Queensland Parliament

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Submission to the Inquiry into the Termination of Pregnancy Bill 2018

Julie Hamblin

I am making this submission as a lawyer who has practised in the health sector for more than 25 years. I have acted for hospitals and individual health practitioners across the full spectrum of legal issues relevant to clinical practice. I also hold a number of appointments to government bodies and other health sector organisations including:

- NSW Ministry of Health Clinical Ethics Advisory Panel
- Commonwealth Medicare Benefits Schedule Review – Obstetrics and Gynaecology Clinical Committees
- Australian Research Integrity Committee
- Family Planning NSW International Program Advisory Committee
- NICM Advisory Board

A particular focus of my work for many years has been sexual and reproductive rights. I have worked with the United Nations Development Programme, UNAIDS and other organisations on public health and human rights, particularly in relation to HIV, in more than 20 countries in Africa, Asia, the Pacific and Eastern Europe. I believe that the law is a critical element of rational and effective health policy, and must underpin appropriate, equitable and non-discriminatory access to reproductive health services.

For many years, I have advocated publicly for the reform of laws within Australia that criminalise abortion. I believe that there is no place in 2018 for the criminal law to intrude upon women's decisions in this area. To permit it to do so is out of line with contemporary medical practice and inconsistent with what the majority of Australians think is appropriate. It is also inconsistent with Australia's commitments under international law as the Consultation Paper of the Queensland Law Reform Commission pointed out.

I therefore welcome the Termination of Pregnancy Bill 2018 (Qld), and believe it should be passed in its current form without amendment.

In answer to the specific questions posed by the Committee, my responses are set out below.

1. Lawful terminations - not more than 22 weeks pregnant

Clause 5 of the Bill allows that a medical practitioner may perform a termination on a woman who Is not more than 22 weeks pregnant. Clause 10 of the Bill provides that a woman who consents to, assists in, or performs a termination on herself does not commit an offence. Clause 22 of the Bill repeals sections 224 to 226 of the Criminal code which make it an offence to terminate a pregnancy.

Do you agree that termination should be lawful on request up to 22 weeks?

Yes.

It is my view that a woman should be able to make her own decision about whether to terminate her pregnancy, and that this right should exist regardless of the gestational stage of the pregnancy. However, I acknowledge there is a level of public concern about the regulation of late term abortions, and that it may therefore be appropriate for some additional legal requirements to be put in place for later term abortions.

Having a threshold of 22 weeks for any additional legal requirements seems to me to represent an appropriate balance between respecting the autonomy of women to make their own decisions about termination of pregnancy, and acknowledging concerns about late term abortions, particularly after the point at which the foetus may be viable. An earlier gestational limit in the range 16 to 20 weeks risks causing serious prejudice to women seeking second trimester abortions. There is good evidence to suggest that women seeking terminations in the second trimester rather than earlier in the pregnancy are more likely to be socially and economically disadvantaged and more likely to have experienced domestic violence. Making it more difficult for these women to obtain a lawful abortion only serves to increase their vulnerability.

2. Lawful terminations - more than 22 weeks pregnant and with the agreement of two medical practitioners

Clause 6(1) of the Bill allows that a medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers that the termination should be performed, and has consulted with another medical practitioner who also agrees that the termination should be performed.

Clause 6(2) of the Bill outlines the matters which a medical practitioner must consider when considering whether a termination should be performed - these being all relevant medical circumstances, the woman's current and future physical, psychological and social circumstances, and the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.

Do you agree that terminations should be lawful beyond 22 weeks with the agreement of two medical practitioners?

Yes.

I consider that Clause 6, as currently drafted, represents a very reasonable approach to the regulation of abortions after 22 weeks. Any decision to have a late term abortion is one that is painful and difficult for the woman concerned, and not taken lightly. The decision is best made by the woman in consultation with her treating medical practitioners and in accordance with relevant professional standards. The law should recognise that many factors may be relevant to the decision and should permit consideration of all the ways in which an unwanted pregnancy may affect the woman. This should include the woman’s current and future physical, psychological and social circumstances.

3. Lawful terminations - more than 22 weeks pregnant and in an emergency

Clause 6(3) of the Bill allows that a medical practitioner may, in an emergency, perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers it necessary to perform the termination to save the woman's life or the life of another unborn child.

Do you agree that terminations beyond 22 weeks should be allowed in an emergency?

Yes. This is clearly appropriate and consistent with the legal position in relation to other medical procedures.

4. Conscientious objection

Clause 8 of the Bill allows for a health practitioner to conscientiously object to the performance of a termination. The health practitioner is required to disclose their conscientious objection and refer or transfer the woman to another health practitioner or health service provider. The clause does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

Do you agree with allowing a health practitioner to conscientiously object to the performance of a termination, except in emergencies?

Yes. I am in favour of permitting a health practitioner who has a deeply-held moral or religious objection to termination to exercise a right of conscientious objection. However, safeguards must be put in place to ensure that recognising a right of conscientious objection does not have the consequence in practice that women are denied adequate access to termnation services and other necessary reproductive health care.

Accordingly, a right of conscientious objection should not apply in case of emergency. In all other cases, the health practitioner should be able to conscientiously object but should be required to refer the patient to another health practitioner who does not share the conscientious objection to abortion or to a health service that offers abortion.

There is a real concern that recognising a right of conscientious objection may, in some circumstances, mean that women in geographically isolated communities are left with little or no access to termination if their local health practitioners are morally opposed to providing it. To address this concern, consideration could also be given to limiting any legal right of conscientious objection to termination in cases where there is no alternative pathway for women in that geographic region to access termination services.

5. Safe access zones

Clauses 11 to 14 of the Bill allow for the establishment of safe access zones at termination service premises. The safe zone applies to an area within 150 metres of the entrance of the termination service premises, unless a distance is prescribed by regulation. It also establishes penalties for prohibited conduct or restricted recording (including the publication and distribution of a restricted recording) within a safe access zone.

Do you agree with the establishment of safe access zones within 150m of the entrance of

termination service premises and associated penalties for prohibited conduct or restricted recording?

Yes. Unfortunately, there are many examples across Australia of inappropriate and offensive behaviour by opponents of abortion directed at women attending clinics that provide abortions, as well as at the staff of those clinics. This behaviour goes beyond mere "free speech" (which I support) and amounts to intimidation and harassment that should not be permitted. Existing legal remedies have not been effective in restraining this behaviour. It is therefore appropriate to establish safe access zones around premises in which termination services are provided.

6. Offences for unqualified persons

Clause 25 of the Bill outlines offences for an unqualified person who performs, or assists in performing, a termination on a woman. Both offences have a maximum penalty of 7 years imprisonment.

Do you agree with the proposed offences for unqualified persons who perform or assists with a termination?

Yes, although I query whether the offences are necessary. If abortion is decriminalised and is able to be offered lawfully as part of mainstream reproductive health services, the risk that unqualified people will offer terminations of pregnancy will be greatly diminished. It may therefore not be necessary to create offences for an unqualified person to perform or assist in performing a termination. Requirements of this kind are not considered necessary in relation to most other medical procedures. However, if the criminal offences proposed will help to address any residual concerns that unqualified people may perform abortions unsafely, I would not oppose them.

7. Other issues

If you wish to make any other comments in relation to this Bill, you can do so here:

I understand the Committee may also be considering whether the Bill should make counselling mandatory for women seeking a termination.

I am strongly opposed to any mandatory counselling requirement. While women should be supported to make an informed decision about whether to terminate their pregnancy, and should have access to counselling services if they choose, there should be no legal requirement for counselling to be offered to all women seeking a termination. Such a requirement carries with it the unspoken assumption that a woman who wishes to have a termination must be psychologically unwell and in need of professional psychological support. This assumption is erroneous and inconsistent with the principle that women should be able to make their own decision about whether to have a termination. Any need for counselling should be dealt with on a case by case basis in consultation between the woman and her treating clinicians, as happens in other medical contexts.

Similarly, there should be no legal obligation for women seeking a termination to undergo counselling. It is offensive and disrespectful to women to force them to have counselling

when they do not want it, and achieves no useful public health objective. An additional reason for opposing any legal requirement to offer or provide counselling to women seeking a termination is that it presents yet another impediment in practice to making terminations accessible and affordable, particularly in areas where counselling resources may be limited.

8. Publication of submission

If the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee accepts a submission, it becomes part of the committee's records and is usually published on the committee's webpage as soon as possible to encourage public consideration. However, a committee may decide that a submission, or part of it, should be kept confidential.

Contact details of individuals (e.g. residential or email addresses or phone numbers) are removed before submissions are published.
Are you content for your submission to be published? *

Yes.

9. Appearing as a witness at a public hearing

As part of its inquiry, the committee will hold public hearings to build on the information provided in written submissions. These hearings provide the opportunity to those witnesses, who are invited by the committee to appear, to explain further, or add to, information included in their submissions. Hearings enable committee members to question submitters on the issues raised in their submissions. They also give submitters an opportunity to respond to issues or arguments put forward in other written or oral submissions.

Further information can be found in the guide *Appearing as a Witness*, available here.
Would you like to be considered to appear as a witness before the committee?

No.

Julie Hamblin