



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Watching Them While They're Watching You

5 September 2018

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

By Email: health@parliament.qld.gov.au

Dear Committee Secretary,

RE: Termination of Pregnancy Bill 2018

1. The Queensland Council for Civil Liberties ("the QCCL") is a not-for-profit organisation that receives queries from members of the public regarding their civil liberties and individual rights.
2. The QCCL largely supports the ascension of the *Termination of Pregnancy Bill 2018* ("the Bill").
3. This submission canvasses the key points raised by the Queensland Government in their request for submissions, as well as issues that are relevant to the QCCL.
4. In the interest of completeness, we repeat our submissions made to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on 6 October 2016 and to the Queensland Law Reform Commission on 13 February 2018.
5. Broadly it is our position, like a large majority of Queenslanders, that abortion should be legal, and abortion is a matter between a woman and her doctor.

Gestational Limits

6. We recognize the political reality that others, including some MPs, hold very different views and that a Bill that allows unrestricted abortion on demand may not command majority support in Parliament. We also note that whilst ACT law provides for abortion 'on request', this may not be practicably available.
7. The QCCL position supportive of a combined approach, like that in Victoria. Namely being that abortion is decriminalized and available 'on request' up to 24 weeks and abortion is legal after 24 weeks where two medical practitioners agree that it is appropriate in all the circumstances.

qccl.org.au



@LibertyQld

PO Box 2281, Brisbane QLD 4001 forum.qccl@gmail.com Enquiries: [REDACTED]

Media Enquiries: Michael Cope, [REDACTED]

8. We recognise the small difference between this proposal and the time limit prescribed in the Bill but submit that additional time allows for more appropriate decision-making.
9. The QCCL appreciates the complexities of terminating late term pregnancies, and as such, we support specific grounds for termination after 24 weeks. We note the grounds outlined in clause 6 of the Bill but submit that a further ground of social and economic circumstances be taken into account.

Permitted medical practitioners who may perform lawful abortions

10. The QCCL supports the approach of the Bill, such that it is a criminal offence for an unqualified person to perform a termination. We further support the right for registered health practitioners to assist in performing terminations. The QCCL submits that health practitioners should be allowed to perform terminations and should be able to supply or administer a termination drug to a woman who is not more than 24 weeks pregnant. The QCCL approves of the definition of a health practitioner in clause 7 of the Bill and the ambit of assistance pursuant to subclause 7.2 of the Bill.

Consultation by the medical practitioner

11. The QCCL agrees with the consultation process as outlined in clause 6 of the Bill. We have previously submitted that the current Queensland Clinical Guideline is unnecessarily cumbersome and can result in an undue delay. Furthermore, it is important that a panel not be introduced as obligatory as this has been shown to lead to delays and result in later termination of pregnancy. The QCCL supports a combined approach, with consultation required after 24 weeks. We support a move in line with the RANZCOG statement and the Victorian model. This would constitute agreement by two medical practitioners where the woman is more than 24 weeks pregnant.

Conscientious objection

12. The QCCL supports the position of the Bill, specifically in ensuring that conscientious objection does not apply in cases of emergency and that practitioners who do object have a duty to refer the woman to another registered health practitioner.
13. The QCCL believes that the codes of conduct and ethical standards already adequately address the issue of conscientious objection, and so it should not be the subject of legislation. However, we recognise that a lack of legislative guidance may result in some ambiguity, and so our position is outlined below.
14. At the individual level, the law ought to reflect the position that a person is not entitled to exercise a right in such a way as to do harm to another person. So the first question to be asked is whether or not conscientious refusal of a person to assist in provision of abortion would represent a threat to the safety or health of the woman. In that case the first duty of the health professional must be to the woman.
15. In *Shelton v University of Medicine & Dentistry, Dentistry of New Jersey*, 223 F.3d 220, the US Court of Appeal for the Third Circuit rejected a nurse's claim that she was subject to discrimination when she was fired from a public hospital for having refused on religious grounds to participate in two emergency procedures. She had refused because the procedures would have required the termination of pregnancy.
16. In our view, a conscientious objection provision should not apply in an emergency, or in the absence of another termination service within a reasonable geographical proximity. To not include these provisions would mean that practically, women would face unnecessary barriers to access a safe abortion.
17. Further, a practitioner with a conscientious objection should be obliged to refer a woman to

another termination of pregnancy service, so that she may access the standard of medical care that she is entitled to.

Safe access zones

18. The QCCL further submits that no one should be the subject of vilification or harassment, by which we mean conduct, including speech, directed at a specific individual or individuals which is intended to cause distress or harm. However, this requires a careful balance to protect freedom of speech.
19. The QCCL submits that safe access zones would protect those who visit a facility that provides pregnancy termination from harassment. It would also protect their privacy.
20. We submit that demonstrations and 'footpath counselling' cause undue stress on persons visiting a facility, and that any counselling should be offered by qualified health practitioners.
21. We support the definition of a "safe access zone" as defined in clause 14 of the Bill. The Council accepts that a distance of 150m consistent with many other states, and therefore adequate.
22. In our view, abortion laws can be clearly distinguished from laws against protesting outside a forest or a mine. People visiting these clinics are engaged in a deeply personal, private and no doubt an emotionally stressful activity. This justifies giving them some level of protection, whilst still allowing those with alternative views a fair and proportionate opportunity to express their views and opinions.
23. Furthermore, it is our position that it should be an offence to publish or distribute a recording of another person entering or leaving, or trying to enter or leave, premises where terminations are performed, unless the recorded person has given their consent.
24. Generally, a termination of pregnancy is an entirely private matter, with no public interest.

Reporting requirements

25. We note that reporting requirements have been removed from the Bill and, in the interest of clarity, maintain our position that anonymised and un-identifiable reporting, as occurs with other health and medical procedures and on the same terms and obligations expressed within, *inter alia*, the *Privacy Act 1988*, are reasonable. However, the QCCL maintains its position that any mandatory reporting obligation which may later be introduced by regulation or policy would be unnecessary.
26. We thank the QCCL interns, Nikita Aganoff, Alex Ladd and Amye Fairbairn, for their assistance in the preparation of this submission.
27. We trust that submission is of assistance and please do not hesitate to contact us should you require any further information or comment.

Yours sincerely,



Angus Murray
Vice-President
For and on behalf of the
Queensland Council for Civil Liberties

Email: forum.qccl@gmail.com

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