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Inquiry Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By email: abortion.bill@parliament.qld.gov.au

6 October 2016

Dear Secretary

Review of the Health (Abortion Law Reform) Amendment Bill 2016

Thank you for the opportunity to participate in the Committee's inquiry into the Health (Abortion Law Reform) Amendment Bill (**the Bill**). The Human Rights Law Centre is a national organisation that works to protect and promote women's reproductive rights across Australia.

This submission assumes that the Bill will be treated as supplementary to the Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 that decriminalises abortion (the **Decriminalisation Bill**). We provided a submission to the Committee's earlier inquiry in support of the Decriminalisation Bill and would be grateful if the Committee could take that submission into account in this inquiry.

We strongly support the two bills. Together the bills go a long way to providing certainty and clarification around women's rights to choose to have an abortion, a medical practitioner's right to conscientiously object to providing an abortion and the protection of patients and staff attending abortion clinics.

Decriminalisation of abortion in Queensland is long overdue and the regulation provided by the two bills would bring Queensland law into line with clinical practice and common sense.

We would, however, suggest the following amendments to the Bill to ensure that it properly protects women's rights:

- the conscientious objection provisions of the Bill should require doctors to notify their patient of their conscientious objection to abortion and refer the patient to a doctor who does not have such an objection;
- the patient protection zones should be not be declared by a Minister but provided for expressly in the Act; and
- the prohibited behaviour in the patient protection zones should not include an intention element.

Conscientious objection and duties to perform an abortion

Abortion laws should ensure that patients are not disadvantaged by the individual ethical, religious or moral objections that some medical practitioners may have to abortion.

We welcome the inclusion of conscientious objection provisions in the Bill. The Bill entitles medical practitioners to refuse to assist in performing abortions, except in emergency situations where it is necessary to save the life of, or prevent a serious physical injury to, the woman (proposed new section 22).

However, the Bill should also require doctors to notify their patient of their objection and refer the patient to a doctor who does not have such an objection. This is the form of the conscientious objection regimes established in Victoria and Tasmania.¹

Medical practitioners are in a position of power and authority when women seek their assistance. Referral provisions ensure that women receive the treatment and advice they need and that their rights are realised in practice.

By adding a duty on doctors to refer their patients, the law would strike a fair balance between the doctor's right to freedom of conscience and religion, and the rights of women to bodily autonomy and non-discrimination. Freedom of conscience and religion can be limited to protect public safety, order, health, or morals or the rights and freedoms of others.² The UN Committee on the Elimination of Discrimination against Women has considered the issue of conscientious objection and stated that where doctors refuse to perform abortion services based on their religious beliefs, measures should be introduced to ensure that women are referred to alternative health providers.³

Patient protection

We strongly welcome the inclusion of the patient protection provisions that enable the establishment of protected areas around abortion facilities. The HRLC has been involved in the law reform to create similar protected areas or "safe access zones" in Tasmania, Victoria and the ACT.

However, the patient protection provisions could be improved in two ways.

¹ See *Abortion Law Reform Act 2008* (Vic), section 8 and *Reproductive Health (Access to Terminations) Act 2013* (Tas), sections 6 & 7.

² ICCPR, Article 18(3).

³ Committee on the Elimination of Discrimination Against Women, *General Recommendation 24 on Women and Health*, 20th session, 1999; See CEDAW Committee: Croatia, ¶ 109, U.N. Doc. A/53/38 (1998); Slovakia ¶ 43, U.N. Doc. A/63/38 (2008).

First, by removing the requirement of the Minister to declare an area be a protected area. Protected areas that are prescribed by a Minister remain subject to the whim of the executive. Given the sensitive and highly politicised nature of abortion, there may always be strong political and other factors weighing against creating a protected area. The strength of the Tasmanian and Victorian safe access zone laws is that the zones are automatically established in the law.⁴

Secondly, the protection provisions could be improved by removing the intention element in the offence. The Bill defines some prohibited behaviour as acts such as harassment, hindering, threatening, but only where done with the intention to stop a person from entering a facility or from having or performing an abortion (the **intention requirement**) (proposed new sections 24(2)(a) and (b)).

The intention requirement creates an unnecessary extra element of the offence and a barrier to enforcement.

In general the most important thing is that the bill protects against unwanted interference in women's private decisions. A Canadian courts considering access zones in British Columbia explained that a broad "white line prophylactic rule" that simply prohibits behaviours without needing to prove intention or an impact on the victim is necessary because it is too difficult to attempt to characterise each separate interaction between anti-abortionists and patients as harassing or not harassing.⁵ Similarly we would not want enforcement to come down to a question of whether actions intended to have certain impacts.

We would be happy to provide further information on request.

Yours sincerely



Emily Howie

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⁴ *Public Health and Wellbeing (Safe Access Zone) Amendment Act 2015 (Vic), Reproductive Health (Access to Terminations) Act 2013.*

⁵ *R. v. Watson, R. v. Spratt* 2008 BCCA 340, citing US Supreme Court in *Hill v Colorado* 530 U.S. 703 (2000).