



Queensland  
Branch

---

*AASW(Qld) submission on the Review of  
termination of pregnancy laws in Queensland*

**Submission- January 2018**

© Australian Association of Social Workers

Queensland Branch Office– Brisbane

17 Ross St, Paddington

BRISBANE, QLD 4065

PO Box 1015

MILTON QLD 4064

T 07 3369 9818

F 07 3217 6938

Enquiries regarding this submission can be directed to:

**Queensland Branch President:**

Dr Fotina Hardy

Email: [fhardy@bigpond.com.au](mailto:fhardy@bigpond.com.au)

**Queensland Branch Manager**

Ms Mere Vitale

Email: [aaswqld@asw.asn.au](mailto:aaswqld@asw.asn.au)

## **Acknowledgement**

---

The submission was prepared by members of the Queensland Branch Social Policy sub committee.

## Introduction

---

The Australian Association of Social Workers is the key professional body representing more than 10,000 social workers throughout Australia. Social work is founded on the principles of social justice, human rights and professional integrity. It aims to enhance the quality of life and support the development of the full potential of each individual, group and community in society through practise that is ethically accountable, professionally competent and transparent. The social work profession's values are embodied in the profession's national and international Codes of Ethics, Practice Standards and the theoretical perspectives that underpin Social Work's professional knowledge and evidence base.

The AASW Queensland Branch<sup>1</sup> is pleased to provide the following submission in response to the Consultation Questions regarding the proposed new legislation on the termination of pregnancy and related issues. The AASW recognises that any legislation regarding termination of pregnancy evokes wide ranging legal, ethical and moral views, however we maintain that this is an issue that is inextricably linked to the fundamental human rights and social justice for the women concerned. It is from this perspective that the AASW supports reform that delivers access to a key right for women in Queensland to exercise their reproductive rights. The AASW welcomes the opportunity to continue to be involved in the implementation of this important piece of legislation.

## Who should be permitted to perform or assist in performing terminations?

---

### *Who should be permitted to perform, or assist in performing, lawful termination of pregnancy?*

It is the stance of the AASW Queensland Branch that terminations of pregnancy must be performed by appropriately trained medical practitioners and as per the AMA guidelines, in premises approved by a recognised health standard authority. The World Health Organisation (WHO) further highlights clinical and emotional/psychological factors necessary for safe termination of pregnancy (Clinical Practice Handbook for Safe Abortion Care) which highlights the importance of appropriately medically qualified practitioners.

However, it is also recognised that there needs to be provisions to ensure access to lawful terminations for women living in remote, rural and regional areas as well as Aboriginal and Torres Strait Islander women and women from CaLD backgrounds. To this end the AASW supports the stance taken by the Northern Territory that allows an Aboriginal and/or Torres Strait Islander health practitioner, midwife or nurse authorised under their relevant Medicines, Poisons and Therapeutic Goods Act (NT) or an authorised pharmacist to supply or administer a termination drug if directed by a suitable medical practitioner in the case where the woman is no more than 14 weeks pregnant. Victoria has a similar law allowing a registered pharmacist or nurse to supply relevant drugs that cause termination.

Given the geography of Queensland and the existing barriers to accessing appropriate health care services for women living in regional, rural and remote locations, we believe that provisions for appropriately qualified health practitioners to work alongside medical practitioners is essential in administering termination medication. The AASW recognises as

---

<sup>1</sup> Hereafter referred to as the AASW, recognising this represents the Queensland Branch

identified in the Consultation Document that health practitioners are subject to complex legal and regulatory frameworks at both state and national levels providing an important level of oversight.

The AASW therefore supports the inclusion of appropriately qualified health practitioners as lawfully assisting in the performance of a termination.

### ***Should a woman be criminally responsible for the termination of her own pregnancy?***

The AASW strongly advocates that access to medically safe terminations of pregnancies, both surgical and medical, is a fundamental human right as per the International Conventions on the Elimination of all Forms of Discrimination against Women (CEDAW). Furthermore, access to a safe termination of pregnancy has been recognised as a major public health issue in the WHO Reproductive Health Strategy 2012. It is our view that access to a medically safe termination of pregnancy should not be a criminal offence, as is the case in many Australian states and Territories including ACT, Victoria, South Australia, Tasmania, WA and NT, and internationally.

## **Gestational limits and grounds**

---

### ***Should there be a gestational limit or limits for a lawful termination of pregnancy?***

The AASW is not able to provide a specific response to these questions, as this would be outside the scope of our expertise. However, our view is that there needs to be guidelines for extreme or unusual circumstances where terminations are required past the traditional 20 week gestational period to ensure that appropriate assessment occurs.

The AASW is of the view that a combined approach is needed in terms of gestational limits and grounds, recognising the complexity involved. This would position the seeking termination of pregnancy as a health matter not a criminal matter, while also including regulations around gestational limits and processes associated with this. As highlighted by the RANZCOG<sup>2</sup>, the AASW supports a framework that provides for a multi-disciplinary approach in supporting women seeking late terminations. This recognises that each situation is unique and that there needs to be a fundamental focus on the woman's physical, social, emotional and psychological needs. Key to such a framework is the provision of therapeutic counselling and support to the woman through an appropriately qualified professional, social worker, psychologist or counsellor.

### ***Should there be a specific ground or grounds for a lawful termination of pregnancy?***

According to WHO (2012), access to safe and lawful termination of pregnancy is essential finding that "whether abortion is legally more restricted or available on request, a woman's likelihood of having an unintended pregnancy and seeking induced abortion is about the same. However, legal restrictions, together with other barriers, mean many women induce

---

<sup>2</sup> Law Reform Commission, (2017) Review of Termination Laws Consultation Paper, WP No 76

abortions themselves or seek abortion from unskilled providers. The legal status of abortion has no effect on a woman's need for an abortion, but it dramatically affects her access to safe abortion"<sup>3</sup> (p. 17). The WHO argue that where legislation provides for access to abortions under "broad indications, the incidence of and complications from unsafe abortions are generally lower than where abortion is legally more restricted" (2012, p. 17). The AASW recommends that this be used as a guiding principle, rather than overly restricted legal grounds. In addition, the AASW also cautions on a focus on unwanted pregnancy only, as women's circumstances can change including but not limited to relationship breakdowns, domestic and family violence, health issues on the part of the parents/s and also the unborn child and dealing with significant events that occur post pregnancy (Children by Choice Submission to the Parliamentary Committee<sup>4</sup>).

### **Consultation by the medical practitioner**

---

The AASW believes that creating unnecessary bureaucratisation of the process for seeking a termination of pregnancy would undermine the overall human rights principles of any laws regarding termination of pregnancy. Considering termination of pregnancy as a health matter with a focus on the emotional, social, psychological and physical wellbeing of the woman is crucial. The imposition of panels or committees would violate the rights of the woman and is not something that would be considered in most health related issues. Furthermore, this would create further barriers to a woman's agency; position the health practitioners in the position of power over a woman's body and decision making; and create even further barriers for women who live in rural, regional or remote locations, women who have experienced sexual assault or domestic and family violence, Aboriginal and/or Torres Strait Islander women and women from CaLD backgrounds.

The AASW recognises the importance of a multidisciplinary framework of care in supporting women seeking termination of pregnancy where there is increased complexity around the circumstances leading a woman to request/require a termination, for example late pregnancy. In these situations, the involvement of other allied health professionals such as social workers or psychologists to provide counselling and support are necessary to ensure the overall emotional, psychological, physical and social needs of the woman. The AASW recognises that in complex cases, there would need to be appropriate consultation with other medical and allied health professionals, and to this end again highlights that if the termination of pregnancy was considered a health matter that appropriate frameworks be put in place, paying attention to the rights of the woman. This is similar to the laws in Victoria. However, it is also recognised that where there is no health complexity involved that the laws, as in the Australian Capital Territory, provide greater autonomy and privacy to the

---

<sup>3</sup> WHO (2012) as above

<sup>4</sup> Children by Choice Abortion Law Reform (women's right to choose) Amendment Bill 2016, Children by Choice submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee June 2016, [http://www.parliament.qld.gov.au/documents/Committees/HCDSDVFVPC/2016/AbortionLR-WRC-AB2016/submissions/794.pdf#search=%22children by choice%22](http://www.parliament.qld.gov.au/documents/Committees/HCDSDVFVPC/2016/AbortionLR-WRC-AB2016/submissions/794.pdf#search=%22children%20by%20choice%22)

woman, and the AASW highlights that it is our view that women should not need to 'persuade' others of her need for termination.

## Conscientious objection

---

***Should there be a provision for a conscientious objection?***

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

The AASW supports the right for a health practitioner to conscientiously object to performing a termination, however would support the need for special circumstances where they would be required to do so which includes: where a woman's life is at risk which includes preventing serious physical injury; and where the woman would not otherwise have access to termination services within the required timeframe due to geographic distance. In this situation, the AASW argues that there needs to be provision for the health practitioner to refer the woman to another practitioner or termination of pregnancy service.

The International Covenant on Civil and Political Rights (ICCPR, 1976), provides importance guidance to any framework, recognising the rights of the woman to self-determination in seeking a termination, but also the rights of a health practitioner to their moral or religious beliefs<sup>5</sup>. However as the ICCPR points out Article 18 Point 3 "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (United Nations, 1967). The AASW argues that while respecting a health practitioner's right to conscientiously object to support decision making or the carrying out of a termination, in their professional role, there is a higher order professional responsibility in terms the right to self-determination and to accessing appropriate health care of the woman. Thus it is the view of the AASW that where a health practitioner conscientiously objects or where there is disagreement between health practitioners, there is a duty to ensure that the health needs of the woman are met appropriately and in a timely manner. To this end our view is that explicit guidelines are required around this.

The AASW notes that missing from the questions is the question of what happens when a difference of opinion exists between the woman and her doctor or between different doctors consulted. We believe that this is an oversight as, according to the European Convention on Human Rights (1950), guidelines are required for how differences of opinion are to be addressed (Northern Ireland Human Rights Commission, 2013, [www.nihrc.org](http://www.nihrc.org)). This is particularly important due to inherent power differentials between a woman and her medical practitioner in terms of supporting her decision to access the termination, and also important due to timeframes required for a safe and less risky termination. This also aligns with the

---

<sup>5</sup> See ICCPR Article 1 "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 18 1. "Everyone shall have the right to freedom of thought, conscience and religion." United Nations, International Covenant on Civil and Political Rights 1976, Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), in particular article 12 which protects women's rights to health including elimination of discrimination in reproductive health and article 16 which looks at the rights of a woman regarding when she has children and access to information and the means around this.

## **Counselling**

---

### ***Should there be any requirements in relation to offering counselling for the woman?***

As per the original submission by the AASW, the Branch recommends that therapeutic support / counselling services are offered to all women and such services are provided by appropriately qualified and Accredited Social Workers or registered Psychologists.

The AASW is of the view that counselling services should not be mandatory for women seeking termination of pregnancy, however that best practice would involve offering women the choice of accessing appropriate counselling immediately or in the future and providing them with appropriate names of services. The AASW also recognises that counselling services are of importance to other key stakeholders such as partners.

## **Protection of woman and service providers and safe access zones**

---

### ***Should it be unlawful to harass, intimidate or obstruct***

***(a) a woman who is considering, or who has undergone, a termination of pregnancy; or***

***(b) a person who performs or assists, or who has performed or assisted in performing, a lawful termination of pregnancy?***

The AASW strongly believes that any harassment, intimidation or obstruction of women considering or having undergone a termination and the staff involved in providing the services is unlawful and breaches the rights to safety of those individuals.

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

The AASW agrees for the need of safe access zones around premises, recognising the significant emotional and physical effects that harassment, intimidation or obstruction can cause to both the person seeking a termination and the staff who work in the services. The AASW recommends that legislation similar to that enacted in Victoria, the *Public Health and Wellbeing Amendment (Safe Access) Bill 2015* is necessary to ensure the safeguarding of women, their families/support people and the staff of reproductive health services. Moreover, it is important that a safety zone is sufficient to ensure privacy and unimpeded access for anyone entering, trying to enter or leaving an approved medical facility.

***Should it be an offence to make or publish a recording of another person entering or leaving, or trying to enter or leave, premises where termination of pregnancy services are performed, unless the recorded person has given their consent?***

Maintaining the privacy and confidentiality of all individuals needs to be upheld, in our age of social media where the ability to 'post' photos and recordings online is instantaneous this is an important consideration. The view of the AASW is that any breach of an individual's right to privacy and their confidentiality needs to be considered seriously and treated within the appropriate legal framework<sup>6</sup>.

### **Collection of data about termination of pregnancy**

---

***Should there be mandatory reporting of anonymised data about terminations of pregnancy in Queensland?***

The AASW recognises the importance of accurate data collection to inform public health policy.

---

<sup>6</sup> Privacy Act 1988, Section 6FA &B, and Division 2 Australian privacy Principles, Section 16B, <https://www.legislation.gov.au/Series/C2004A03712>.