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

> *Those words of Bracton quoted by Coke, 'The King is under God and the law' epitomise in one sentence the great contribution made by the common lawyers to the Constitution of England. They [the common lawyers] insisted that the executive power in the law was under the law. In insisting upon this they were really insisting on the Christian principles [of the common law]. If we forget these principles, where shall we finish? You have only to look to the totalitarian systems of government to see what happens. The society is primary, not the person. The citizen exists for the State, not the State for the citizen. The rulers are not under God and the law. They are a law unto themselves. All law, all courts are simply part of the State machine. The freedom of the individual, as we know it, no longer exists. It is against that terrible despotism, that overwhelming domination of human life, that Christianity has protested with all the energy at its command.*
>
> - Sir Alfred Denning, The Changing Law (Stevens & Sons, 1953) 118. [1]

Thank you to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for accepting submissions on the Termination of Pregnancy Bill 2018.

After reviewing the Termination of Pregnancy Bill 2018 and the Queensland Law Reform Commission's Report on Decriminalising Abortion in Queensland, I list my concerns on the Bill below.

First, I want to make known my objections to the Terms of Reference given to the Law Reform Commission to review Queensland's abortion laws. Not only did they bind the Commission into treating abortion as positive, they did so despite the mountains of evidence cited in both reviews of Rob Pyne MP's Bills which showed that there are some very real concerns with how abortion is practiced at present in Queensland, let alone how on decriminalisation the issues would only compound. As a result, the Termination of Pregnancy Bill 2018 is drafted purely and simply as an ideological manifesto, rather than a balanced, prudent treatment of the matter at hand.

ISSUES WITH THE PROPOSED LAWS

Argument from the Woman's Right to Autonomy

[1] As cited in Augusto Zimmermann, 'Sir Edward Coke and the Sovereignty of Law', Macquarie law Journal, Vol 17, 2017 p. 131.

The expressive individualism movement is reaching its peak, confident that it is now free to propose such preposterous laws such as abortion until birth - virtually on demand (as well as voluntary euthanasia). It is somewhat ironic, however, that a contrasting movement which recognises the interdependency of human beings, their reliance on each other and that the human condition is laced with both grace and frailty is growing at a faster pace than individualism ever did.

As the eminent philosopher Alasdair MacIntyre conceptualises:

> And as it is with the care needed by children, so it is too with the care needed by the old and the physically and mentally infirm. What matters is not only that in this type of community children and the disabled are objects of care and attention. It matters also and correspondingly that those who are no longer children recognize in children what they once were, that those who are not yet disabled by age recognize in the old what they are moving towards becoming, and that those who are not ill or injured recognize in the ill and injured what they often have been and will be and always may be.[2]

How much more reverence do we owe to our own mothers who carried us within their own bodies; to recognise ourselves in the unborn who are at their most vulnerable, and to venerate the women, who, whether planned or unplanned, carry the next generation within them?

Abortion is the antithesis of this.

Exclusion Zones

A more thorough discussion of my objections to the exclusion zone legislation can be found in my submission to the Committee reviewing Mr Pyne MP's second abortion Bill.[3] Here I will discuss why the push to legislate exclusion zones in this Bill leaves me scratching my head.

As the Committee reviewing the Pyne Abortion Bill had Nicholas Aroney, a Constitutional Law Professor from the T.C. Bernie School of Law at the University of Queensland, witness before them that he believed that the exclusion zone legislation contained in Mr Pyne's Bill was 'almost certainly unconstitutional' as it would intrude upon the implied freedom of political communication within the Constitution[4] - notwithstanding the fact that the Clubb Case[5] which will examine this issue directly will be before the High Court later this year - it beggars belief that

[2] Alasdair MacIntyre, 'Dependent Rational Animals', Open Court, Chicago and La Salle, Illinois, 1999, p. 146.

[3] See Mary Crabb (2016), Submission to the Health Communities, Disability Services and Domestic and Family Violence Prevention Committee on the Health (Abortion Law Reform) Amendment Bill 2016, assessed at: [redacted]

[redacted] in Queensland 'could breach constitution', Brisbane Times, 27 October, 2016, assessed at: [redacted]

[5] Clubb v. Edwards & Anor Case No. M46/2018

that both the Queensland Law Commission and the drafters of this Bill didn't err on the side of caution, or at least postpone tabling it until a judgment on this matter is handed down.

Secondly, the number of existing laws that already prevent harassment, intimidation, stalking and the like outside and inside abortion clinics, even to the point that people are able to register a peaceful protest with the Police and have it approved prior to it being held, strike a balance between people's right to political communication (otherwise known as freedom of speech) and freedom of religion with the right for people accessing abortion clinics to not be unlawfully harassed, intimidated, threatened, etc.

This Bill has the pendulum swung so far in favor of those who seek to profit from women not having a chance to rethink their abortion outside of a clinic that the bias could be smelt 150 metres away!

Conscientious Objection

My thoughts on conscientious objection and being required to assist in an abortion in an emergency can be found in my submission to the Parliamentary Committee that reviewed Mr Pyne's second abortion Bill.[6]

In this Bill, however, the most startling revelation on the matter of conscientious objection is that there will be a blanket requirement for institutions whose ethos is against providing abortion services to instead have this ethos trampled upon.

Healthcare workers under their employ, providing they have no conscientious objections as individuals, would be able to demand the right to perform abortions on their premises. This is not withstanding the fact that if a woman comes to a health institution, practice or pharmacy and asks for assistance with an abortion, at the very least a health practitioner *must* refer her to a practitioner that will assist her.

In both situations freedom of conscience, religion and belief, and in the former, freedom of association, are encroached upon - the mind boggles on the number and convolutedness of the lawsuits that will eventuate from this situation.

EXAMINING THE CURRENT STATE OF LAW

International Human Rights Law and Abortion

The most convincing, yet weakest argument from proponents of this Bill, is that Human Rights Law compels the State to decriminalise abortion to prioritise the availability of reproductive healthcare to women.

Nothing could be further from the truth.

[6] See Mary Crabb (2106), op cit.

Since its inception, the Universal Declaration of Human Rights recognised the Unborn as being part of the Human Race and guaranteed their Right to Life. Subsequent documents must be read in this context as there is no provision for the rewriting of the content of original document when applying it to further reports from United Nations' (UN) committees. For example, from the Convention on the Rights of the Child it reads:

> Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" [emphasis added] ...
>
> **Article 6**
>
> 1. States Parties recognize that every child has the inherent right to life.
>
> 2. States Parties shall ensure to the maximum extent possible the survival and development of the child[7]

What has occurred is that a radical feminist agenda has been pushed by members of the UN who have since used the committee process to write report after report referencing themselves to form precedent thereby seeking to justify the deletion of the Right to Life of the Unborn and to replace it with a faux right to abortion under the Orwellian term, "reproductive healthcare".

Of course, these documents make it ever so easy for the co-conspirators of the agenda who reside within governing bodies to convince the populace and the legislature that decriminalising abortion must be an issue of top priority.

As Senator for Queensland Amanda Stoker rightly observes:

> There is also some irony in the invocation of human rights law in support of these radical abortion proposals. The same body of human rights law which establishes the fundamental human right to life (see Article 6 of the International Covenant on Civil and Political Rights) is now being relied upon to justify the death of approximately 14,000 babies in Queensland every year.[8]

Common Law and Abortion

In English Common Law the unborn child was protected from abortion from the time of 'quickening' as a matter of being able to prove that the pregnancy existed, until such time that it was established as a scientific fact that human life began at conception.

---

[7] United Nation's Convention of the Rights of the Child, 1989, assessed at: [redacted]

[8] Amanda Stoker, 'Annastacia Palaszczuk and the merchants of death', The Spectator, 20 July, 2018, assessed at: [redacted]

> The "quickening" distinction survived in common law until emergent medical science discovered "that human life began at fertilization," allowing medical examiners to prove prenatal life and cause of death due to abortion with greater certainty.
> After this discovery in the early nineteenth century, British courts instructed jurors that "quick with child," which had earlier meant "formed and animated," now meant "from the moment of conception." When determining whether to grant temporary reprieve from execution for a pregnant woman, for example, the court in *Regina v. Wycherley* reinterpreted common law to reflect that new scientific fact in 1838.[9]

Common law in Queensland hedges on the ruling by Justice McGuire in *R v Bayliss and Cullen 1986* (Qld). It is presumed that in this case he incorporated Justice Menhennitt's ruling in *R v Davidson 1969* (Vic), simply known as the "Menhennitt Rule" to be fully compatible with Statute Law in Queensland. That is debatable. The Menhennitt ruling defined an abortion as lawful when a doctor had formed a reasonable belief that an abortion was:

> necessary to preserve the woman from a serious danger to her life or physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of pregnancy would entail; and
>
> in the circumstances not out of proportion to the danger to be averted.[10]

I believe it is quite a liberal interpretation that would say that abortion in Queensland is allowed for physical and mental health reasons that aren't a normal manifestation of pregnancy. As Justice McGuire stated in his opinion:

> It would be wrong indeed to conclude that Bourne equates to carte blanche. It does not. On the contrary, it is only in exceptional cases that the doctrine can lawfully apply. This must be clearly understood. The law in this State has not abdicated its responsibility as a guardian of the silent innocence of the unborn. It should rightly use its authority to see that abortion on whim or caprice does not insidiously filter into our society. There is no legal justification for abortion on demand.[11]

It is worth noting that Justice McGuire believed that the sections of the Queensland Criminal Code pertaining to abortion were uncertain and needed further clarification by either the Court of Appeal or the Parliament.[12]

It is safe to say that Common Law as well as Human Rights Law both determine that the Unborn are Human Beings worthy of protection, except for in the rarest of circumstances. As a matter of clarification these circumstances ought to be defined by the legislature.

---

[9] Joshua Craddock, 'Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?', Harvard Journal of Law & Public Policy, vol 40, no. 2, 2017, p. 554.
[10] *R v Davidson 1969* (Vic)
[11] *R v Bayliss and Cullen 1986* (Qld)
[12] See Children by Choice, Queensland Abortion Law, assessed at: [redacted]

The fact that at least 14,000 abortions occur each year in Queensland demonstrates the abject failure on all levels of society to protect the most vulnerable Human Beings among us.

Statutory Law in Queensland and Abortion

The Queensland Criminal Code by no means discounts the Unborn as members of the Human Race as the term 'unborn child' is mentioned in it many times. The distinction between 'unborn child' and 'person' in the Code is to do with matters of Tort and Criminal Law rather than a determination of the point of embodiment of personhood, in a metaphysical sense, occurring at the time of birth.

Moreover, in comparison with jurisdictions such as NSW, the Code recognises that it is a criminal offence to illegally harm an unborn child:

> **313 Killing unborn child**
> (1) Any person who, when a female is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, the person would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.
> (2) Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.
> Penalty: Maximum penalty—imprisonment for life.[13]

One glaring contradiction in the existing Criminal Code is the conflicting ethical basis used for abortion and euthanasia legislation.

Euthanasia is proscribed using the Principle of Double Effect - in a nutshell the difference between indirect treatment that hastens or leads to death and direct killing by either by an act or omission.

Whereas abortion is justified by Double Effect (an example would be where a mother needs chemotherapy to treat an aggressive form of cancer while she is pregnant and her baby dies indirectly as a result of being exposed to the chemotherapy agents) *as well as* Consequentialism: an assessment as to how a pregnancy negatively affects a mother and is subsequently used as a justification to abort her child.

In brief, Double Effect ought to be the only way to legislate on both abortion and euthanasia. It is not subjective, arbitrary or a springboard for a slippery slope. It also makes the law clear.

The Conundrum of Babies who are Born Alive after an Abortion

Separate from the circumstance of a baby being born alive but 'doomed' to death caused by injury which occurred prior to birth during a legal abortion, it needs to be highlighted that a baby

[13] *The Criminal Code Act 1899* (Qld) s 313

who is born alive after an abortion procedure who is not 'doomed' to death must be provided with assistance and not simply be 'left to die' as the following sections of the Criminal Code attest:

> **292 When a child becomes a human being**
> A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not…
>
> **293 killing**
> Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person…
>
> **282A Palliative care**
> (1) A person is not criminally responsible for providing palliative care to another person if—
> (a) the person provides the palliative care in good faith and with reasonable care and skill; and
> (b) the provision of the palliative care is reasonable, having regard to the other person's state at the time and all the circumstances of the case; and
> (c) the person is a doctor or, if the person is not a doctor, the palliative care is ordered by a doctor who confirms the order in writing.
> (2) Subsection (1) applies even if an incidental effect of providing the palliative care is to hasten the other person's death.
> (3) However, nothing in this section authorises, justifies or excuses—
> (a) an act done or omission made with intent to kill another person; or
> (b) aiding another person to kill himself or herself.
> (4) To remove any doubt, it is declared that the provision of the palliative care is reasonable only if it is reasonable in the context of good medical practice.
> (5) In this section—
>
> "good medical practice" means good medical practice for the medical profession in Australia having regard to—
> (a) the recognised medical standards, practices and procedures of the medical profession in Australia; and
> (b) the recognised ethical standards of the medical profession in Australia.
>
> "palliative care" means care, whether by doing an act or making an omission, directed at maintaining or improving the comfort of a person who is, or would otherwise be, subject to pain and suffering.[14]

Arguably the Criminal Code s 326 Child Exposure comes into play here as well:

[14] Ibid. ss 292, 293 & 282A

326 Child Exposure
Any person who unlawfully abandons or exposes a child under the age of 7 years, whereby the life of such child is or is likely to be endangered, or the child's health is or is likely to be permanently injured, commits a crime.

Penalty: Maximum penalty—7 years imprisonment.[15]

To my knowledge there are no regulations or directives in place to advise health practitioners of their responsibilities under law on this issue, however it is widely known that babies are born alive after abortion. This oversight attests to the dangerous link between abortion and infanticide, a slippery slope that ought never exist in a civil society.

Conclusion
Ideally, and in conjunction with Common Law and International Human Rights Law precedent, the legislature's role is to clarify how the Unborn's Right to Life is to be protected whilst accurately defining logical exceptions to the rule based on sound ethical precepts. Given that abortion on demand until 20 weeks gestation, although tentatively, is theoretically what currently occurs in Queensland, give or take, it would be unrealistic to think that this goal is currently achievable. Yet momentum for a rethink on the negative effects of abortion is gaining ground.

In my opinion, and in taking Sir Alfred Denning's lead, I believe any person who votes for this Bill is seeking to make the law unto themselves. I therefore ask the Committee to outrightly reject the Termination of Pregnancy Bill 2018.

Yours faithfully,

Mary Crabb

[redacted]

[15] Ibid. s 326