

5 September 2018

Our ref: LP-VKBDSDNC

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

By email: [REDACTED]

Dear Committee Secretary

Termination of Pregnancy Bill 2018

Thank you for the opportunity to provide comments on the Termination of Pregnancy Bill 2018 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

We commend the thorough consultation undertaken prior to the introduction of the Bill through referral of the inquiry to the Queensland Law Reform Commission (the **QLRC**).

This response has been compiled with the assistance of the QLS Criminal Law Committee, Health and Disability Law Committee and Domestic and Family Violence Committee which are comprised of legal practitioners who are experts in their respective areas of practice.

In addition to liaising with our policy committees, QLS consulted with its members over a period of 8 months, between January and August 2018.

QLS recognises that this issue is one of great focus for many Queenslanders. In forming a response on the issues contained in the Bill, QLS had regard to the significant amount of feedback and input received from members.

The Society acknowledges that our members have divergent views, and in some cases there are strong and personal convictions held by some members with respect to the issues dealt with in the Bill. While the Society received divergent feedback on this issue, the overwhelming majority of views received expressed support for treating this as a health matter.

Accordingly, QLS supports the objectives of the Bill to clarify the law on this issue.

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The Society acknowledges the need to ensure that good law reflects the evolution of public and community attitudes.¹

The Criminal Law, Health and Disability Law and Domestic and Family Violence Committees of the Society have also noted the removal of s.225 of the *Criminal Code Act 1899* (Qld) (the **Criminal Code**) would mirror the law in the majority of Australian jurisdictions. Seeking or obtaining the termination of a pregnancy is not a criminal offence in the Australian Capital Territory, Victoria, Tasmania or the Northern Territory. The New South Wales government is currently considering legislation that will decriminalise the termination of a pregnancy.

The reform of Queensland's termination of pregnancy laws to address these matters as a health issue, as well as the removal of ss. 224, 225 and 226 of the Criminal Code will modernise the legislative treatment of this issue in accordance with current community attitudes. This position is also supported by the advice of leading medical and legal bodies, such as the Australian Medical Association (Queensland) and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, as noted by the QLRC in their final report.²

With respect to the content of the Bill, we raise the following issue for consideration.

Safe Access Zones

QLS is concerned that the drafting of the Bill in relation to the introduction of 'safe access zones' does not fulfil the policy objectives as set out in the explanatory notes to the Bill (the **Explanatory Notes**).

Section 15 of the Bill sets out that "prohibited conduct" within the area of a safe access zone is an offence.

The definition of "prohibited conduct" includes conduct that could be *"reasonably likely to deter a person from entering or leaving, or from requesting, undergoing or providing, a termination at the premises"*.

The Explanatory Notes set out that:

"Consistent with the QLRC recommendation 5-1, the Bill expressly states the purpose of the safe access zone provisions is to protect the safety and well-being and respect the privacy and dignity of a person accessing services provided at termination services premises and employees and others who need to access those premises in the course of their duties and responsibilities."

The Explanatory Notes continue that, in relation to the definition of 'prohibited conduct', it is *"immaterial whether another person saw or heard, or was deterred by, the conduct."*

However, the drafting of section 15(1) of the Bill requires that, in order for the definition of 'prohibited conduct' to be met, the conduct must:

- a) relate to terminations or could reasonably be perceived as relating to terminations; and

¹ Sarah M. Cameron and Ian McAllister. 2016. Trends in Australian Political Opinion: Results from the Australian Election Study 1987-2016. Canberra: The Australian National University, page 93, available at <http://ada.edu.au/ADADData/AES/Trends%20in%20Australian%20Political%20Opinion%201987-2016.pdf>.

² Queensland Law Reform Commission, 'Review of termination of pregnancy laws', Report No 76, June 2018.

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- b) be visible or audible to another person in, or entering or leaving, the premises; and
- c) would be reasonably likely to deter a person mentioned in paragraph (b) from
 - i. entering or leaving the premises; or
 - ii. requesting or undergoing a termination; or
 - iii. performing, or assisting in the performance of, a termination.

This reveals several inconsistencies between the drafting of this section, and the Explanatory Notes. Section 15(1)(b) is clearly inconsistent with the description of 'prohibited conduct'.

Further, and importantly, the subjective requirement that certain conduct must *also* be reasonably likely to deter a person as described is inconsistent with the described objective and reasoning for the introduced section.

Alternative drafting of 'prohibited conduct'

We refer the Parliamentary Committee to the approach adopted in Victoria, and more recently in New South Wales, where certain conduct is strictly prohibited within the 'safe access zone'.

The Victorian definition of '*prohibited behaviour*' within the defined exclusion zone around a facility is as follows:³

Section 185A prohibited behaviour means –

- (a) *in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or*
- (b) *subject to subsection (2), 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;*
- (d) *intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access or leaving premises at which abortions are provided, without that other person's consent' or*
- (e) *any other prescribed behaviour.*

There is no additional requirement that conduct be reasonably likely to deter access to services.

The recently passed New South Wales legislation⁴ achieves the same objective by way of similar drafting:

98C Interfering with access of persons to reproductive health clinics

(1) *In this section:*

Interfere with *includes harass, intimidate, beset, threaten, hinder, obstruct or impede by any means.*

³ Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015 (Vic) s185B(1).

⁴ Public Health Amendment (Safe Access to Reproductive Health Clinics) Act 2018 (NSW).

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- (2) *A person who is in a safe access zone must not interfere with any person accessing, leaving, or attempting to access or leave, any reproductive health clinic at which abortions are provided.*
- (3) *A person who is in a safe access zone must not, without reasonable excuse, obstruct or block a footpath or road leading to any reproductive health clinic at which abortions are provided.*

In our view a definition of 'prohibited conduct' which is consistent with that of the New South Wales legislation or the Victorian legislation will better achieve the policy objectives relating to the introduction of safe access zones as described in the Explanatory Notes.

Thank you again for the opportunity to provide comments on the Bill.

If you have any queries regarding the contents of this letter, please do not hesitate to contact the QLS Legal Policy team by phone on [REDACTED] or by email to [REDACTED].

Yours faithfully


Ken Taylor
President