Dear Parliamentary Committee Members,

Introduction

Below is my submission in relation to the Termination of Pregnancy Bill 2018. To tell you something about myself, I am a solicitor working in the public sector (note I make this submission as a private citizen), a native Australian and am married with a two children, aged two years old and ten months old.

Section 3 Purposes

To treat termination of pregnancy as a purely health issue, is (except in relation to clinical practice) to strip the issue of its ethical implications. Termination is fundamentally killing, and when killing should be lawful is one of the most serious ethical questions for society. Across all societies and cultures, unlawful killing in other contexts rightly attracts the most severe criminal penalties. It is therefore entirely inappropriate to treat this question as one of a health complaint without ethical implications.

I would strongly recommend that the current purposes of the Bill be altered. If the Bill does proceed, then I would recommend it be amended to recognise the ethical and legal implications of termination. I would suggest the following alternative wording:

"s. 3 The purposes of this Act are-

(a) to regulate access by women to terminations;

(b) to prescribe offences relating to terminations; and

(b) to regulate the conduct of registered health practitioners in relation to terminations."

Section 6 Termination by medical practitioner after 22 weeks.

Termination by a medical practitioner after 22 weeks gestation should only be justified in limited circumstances. At 22 weeks of gestation, the unborn child is on the cusp of being able to survive (long-term) independently of the mother's body. On that basis any termination at that point onwards is a killing and such killing should be lawful only in limited circumstances. Section 6 of the Bill fails to sufficiently limit (or clarify) those circumstances.

As noted in the QLRC Report, consideration of Queensland case law on the issue found that the court considered late-term abortion on demand is not justified, should only apply in exceptional circumstances, and that consideration of social and economic circumstances of the mother was not included (R v Bayliss & Cullen). Section 6 of the Bill however, expressly includes 'social' circumstances and is quite unclear as to what is meant by social and what other circumstances apply (beyond consideration of relevant medical circumstances and professional standards and guidelines).

Ethical and appropriate circumstances that support a late-term abortion are: structural and genetic abnormalities in the unborn child, severe maternal health complications or an emergency (as well covered by section 6(3) of the Bill). Beyond that, the current and future physical, psychological and social circumstances of the woman are not decisive circumstances for or against termination. Indeed psychological circumstances weigh in favour of not terminating, as women who do terminate have a significantly higher risk of mental illness, depression and suicide. The inclusion of social circumstances (without further definition) is itself vague, and not a legitimate or ethical consideration that should be entertained in the context of late-term abortion.

While surveys of public attitudes to abortion in Australia (as cited by the QLRC report) indicate support for a woman's right to request an abortion, there is little public support for late-term abortion, abortion for social reasons (or quasi-social cultural reasons), or sex-selection abortion. Yet these

extreme options for abortion are all proposed to become valid considerations for medical practitioners in performing terminations under section 6 the Bill.

I would request that section 6(2) of the Bill be amended to exclude social circumstances from s.6(2)(b).

I would also request that the section be rewritten to identify circumstances as for and against a decision to perform a termination, rather than be listed as (neutral) circumstances for consideration. The current wording of s.6(2) lacks the further information needed as to whether those listed circumstances support or oppose a decision to perform the termination. I would propose that s.6(2) of the Bill be deleted and replaced as follows:

"(2) In considering whether a termination should be performed on a woman who is more than 22 weeks pregnant, a medical practitioner must consider-

(a) all relevant medical circumstances; and

(b) whether the woman's current and future physical and psychological health would be assisted or harmed by performing such a termination; and

(c) if structural or genetic abnormalities affect the unborn child, that the termination should be performed; and

(d) the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination; and

(e) the general principle that such terminations should be performed only where strongly supported by considerations in this s.6(2)(a) to (d)."

Section 8 Registered health practitioner with conscientious objection and Section 9 compliance with this part relevant to professional conduct or performance

As a matter of freedom of conscience, a medical practitioner should not be compelled to perform, or assist in performing, a termination where that medical practitioner considers a termination morally repugnant. It follows that such freedom of conscience extends to refraining from assisting a different medical practitioner to perform that termination.

Section 8(3) of the Bill however proposes to compel conscientious objectors to actively assist the woman seeking a termination to obtain that termination. This compulsion is enforced through the threat of investigation of the conscientious objectors professional conduct under s.9(1)(c) (as if upholding personal and professional ethics ought to be considered misconduct).

Rather than safeguard freedom of conscience for medical practitioners, the Bill seeks to coerce them to act against their conscience and ethical standards, and to threaten them with allegations of professional misconduct. This is unethical, oppressive and an abuse of power.

For these reasons, I strongly request that s.8(3) is deleted.

Section 10 Woman does not commit an offence for termination on herself.

What is lawful and unlawful killing is a most serious ethical question. Section 10 of the Bill grants a blanket exclusion from criminal responsibility (irrespective of circumstances) to the woman where she performs or assists in the termination of her unborn child herself. This exclusion of criminal responsibility ought not to apply to a woman who performs her own termination, as a matter of public policy and public health to prevent the return of backyard abortions performed without reference to medical practitioner's expertise.

Secondly where the woman assists or consents to the termination of her unborn child, the exclusion must be subject to compliance with Part 2 of the Bill (ie that exclusion of responsibility should only occur where the termination is delivered by a medical practitioner in accordance with the Bill). The absence of these exceptions to exclusion of criminal responsibility, reopens the door to backyard terminations or medical terminations where the drug obtained is not sourced via a medical practitioner. This would be a further unintended and detrimental side effect of section 10 of the Bill.

For the above reasons, I would request that s.10 of the Bill is amended as follows:

"10 Woman does not commit an offence for termination of own unborn child in certain circumstances

Despite any other Act, a woman who consents to, or assists in a termination on her unborn child where such termination is performed by a medical practitioner in compliance with Part 2 of this Act, does not commit an offence, unless in contravention of s.10A (Procuring an abortion on sex-selection grounds)."*

* Please see below regarding this proposed additional offence (which I have labelled 10A for cross-referencing purposes).

In relation to where the woman performs a termination on herself, I would request that the relevant section 225 of the Criminal Code Act remain and not be omitted. If that is not possible, then alternatively the introduction of a similar section to s.225 into the Bill (with the same maximum sentence) would also be appropriate.

Part 4 Safe Access Zones s.11 to 15 (free speech and free assembly exclusion zones).

The euphemistically titled "safe access" zones in Part 4 of the Bill will have the effect of excluding basic human rights of free speech and free assembly around every hospital, medical centre and pharmacy providing surgical or medical termination services. These zones are being created under the pretext of protecting safety of health practitioners and clients seeking these services, however there is scant evidence of any lack of safety or threat to safety in the area of these zones on the part of abortion critics. In addition, even if there was an actual lack of safety or violence in the area of these zones, the Criminal Code and other legislation provides ample power for the State to prosecute offenders and maintain public safety.

In reality, the intention of these zones is to stifle the free speech of abortion critics, stifle their ability to express their views in an effective or public way and to delegitimise their views regarding abortion.

Under the Bill the Minister may, by regulation, extend these zones at her discretion and without reference to any criteria other than her belief in what is necessary to achieve the purpose of the Part. It is very troubling that these areas of free speech and free assembly exclusion may be expanded under the power of a Minister (with Governor in Council approval) and without further consideration by Parliament.

I strongly oppose any removal of basic human rights of free speech and free assembly in Queensland by the creation of these exclusion zones. I further oppose the inclusion in the Bill of any power of the Minister to expand these free speech exclusion zones by regulation.

For those reasons I request the removal of Part 4 (and the related Part 5) of the Bill in its entirety.

Section 22 deletion of s.224-226 of the Criminal Code

As noted above in my submission on section 10, the Bill's removal of s.225 of the Criminal Code Act is a serious misstep excusing criminal responsibility on the part of the pregnant woman where it is warranted.

In relation to section 224 and 226 (attempts by another person to procure an abortion) I note that the Bill does seek to replace this criminal offence through s.24 and 25. I am comfortable with the Bill's replacement offences, or the original Criminal Code Act ss.224 and 226 offences remaining.

I would request that section 22 of the Bill be amended to remove the omission of s225 of the Criminal Code Act, and the Bill replace s225 of the Criminal Code Act with the following (assuming the Bill passes):

"Performing an abortion by woman with child

Any woman who, with intent to terminate her own unborn child:
(a) unlawfully administers to herself any poison or other noxious thing, or
(b) uses any force of any kind, or
(c) uses any other means whatever, or
(d) permits any such thing or means to be administered or used to her, unless by a medical practitioner or registered health practitioner in compliance with Part 2 of the Termination of Pregnancy Act 2018,
is guilty of a crime, and is liable to imprisonment for 7 years."

<u>Addition of an offence (whether under this Bill or the Criminal Code Act) of procuring an abortion on sex selection grounds.</u>

One aspect of termination which has been ignored by the QLRC in preparing this Bill, is sex-selection abortion (ie where the parents consider one sex more desirable than the other and as a result choose to terminate the pregnancy upon identifying the sex as "undesirable"). Where statistics in western countries are kept on this issue, they indicate ethnic backgrounds which consider male children as more desirable are trending to unnaturally low birth rates of females relative to males. This trend (apart from being unethical in a society where men and women are equal and equally valued) will have serious public policy implications if not addressed.

I would therefore request that a new offence (whether under this Bill or the Criminal Code) of procuring an abortion on sex selection grounds, be inserted (I have assigned it s.10A for the purposes of cross-referencing in other proposed drafting above). The wording of such an offence might be (roughly) as follows:

"10A Procuring or consenting to termination of an unborn child on sex selection grounds:

Any woman who:
(a) with knowledge of the sex of her unborn child; and
(b) with the intent of sex-selection;
procures, assists with or consents to the termination of her unborn child is guilty of a crime, and is liable to imprisonment for 7 years."

In this section-

sex-selection grounds means to terminate an unborn child due to the sex of that unborn child, where the sex of that unborn child is considered undesirable by the pregnant woman."

I am comfortable with this submission being published.

Yours sincerely

Drew Koppe