



# Criminal Lawyers Association of the Northern Territory (CLANT)

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## Submission on Termination of Pregnancy Law Reform<sup>1</sup>

The Criminal Lawyers Association of the Northern Territory (CLANT) welcomes the opportunity to respond to the Northern Territory Department of Health Discussion Paper on this issue, and commends the Northern Territory Government for taking a positive, progressive and consultative approach to this important area of law reform.

CLANT's objects include "to promote and advance the development and improvement of criminal law throughout the Northern Territory", and we are members of the legal profession, not doctors. Accordingly, this submission will focus on aspects of termination of pregnancy concerned with criminal law.

In relation to the medical aspects of this topic, CLANT defers to our colleagues in the medical profession, but recommends that NT law be formulated in accordance with current medical best practice. In that regard, CLANT notes that all jurisdictions except the Northern Territory permit medical (as distinct from surgical) termination of pregnancy, and that Mifepristone and Misoprostol are approved and recommended medicines by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.

Women and girls in the NT lack choice in their abortion treatment and are currently at risk of criminalisation if they seek treatment which is safe, widely approved and globally used. In addition, medical practitioners and other health workers in the NT are at risk of criminalisation in relation to termination of pregnancy if they seek to treat patients in what would otherwise be a safe and medically acceptable way.

Accordingly, CLANT supports the decriminalisation of abortion, as has occurred in the ACT, Victoria and Tasmania. Termination of pregnancy should be a decision made by a pregnant woman or girl in consultation with her medical and health practitioners. As with other medical treatments,

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<sup>1</sup> Partly taken from research by CLANT Vice President Felicity Gerry QC, published online as part of a joint CDU/Menzies research project in 2014/15: Gerry, F., Belton S., Yogaratnam J., (2015). *Reproductive Health and Rights in the Northern Territory: Reforming the Medical Services Act 1974*. Darwin, NT: Charles Darwin University, Menzies School of Health Research, accessed at [https://espace.cdu.edu.au/eserv/cdu:52966/Gerry\\_52966.pdf](https://espace.cdu.edu.au/eserv/cdu:52966/Gerry_52966.pdf)

practices and procedures, regulation of abortion should be by way of the existing Territory and Commonwealth legislative framework governing the medical, pharmacy, nursing, health worker and allied professions, supported by their well-established array of disciplinary bodies.

Part VI Division 8 (“Abortion”) of the *Criminal Code* (NT) should be repealed. Section 170 (“Killing unborn child”) of the *Criminal Code* (NT) should be amended to clearly exclude from its scope conduct engaged in by a medical practitioner in the course of treating a patient.

In 2009, YWCA Australia and Women’s Legal Services Australia, with the endorsement of 135 organisations, produced the *NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Australia*. Its recommendations included:

- THAT all Australian governments reinstate the requirement that State and Territory governments provide for women’s reproductive and sexual health services.
- THAT all State and Territory governments decriminalise abortion, and move to adopt harmonious laws related to termination of pregnancy across jurisdictions.
- THAT all Australian governments examine schemes to address the barriers to access of sexual health services and education faced by women in rural, regional and remote areas.
- THAT the Australian Government liaise with State and Territory governments to increase access to RU 486 and take positive steps to support its sale in Australia.

The NT has the highest teenage pregnancy rate in Australia. Among the factors causing this are lack of education, cultural practices, vulnerability, disadvantage – and lack of access to appropriate reproductive health services.

Currently, women and girls seeking termination of pregnancy are required to travel to hospitals in Darwin or Alice Springs and to access specialist services from an obstetrician/gynaecologist. Those who are unable to travel for reasons of poverty, location or pressure of time and circumstances risk poor health outcomes and on-going social and mental consequences through unwanted pregnancy and its consequences.

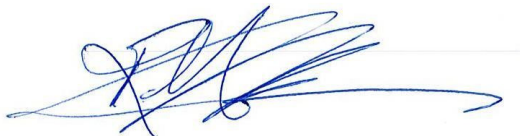
CLANT urges that the most serious consideration be given to submissions from both the health professions and community groups that these harms would be substantially mitigated by the substantial liberalisation of the regulatory framework governing the termination of pregnancy.

CLANT supports the Department of Health's proposal for provisions similar to those in Victoria regarding doctors who have a conscientious objection to performing abortions. Those measures appear to strike a common sense and practical balance between the competing interests in this sensitive area.

CLANT also supports the Department of Health's proposal for the creation of Safe Access Zones, and the associated imposition of sanctions against those who harass or otherwise unreasonably infringe the privacy of patients or health providers.

As with any medical procedure, a decision to terminate a pregnancy should only be taken with the informed consent of the patient. In relation to young pregnant women, CLANT notes that the Gillick competence principle forms part of Australian common law,<sup>2</sup> and submits that no legislative action is required to give effect to the principle that a minor is capable of giving informed consent when having sufficient intelligence to be able to understand fully what is proposed.

CLANT submits that both the Department of Territory Families, in its role as guardian of children in care, and the Office of the Public Guardian, in its role as guardian of adults subject to guardianship orders, should develop appropriate protocols, practices and procedures to ensure that the girls and women under their respective guardianship are given access to reproductive health services, in accordance with the Gillick competence principle.



Russell Goldflam  
PRESIDENT

27 January 2017

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<sup>2</sup> *Secretary, Department of Health and Community Services v JWB and SMB* (Marion's case) (1992) 175 CLR 218, per Mason CJ., Dawson, Toohey, Gaudron at 237-238; Deane J at 293-294; McHugh J at 311. This leading case, it is noted, originated in the Northern Territory.