply to a police officer doing a thing in the course of their duties, for example operating a body worn camera.

A restricted recording is an audio or visual recording of a person while the person is in, or entering or leaving, termination services premises; and contains information that identifies (or is likely to identify) that person. The section also contains definitions of the terms distribute, publish and visual recording. Footage taken by the occupier of a termination services premises for security purposes is provided as an example of what may be a reasonable excuse for these offences.[229]

A number of submitters expressed support for or noted their disagreement with the proposed penalties under clauses 15 and 16 generally. Some submitters expressed concerns with the reasonableness of the penalties proposed under the safe access provisions indicating they are disproportionate to the proposed offences.[230] Alternatively, it was also proposed that higher penalties should be implemented in the event a person repeatedly engages in prohibited conduct.[231]

Mr Matthew McInnes stated generally in relation to recording people:

…you should have their permission to do so and I believe it is illegal to record a conversation without informing the other party that you are. I think that an abortion clinic isn't a special case

[227] Explanatory notes, p 15.

[228] Explanatory notes, p 22.

[229] Explanatory notes, pp 22 – 23.

[230] For example, see submissions 411 and 498, and online submission 2703.

[231] Submission 140, p 9.

that should exempts [sic] the rights of otherwise law abiding people from general video and audio recording.[232]

Maurice Blackburn noted that the penalties which apply under clause 16, which prohibit recording persons in or near termination services (and distributing recordings), should also be increased where a person engages in repeated breaches of this provision.[233] Maurice Blackburn also suggested:

- clause 16(1)(a) be amended to refer to audio or visual recordings of a person within a safe access zone to ensure the privacy of that person[234]
- a new clause 16(3)(c) be inserted to ensure that video or audio recording of a person engaged in prohibited conduct within a safe access zone is lawful and can be provided to staff and contractors of the premises or the police for security purposes (without the recorded persons consent), and
- a new clause 16(4) be inserted exclude the operation of security cameras (for security reasons only) at termination services premises (or connected or near the premises).[235]

Ms Anna Walsh, Mr Michael Quinlan and Mr Michael McAuley note that clause 15 does not include a reasonable excuse exception such as is included at clause 16(2), and suggest that this was either an oversight or indicated the Parliament is seeking to 'interpret the provision harshly'.[236]

The explanatory notes recognise that the penalties proposed at clause 15 and 16 of the Bill reflect recommendations 5-4, 5-5 and 5-6 of the QLRC Report.[237]

In this respect, the QLRC report states:

5.145 The penalty in relation to each new offence should be a fine of 20 penalty units or 1 year's imprisonment. This is approximately double the penalty for a public nuisance offence under the Summary Offences Act 2005, and is appropriate because of the targeted nature of the offence and the harm that may be caused. It is also consistent with the penalty prescribed in other jurisdictions that have enacted safe access zone provisions.[238]

Further, the explanatory notes identify that the creation of the new offences and related penalties constitute a potential breach of the fundamental legislative provisions in relation to the rights and liberties of individuals. The notes provide that the potential breach is justified, referring back to the conclusions of the QLRC in their report, and stating:

…the penalty is approximately double the penalty for a public nuisance under the Summary Offences Act 2005 but this is appropriate because of the targeted nature of the offences and the harm that may be caused. Consequently, any potential breach of fundamental legislative principles is justified on this basis.[239]

232 Online submission 808.

233 Submission 140, p 9.

234 Submission 140, p 9.

235 Submission 140, pp 9 – 10.

236 Submission 91, p 8.

237 Explanatory notes, p 13.

238 QLRC Report, p 186.

239 Explanatory notes, p 13.

With respect to the concern that clause 15 does not refer to 'reasonable excuse' the Department advised the committee:

> *The only persons expressly excluded from the offence in clause 15 are persons employed to provide a service at the termination services premises. The QLRC notes at paragraph 5.142 that this is to ensure that communications relating to the treatment of the pregnant person do not give rise to a breach of the section.*
>
> *The usual defences and excuses for criminal responsibility in the Criminal Code will apply to the offences in clause 15 and 16 of the Bill including, for example, the excuse of mistake of fact in section 24 of the Criminal Code.*[240]

Committee comment

Sufficiency of existing laws

While a number of laws currently exist that could be used to address concerns about harassing and intimidating behaviour at termination services premises, based on the information provided, these laws do not address all conduct that can occur outside these facilities or the particular needs of women who are seeking to use termination services.

Noting also the experiences in other jurisdictions before and after safe access zones laws were established, the committee agrees that specific laws prohibiting conduct within these zones is required.

Prohibited conduct

Based on the explanatory notes, prohibited conduct under clause 15 was intended to include footpath or sidewalk counselling. In this respect, prohibited conduct under clause 15 is an objective assessment based on whether conduct is reasonably likely to deter a person as per clause 15(1)(c) from entering or leaving termination service premises; requesting or undergoing a termination; or performing, or assisting in the performance of a termination. Clause 15(2) provides a person engages in prohibited conduct regardless of whether another person sees or hears the conduct or is deterred from taking an action mentioned in clause 15(1)(c).

Concerns were raised that the inclusion of 'reasonably likely to deter' in clause 15 sets a high bar, is vague and may result in an ordinary person not considering conduct that could cause psychological distress meets this requirement.

Conversely, concerns were also raised that the definition of prohibited conduct is too broad.

The committee is satisfied that the intention of the provision is clear, noting that the explanatory notes expressly state the intent to include actions such as footpath or sidewalk counselling. Additionally, clause 15(2) makes the assessment of prohibited conduct an objective assessment separate from whether a person is deterred under clause 15(1)(c) by the conduct.

Imposition on rights

The committee agrees that in the circumstances the imposition on the freedom of political communication and assembly are justified to protect the various rights of persons seeking to obtain a termination and that the Bill provides an appropriate balance of these rights.

[240] Department of Health, Correspondence dated 10 September 2018.

However, uncertainty remains as to whether the safe access zones provisions will be found to be constitutionally valid by the High Court of Australia. In the event that they are not, those provisions will be severed from the operation of the Bill.

Definition of termination services premises

Limited comment was provided in relation to the basis for the proposed definition of termination service premises in clause 13 of the Bill.

With regard to the concerns that not all facilities in which a termination may occur will be protected by the safe access zone requirements, not least because a termination is only performed occasionally, the committee considers that the term 'ordinarily' in clause 13 should be interpreted as referring to premises in which a termination would normally be performed, including hospitals and GP clinics, not the frequency with which such a procedure is conducted. The committee notes that in this context it is important that certainty be provided around where a safe access zone is in force.

The committee does not support suggestions that the definition should be extended to premises in which information and advice about services providing terminations is provided to women, or to pharmacies. This proposal would impact on a significantly greater space than is proposed under the Bill and therefore upon the rights of persons and the committee has not been presented with sufficient evidence to justify such an extension.

150 metre safe access zone and ministerial discretion

The 150 metre distance proposed in the Bill appears to be reasonable and consistent with the distances applied in other jurisdictions with safe access zones.

Additionally, while noting the concerns of the submitters in regard to the discretion provided to the Minister under clause 14(4) to increase or decrease the distance of a safe access zone, the committee considers this to be a reasonable power which will allow for flexibility in the legislation to ensure that the intent of the provision is being achieved in a range of different circumstances.

Penalties under clause 15 and 16

While there may be some concerns about the reasonableness of the proposed penalties, which are approximately double the penalty for the offence of public nuisance under the *Summary Offences Act 2005* (Qld), the committee agrees that this is appropriate in light of the targeted nature of the offences in question and the potential for harm that could be caused.

The committee does not at this time agree with the proposal to impose greater penalties where a person repeatedly breaches safe access zone provisions, noting that the penalties have not been implemented and tested to determine whether they are effective or not. The committee also notes that the penalties may prove to be a greater deterrent to repeated behaviour as a consequence of being approximately double the penalty applicable to a public nuisance offence. In the event that this is not the case it may be appropriate to consider whether greater penalties for repeated breaches of safe access zones should be introduced.

The committee also notes that the insertion into clause 15 of a reasonable excuse provision is not necessary given that the department advised the clause is only intended to exclude persons employed at termination services premises and other defences and excuses under the criminal law continue to apply.

The committee does not support the amendments proposed to clause 16. The proposed amendment to clause 16(1)(a) to refer to audio or visual recording of a person within a safe access zone (as opposed to persons in, entering or leaving termination services premises) gives rise to uncertainty, noting that persons may make a recording for incidental purposes within a safe access zone which may not fall within the scope of the reasonable excuse provision. The proposed inclusion of clauses 16(3)(c) and 16(4) relate to matters that appear to already fall within the reasonable excuse provision. The committee considers that this includes premises adjoining or near termination services premises using recording devices for security purposes.

6.9 Offences for unqualified persons performing or assisting in a termination

The Bill proposes to amend the Criminal Code by creating new offences for an unqualified person to perform, or assist in, a termination of pregnancy. An unqualified person is someone who is not a medical practitioner or a prescribed practitioner.

Assisting in the termination of a pregnancy can include supplying, or procuring, a drug to terminate a pregnancy and administering such a drug. A pregnant woman who is provided with such a drug does not commit an offence if she attempts to terminate the pregnancy by taking that drug.[241]

The proposed maximum penalty for performing, or assisting in, a termination of pregnancy is seven years' imprisonment.

Submitters' views

There was broad support in submissions for creating new offences for unqualified persons to perform, or assist in, a termination of pregnancy.

6.10 Other Acts proposed to be changed by the Bill

If passed, the Bill would amend a number of other Acts. These potential amendments are discussed below.

6.10.1 Proposed amendment of the *Evidence Act 1977* (Qld)

The Bill proposes to amend the *Evidence Act 1977* (Qld) to remove references to 224 – 226 of the Criminal Code and to add references to section 319A of the Bill, which covers the termination of pregnancy by an unqualified person.[242]

6.10.2 Proposed amendment of the *Guardianship and Administration Act 2000* (Qld)

The Bill proposes to amend section 71 of the *Guardianship and Administration Act 2000* (Qld), which provides for the Queensland Civil and Administrative Tribunal to consent for an adult with impaired capacity to have that adult's pregnancy terminated.[243] The Bill proposes to achieve this by inserting text to ensure that a termination of pregnancy for such an adult is made under the Bill if it is passed.

6.10.3 Proposed amendment of the *Penalties and Sentences Act 1992* (Qld)

The Bill proposes to amend section 151F of the *Penalties and Sentences Act 1992* (Qld), which outlines when a drug and alcohol treatment order cannot be made. When defining a sexual assault offence,

241 Termination of Pregnancy Bill 2018, cl 25.

242 Termination of Pregnancy Bill 2018, cls 26 – 30.

243 Termination of Pregnancy Bill 2018, cls 31 – 32.

the Bill proposes to remove reference to an offence against sections 224 – 226 of the Criminal Code as not being a sexual assault offence.

6.10.4 Proposed amendment of the *Police Powers and Responsibilities Act 2000* (Qld)

The Bill proposes to amend the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA), to facilitate the proposed safe access zone provisions.[244]

If a person has committed, is committing, or is about to commit an offence against the safe access zone provisions, the police can search that person without a warrant.[245] The police can also search a vehicle without a warrant if there is something in the vehicle that may be evidence of an offence against the safe access zone provisions.[246]

6.10.5 Proposed amendment of the *Transport Operations (Road Use Management) Act 1995* (Qld)

The Bill proposes to insert a transitional provision for the Termination of Pregnancy Act 2018, stating schedule 2 applies as if it included a reference to section 226 of the Criminal Code (Supplying drugs or instruments to procure abortion) as in force at any time before its repeal by the Termination of Pregnancy Act 2018.[247]

The Bill also proposes to amend the list of disqualifying offences under the Criminal Code for crossing supervisors (schedule 2) by removing the reference to section 226 of the Criminal Code and inserting a reference to what will be section 319A of the Bill if it is passed, making terminating a pregnancy by an unqualified person a disqualifying offence under the Criminal Code for crossing supervisors.[248]

6.11 Matters raised in submissions but not included in the Bill

A wide range of issues were raised in submissions that are outside the scope of the Bill. A selection of these is briefly discussed below.

6.11.1 Provision of counselling services to women considering a termination of pregnancy

Many submitters raised the issue of counselling for women considering an abortion, as well as the provision of counselling after a termination occurs.

Some submitters suggested that counselling should be mandatory for a woman considering a termination, while others considered there should be an obligation for counselling to be provided if a woman considering a termination requests counselling.

6.11.2 Education

A number of submitters raised the need for broad community education (including in schools) in their submissions, particularly in relation to the prevention of unintended pregnancy. The Young Women's Advisory Group (YWAG) were concerned that in Queensland, sex education is not compulsory, with the principal making the decision about whether a school provides sex education. The YWAG stated:

> *Sexuality and relationships education needs to be given greater priority, and more significantly incorporated into the Queensland curriculum for young people to have adequate knowledge of*

244 Termination of Pregnancy Bill 2018, cls 35 – 37.

245 Termination of Pregnancy Bill 2018, cl 36.

246 Termination of Pregnancy Bill 2018, cl 37.

247 Termination of Pregnancy Bill 2018, cl 39.

248 Termination of Pregnancy Bill 2018, cl 40.

> *contraceptive choices, as well as the ability to negotiate healthy and consensual relationships and sex. Comprehensive sex education is therefore an important part of the context in which women and people with uteruses' experience unplanned pregnancy.*[249]

RANZCOG also stated its support for broad community education, including schools, and highlighted the need to prevent unintended pregnancy as a priority.[250]

As part of their community education programs, Children by Choice deliver sexuality and relationships education to young people through schools and youth centres:

> *Most of our work with young people is centred around those disengaged from mainstream education and is delivered through alternative education programs, community organisations, and behavioural support groups. 300 young people took part in these programs in 2016.*[251]

Other submitters called for the development of a broad sexual and reproductive health strategy for Queenslanders. The Queensland Nurses and Midwives Union suggested the Queensland Government work with the federal Department of Health to, 'develop and implement a broad female sexual and reproductive health strategy that includes comprehensive access to education, services, counselling and information'.[252] Women's Health Victoria advised that Victoria had developed and implemented its own comprehensive state-wide strategy, *Women's Sexual and Reproductive Health: Key Priorities 2017-2020,* and suggested a similar strategy would support and coordinate a comprehensive approach to advancing sexual and reproductive health in Queensland:

> *In Queensland, such a strategy could include additional resourcing for Children by Choice and/or the establishment of a statewide sexual and reproductive health information service to provide non-biased information about contraception, including emergency contraception and abortion. Timely access to information and services will support women to access services as early as possible. WHV has recently been funded by the Victorian Government to establish such a service for the first time in Victoria under our state sexual and reproductive health strategy.*[253]

Committee comment

The committee is aware that this issue is outside the scope of the Bill. Regardless of whether the Bill is passed, the committee sees significant value in better educating people – especially young people – about how to avoid unwanted pregnancies.

[249] Submission 130, p 8.

[250] Submission 137, p 1.

[251] Submission 108, p 6.

[252] Submission 121, p 4.

[253] Submission 134, p 4.

7 Conscience votes (personal votes)

Given the nature and sensitivity of the issues covered by the Bill, and the Government's public commitment to allow its Members a personal vote (also known as a conscience vote or free vote) when the Bill is debated in the Legislative Assembly, the committee considers it would be beneficial to all Members to provide some brief information in this report relating to conscience voting.

7.1 The history and philosophy of conscience votes

The committee sought briefs on the matter of conscience voting from Dr Paul Williams of Griffith University and the Parliamentary Library. Dr William's provided an oral briefing on a report he prepared for the committee titled 'Report to the Health, Communities, Disability Services and Prevention of Domestic and Family Violence Prevention Committee on the history, philosophy and practice of Parliamentary Conscience Votes'.

In his report, Dr Williams states that:

> *Conscience votes can be defined as "that rare vote in Parliament in which members are not obliged by the parties to follow a party line but vote according to their own moral, political, religious or social beliefs".*[254]

A conscience vote, to be distinguished from the historical concept of a free vote,[255] generally arises in consideration of legislation that touches "personal moral-ethical issues… for example abortion, capital punishment, euthanasia, contraception, stem cell research, cloning, same-sex relationships".[256]

The committee heard that conscience votes have traditionally been granted by both major parties in relation to Bills that touch upon sensitive matters of ethics, morality or religion, or deeply held personal views.

Within the Queensland Legislative Assembly, past conscience debates include the Civil Partnerships Bill 2011, Surrogacy Bill 2009, Prohibition of Human Cloning Bill 2003, and Regulation of Research Involving Human Embryos and Assisted Reproductive Technology Bill 2003.[257]

As discussed earlier on page 5 of the report, six of the seven abortion reforms passed by other Australian jurisdictions (NSW, Vic, Tas, ACT and NT) during the past decade were the subject of conscience votes in their respective parliaments.

Conscience votes are rare in Australia's state, territory or Commonwealth parliaments, occurring approximately every two years, although their frequency has increased in recent decades. Dr Williams notes that:

> *The frequency of conscience votes in Australian parliaments has increased in recent decades for two reasons: advances in medical and bio-technical science have forced parliaments to confront issues such as cloning and stem cell research; and the fact the politics of human rights – led by*

254 P Williams, *Report to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on the history, philosophy and practice of Parliamentary Conscience Votes*, 24 September 2018, p 2.

255 P Williams, 2018, p 2.

256 P Williams, 2018, p 2.

257 Queensland Parliament Fact Sheet, *Voting in the Queensland Parliament*, updated April 2018.

> *media, pressure groups and constituents – have exploded in force since the 1970s, particularly over such issues as contraception, abortion and euthanasia.*[258]

Dr Williams further states that media and voters strongly approve of conscience votes,[259] and that they offer a legitimate option for those unable to reconcile personal beliefs with constituency or public expectations.[260] This was most recently and powerfully demonstrated during the public and parliamentary debate surrounding the Marriage Amendment (Definitions and Religious Freedoms) Bill 2017 (the Marriage Equality Bill) which passed into Commonwealth law in 2017 following a high profile conscience vote.

Ultimately, conscience votes are inherently democratic, and accommodating the personal beliefs and moral values of otherwise loyal Members when debating sensitive legislation can only add to the democratic surplus.[261]

7.2 The practice of conscience voting in the Queensland Legislative Assembly and elsewhere

Conscience votes are described in House of Representatives Practice as follows:

> *A free vote is a political rather than a procedural matter and is not specifically identified as such in the Votes and Proceedings nor, apart from any comments by Members during debate, in Hansard. Items of business described in debate as being subject to a free vote may not necessarily be formally voted on at all, perhaps being carried without division. Even though a party may allow a free vote of its Members on a particular issue the vote may, in fact, follow party lines substantially or completely.*[262]

A conscience vote on a particular Bill or motion in parliament may be allowed by a single party or all parties.[263]

There are specific procedures for voting in a conscience debate in the Queensland Legislative Assembly. In these debates voting is by personal vote instead of party voting, in accordance with Standing Rules and Orders of the Legislative Assembly.[264] Standing Order 106 makes provision for party voting and standing order 107 makes provision for personal votes.

Standing Order 107 provides:

(1) When the bars have been closed, the Speaker shall state the question to the House, and then direct the 'Ayes' to proceed to the right of the Chair and the 'Noes' to the left.

(2) After members have divided, the Speaker shall appoint two tellers from each side. If two tellers cannot be found for one side of the question, the Speaker must immediately declare the resolution of the House. The member who called for the division may ask for their dissent to

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258 P Williams, 2018, pp 9 – 10.

259 P Williams, 2018, p 10.

260 P Williams, 2018, p 14.

261 P Williams, 2018, p 10.

262 'Chapter 8: order of business and the sitting day Australia Parliament' in *House of Representatives Practice*, 6th ed, September 2012, p 283 – 4.

263 P Balint & C Moir, *Understanding conscience vote decisions: The case of the ACT* *Australasian Parliamentary Review*, vol 28(1), Autumn 2013, p 44.

264 Queensland Legislative Assembly, *Standing Rules and Orders of the Legislative Assembly*, SO 106 and SO 107.

be recorded in the Record of Proceedings. The Speaker then directs the Clerk to record that dissent.

(3) The tellers shall count the members voting and record the vote of each member present on the division sheets.

(4) A member may not change their vote once the tellers have been appointed.

(5) The tellers shall report the numbers to the Speaker.

(6) The Speaker shall announce the result of the division to the House.

(7) In case of confusion or error concerning the numbers reported, unless it can be otherwise corrected, the House shall proceed to another division on the question.

(8) The names of the members who have voted are recorded in the Record of Proceedings.

Standing Orders 106 and 107 were introduced in 2014. Prior to this, the process for conscience voting (now personal voting) was not specifically provided for in the Standing Orders.

Party leaders make the decision to allow party members a conscience vote or not. A party whip will advise the Speaker in advance if their party are to have a conscience debate on an upcoming division.[265]

Recommendation 2

The committee recommends that, in light of the sensitive subject matter and the history of consideration of termination of pregnancy and similar matters, the Termination of Pregnancy Bill 2018 be subject to a personal vote, otherwise known as a conscience vote, by Members in accordance with section 107 of the *Standing Rules and Orders.*

[265] Queensland Parliament, *Voting in the Queensland Parliament*, April 2018.

8 Compliance with the *Legislative Standards Act 1992*

8.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (Qld) (LSA) states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of FLPs to the Bill. The committee brings the following issues to the attention of the Legislative Assembly in relation to clauses 7, 8, 14, 15, 16, 17, 25, 36 & 37.

8.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Creation of new offences

The Bill proposes to create new Criminal Code offences in relation to an unqualified person who performs a termination on a woman, or who assists in the performance of a termination on a woman.[266] The maximum penalty for each offence is seven years' jail.

Potential FLP issues

The creation of new offences might breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of the individual. Additionally, any penalty should be proportionate to the offence.

In relation to the new offences, the explanatory notes state:

> *The QLRC recommended (recommendation 3-8) the need for offences of this type as a necessary consequence of the repeal of current sections 224, 225 and 226 of the Criminal Code in order to ensure the health, safety and well-being of women is adequately protected by criminalising the practice of unregulated terminations. Any breach of fundamental legislative principle is justified on this basis.*[267]

In relation to the proportionality of penalties, the Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

> *Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[268]

Here, the penalties imposed are broadly consistent with the current provisions. The QLRC recommended (recommendation 3 – 10) the maximum penalty for the new offences should be seven years' imprisonment:

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266 Termination of Pregnancy Bill 2018, cl 25.

267 Explanatory notes, p 12.

268 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

> [This] *is an appropriate penalty, given that the mischief to which this offence is addressed is risk to the health of the woman posed by an unqualified person performing or assisting in the performance of a termination.*[269]

Committee comment

In considering issues of fundamental legislative principle arising from clause 25 (as distinct from policy issues regarding the proposed repeal of the current offence provisions), the committee considers that the proposed offences in clause 25 are appropriate and the penalties are proportionate, and accordingly, any breach of the rights and liberties of individuals is justified.

New criminal offence for prohibited behaviour in safe access zones

The Bill proposes to create a new offence of engaging in 'prohibited conduct' in a safe access zone,[270] as well as proposing to create a new offence for a person to make, publish or distribute a restricted recording of another person, without the other person's consent and without reasonable excuse.[271] A restricted recording is defined as an audio or visual recording of a person:

- while the person is in, or entering or leaving, a termination services premises, and
- that contains information that identifies, or is likely to lead to the identification of, the person.

Clause 14 defines a 'safe access zone', relative to 'termination services premises'. The latter term is defined[272] to mean premises at which a service of performing terminations on women is ordinarily provided (but not including a pharmacy).

Under clause 14, a place is in the safe access zone for termination services premises if the place is:

- in the premises, or
- not more than the prescribed distance from an entrance to the premises.

Unless a distance is prescribed by regulation, the prescribed distance is 150 metres.

The minister may recommend the making of such a regulation only if satisfied that, having regard to the location of the premises, a prescribed distance of 150 metres is insufficient, or greater than necessary, to achieve the purpose of this part in relation to the premises.[273]

Under clause 15, conduct in the safe access zone for termination services premises is *prohibited conduct* if the conduct:

- relates to terminations or could reasonably be perceived as relating to terminations
- would be visible or audible to another person in, or entering or leaving, the premises, and
- would be reasonably likely to deter a person mentioned above from:

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269 QLRC report, paragraph 3.278.

270 Termination of Pregnancy Bill 2018, cl 15.

271 Termination of Pregnancy Bill 2018, cl 16.

272 Under cl 13, Termination of Pregnancy Bill 2018.

273 Clause 11 sets out these purposes as *to protect the safety and well-being, and respect the privacy and dignity, of persons accessing services provided at termination services premises; and persons who are employed to provide services at termination services premises or otherwise need to access the premises in the course of their duties or responsibilities.*

- entering or leaving the premises
- requesting or undergoing a termination, or
- performing, or assisting in the performance of, a termination.

Conduct may be prohibited conduct whether or not another person is deterred from taking any of these last-mentioned actions or sees or hears the conduct.

Potential FLP issue

The clauses (particularly clause 15) will prevent people from engaging in activities such as protesting or demonstrating within a specified distance of a termination service premises. The clauses impact upon freedom of speech and protest and political communication. The issue arises as to whether these prohibitions have sufficient regard to the rights and liberties of individuals.

As noted in the former committee's report on the Health (Abortion Law Reform) Amendment Bill 2016:

> *An implied right to freedom of political communication exists in Australia, that operates as a right to freedom from government restraint about political matters.*[274]

The explanatory notes state:

> *The QLRC recommended (recommendation 5-4) the creation of such an offence on the basis that termination is a sensitive and personal issue, and the presence of people engaging in activities such as protesting or holding prayer vigils near termination services premises may impact on the safety, privacy and well-being of women who are accessing those premises and of service providers (paragraph 5.1 and 5.130 of the QLRC Report).*[275]

In considering whether existing laws could address harassing or intimidating behaviour, the explanatory notes justify the new offence under clause 15 by making reference to the QLRC's view that the existing offences do not adequately address the full range of behaviours engaged in by people who oppose terminations at or near termination service premises. The notes also state that any potential breach of fundamental legislative principle is justified on the following basis set forth by the QLRC:

> *…safe access zone provisions are intended to promote public safety and public order and will provide a simple and effective mechanism for the protection of women and service providers. Similar provisions appear to have been effective in curtailing harassing and intimidating conduct at or near termination services premises in other jurisdictions.*[276]

Penalties

The new offences in clauses 15 and 16 each carry a maximum penalty of 20 penalty units or one year's jail. The QLRC noted that this is approximately double the penalty for a public nuisance offence under the *Summary Offences Act 2005,* but that this appropriate because of the 'targeted nature of the offences and the harm that might be caused'. The explanatory notes state the penalties are justified on that basis.[277]

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274 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 33a, 55th Parliament: Health (Abortion Law Reform) Amendment Bill 2016*, p 41.

275 Explanatory notes, p 13.

276 Explanatory notes, p 13.

277 Explanatory notes, p 13.

Committee comment

The Bill attempts to balance competing interests between, on the one hand, the right to freedom of speech and political communication and the right to protest and, on the other hand, the right to privacy and personal autonomy.

On balance, the committee considers that any breach of fundamental legislative principle posed by clauses 15 and 16 in relation to rights and liberties of individuals is justified.

Conscientious objection by health practitioners

The Bill proposes to allow a health practitioner to have a conscientious objection to performing a termination.[278] In such a situation, where a woman requests a registered health practitioner to perform a termination or advise about the performance of a termination, the registered health practitioner must, in addition to disclosing their conscientious objection, refer the woman or transfer her care to another registered health practitioner or health service provider who does not have a conscientious objection.

Clause 8(4) provides that a conscientious objection does not limit the duty of care owed by a registered health practitioner to provide a service in an emergency.

Potential FLP issues

The explanatory notes identify that:

> *These requirements may be considered to impact on the rights and liberties of registered health practitioners to practice according to their belief.*[279]

The explanatory notes reference a statement by the QLRC in its report:

> *…the recommended approach balances the right to freedom of conscience with other individual rights, achieves consistency with current codes of conduct and guidelines, and assists in enabling access to services.*[280]

The explanatory notes then conclude that 'any potential breach of fundamental legislative principles is justified on this basis.'[281]

Clause 8(4) provides that a conscientious objection does not limit the duty of care owed by a registered health practitioner to provide a service in an emergency.

Committee comment

The committee considers the potential breach of fundamental legislative principles is justified.

[278] Termination of Pregnancy Bill 2018, cl 8.

[279] Explanatory notes, p 14.

[280] QLRC Report, paragraph 4.150.

[281] Explanatory notes, p 14.

Police power to search without warrant

Clause 36 seeks to amend section 30 of the *Police Powers and Responsibilities Act 2000* (PPRA) aimed at ensuring police have enforcement powers in relation to safe access zones. This power will allow a police officer to stop, detain and search a person and seize anything that may be evidence without a warrant if they hold the requisite reasonable suspicion.

Clause 37 would effect a corresponding amendment to section 32 of the PPRA to enable searching of vehicles without a warrant and with reasonable suspicion.

Potential FLP issues

As these powers are being exercised without a warrant issued by a judicial officer, they could be viewed as not having sufficient regard to the rights and liberties of individuals. Section 4(3)(e) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The explanatory notes state that any potential breach of fundamental legislative principle is justified on the following basis set out in the QLRC report:

> *By supporting police enforcement powers in safe access zones these amendments are consistent with the overall purpose of protecting the safety and well-being of persons accessing services. Any potential breach of fundamental legislative principles is justified on this basis.* [282]

Committee comment

The committee considers that any breach of an individual's rights and liberties in relation to clauses 36 & 37 is justified.

Onus of proof – Section 4(3)(d) *Legislative Standards Act 1992*

Section 4(3)(d) of the LSA requires that legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

Clause 17 of the Bill provides for the use of evidentiary certificates in relation to proceedings for safe access zone related offences. In such a proceeding a signed certificate that the stated premises are termination services, or a place is in a safe access zone, may be taken to be evidence of the matter.

Potential FLP issue

Generally, legislation should not reverse the onus of proof in criminal matters, nor provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.[283]

The explanatory notes state:

> *Evidentiary aids benefit the administration of justice by potentially saving time and costs rather than requiring witnesses to appear and give evidence for non-contentious matters. Certificates are a means of facilitating the evidence and not conclusive proof of the matter. They may be*

[282] QLRC recommendations 5 – 7. See the explanatory notes, p 15.

[283] *Alert Digest 2002/4, Scrutiny of Legislation Committee – 50th Parliament*, p 27, para 10.

challenged by the defence. Any potential fundamental legislative principles breach is considered justified on that basis.[284]

Committee comment

Given the nature of the matters that might be covered by a certificate, the advantages of using them, and noting that the evidence can be challenged by the defence, the committee considers that any reversal of onus of proof is justified in relation to clause 17.

8.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Clause 7 provides power to expand, by regulation, the list of categories of registered health practitioners who, in the practice of his or her health profession, may assist in the performance of a termination by a medical practitioner.

The explanatory notes state:

This ensures flexibility to keep pace with future changes in clinical practice so that assistance in terminations can be provided by existing or emerging health professions as appropriate. Other registered health professions would only be prescribed if assisting a medical practitioner to perform a termination is within their scope of practice. Any potential fundamental legislative principles breach is considered justified on this basis.[285]

As noted above, under clause 14, the minister may recommend the making of a regulation prescribing the distance for determining a safe access zone, only if satisfied that, having regard to the location of the premises, the distance of 150 metres (prescribed in clause 14(2)) is insufficient, or greater than necessary, to achieve the purpose of part 4.

There might be cases where, due to the location or features of a particular premises, it might be necessary to vary the 150 metre distance. The explanatory notes give an example of a premises in a high rise or multi-complex building and describe the power to vary the distance as:

…a practical step in order to ensure the objectives of the safe access zone provisions are upheld.[286]

It is noted that while the minister, in recommending a regulation, must be satisfied as to the 'negative' (that is, that the 150 metre distance is inappropriate as either too great or insufficient), there is no *express* requirement that the minister be satisfied as to the 'positive' (that is, that the distance to be prescribed by regulation is appropriate.)

Potential FLP issue

Appropriate delegation of legislation

Under section 4(4) of the LSA, whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons, and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

284 Explanatory notes, p 15.

285 Explanatory notes, p 15.

286 Explanatory notes, p 15.

Committee comment

In this case, the delegated power is to be exercised by the minister, and by regulation, which would be subject to the disallowance power of the Parliament. The power has some limits on it in each case. In the circumstances, the committee is satisfied that the delegation of legislative power has sufficient regard to the institution of Parliament.

8.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced and sets out the information an explanatory note should contain.

Committee comment

The explanatory notes tabled with the introduction of the Bill are fairly detailed and contain the information required by Part 4 as well as a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – Officials at public departmental briefing on 24 August 2018

Department of Health

- Dr John Wakefield, Deputy Director-General, Clinical Excellence Division
- Ms Kirsten Law, Director, Legislative Policy Unit, Strategy, Policy and Planning Division

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Julie Rylko, Director, Strategic Policy and Legal Services

Appendix B – Witnesses at public hearings

Townsville, Monday, 10 September 2018

Maurice Blackburn Lawyers

- Ms Katie Robertson, Senior Associate, Social Justice Practice
- Mr Rene Flores, Senior Associate and Regional Office Leader

Cherish Life

- Ms Teeshan Johnson, Executive Director

Australian Christian Lobby

- Ms Wendy Francis

Harrison's Little Wings Inc.

- Ms Melanie McKenzie

Citizens

- Ms Theresa Anderson
- Ms Judith Chandler
- Ms Ashleigh Foley
- Mr William Tento

Children by Choice

- Ms Daile Kelleher, Manager
- Ms Sian Tooker, Counsellor

Cairns, Tuesday, 11 September 2018

Citizens

- Dr Tim Coyle
- Professor Caroline de Costa
- Professor Heather Douglas
- Dr Liz McKenna
- Dr Heather McNamee
- Ms Zena Mason
- Ms Anna Owczarek
- Ms Miriam Wentworth

Harrison's Little Wings Inc.

- Ms Melanie McKenzie

Pro Choice Cairns

- Dr Kay Haig
- Ms Carla Gorton
- Ms Elizabeth Power

Cairns Women's Centre

- Ms Jane Doyle, Manager

Brisbane, Wednesday, 12 September 2018

Marie Stopes

- Dr Philip Goldstone, Medical Director

Citizens

- Dr Carol Portmann

Harrison's Little Wings Inc.

- Ms Melanie McKenzie

Cherish Life

- Dr Donna Purcell, President
- Ms Teeshan Johnson, Executive Director

Australian Medical Association Queensland

- Dr Michael Cleary, Vice President
- Dr Bav Manoharan, Director and Councillor
- Dr Alex Markwell, Past President

Human Rights Law Centre

- Ms Adrianne Walters, Senior Lawyer

Queensland Law Society

- Mr Ken Taylor, President
- Ms Karen Williams, QLS Chair – Health and Disability Law Committee
- Ms Rebecca Fogerty, QLS Deputy Chair – Criminal Law Committee

TC Beirne School of Law, University of Queensland

- Professor Nicholas Aroney
- Dr Paul Harpur
- Dr Luke McLindon

Australian Family Association

- Mrs Angela Duff, Queensland Vice-President

- Mr Alan Baker, State Committee Member

Archdiocese of Brisbane

- Mr Peter Pellicaan, Private Secretary to the Archbishop

Appendix C – Officials at public departmental briefing on 17 September 2018

Department of Health

- Dr John Wakefield, Deputy Director-General, Clinical Excellence Division
- Ms Kirsten Law, Director, Legislative Policy Unit, Strategy, Policy and Planning Division

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Julie Rylko, Director, Strategic Policy and Legal Services

Appendix D – Access to termination services in selected countries

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
Legislation/other sources	*Crimes Act 1961* (NZ) (CA); *Contraception, Sterilisation, and Abortion Act 1977* (NZ) (CSAA)	Regulation of abortion is state-based and varies from state to state[287]	*Canada Health Act 1985*	*Abortion Act 1967* (UK) (AA)	*Protection of Life During Pregnancy Act 2013* (PLDPA)	*Offences Against the Person Act 1861* (UK) *Criminal Justice Act (Northern Ireland) 1945* (NI); *Infant Life (Preservation) Act 1929* (UK)	*Law No. 75-17 of January 1975 Regarding Voluntary Interruption of Pregnancy* (VIP)	*German Criminal Code 2016 ss 218-219b* *Act on Assistance to Avoid and Cope with Conflicts in Pregnancy* (AAACCP)
Can a woman access an abortion on request? If so, up to how many weeks of pregnancy?	No (s 187A(1) CA)	Varies state to state	Yes No gestational limit	No	No	No	Yes Up to 12 weeks	Yes Up to 12 weeks
After how many weeks' gestation are reasons needed to access an abortion?	0 weeks (s 187A(1) & s 187A(3) CA)	43 states prohibit abortion except when necessary to protect the woman's life or health, after a specified point in pregnancy (GIa)	NA	Reasons are required at any time during pregnancy.	Reasons are required at any time during pregnancy.	Reasons are required at any time during pregnancy.	12 weeks	Between 12 and 22 weeks
Is any second opinion required?	Yes for all abortions (s 187ACA) & ss 32 & 33 CSAA	19 states require the involvement of a second physician after a specified point (GIa & GIb))	No	Yes	Yes	The *Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland* recommends two doctors should	Yes	Yes, in the case of medical or criminal grounds for an abortion, and the certifying doctor may not perform the abortion.

287 Guttmacher Institute, 2018, *An Overview of Abortion laws*, September and Guttmacher Institute, 2018, *State facts about Abortion*, January.

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
						make the clinical assessment.		
Can medical practitioners refuse to provide abortion advice/and or treatment because they have a conscientious objection to abortion?	Yes (s 46 CSAA)	45 states allow individual health care providers to refuse to participate in an abortion. 42 states allow institutions to refuse to perform abortions, 16 of which limit refusal to private or religious institutions. (GIa)	No	Yes S 4 AA	Yes S 17 PLDPA	No[288]	Yes. Any health care professional may refuse to participate in an abortion, but a doctor who does so must give the woman the names of other doctors who would be able to perform the abortion.[289]	Yes S 12 AAACCP
If so, are such practitioners required to refer the woman to a medical practitioner they are reasonably confident can offer abortion treatment or advice?	Yes (s 32 CSAA)	Varies state to state	No	No	Yes	No	Yes	No
Are there laws regarding 'safe access zones' near premises that offer abortion services, where people who wish to express an	No	Yes Federal law *Freedom of Access to Clinic Act* Title	Yes	Safe access zones may be provided by local councils.	No	No	No, but the Penal Code includes offences in relation to preventing a voluntary termination of pregnancy by:	No

288 Department of Health, Social Services and Public Safety, *Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland,* March 2016, p 11.

289 Law Library of Congress, Global Legal Research Center, *Abortion Legislation in Europe*, January 2015, p 13.

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
objection to abortion cannot, in any way, seek to communicate with or influence women seeking an abortion?		18, USC, Section 248. Some state laws also deal with safe access: 14 states and the District of Columbia prohibit certain specified actions aimed at abortion providers; 12 states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; 6 states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services; 3 states prohibit property damage to facilities providing reproductive health services; 2 states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; 5 states and the District of Columbia prohibit other specified actions, such as creating excessive					disrupting access to or the free movement of persons into or out of clinics, threatening or engaging in any act of intimidation against medical and non-medical personnel.	

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
		noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odour on clinic premises; 3 states have established a 'bubble zone' around a person within a specific distance of a clinic's entrance or driveway.[290]						
If so, what is the distance such people should stay away from such premises?	Na	Bubble zones: Colorado - 8ft around a person within 100ft of the door of a clinic; Montana - 8ft zone around a person within 36ft of the door of a clinic.[291] Buffer zone legislation in Massachusetts which established a 35 ft buffer zone around reproductive health	Access zones are imposed through state legislation. eg British Colombia -50 metres around abortion facilities; 10 metres around doctors' offices; 160 metres around the residence of doctors and abortion service providers. Safe access zones can be established by regulation, and		No	No		No

290 Guttmacher Institute, 2018, *Protecting Access to Clinics*, 1 September.

291 Guttmacher Institute, 2018, *Protecting Access to Clinics*, 1 September.

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
		care facilities was overturned by the US Supreme Court in 2014.[292]	may be varied to a max of 20 metres.[293]					
Are there penalties for breaching such provisions?	Na	Yes *Freedom of Access to Clinic Act* Title 18, USC, Section 248	Yes		No	No	Yes	No
If a woman is considering an abortion, is she required to use a counselling service before she can access the procedure?	No Counselling is optional. A woman has the right to seek counselling from any appropriate person or agency, and shall be advised of that right by the certifying consultant. (s 35 CSAA)	18 states mandate that women be given counselling before an abortion that includes information on at least one of the following: the purported link between abortion and breast cancer (5 states); the ability of a foetus to feel pain (13 states); or long-term mental health consequences for the woman (8 states).[294]	No	No, but the Department of Health states in *A Framework for Sexual Health Improvement in England* that its ambition is that all women requesting an abortion should be offered the opportunity to discuss their options and choices with a trained counsellor.	No	The *Guidance for Health and Social Care Professionals on Termination of pregnancy in Northern Ireland* states a woman should be offered access to counselling if she wishes to consider options available to her.	The woman must be offered counselling before and after the abortion. Minors may not refuse the offer of counselling.	Pre-abortion counselling is mandatory, except for abortions on medical grounds. The counselling must take place three days before the operation. S219 AAACCP
If a woman is considering an abortion, are there	No	No	Yes Access to funded health services is	No	No	No		Yes The German States are required to

292 McCullen v Coakley 2014 573 U.S. at p 1.

293 *Access to Abortion Services Act 1995* (BC).

294 Guttmacher Institute, 2018, *Protecting Access to Clinics*, 1 September.

	NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
any provisions that aim to guarantee access to such services if she requests them?			guaranteed by the *Canada Health Act*.					ensure the availability of a sufficient number of inpatient and outpatient facilities for the performance of abortions.
Any other relevant information	Abortion law reform is currently being considered by the Law Commission of NZ	Other state requirements include: A parent of a minor must be notified before an abortion is provided (eg Iowa, Utah, West Virginia); a parent of a minor must consent before an abortion is provided (eg Alabama, Arizona, Arkansas, Florida, Idaho, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Virginia, Wyoming); A woman must undergo an ultrasound before obtaining an abortion and the provider must offer her the option to view the image (eg						

NZ	USA	Canada	England/Wales/ Scotland	Republic of Ireland	Northern Ireland	France	Germany
	Arizona, Florida, Indiana, Iowa, Kansas, Mississippi, Virginia); a woman must undergo an ultrasound at least 24 hours before obtaining an abortion and the provider must show and describe the image to her (eg Louisiana, Texas, Wisconsin); prohibitions on abortions for the purpose of sex selection (eg Arkansas, Kansas, North Carolina, Pennsylvania, South Dakota); Arizona prohibits abortion for the purpose of race selection; other states do not have restrictions on abortion (eg California, Connecticut, Hawaii, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Vermont, Washington).						

Appendix E – Queensland Law Reform Commission – Review of termination of pregnancy laws – Terms of Reference

Background

In Queensland, an unlawful abortion is a crime. The relevant sections are found in Queensland's Criminal Code and are as follows:

Section 224 (Attempts to procure abortion)

Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

Section 225 (The like by women with child)

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime, and is liable to imprisonment for 7 years.

Section 226 (Supplying drugs or instruments to procure abortion)

Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Section 282 (Surgical operations and medical treatment)

1) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of—
2) a person or an unborn child for the patient's benefit; or
3) a person or an unborn child to preserve the mother's life;
4) if performing the operation or providing the medical treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.
5) If the administration by a health professional of a substance to a patient would be lawful under this section, the health professional may lawfully direct or advise another person, whether the patient or another person, to administer the substance to the patient or procure or supply the substance for that purpose.
6) It is lawful for a person acting under the lawful direction or advice, or in the reasonable belief that the advice or direction was lawful, to administer the substance, or supply or procure the substance, in accordance with the direction or advice.
7) In this section—

   health professional see the Hospital and Health Boards Act 2011, schedule 2.

   medical treatment, for subsection (1)(a), does not include medical treatment intended to adversely affect an unborn child.

patient means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided.

surgical operation, for subsection (1)(a), does not include a surgical operation intended to adversely affect an unborn child.

In 2016, two Bills that sought to reform the law relating to termination of pregnancy were introduced into the Queensland Legislative Assembly by the Member for Cairns, Mr Robert Pyne MP, namely:

- the Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 (the first Bill), and
- the Health (Abortion Law Reform) Amendment Bill 2016 (the second Bill).

The first Bill was introduced on 10 May 2016 and referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee (the Parliamentary Committee) for detailed consideration.

On 26 May 2016, the Legislative Assembly expanded the Parliamentary Committee's referral to require it to also conduct a wide-ranging enquiry into the law and clinical practice of terminations in Queensland (the general enquiry).

The Parliamentary Committee held public hearings and received over 1,400 submissions in relation to the first Bill.

On 26 August 2016, the Parliamentary Committee tabled its report on the first Bill and its general enquiry (Report on the first Bill). The Parliamentary Committee was of the view that the first Bill failed to address a number of important policy issues and to achieve a number of its own stated objectives. It did not recommend that the Bill be passed.

On 17 August 2016, the second Bill was introduced to the Queensland Legislative Assembly and was also referred to the Parliamentary Committee for detailed consideration. Over 1,200 submissions were received on the second Bill.

On 17 February 2017, the Parliamentary Committee tabled its report on the second Bill (the Report on the second Bill). The Committee was unable to reach agreement on whether or not the second Bill should be passed.

On 28 February 2017:

- both Bills were withdrawn from the Legislative Assembly by the Member for Cairns, and
- the Queensland Government announced that Queensland's laws in relation to the termination of pregnancy would be referred to the Queensland Law Reform Commission for its advice, with a view to a Bill being introduced in the next term of Government so as to modernise Queensland's laws relating to the termination of pregnancy.

Terms of Reference

I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for Training and Skills, refer to the Queensland Law Reform Commission, for review and investigation, the issue of modernising Queensland's laws relating to the termination of pregnancy pursuant to section 10 of the *Law Reform Commission Act 1968*.

Scope

The Queensland Law Reform Commission is asked to recommend how Queensland should amend its laws relating to the termination of pregnancy to:

1. Remove terminations of pregnancy that are performed by a duly registered medical practitioner(s) from the Criminal Code sections 224 (Attempts to procure abortion), 225 (The like by women with child), and 226 (Supplying drugs or instruments to procure abortion).
2. Provide clarity in the law in relation to terminations of pregnancy in Queensland.

The Queensland Law Reform Commission is asked to prepare draft legislation based on its recommendations.

In providing advice and preparing draft legislation, the Queensland Law Reform Commission should have regard to the following:

1. Existing practices and services in Queensland concerning termination of pregnancy including those provided by medical practitioners, counsellors and support services.
2. Existing legal principles relating to termination practices in Queensland.
3. The Queensland Government's commitment to modernise and clarify the law in relation to terminations of pregnancy.
4. The consultation with stakeholders that occurred during the Parliamentary Committee's consideration of the first and second Bills.
5. The views of experienced clinical practitioners.
6. The views of the Queensland community.
7. Legislative and regulatory arrangements in other Australian and international jurisdictions.

Consultation

The Queensland Law Reform Commission shall consult with any group or individual, in or outside of Queensland, to the extent that it considers necessary.

Timeframe

The Queensland Law Reform Commission is to provide a report on the outcomes of the review to the Attorney-General and Minister for Justice and Minister for Training and Skills by **30 June 2018**.

Dated the 13th day of June 2017

YVETTE D'ATH MP

Attorney-General and Minister for Justice

Minister for Training and Skills

Dissenting Report and Statements of Reservation

DISSENTING REPORT

TO THE RIGHT OF THE COMMITTEE TO INCLUDE PART 7 OF

THE COMMITTEES REPORT

"CONSCIENCE VOTE (PERSONAL VOTES)"

AND TO CONSIDER THE QUESTION OF A CONSCIENCE VOTE AS PART OF ITS REPORT

1. Firstly it must be clearly stated that the right to a conscience vote rests with individual parties and this Dissenting Report deals with the overreach of the Committee to discuss the issue when no authority exists for it to do so.

2. The LNP members of the Committee do not agree to the insertion of Part 7 in the Committees report headed "Conscience Votes (personal votes)" nor to the right of the Committee in this report to recommend a conscience vote.

3. Standing Orders 132 of the Legislative Assembly of Queensland; Standing Rules and Orders of the Legislative Assembly reads;

> 132. Portfolio committee consideration of Bills
>
> (1) Each portfolio committee to which a Bill is referred shall examine the Bill and -
>
> (a) determine whether to recommend if the Bill is to be passed
>
> (b) may recommend amendments to the Bill and
>
> (c) consider the application of fundamental Limited Principals contained in Part 2 of the Legislative Standards Act 1992 to the Bill and compliance with Part 4 of the Legislative Standards Act 1992 regarding explanatory notes.

(2) A report by a portfolio committee on a Bill is to indicate the Committees determination on the matters set out in the Standing Order.

4. Under the terms of Standing Order 132 the Committees obligation is in relation to the terms of the bill before it. Consideration of its terms should be;

(a) Directly in relation to the wording used in the Bill or

(b) Indirectly, in as it applies to its implementation and questions that arise as a consequence thereof.

The standing order does not permit consideration outside the terms as outlined.

5. The Committee should consider Legislation in other jurisdictions to understand how the legislation functions and what questions arose upon the implementation but those considerations indirectly flow from the language of the Bill itself.

6. In the Bill before the House there is no reference to "Conscience Vote" either directly or indirectly and as such there is nothing to indicate the Bill before the Committee that warrants consideration of a conscience vote in relation to Standing Order 132.

7. If the Government, which introduced the Bill, wanted a discussion in relation to or effect of a conscience vote it could have;

(a) At the time the Bill was introduced put a motion to the House for that to also be considered by the Committee. That did not occur.

(b) Additionally at any time post the introduction of the Bill the Government could have put a motion to the House to include consideration of a conscience vote by the Committee. That did not occur.

8. In either case the Government would have had the numbers to pass the motion. Clearly the Government saw implications in taking that course of action.

9. There seems to be some wild belief that members would not know what a conscience vote was nor understand its implications. That is a ridiculous notion. Members could, if they needed to, inform themselves of its meaning by;

(a) Going to the Oxford dictionary, looking up the words "conscience" and "vote" and putting the meanings together

(b) Google "conscience vote".

(c) Speak to another Member of Parliament or former Member of Parliament who would have indicated quite simply what the term meant

(d) Gone to level 6 and obtained a brief from the Parliamentary Library. This would have taken a couple of days to achieve.

10. The Government did not make consideration of a conscience vote part of any or referral to the Committee and as such one has to question the reason the Committee took this step.

11. Certainly Standing Order 132 would not require such a step being incorporated into the terms of the report.

12. We repeat there are well established guidelines as to how a conscience vote is allowed by parties

X

Mark McArdle MP
Deputy Chair Health Committee

4/10/2018

X

Marty Hunt
Member for Nicklin

4/10/2018

STATEMENT OF RESERVATIONS

LNP MEMBERS

IN RELATION TO THE

"TERMINATION OF PREGNANCY BILL 2018"

The Bill currently before the house is the third iteration to be considered by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (Health Committee) within the past two and a half years. Two were introduced by the former Member for Cairns, on 10 May 2016 and 17 August 2016 respectively.

On 26 May 2016, the Parliament detailed *Terms Of Reference* for the Committee to consider and report on, concurrent with the Bill introduced in May 2016.

The Bills introduced by the former Member for Cairns were withdrawn on 28 Februrary 2017 and the issue in relation to termination were referred to the Queensland Law Reform Commission (QLRC) which received *Terms of Reference* from the Attorney General and Minister for Justice on 19 June 2017.

In June 2018 the Commission provided its report entitled "Review of Termination of Pregancy Laws" together with a "Draft Termination of

Pregnancy Bill 2018". The Attorney General introduced the Termination of Pregancy Bill 2018 on 22 August 2018 with that Bill being referred to the Health Committee. It should be noted that the draft Bill as recommended by the QLRC is not the same as that introduced by the Government, there being a number of small variances.

Prior to this report the Health Committee has tabled three reports on its consideration of the Bills introduced by the former Member for Cairns; and the terms of reference:

a) Report number 24, 55th Parliament into the "Abortion Bill 2016" and "Inquiry into Laws governing termination of pregnancy in QLD";
b) Report number 33, 55th Parliament into the "Health Abortion Law Reform Amendment Bill 2016"; and
c) Report number 33a, 55th Parliament into the "Health Abortion Law Reform Amendment Bill 2016" which updated report number 33 to incorporate an erratum.

The report provided by the QLRC provides analysis of the current legal and clinical framework under which terminations are currently performed together with a lengthy and in depth assessment as to where the QLRC sees the modern law in relation to termination of pregnancy should move to.

We certainly acknowledge the work and legal experience of the QLRC and thank them for their efforts. The Queensland Parliament is a sovereign body and its obligation is to ensure the terms of any Bill presented to it are in the best interests of Queenslanders.

Questions for serious consideration based on the current Bill

We have doubts in relation to the Bill and are not able to currently recommend its terms.

We see there are a number of questions that must be considered and addressed concerning the Bill.

a) The first question relates to the Criminal Code which prohibits the termination of a pregnancy but allows a termination to be lawful in certain circumstances (based on judicial interpretation and the application of other legal decisions and the common law in certain circumstances). The question is why should the question of termination be removed from the Criminal Code?

b) The Bill proposes that terminations may occur upon request up to 22 weeks. The request to terminate pregnancy up to 22 weeks is often referred to as "on demand". Consideration should be given to whether the gestational limit of 22 weeks is appropriate. The Northern Territory, Western Australia, South Australia and New South Wales prohibit termination of pregnancy "on

demand'. In addition, termination of pregnancy on demand is only lawful up to 16 weeks in Tasmania. Only Victoria and the ACT allow for termination on demand at 24 weeks gestation.

c) Under clause 6(1)(b) a medical practitioner can perform a termination "on a woman who is more than 22 weeks pregnant" if that practitioner has "consulted" with "another medical practitioner". The term "consulted" has not been defined. What is considered "consulted"? Is it open to the first medical practitioner to determine what constitutes consultation or should this term be defined?

d) Under clause 6(2)(b) one of the considerations post 22 weeks is that of whether a termination should occur the practitioner must consider "the woman's current and future physical, psychological and social circumstances".

Under clause 6(2) the question arises as to what do those terms mean, in particular "social circumstances"? In relation to that same point, what weighting is required to be given to the words and is it the case that all three terms are to be established or is only one sufficient to trigger that clause? This gives rise to concerns that terminations on request will extend beyond 22 weeks. While Queensland Health will provide additional guidance as to

how those decisions should be determined by medical practitioners, at this stage that process remains unclear and particularly broad.

e) Under clause 8 of the Bill a "registered health practitioner"(practitioner) may have a "conscientious objection" to performing a termination but under (3) "the practitioner must refer the woman or transfer her care to" a practitioner who "in the first practitioner's belief can provide the requested service and does not have a conscientious objection to the performance of the termination".

Here we see a legal requirement obliging a practitioner who has a conscientious objection to perform a termination to refer a woman to another practitioner who may well perform the termination, the very event that runs contrary to the first practitioner's conscience. There needs to be additional consideration of the practical implications for nursing and theatre staff who are conscientious objectors.

f) The Bill is silent in relation to the question of counselling, whether it be compulsory to undertake counselling or compulsory to offer counselling and when (if any) counselling should be offered. It is to be noted that coercion related issues raised through submissions to the Committee's inquiry into the Bill remain unaddressed.

g) The Bill is similarly silent in relation to the data being gathered to establish the number of terminated pregnancies that occur each year, the gestation period at which terminations are performed and the reason for such terminations.

h) Significant questions were raised by Maurice Blackburn in relation to Part of the Bill; namely, safe access zones. In addition, Professor Nicholas Aroney believed that Part 4 could, in part, fall foul of the High Court in relation to the implied freedom of political communication.

i) It is noteworthy that, in some respects the Labor government's Bill is more extreme than the private members' bills introduced in the previous Parliament by the former Member for Cairns.

X

Marty Hunt
Member for Nicklin
4/10/2018

X

Mark McArdle
Deputy Chair Health Committee
4/10/2018

Statement on Committee Report

Michael Berkman MP, Member for Maiwar

The Greens strongly support decriminalising abortion in Queensland. We believe abortion should be safe, legal and free.

I support the position and recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (**Committee**) as set out in its report (**Report**) on the Termination of Pregnancy Bill 2018, and submit this statement to briefly address residual issues.

The weight of evidence

The Report quite rightly recognises the variety of views held across the community, which are based on factors such as religious beliefs and lived experience. What is perhaps less clear in the Report is the extent of misinformation that has been presented in opposition to the Bill and that the vast weight of expert and clinical evidence demonstrates the need for this reform, and the likely outcomes.

A peak advocacy group opposing the Bill gave incorrect and unsupported evidence that it "removes any limitation on abortion", "it would mean late-term and full-term healthy babies to healthy mothers could be aborted for pretty much any reason", and that, if passed, the Bill "would mean Queensland would have open-slather abortion." Such misinformation appears to have been adopted and reproduced in a significant proportion of the submissions made in opposition to the Bill.

The evidence from Victorian health department data is completely contrary to the suggestion that this legislation would 'open the floodgates'. Abortion was decriminalised in Victoria in 2008 and in 2017, the rate of abortions for women aged 15-44 had dropped by more than 25% below 2008 levels. These figures should speak for themselves and demonstrate the likely outcomes of a holistic, health-focussed approach to reproductive services.

The universal perspective of clinicians and experts working to support people who need to access abortion services is that the decision to have an abortion is never taken lightly, and this is particularly the case in respect of abortions later in the term of pregnancy.

This is reflected in the exceedingly low rate of abortions after 22 weeks. Only 76 of 10,421 abortions in Queensland in 2016 - less than 1% - occurred after 22 weeks, and these "generally involve complex medical circumstances".

Members need to look past the misinformation and rely on the expert evidence in considering this Bill.

Safe access zones

The issue of safe access zones is given a detailed treatment is the report, both in terms of the evidence before the Committee and their relevance to fundamental legislative principles.

I welcome the inclusion of safe access zones in the Bill and the Committee's broad support of these provisions. The Committee had the benefit of evidence from a number of submitters with experience in the operation of analogous legislation in other states. Particularly noteworthy was the submission of Maurice Blackburn, which includes detailed analysis of the proposed provisions for safe access zones and a number of recommendations for improvement.

All of these recommendations warrant careful consideration by members, but that the following observations and recommendation deserves particular attention:

> We commend the Queensland Government for introducing law reforms targeted to ensuring patients can access health care and termination services safely. …
>
> However we are seriously concerned that the Bill as currently drafted will not adequately prevent conduct likely to cause harm. As currently drafted, behaviour that may not be 'reasonably likely to deter' a patient from accessing termination services but is nevertheless distressing, or breaches their right to privacy and dignity may be permitted. This outcome is clearly incompatible with the purported purpose of the safe access zones as set out in Part 4 of the Bill.
>
> Maurice Blackburn is also concerned that establishing whether or not a person has engaged in 'prohibited conduct' will be very difficult as it varies depending on the particular experience of each patient. This is likely to make the laws problematic to enforce.
>
> Furthermore, it will be difficult for a patient to adequately prove whether certain intimidating behaviour is likely to deter them from accessing a service, and the process of having to do so is likely to be detrimental to their well-being.
>
> The imposition of this high bar is also likely to result in reluctance by police to prosecute persons who engage in intimidating behaviour within safe access zones.
>
> **Recommendation 1:** The Bill should be amended to prohibit certain conduct without the additional need to establish the impact on the victim, in line with other safe access zone legislation in Australia, such as Victoria.

While the introduction of safe access zones as proposed by the Bill is a vast improvement on the status quo, the risk remains that conduct by protestors may not satisfy the requirement that it is "reasonably likely to deter", yet still cause distress to those seeking abortion or other healthcare services.

Maurice Blackburn's submission recommends an alternative provision that includes a more explicit focus on the conduct to be prohibited, while retaining and expanding consideration of the consequences and emotional impact of such conduct on the relevant person:

> **Recommendation 4:**
>
> That section 15(1) be replaced with:
>
> **15 Prohibited conduct in safe access zones**
>
> (1) A person's conduct in the safe access zone for termination services premises is prohibited conduct if the conduct—
>
> (a) in relation to a person accessing, attempting to access, or leaving termination services premises, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or
>
> (b) subject to subsection (4), 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; or
>
> (c) interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided; or
>
> (d) is a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, termination services premises

The alternative proposed in Recommendation 4 would also ensure better protection for staff or contractors working at termination services premises, which is also of paramount importance.

Whatever uncertainty exists as a consequence of the current court challenges around safe access zones in other Australian jurisdictions, the Bill would benefit from the improvements proposed above.

Abortion services in the public health system

Right now, 95% of terminations performed in a medical facility occur in the private or NGO sector. These services have served a crucial function, especially in regional areas where access via the public health system has been limited. Out-of-pocket costs in these circumstances can range from $250 to $5,000.

The Greens believe we should expand our world-leading universal public healthcare system to cover abortion, just like any other form of health care. Recognising the dramatic improvement that the passage of this Bill would represent, far more is required from government to ensure this necessary healthcare service is freely and universally available.

Michael Berkman MP

Member for Maiwar