

**Submission to the Tasmanian Department of Health and Human Services**

**on the**

**Revised pregnancy termination laws  
proposed for Tasmania**

**Draft Reproductive Health  
(Access to Terminations) Bill**

**April 2013**

## Introduction

The Australian Women's Health Network welcomes the invitation of the Tasmanian Government's Department of Health and Human Services to comment on the proposed legislative framework for termination of Pregnancy Reproductive Health (Access to Terminations) Bill 2013 and the opportunity to have input into this important reform process.

## The Australian Women's Health Network (AWHN)

The Australian Women's Health Network is an advocacy organisation that provides a national voice on women's health, based on informed consultation with members. Through the application of a social view of health, it provides a woman-centred analysis of all models of health and medical care and research. It maintains that women's health is a key social and political issue and must be allocated adequate resources to make a real difference.

It aims to foster the development not only of women's health services but of stronger community-based primary health care services generally, which it sees as essential to improve population health outcomes. It advocates collaboration and partnership between relevant agencies on all issues affecting health. To this end, AWHN coordinates the sharing of information, skills and resources to empower members and maximise their effectiveness. The coalition of groups that comprises the organisation aims to promote equity within the health system and equitable access to services for all women, in particular those women disadvantaged by race, class, education, age, poverty, sexuality, disability, geographical location, cultural isolation and language.

AWHN has representatives from across Australia and a membership base of 65 organisations and 84 individuals.

## AWHN's position on abortion and women's sexual and reproductive health

In July 2012, AWHN published a Position Paper on *Women and Sexual and Reproductive Health* (Attachment I). In this paper, AWHN calls for decriminalisation of abortion across Australia, as part of a more comprehensive agenda for action to promote women's sexual and reproductive health:

*The Australian Women's Health Network advocates for comprehensive action across these areas [promoting positive and respectful attitudes to sex and sexuality; developing women's health literacy; increasing reproductive choice; facilitating women's health throughout pregnancy and birth; expanding prevention and treatment of reproductive cancers and menstrual issues; improving prevention and treatment of sexually transmitted infections (STIs); and equipping the health workforce to better respond to women's health needs] and particularly recommends: a national sexual and reproductive health strategy; a national sexuality education curriculum, including respectful relationships education; the decriminalisation of abortion across all Australian states and territories; and a transformation in the knowledge and capacity of the health workforce to address the full range of women's sexual and reproductive health needs.*

AWHN advocates for the following specific actions relating to abortion:

*It is recommended that abortion be decriminalised through law reform in those States where abortion still forms part of the criminal code.*

*It is recommended that access to safe and legal abortion be provided to all Australian women through the public health system and through accessible licensed private practitioners.*

*It is recommended that federal, state and territory governments address inequities in abortion service delivery to ensure women living in regional, rural and remote areas have timely access to affordable services.*

*It is recommended that medication abortion is a readily available method for all women seeking early termination be made possible through federal government support on applications for the importation and distribution of mifepristone in Australia, including the listing of mifepristone on the Pharmaceutical Benefits Scheme.*

AWHN's position on sexual and reproductive health is reflected in its Abortion Policy (Attachment 2) which calls for 'available, safe and equitable' services but also acknowledges that:

*The primary public health goal in the area of unplanned pregnancy must be prevention. Educational, social and health service programs are required to improve information and access to planned parenting choices. Sexual health education programs in secondary, tertiary and adult learning environments require expansion.*

The prevention theme is particularly relevant in Tasmania where teenage pregnancy rates, particularly among disadvantaged groups, continue to be very high.

AWHN fully acknowledges the wide range of ethical and religious beliefs regarding abortion in the Australian community and respects the rights of women to make decisions about their reproduction within the context of their lives and belief systems. AWHN believes that abortion is a health and human rights issue and no woman should be forced either to terminate a pregnancy or compelled to carry an unwanted pregnancy to term.

There is evidence to suggest that the vast majority of Australians support a woman's right to choose. A Tasmanian survey, conducted in 2012, found that 86% of respondents believed termination should be a medical, not a criminal decision. Many Australian women have had to make this difficult choice for themselves (it is estimated that one in every four pregnancies is terminated). AWHN believes that no woman facing such choices should be subject to fear as to the criminality of their decision, to public stigma, or to unnecessary financial or social hardship as a result of their choice.

## Current law in Tasmania and the need for change

AWHN believes that the current legislation covering abortion in Tasmania is outdated, cumbersome, confusing and dangerous both for women and medical practitioners. There is considerable uncertainty regarding the legal situation, both in the public and medical arenas. This uncertainty has resulted in:

- the withdrawal of termination services in the public system
- the absence of any local services for women who are more than 14 weeks pregnant and the necessity for them to travel to Victoria for the procedure (at considerable cost and personal disruption)
- women continuing with unwanted pregnancies, with implications for their families and futures
- reluctance on the part of doctors to make appropriate referrals
- some medical staff exercising their right to 'conscientious objection' and refusing to treat or refer women seeking terminations
- difficulties for support services and lack of access to funding to support women needing to travel interstate
- a decline among doctors in Tasmania of the skills required to perform terminations, particularly those that are later term or complicated, and the unavailability of local doctors to take on this role should existing private clinic practitioners move on
- public perception that abortion is very different to other medical procedures and continuation of the stigma associated with abortion and women who need to access this procedure.

As stated in its Abortion Policy, AWHN considers that:

*All reference to abortion should be removed from the criminal laws and codes of the States and Territories of Australia. Abortion should be regulated, as are all other medical services, under the health care and medical practice legislation. There is no case for singling out the abortion procedure in any area of legislation.*

## Comments on the revised framework

AWHN fully endorses and supports the revised legislative framework and Bill as a means to remove the threat of criminal sanctions for women and doctors and to remove the legal impediments to vital reproductive services in Tasmania.

### *A health based Act*

AWHN believes that abortion should be treated as a medical procedure and fully supports its removal from the Criminal Code into a separate health-based Act.

### *24 week gestational limit*

Less than 1% of terminations occur after 24 weeks and almost all of these are to save the mother's life or due to severe foetal abnormality. Any woman seeking a termination during this period would naturally be subject to considerable personal angst as well as scrutiny by the medical staff involved. Current legislation does not specify any gestation period and AWHN does not believe that this is necessary to enshrine in new legislation. Such a limitation is arbitrary, lacks flexibility and calls into question the integrity of women and medical practitioners to make an appropriate decision based on individual circumstances. As stated in the Information Paper relating to the Bill, 'there is no medical basis for singling out terminations and regulating access in a different way to other medical procedures'. This statement applies equally to late term terminations.

It is likely that removal of abortion from the criminal code will encourage women seeking this procedure to do so earlier in their pregnancy, reducing the numbers of later term abortions and ensuring a safer outcome.

AWHN agrees that, should a 24 week gestational barrier be included in the new legislation, there should be no onus on the part of doctors to refer women for counselling after that period.

### *Conscientious objection*

AWHN accepts that some doctors and counsellors may hold views about abortion that would cause them discomfort in providing advice on the full range of options available to a woman. Under these circumstances AWHN supports the rights of these people to conscientiously object to performing or assisting with a termination.

The personal views (or conscientious objection) held by these health service providers should not be imposed on the woman seeking support to make her own informed decision. AWHN therefore fully supports the clauses in the draft legislation requiring medical practitioners and counsellors who have a conscientious objection to refer women on to someone known to have no such objection. This referral is not providing a service as there is no continuing case management of the woman arising from it. It puts the woman in touch with a service that will support her through her pregnancy options decision making. This approach finds a good balance between the service provider's rights and the woman's rights. AWHN recommends that education of health professionals about their exercise of conscientious objection to termination of pregnancy services will be required and should be resourced arising from the successful passage of this bill.

### *Access zones*

Premises where abortions are performed and the people working in, or accessing these premises, are often the target for harassment and intimidation. Some such harassment has occurred in Tasmania.

AWHN fully supports the introduction of 150 metre access zones through the new legislation.

### *Criminal offences relating to abortion*

AWHN agrees with the inclusion of certain offences relating to abortion within the Criminal Code – ie anyone other than a doctor terminating a pregnancy; any person terminating a pregnancy without a woman's consent; and anyone aiding or abetting in these crimes.

## Attachment & Appendix

### Attachment 1: AWHN Women and Sexual and Reproductive Health Position Paper 2012

Provided with this submission as a separate, accompanying attachment and available at: <http://www.awhn.org.au/files.php?cat=1>

### Appendix 1: AWHN's Abortion Policy – March 2002

#### Preamble

The Australian Women's Health Network recognises that access to safe termination of pregnancy services is an important women's health issue but that there is a wide range of ethical and religious beliefs regarding abortion in the Australian community. Despite the diversity of views, the vast majority of Australians support a woman's right to choose.

#### Policy

1. The Australian Women's Health Network believe that no woman should be forced to terminate a pregnancy, nor be compelled to carry an unwanted pregnancy to term.
2. Abortion should be primarily considered by legislators, policymakers and health administrators as a health and human rights issue. A woman's right to choose is in the best interests of her health.
3. All reference to abortion should be removed from the criminal laws and codes of the States and Territories of Australia. Abortion should be regulated, as are all other medical services, under the health care and medical practice legislation. There is no case for singling out the abortion procedure in any area of legislation.
4. Abortion services should be made available, safe and equitable. Governments should ensure that women in rural, regional and remote areas are able to access pregnancy termination services, including ensuring patient confidentiality is maintained.
5. Medicare rebates for abortion should provide adequate recompense. The cost of private pregnancy termination services are increasing beyond the reach of many women on low incomes. State and Federal Governments should ensure that no woman seeking abortion is unable to obtain this service due to costs she will incur in relation to the procedure.
6. The primary public health goal in the area of unplanned pregnancy must be prevention. Educational, social and health service programs are required to improve information and access to planned parenting choices. Sexual health education programs in secondary, tertiary and adult learning environments require expansion.

#### The Australian Women's Health Network recognises that:

7. unplanned pregnancy is a reality of many Australian women's lives. No contraceptive method is 100% effective and many new improved contraceptive products are not available in Australia or are not registered with the Pharmaceutical Benefits Scheme;
8. in most Australian States and Territories, the legal framework does not allow the decision to abort a pregnancy as a matter for individual conscience and medical advice. The law pertaining to abortion is located in the criminal statutes and codes. The criminal law is an inappropriate vehicle - both in principle and practice - for regulating the provision of abortion;
9. change to the legal framework has been made in Western Australia. Section 334 of the Health Act sets out the circumstances in which an abortion is justified. Section 199 of the Criminal Code establishes the offence of performing an abortion unless performed by a medical practitioner and justified under s334 of the Health Act. The Criminal Code also prescribes penalties if an offence has been committed;
10. the health status of women and their children is enhanced when safe, reliable methods of fertility control are available;
11. before 1971, abortion was a major cause of pregnancy-related deaths in Australia. Since then, abortion deaths have been very rare, and usually occurred in women with multiple pre-existing health problems<sup>[i]</sup>;
12. complication rates associated with abortion in Australia are very low. Complication rates are reduced when safe abortion services are readily available and the procedure is performed prior to the 12th week of pregnancy;
13. therapeutic abortion is the third most commonly performed gynaecological procedure, and significant proportion of all Australian women undergo an abortion at some stage during their reproductive lives. It is estimated that 1 in 4 pregnancies in Australia are terminated but these figures could be significantly reduced if greater investment was made in reproductive health promotion.

NOTE: This policy draws on the policy of the Public Health Association of Australia, and is therefore also an endorsement of the PHAA position on abortion.

[i] National Health and Medical Research Council Maternal Mortality Working Party (1988). Report on Maternal Deaths in Australia 1991-93. Canberra: Commonwealth of Australia.