

Women's Legal Service

Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland

Submission to the Health, Disability Services and Domestic and
Family Violence Prevention Committee

By Women's Legal Service Queensland

About Women's Legal Service Queensland

The Women's Legal Service (WLS) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, and child protection. WLS provides State-wide assistance through our legal helpline, and have a designated Rural, Regional and Remote solicitor to increase women's access to our service in non-metropolitan regions. We undertake outreach work at the Brisbane Women's Correctional Centre and at Family Relationship Centres in Brisbane. We also conduct duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich. Our specialist domestic violence units in Brisbane and Southport provide intensive case work and Court representation for our most vulnerable clients.

We thank the government for the opportunity to provide this feedback.

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Domestic Violence and Reproductive Health

WLS is experienced in working with women facing domestic violence and over 90% of our legal casework clients and 98% of our social work clients from July 2014 – June 2015 identified experiencing domestic violence.ⁱ Research has shown that unplanned, unintended or unwanted pregnancy is more common for women experiencing domestic violence than for other women, and that the pregnancy itself can be used as a strategy by the perpetrator to control.ⁱⁱ We are aware of the high rates of sexual violence and reproductive coercion that occur in abusive intimate partner relationships.ⁱⁱⁱ The WLS social work team routinely screens for sexual violence and reproductive coercion due to the additional risk that pregnancy may pose for women in a domestic violence relationship. WLS values the rights of women, with particular reference to those in violent relationships, to exercise their discretion to use contraception, avoid pregnancy, or access termination services. Accordingly, WLS supports the decriminalisation of abortion in Queensland.

Reproductive coercion is the interference with a woman's reproductive autonomy that denies her decision-making and access to options. Reproductive coercion is a strategy of domestic violence and control that uses the woman's own fertility against her in promoting or preventing pregnancy against her wishes.^{iv} Such control may manifest in a number of ways, including physical or financial control limiting a woman's ability to purchase contraceptives; but also deliberate intentions and actions to impede her decision-making regarding her reproductive health. Such behaviours may include compromising her ability to consent to sex; rape; threats and use of physical violence if sex is refused; disposal of birth control pills; refusal to wear a condom, poking holes in them, or removing the condom during sex; refusing to provide money for emergency contraception; forceful removal of intrauterine devices and implants; refusal to assist financially or practically with access to an abortion; and threats or use of violence if she has an abortion.^v The ultimate aim of such strategies is to cause the woman to fall pregnant, and consequently impact her ability or willingness to leave the relationship.

WLS is aware that pregnancy places women at an increased risk of domestic violence,^{vi} and research also shows that physical violence in abusive relationships often begins during pregnancy or, if violence already existed, increases in severity.^{vii} Pregnancy and co-parenting may impact on a woman's plans to leave the relationship despite violence due to childcare needs; fears she may lose her children in a custody battle, or that her violent partner will then have court-ordered unsupervised contact time with them; fears he may carry out threats to harm her, their children, or himself if she leaves; economic and financial concerns regarding supporting the children on her own.

This is the context in which women in violent relationships may make a decision to terminate their pregnancy. WLS respects that choice, and acknowledge that it must be supported and facilitated.

Domestic Violence and Abortion Law

Between 6 and 22 per cent of women seeking an abortion report recent violence from an intimate partner, and concern about violence is a major reason why some women decide to terminate their pregnancy.^{viii} Women who report violence as a reason for abortion describe not wanting to expose children to violence, and understand that continuing the pregnancy will tie them to an abusive partner.^{ix} At WLS we regularly support women whose children are used as tools of leverage and control, where perpetrators use the Family Law Courts and ongoing litigation as a means of continuing control.^x Contemporary media coverage has educated our community in a very real way of the lethal risks that perpetrators of violence pose to women's lives, and their own children's lives. A woman experiencing pregnancy, especially a pregnancy manipulated or forced on her by the perpetrator, may wish to terminate in those circumstances as a strategy of safety and out of concern for any future children.

Current criminalisation of abortion poses many barriers for women seeking abortion, with particular onus on women in violent relationships. Criminalisation and the current ambiguity of the common law negatively impacts provision of services due to uncertainty doctors face about liability and potential prosecution. Despite the implementation of the *Queensland Health Maternity and Neonatal Clinical Guidelines on Therapeutic Termination of Pregnancy* in 2013, these are not mandatory or enforceable, and provision and process varies between public hospitals. Women experiencing domestic violence may also be experiencing financial control and heavy financial scrutiny, and not be able to access funds for the procedure through a private clinic.

The American Turnaway Study has found in a study released in 2014 that women who sought but were denied an abortion were slower to end violent relationships.^{xi} These women were more likely to have sustained contact with the perpetrator over time and continue to experience physical violence than women who were able to access the abortion.^{xii}

Decriminalising abortion will contribute to keeping many women and children safe from further ongoing violence and control.

Recommendations

1. Sections 224, 225 and 226 of the *Criminal Code 1899 (Qld)* should be repealed.

Criminalisation of abortion poses many barriers for women regarding access to information and services, and medical practitioner willingness to provide terminations due to the legal ambiguity. These barriers are compounded for women experiencing domestic violence and reproductive coercion.

Today abortion is one of the safest medical or surgical procedures when performed by a qualified health professional.^{xiii} Current regulation of abortion through clinic and hospital licensing conditions and professional practice standards are sufficient to ensure best outcomes and safety for women and their doctors.

Currently, terminations after 20 weeks are rare, and are usually due to circumstances including domestic violence, difficulty in locating a provider, inappropriate referrals, financial and geographic barriers, or other practical reasons.^{xiv} With greater accessibility at earlier trimesters, the small number of later gestation terminations will decrease even further.

2. Any new abortion law should not contain a requirement for mandatory counselling or mandatory referral to counselling

Mandatory counselling has been promoted as a strategy to ensure informed decision-making regarding abortion, and both directive and non-directive models have emerged in Europe.^{xv} However, criticisms and concerns have arisen that such policies act as an implicit deterrent and barrier to abortion access, instead of achieving the aim of supporting the best interests of women.^{xvi} Many women are sure of their decision to terminate, often because they have assessed they are in no position to parent or participate in appropriate pregnancy care.^{xvii} Women experiencing domestic violence or financial hardship also may lack the ability to attend repeated appointments prior to being granted approval for an abortion. While many women may benefit from non-directive counselling, imposing it as mandatory is an undue requirement on Queensland's most vulnerable women.

Unbiased and non-directive counselling and support must be available for women who choose to access it for assistance in their decision-making and circumstances, or for referrals by clinicians regarding concerns a woman has been pressure or forced to terminate. However mandatory pre-abortion counselling is not best practice for all women's circumstances. Current screening processes in clinics is sufficient.

3. Any new abortion law should not contain a compulsory delay or cooling-off period before an abortion may be lawfully performed

Queensland is a large State, with healthcare facilities long distances from many residents. Any requirement that requests for abortion must be followed by a mandatory wait period before they can return to the clinic would be a significant barrier for many women. As mentioned above, women in abusive relationships may not be able to arrange or attend multiple appointments without arousing their partner's suspicions, or escalating his control or violence. Any mandatory delays or multiple appointments beyond required medical care may place her at risk or unnecessarily prevent her from accessing the abortion.

Thank you for the opportunity to provide comment. We are available and happy to participate in any public hearings to assist understanding of these matters.

ⁱ Women's Legal Service "Annual Report: Our Year in Review 2014-2015".

ⁱⁱ Corrine M. Williams, Ulla Larsen and Laura A. McClosky, 'Intimate Partner Violence and Women's Contraceptive Use' (2008) 14 *Violence Against Women* 1382; Ann M. Moore, Lori F. Frohwirth and Elizabeth Miller, 'Male Reproductive Control of Women who have experienced Intimate Partner Violence in the United States' (2010) 70 *Social Science and Medicine* 1737.

ⁱⁱⁱ Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra; World Health Organisation (2005) *Multi-Country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses*.

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- ^{iv} Elizabeth Miller, Michele R. Decker, Heather L. McCauley, Daniel J. Tancredi, Rebecca R. Levenson, Jeffrey Waldman, Phyllis Schoenwal and Jay G. Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 316; Miller, Jordan, Levenson and Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457.
- ^v Elizabeth Miller, Beth Jordan, Rebecca Levenson and Jay G. Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457; Linda Chamberlain and Rebecca Levenson, *Addressing Partner Violence, Reproductive and Sexual Coercion: A Guide for Obstetric, Gynecologic and Reproductive Health Care Settings* (2nd edn) (2012) Futures Without Violence (online).
- ^{vi} Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra.
- ^{vii} Australian Bureau of Statistics (2013) *Personal Safety Study 2012*, Canberra; Lois James, David Brody, and Zachary Hamilton, 'Risk Factors for Domestic Violence During Pregnancy: A Meta-Analytic Review' (2013) 28(3) *Violence and Victims* 359.
- ^{viii} Karuna S. Chibber, M. Antonia Biggs, Sarah C. M. Roberts, Diana Greene Foster 'The role of intimate partners in women's reasons for seeking abortion' (2014) 24 *Women's Health Issues* 131; M. Antonia Biggs, Heather Gould, Diana Greene Foster, 'Understanding why women seek abortions in the US' (2013) 23 *BMC Women's Health* 39; Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh, Ann M. Moore 'Reasons US Women have abortions: quantitative and qualitative perspectives' (2005) 37 *Perspectives on Sexual and Reproductive Health* 110.
- ^{ix} Karuna S. Chibber, M. Antonia Biggs, Sarah C. M. Roberts, Diana Greene Foster 'The role of intimate partners in women's reasons for seeking abortion' (2014) 24 *Women's Health Issues* 131.
- ^x Rosie Batty, 'Speech to the National Press Club' (Speech delivered at the National Press Club, Canberra, 15 June 2016).
- ^{xi} Sarah C. M. Roberts, M. Antonia Biggs, Karuna S. Chibber, Heather Gould, Corinne H. Rocca and Diana Greene Foster, 'Risk of Violence from the Man Involved in the Pregnancy after receiving or being denied an abortion' (2014) 12 *BMC Medicine* 144.
- ^{xii} Sarah C. M. Roberts, M. Antonia Biggs, Karuna S. Chibber, Heather Gould, Corinne H. Rocca and Diana Greene Foster, 'Risk of Violence from the Man Involved in the Pregnancy after receiving or being denied an abortion' (2014) 12 *BMC Medicine* 144.
- ^{xiii} World Health Organisation, 'Safe Abortion: Technical and Policy Guidance for Health Systems' (2003); Caroline de Costa, 'Medical abortion in Australia' (Paper presented at Unplanned Pregnancy: Prevention, Responses and Options, Brisbane, Queensland 17 September 2012).
- ^{xiv} Katharine Betts, 'Attitudes to Abortion: Australia and Queensland in the Twenty-First Century' (2009) 17(3) *People and Place* 25; E.A. Drey, D.G. Foster, R.A. Jackson, S.J. Lee, L.H. Cardenas and P.D. Darney, 'Risk Factors Associated with Presenting for Abortion in the Second Trimester' (2006) 107 *Obstetgynocol*: 128; Lawrence B. Finer, Lori F. Fronwirth, Lindsay A. Dauphinee, Susheela Singh, and AnnM. Moore, 'Timing of steps and reasons for delay in obtaining abortions in the United States' (2006) 74 *Contraception* 344; Diana Greene Foster, Rebecca A. Jackson, Kate Cosby, Tracy A. Weitz, Philip D. Darney, and Eleanor A. Drey 'Predictors of delay in each step leading to an abortion' (2008) 77:4 *Contraception* 289.
- ^{xv} For example, Belgium, Czech Republic, Germany, Hungary, and Portugal.
- ^{xvi} Katha Pollitt (2014) *Pro: Reclaiming Abortion Rights*, Picador, 40; Reva B. Siegel (2014) "The Constitutionalisation of Abortion" in RJ Cook et al (eds), *Abortion Law in Transnational Perspective: Cases and Controversies*, University of Pennsylvania Press, 14, 35; Rebecca J Cook (2014) 'Stigmatised Meanings of Criminal Abortion Law' in RJ Cook et al (eds), *Abortion Law in Transnational Perspective: Cases and Controversies*, University of Pennsylvania Press, 353.
- ^{xvii} Robin Gregory (2007) 'Hardly Her Choice: A History of Abortion Law Reform in Victoria' 19 *Women Against Violence* 63, 68; Children by Choice, 'Unplanned Pregnancy in Australia' www.childrenbychoice.org.au/info-a-resources/facts-and-figures/unplanned-pregnancy-profiles-of-abortion-adoption-and-parenting (on 28/06/16).