

**Submission to:**

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**Submission on the exposure draft of the *Health  
(Patient Privacy) Amendment Bill 2015***

**September 2015**

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## 1. Introduction

The Women's Centre for Health Matters is a community-based organisation that works in the ACT and surrounding region to improve women's health and wellbeing. WCHM believes that health is determined not only by biological factors, but by a broad range of social, environmental and economic factors known as the 'social determinants of health'. We acknowledge that the environment and life circumstances that each woman experiences have a direct impact on her health, and in many cases, women's poor health is rooted in social disadvantage. For these reasons, WCHM is committed to taking a whole-of-life and social approach to women's health that is also firmly situated within a human rights framework.

WCHM focuses on groups of women who may be vulnerable to experiencing disadvantage, social isolation and marginalisation and uses social research, community development, advocacy and health promotion to:

- Provide women with access to reliable and broad ranging health-related information which allows informed choices to be made about each woman's own health and wellbeing
- Advocate to influence change in health-related services to ensure responsiveness to women's needs

WCHM welcomes the exposure *Health (Patient Privacy) Amendment Bill 2015*, and is pleased to have the opportunity to provide comment.

## 2. WCHM's response to the exposure bill

WCHM supports the creation of privacy zones (referred to as 'protected areas' in the exposure bill) around services that provide termination of pregnancy in the ACT.

WCHM, underpinned as it is by a focus on social justice and human rights, agrees with the importance of protecting Canberra's freedom of expression and does not wish to see it limited unnecessarily. However, we also consider protesting immediately outside a health facility to be insensitive and inappropriate, because it targets individual health service users and their support people. We believe that protests against the provision of particular health services—the right to which WCHM respects fundamentally—ought to be aimed clearly at legislators, policy makers, the general community, or the service itself, in ways that do not implicate individuals at the point of accessing the service. The management of this behaviour certainly warrants special action under the law.

The appropriateness of privacy zones as a means through which to protect the rights of safe access and privacy of women and their support people has been acknowledged by the Human Rights Law Centre as consistent with international human rights law, provided that

the zones do not place any unnecessary limitation on freedom of expression or assembly.<sup>1</sup> In addition, there is widespread community support for the creation of privacy zones. A report from Essential Vision released in July 2015 found that of those polled, 54 percent believed that protest outside a medical clinic that offers termination of pregnancy should be illegal; only 30 percent felt that it should be legal.<sup>2</sup>

Through WCHM's own advocacy on this issue we have learned that there is good support for the creation of privacy zones within the ACT community. Through our website [www.rightogway.org.au](http://www.rightogway.org.au) we have—at the time of writing this submission—gathered over 300 petition signatures and witnessed more than 100 letters being sent to ACT MLAs. We have also been hearing directly from women in the ACT community:

*I am writing in support of WCHM's advocacy for women to have unimpeded access to termination of pregnancy services. Like in racism, freedom of speech cannot come at the cost of offending or humiliating other people—in this case women seeking health services. It is unbelievable that in this day and age we are still questioning women's right to make these decisions.*

(ACT Woman, shared with WCHM)

WCHM applauds the initiative of the *Health (Patient Privacy) Amendment Bill 2015* to remove some of the barriers that women face in exercising their right to legal reproductive health services. In our view, the bill will assist to protect the ability of women to exercise autonomy and freely make important decisions without undue influence or coercion.

We also applaud the exposure bill for striving toward the best possible balance of human rights, and compliance with the ACT *Human Rights Act 2004*. However, the primary task of the exposure bill is to provide protection to women and their support people. With this in mind, we feel that the exposure bill could better achieve what it sets out to do: create protected areas around health services that provide termination of pregnancy in the ACT.

Our submission therefore sets out to achieve two aims: Firstly, we wish to support the case for the creation of privacy zones around facilities that provide termination of pregnancy in the ACT through sharing the stories we have collected from ACT women. Secondly, we wish to suggest that the exposure bill be amended to remove reference to a protected time and to allocate in metres a distance for the zones.

At the end of the submission we provide comments of support from our colleagues in the sector.

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<sup>1</sup> *Submission on the Reproductive health (Access to Terminations) Bill 2013*, Human Rights Law Centre, Victoria, 2013, <[http://www.hrlc.org.au/wp-content/uploads/2013/07/TAS\\_ReproductiveHealthBill\\_HRLC\\_Submission\\_July2013.pdf](http://www.hrlc.org.au/wp-content/uploads/2013/07/TAS_ReproductiveHealthBill_HRLC_Submission_July2013.pdf)>

<sup>2</sup> *Right to protest*, Essential Vision, 2015, <<http://www.essentialvision.com.au/right-to-protest>>

### **3. Stories from women and their support people: Supporting the case for privacy zones**

*I had an abortion three years ago [in Canberra]. Luckily for me, it was on a day when the protestors were not there. The service I received from the Dr Marie staff was kind and professional. I was very impressed and pleased by their conduct and service. It was the best decision I have ever made for myself in my life and I do not regret it one bit. I am a confident woman and had a termination in what I think were probably the easiest circumstances one can have, but seeing the protests still makes me remember that there are people who think my life, my health, my choices and my personal freedoms are utterly worthless. Despite this, their protests never made me even consider swaying from my decision. The way the protestors try to shame vulnerable and stressed women is absolutely abhorrent and vile. A privacy zone is a necessity to protect all women from the judgement and harassment of these protestors.*

(ACT Woman, story shared with WCHM)

#### **3.1 Protest, or harassment, humiliation and intimidation?**

*Protesting immediately outside a health facility is insensitive and inappropriate, because it in part targets the person accessing the service as well as the service itself. Protests against the provision of the service, which are of course the absolute right of anyone who disagrees with their provision, should be aimed clearly at the service and/or at policymakers, not the individuals who for a range of reasons may need to use the service. The presence of protesters at the actual clinic seems clearly designed to intimidate individual women into forgoing their legal right to the service.*

(ACT Man, story shared with WCHM)

Protesting immediately outside a health facility is insensitive and inappropriate, because it targets individual health service users and their support people. The presence of protesters outside of services that provide termination of pregnancy is surely aimed to encourage individual women to forgo their legal right to the service.<sup>3</sup> Even silent protest conveys disapproval and judgement on the healthcare decisions of individual women. In this way, the presence of groups at these locations may be better defined not as protests seeking social change, but as behaviour designed to harass, intimidate and humiliate women and their support people. In the US the activities of anti-abortion activists have led to an unwinding of

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<sup>3</sup> A. Humphries, 'Stigma, Secrecy and Anxiety in Women Attending for an Early Abortion', Masters Thesis, University of Melbourne, 2011.

reproductive health services in that country, and as a result it is suspected that a growing number of women are turning to unsafe abortion practices, including ingestion of poison and violence.<sup>4</sup>

*I have personally been adversely affected by the 'silent' and 'non-violent' harassment from the anti-abortion set. The definition of protest needs to be contested. A protest (and one's right to protest) is measured by its ability to affect change in systems. However, harassment is causing harm to others. It is not the domain of the harasser to define their behaviour as harassment versus protest. It is the domain of the victims of harassment or the State.*  
(ACT Woman, story shared with WCHM)

### **3.2 The psychological impacts of protests on women and their support people**

There is little Australian research into the impacts of anti-abortion protestors on women's psychological adjustment to termination of pregnancy, however, in 2010 Alexandra Humphries surveyed 158 pregnant women who attended the Fertility Control Clinic in East Melbourne for early (less than 12 weeks) termination of pregnancy for psychosocial reasons.<sup>5</sup> The participants completed pre- and post-surgery questionnaires, which included a range of psychological rating scales (including: State-Trait Anxiety Scale Form-Y; Disclosure concerns subscale; impacts of events scale), as well as four yes/no questions addressing women's exposure to and experiences with anti-abortion protestors while accessing the clinics.<sup>6</sup>

Humphries' study concluded that higher levels of pre-abortion anxiety and stigma were associated with having more exposure to the anti-abortion protestors. The participants perceived the greatest amount of stigma to come from protestors, and from protestors being allowed to protest outside the clinic.<sup>7</sup> A summary of findings on contributors to stigma is presented in Table 1:

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<sup>4</sup> Astbury, J & Allanson, S., 'Psychosocial aspects of family planning', in, J. Fisher et al. eds., *Mental health aspects of women's reproductive health: A global review of the literature*, World Health Organisation, Switzerland, 2009, pp. 53.

<sup>5</sup> A. Humphries, 'Stigma, Secrecy and Anxiety in Women Attending for an Early Abortion', Masters Thesis, University of Melbourne, 2011.

<sup>6</sup> *Ibid.*, pp. 14-8.

<sup>7</sup> *Ibid.*, pp. 22-3.

Table 1  
*Percentage Statistics for Sources of Perceived Abortion Stigma*

Is abortion stigmatized by:	Very Much So (%)	Moderately So (%)	Somewhat (%)	Not At All (%)
<b>The picketers</b>	<b>77.8</b>	<b>3.8</b>	<b>5.1</b>	<b>13.3</b>
<b>Allowing protesting at the clinic</b>	<b>70.9</b>	<b>10.8</b>	<b>10.1</b>	<b>8.2</b>
Religious groups	53.8	19.6	12	14.6
Society	21.5	29.1	32.9	16.5
The media	11.4	33.5	36.7	18.4
Your family	20.9	18.4	29.7	31
The partner in the pregnancy	5.1	10.1	24.7	60.1
Your friends	5.7	17.1	39.2	38
The healthcare system	5.1	17.1	32.9	44.9

% of n = 158

Higher overall ratings of perceived stigma related to termination of pregnancy was associated with greater secrecy and silence, which in turn was found to undermine women's wellbeing.

Humphries findings support considering the anti-abortion protestors as a form of enacted abortion stigma. This type of stigma can act in opposition to the protective qualities of social support, particularly through leading to greater secrecy around the pregnancy and termination, and ultimately, higher levels of distress.<sup>8</sup> International studies have corroborated this finding: while women's interpersonal networks can be protective, social milieus that do not provide support for women's decision-making about pregnancy and institutionalise judgement on women are likely to have adverse effects on women's self-regard.<sup>9</sup>

*I have accessed abortion services in Canberra, as well as other services around reproductive health. Deciding to terminate a pregnancy was a very difficult decision for me—certainly not one taken lightly. I was fortunate that when I arrived at the health centre, there were no protesters impeding my access. I really don't know what I would have done if there had been. I like to think perhaps I would have had the strength and determination to walk through regardless, but it certainly would have made the whole thing much more difficult and distressing. No woman should have to endure that kind of treatment when accessing a legitimate health service.*

(ACT Woman, story shared with WCHM)

<sup>8</sup> Ibid., pp. 43-4.

<sup>9</sup> Astbury, J & Allanson, S., 'Psychosocial aspects of family planning', in, J. Fisher et al. eds., *Mental health aspects of women's reproductive health: A global review of the literature*, World Health Organisation, Switzerland, 2009, pp. 57.

### **3.3 Why women seek termination of pregnancy**

ACT women needing termination of pregnancy are a diverse group, with vast differences in age, ethnicity, socioeconomic, occupational, and religious backgrounds. Their reasons for choosing a termination of pregnancy—for both wanted and unwanted pregnancies—are equally myriad.

*When I arrived in Canberra in the eighties I worked in the Abortion Counselling Service and I don't think I met one woman who made this decision lightly, therefore need as much support and understanding as possible.*

(ACT Woman, story shared with WCHM)

In line with international literature reviewed for the World Health Organisation,<sup>10</sup> a study undertaken by the Key Centre for Women's Health in Society looking at over 5000 records of terminations and 60 in-depth interviews with women, found that women's reasons for seeking a termination are varied and include, for example: financial pressure; health or medical issues; physical or intellectual disability; mental health issues; alcohol and other drug issues; lack of access to basic services such as transport, childcare or pregnancy support; undertaking study/feeling too young or ill prepared for motherhood; fears for safety; intimate partner violence; sexual assault; and issues relating to insecure housing and homelessness.<sup>11</sup>

*I am a social worker in the ACT and have assisted many women in difficult situations who have needed to terminate pregnancy. The need for a termination have been for a myriad of reasons: including inadequate finances to care for a child, health risks to the mother, unstable home environment/accommodation and even pregnancy being a result of rape. I have attended the Women's Health Centre in the City with some of these women to discuss termination of pregnancy and have witnessed vigils and protests by religious groups each time I have attended. The impact that these protests have on the women I am supporting are instantaneous. Many begin to second guess their decision or express to me their feelings of guilt and judgement after seeing the protestors praying. Many of the women that frequent these health centres are confused and in a vulnerable state and their mental health takes a hit when they are so publically confronted. There are no other health services where people condemn those in need of medical assistance.*

(ACT Woman, story shared with WCHM)

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<sup>10</sup> Astbury, J & Allanson, S., 'Psychosocial aspects of family planning', in, J. Fisher et al. eds., *Mental health aspects of women's reproductive health: A global review of the literature*, World Health Organisation, Switzerland, 2009, pp. 57.

<sup>11</sup> D. Rosenthal et al., *Understanding women's experiences of unplanned pregnancy and abortion*. Key Centre for Women's Health, Melbourne, 2009, p. 14.

### **3.4 Trust women**

Although termination of pregnancy is often accepted by women as a solution to a problem, it is not, on the whole, an easy one.<sup>12</sup> Each woman's story is different, yet women have much in common. In considering their own needs, desires and capacities, the wellbeing of potential children, and their responsibility for children and adults already in their lives, women wade cautiously through their decision to continue or terminate a pregnancy.<sup>13</sup>

"Trust Women" is a popular motto in the pro-choice movement. The motto doesn't mean that every woman is wise or good or has magical intuitive powers. It means that no one else can make a better decision, because no one else is living her life. Considering that women themselves are the ones who will live with their decision, we can assume that they do their best to make the right one for themselves, and their families, present and future.<sup>14</sup> Understanding this principle, and respecting it in law, defines a rights based approach to health.<sup>15</sup>

It is well established that safe and accessible reproductive health services are an essential component of protecting and promoting women's human rights. The UN Committee on the Elimination of Discrimination against Women, for example, has recognised the specific, distinctive health needs and interests of women', and has emphasised the importance of equitable access to health care, including reproductive health, for ensuring that women can equally exercise their human rights. The Committee has repeatedly called on states to ensure that all health services are 'consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice'. The Beijing Declaration and Platform for Action (adopted at the UN Fourth World Conference on Women in 1995) similarly noted that 'ability of women to control their own fertility forms an important basis for the enjoyment of other rights', and includes 'their right to make decisions concerning reproduction free of discrimination, coercion and violence'.<sup>16</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid, p. 24.

<sup>14</sup> K. Pollitt, *Pro: Reclaiming Abortion Rights*. Picador, USA, 2009, pp. 6-7.

<sup>15</sup> *Women and Sexual and reproductive Health*, Australian Women's Health Network, Victoria, 2012 p. 11, <[http://awhn.org.au/wp-content/uploads/2015/03/94\\_AWHNWomenSexualReproductiveHealthPositionPaper2012.pdf](http://awhn.org.au/wp-content/uploads/2015/03/94_AWHNWomenSexualReproductiveHealthPositionPaper2012.pdf)>

<sup>16</sup> *HRC submission on the Health (Patient Privacy) Amendment Bill 2015 exposure draft*, ACT Human Rights Commission, Canberra, 2015, p. 5, <[http://hrc.act.gov.au/wp-content/uploads/2015/09/HRC-submission\\_exposure-draft-Health-Patient-Privacy-Amendment-Bill-2015\\_31-Aug-2015.pdf](http://hrc.act.gov.au/wp-content/uploads/2015/09/HRC-submission_exposure-draft-Health-Patient-Privacy-Amendment-Bill-2015_31-Aug-2015.pdf)>



*I have previously had a termination, and it was a very difficult decision to make, and one I did not take lightly, but it was necessary for a number of reasons. I also highly value the right to free expression and don't like the idea of more legislation that could reduce this right in any way. I totally support people's right to protesting, lobbying and advocating to try to change legislation about abortion. But I do believe that protesting about abortion is not about judging, humiliating, confronting or intimidating people who have made that decision—there are more appropriate avenues for this protest, and I think women and their partners have the right to make these decisions privately. It is a hard enough decision to make!*

(ACT Woman, story shared with WCHM)

#### **4. The need for clear delineation of privacy zones**

While WCHM supports the current exposure bill, we have reservations about the specification of a protected period, and the lack of specification, in metres, of distance for the zones.

WCHM considers it unnecessary to specify a 'protected period'. The exposure bill currently takes this as the period between 8am and 6pm on each day the facility is open, or any other period declared by the Minister. Our concern for this is two-fold: Firstly, the Dr Marie clinic—currently the only provider of termination of pregnancy in the ACT that we know of—receives women for their appointments from 7:30am. This means that the current exposure bill would not provide protection for women and their support people accessing the existing service. Secondly, defining a protected time renders the exposure bill unnecessarily specific, and fails to ensure ease of application for likely future changes to the provision of termination of pregnancy in the ACT, such as an increase in the number of providers of medical termination of pregnancy.

WCHM also believes that by not specifying the protected area in metres the exposure bill is not effective enough in ensuring that appropriate zones will be created. We acknowledge that by delegating responsibility to the relevant Minister to declare the protected area for each facility the exposure bill is leaving open the possibility that each facility's protected area will be tailored and therefore comprehensive and effective in the protection it provides. However, the exposure bill leaves open the possibility for the reverse to also be true: that future ministers will apply their discretion in a way contrary to the spirit of the law and in so doing provide little protection to women and their support people. Again, should there be additional providers of termination of pregnancy in the future, the current exposure bill would be administratively tiresome and onerous for law enforcement to uphold.

WCHM recommends that the exposure bill be amended to include a distance in meters that will apply to all facilities where termination of pregnancy is provided. While 150 metres is the precedent in Australia (it is the distance adopted in the *Tasmanian Reproductive Health (Access to Terminations) Act 2013* and is the distance suggested in the Australian Sex Party's Victorian *Public Health and Wellbeing Amendment (Safe Access) Bill 2015*), it may be that this is too large a distance to achieve compliance with the *ACT's Human Rights Act 2004*.

WCHM considers one possible solution to be the designation of a distance in metres small enough to ensure compliance with the *Human Rights Act 2004*, but large enough to guarantee protection for women and their support people. We feel that 50 metres would provide this surety, and would be bolstered by delegating authority to the relevant Minister to make this zone larger where required.

**Recommendation 1:** Consider removing reference to a protected time from the exposure bill.

**Recommendation 2:** Consider designating the protected area to be 50 metres for all facilities that provide termination of pregnancy in the ACT, along with a provision for the relevant Minister to revise a zone to be larger if required.

## 5. Conclusion

WCHM is pleased to have had the opportunity to provide a response to the *Health (Patient Privacy) Amendment 2015*. We strongly encourage all legislators to take a long term view when considering laws surrounding access to termination of pregnancy in the Territory. This view should take into consideration the future landscape in regards to both the potential increase in protest activity, as well as changes to the number and location of termination of pregnancy providers. We regard the creation of privacy zones around services that provide termination of pregnancy as best practice in safeguarding women's safe access to reproductive health services and privacy. We are proud of the achievements of the ACT Government to date, and welcome continued leadership in this area.

## 6. Our Supporters



### **Australian Women's Health Network**

AWHN believes the amendment which recommends the establishment of “protected areas” will reduce the stigma and harassment often experienced by women accessing reproductive health services, and will provide safer and more equitable access to clinics.



### **The Canberra Rape Crisis Centre**

The Canberra Rape Crisis Centre heavily endorses the campaign of WCHM to enforce privacy zones around services that provide termination of pregnancy services in the ACT. The Canberra Rape Crisis Centre works with thousands of women each year in the Canberra Community, and some of these women have become pregnant as a result of ongoing rape and sexual violence either through family members or intimate partners. The trauma of sexual violence is well known, but the added trauma of women grappling with options and support available to them to assist with options relating to having become pregnant through rape is not well known or understood. This issue, whilst well understood by CRCC Counsellors, places women in such an isolated and impossible position. Being harassed whilst trying to seek support to deal with what is happening is unthinkable in its impact.



### **The Domestic Violence Crisis Service**

The Domestic Violence Crisis Service (DVCS) supports the creation of protected areas around providers of termination of pregnancy in the ACT. DVCS is a feminist-informed community organisation that seeks to address violence and abuse in family and intimate partner relationships and to promote respect in these relationships. We believe that safeguarding women's right to choose, privacy and safe access to services, protects all women from the arbitrary decisions and control of others, whether that choice is to continue a pregnancy or to terminate it. DVCS endorses the WCHM submission to the exposure bill.



## **Doris Women's Refuge**

We fully support women's rights to self-determination, dignity and absolute right to make decisions regarding their health, their bodies and their lives. We further value their individual right to freedom and privacy, and that it is the obligation of law makers to ensure that women's health is a priority in legislature.



**MARIE STOPES  
INTERNATIONAL  
AUSTRALIA**

## **Marie Stopes International Australia**

Marie Stopes International Australia, through our Dr Marie clinics, provides vital sexual and reproductive health services to women and men across Australia. Our services extend beyond surgical and medical abortion, to decision-based counselling, contraception, STI checks, Pap smears and vasectomy. We believe that the Health (Patient Privacy) Amendment Bill 2015 being developed in the ACT is a critical step toward enabling women and men to freely access sexual and reproductive health services of their choice.

Imagine you are going to give blood for vital blood transfusion services, only to face a barricade of protestors and harassment from people whose personal beliefs tell them blood transfusions are wrong. This is the reality faced by thousands of women who access vital reproductive and sexual health services across Australia every day. Staff members attending their regular place of work also face intimidation and harassment before they have even sat down at their desk.

We regularly see workplace health and safety incident reports being made by our team members as a result of this harassment as part of our overall incident reporting. Every woman has the right to access medical treatment without prejudice or harassment and every staff member has the right to go to work without being shamed for doing so, particularly when their role is to support the health and wellbeing of others.

Marie Stopes International Australia supports the concept of providing safe access for men and women seeking to access health and reproductive services. There are limitations in the bill that could be strengthened to ensure that the intent of the bill is achieved. Ideally, we would like to see the bill modelled on the Victorian Public Health and Wellbeing Amendment (Safe Access) Bill 2015.



## **YWCA Canberra**

YWCA Canberra has a long history of supporting the needs of women and girls in the ACT on a range of issues including affordable housing, access to childcare, prevention of violence, and gender equality. YWCA Canberra believes access to reproductive health services, including termination of pregnancy, is a vital issue for women in our community. Barriers that impede or impact upon women's free access to reproductive health services in the ACT must be prohibited. The *Patient Privacy Bill* acknowledges and seeks compliance with the principle of freedom of expression or assembly, as protected by the *ACT Human Rights Act 2004*. YWCA Canberra agrees with the importance of protecting the freedom of expression of Canberrans, and we do not wish to limit it unnecessarily. The primary task of the Bill is to provide protection to women and their supporters when accessing termination of pregnancy in the ACT—a legal and necessary health service. Establishing protected zones outside these facilities will provide reassurance and security for women, their families and healthcare staff. It will also ensure that women and their families can seek medical advice and treatment in privacy and without harassment, intimidation or humiliation.



## **Women With Disabilities ACT**

As an organisation responsible for systemic advocacy for women with disabilities in the ACT, Women With Disabilities ACT (WWDACT) is proud to support the WCHM submission to the exposure bill. WWDACT is pleased with the proposed actions to safeguard the legal and human rights of women accessing termination of pregnancy in the Territory. Women with disabilities face many barriers when accessing health services in the ACT, therefore WWDACT strongly supports the recommendations in this submission. WWDACT believes that freedom, independence and safety belong to all women. We are encouraged to see the positive leadership of our MLAs in this area, and we hope it continues.