

**QLD Law Reform Commission Review into the Termination of Pregnancy Laws; Criminal Code of Queensland 1899**

**People with Disability Australia (PWDA)**

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**Submission**

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**About People with Disability Australia (PWDA)**

PWDA is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are a NSW and national, cross-disability peak representative organisation and member of Disabled Peoples Organisations Australia (DPO Australia). We represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation. PWDA’s primary membership is made up of people with disability and organisations primarily constituted by people with disability. We have a vision of a socially just, accessible and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride.

PWDA’s responses to the questions set out by the QLD Law Reform Commission on the termination of pregnancy laws in Queensland are informed by our organisation’s principles and the Convention on the Rights of People with Disability (CRPD) [[1]](#footnote-1). As the QLRC consultation paper has already noted[[2]](#footnote-2) and in accordance with the CRPD Articles 6 and 10; pregnancy ought not to be terminated solely on the grounds of apparent impairment. PWDA supports all women, including women with disability’s inalienable right to bodily autonomy and to make informed choices about their own reproductive health.

**Who should be permitted to perform or assist in performing terminations**

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

A registered health and medical practitioner with appropriate training and qualifications should be permitted to perform or assist in performing lawful termination.[[3]](#footnote-3)

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

No. There should be no circumstances in which a pregnant woman can be criminally responsible for terminating or consenting to the termination of their own pregnancy.

**Gestational limits and grounds**

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

No.

The Royal Australian College of Obstetricians and Gynaecologists (RANZCOG) [[4]](#footnote-4)outlines very clear practice guidelines and clinical standards in regards to treatment options for complex pregnancies. PWDA supports a woman’s right to accessible information (easy English fact sheets, Braille, Auslan Interpreters) and disability appropriate support in regards to such complex matters. It is paramount that decisions are made in partnership with the woman and her team of clinicians.

**Q-4 If yes to Q-3, what should the gestational limit or limits be? For example:**

**(a) an early gestational limit, related to the first trimester of pregnancy;**

**(b) a later gestational limit, related to viability;**

**(c) another gestational limit or limits?**

n/a

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

No.

PWDA in accordance with the CRPD[[5]](#footnote-5) stipulates that termination of pregnancy ought not be made solely on the grounds of apparent impairment. The only requirement for the lawful termination of pregnancy by a registered health or medical practitioner should be the pregnant woman’s informed consent. In regards to women with disability and informed consent, information made available must be in accessible formats. PWDA presumes capacity in all people, this is reflected in Victoria where presumed capacity is the default position in regards to informed consent in healthcare[[6]](#footnote-6).

**Q-6 If yes to Q-5, what should the specific ground or grounds be? For example:**

**(a) a single ground to the effect that termination is appropriate in all the circumstances, having regard to:**

**(i) all relevant medical circumstances;**

**(ii) the woman’s current and future physical, psychological and social circumstances; and**

**(iii) professional standards and guidelines;**

**(b) one or more of the following grounds:**

**(i) that it is necessary to preserve the life or the physical or mental health of the woman;**

(**ii) that it is necessary or appropriate having regard to the woman’s social or economic circumstances;**

**(iii) that the pregnancy is the result of rape or another coerced or unlawful act;**

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**(iv) that there is a risk of serious or fatal fetal abnormality?**

n/a

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

n/a

**Consultation by the medical practitioner**

**Q-8 Should a medical practitioner be required to consult with one or more others (such as another medical practitioner or health practitioner), or refer to a committee, before performing a termination of pregnancy?**

No.

As with our response to gestational limits, there are clear professional guidelines and clinical standards that qualified health and medical practitioners are required to follow in regards to prior and post treatment [[7]](#footnote-7). It is therefore unnecessary to legislate for any such requirements in regards to abortion care.

If yes to Q-8:

**Q-9 What should the requirement be? For example:**

**(a) consultation by the medical practitioner who is to perform the termination with:**

**(i) another medical practitioner; or**

**(ii) a specialist obstetrician or gynaecologist; or**

**(iii) a health practitioner whose specialty is relevant to the circumstances of the case; or**

**(b) referral to a multi-disciplinary committee?**

n/a. However, PWDA would like to stipulate that we strongly oppose the introduction of a requirement for committee approval for termination at any gestation in Queensland. The CRPD[[8]](#footnote-8) is very clear in regards to a person with disability’s right to bodily autonomy, therefore the only requirement for a lawful termination to take place is the fully informed consent of the woman requesting a termination.

**Q-10 When should the requirement apply? For example:**

**(a) for all terminations, except in an emergency;**

**(b) for terminations to be performed after a relevant gestational limit or on specific grounds?**

n/a

**Conscientious objection**

**Q-11 Should there be provision for conscientious objection?**

No. The Australian Medical Association[[9]](#footnote-9) as with other registered associations for practitioners have very clear practice guidelines that qualified practitioners are obliged to follow in regards to such matters. There is no need for an additional legislative framework to be added.

**Q-12 If yes to Q-11:**

**(a) Are there any circumstances in which the provision should not apply, such as an emergency or the absence of another practitioner or termination of pregnancy service within a reasonable geographic proximity?**

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

n/a

**Counselling**

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

No.

The commission has already asserted that “good medical practice includes providing accurate, impartial and easy to understand information” in regards to pregnancy options. As previously noted, practice guidelines and professional standards already govern informed consent for medical procedures and thus provides an adequate framework for the offer of counselling where it may be useful or necessary.

**Protection of women and service providers and safe access zones**

**Q-14 Should it be unlawful to harass, intimidate or obstruct:**

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

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

Yes.

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

Yes.

If yes to Q-15:

**Q-16 Should the provision:**

**(a) automatically establish an area around the premises as a safe access zone? If so, what should the area be; or**

**(b) empower the responsible Minister to make a declaration establishing the area of each safe access zone? If so, what criteria should the Minister be required to apply when making the declaration?**

Automatically establish an area of not less than 150m around abortion provider premises. This would then align Queensland’s law with other jurisdictions[[10]](#footnote-10) which already have safe access zone legislation in place. These zones should be clearly legislated and not subject to the control of a Minister who may allow personal beliefs to override measures intended to prioritise the best interests of patients and staff at abortion provider centres.

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

Legislation in Victoria[[11]](#footnote-11) provides the clearest definition of behaviours prohibited within safe access zone, particularly in relation to “a communication that relates to terminations and reasonably likely to cause distress or anxiety”.

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

No. Safe access zone prohibitions on behaviour should apply at all times.

**Q-19 Should it be an offence to make or publish a recording of another person entering or leaving, or trying to enter or leave, premises where termination of pregnancy services are performed, unless the recorded person has given their consent?**

Yes.

Person’s working at or making use of an abortion facility have a right to privacy[[12]](#footnote-12) and as such this right must be protected under the legislation.

**Collection of data about terminations of pregnancy**

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

Yes.

Accurate data in reproductive health care is essential for the provision of services, planning and resources. It may also identify gaps in service provision and also in education around reproductive health more broadly. This is especially important for women with disability as very little data has been collected around their use of reproductive health care or need for reproductive health education. However, such data must be anonymised for example, not make use of the date of birth but rather give an age estimate instead. Individuals seeking medical procedures have a right to privacy as legislated in the *Queensland Privacy Act 2009*.[[13]](#footnote-13)

1. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [↑](#footnote-ref-1)
2. http://www.qlrc.qld.gov.au/\_\_data/assets/pdf\_file/0010/547165/qlrc-wp-no-76-2017.pdf [↑](#footnote-ref-2)
3. https://scholarworks.uvm.edu/cgi/viewcontent.cgi?referer=https://www.google.com.au/&httpsredir=1&article=1374&context=graddis [↑](#footnote-ref-3)
4. ttps://www.ranzcog.edu.au/RANZCOG\_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Termination-of-pregnancy-(C-Gyn-17)-Review-July-2016.pdf?ext=.pdf [↑](#footnote-ref-4)
5. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [↑](#footnote-ref-5)
6. https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/mental-health-act-2014-handbook/recovery-and-supported-decision-making/presumption-of-capacity [↑](#footnote-ref-6)
7. ttps://www.ranzcog.edu.au/RANZCOG\_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Termination-of-pregnancy-(C-Gyn-17)-Review-July-2016.pdf?ext=.pdf [↑](#footnote-ref-7)
8. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [↑](#footnote-ref-8)
9. https://ama.com.au/media/new-code-ethics-doctors [↑](#footnote-ref-9)
10. https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice [↑](#footnote-ref-10)
11. https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice [↑](#footnote-ref-11)
12. https://www.oic.qld.gov.au/about/privacy [↑](#footnote-ref-12)
13. https://www.oic.qld.gov.au/about/privacy [↑](#footnote-ref-13)