

Submission to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Termination of Pregnancy Bill 2018

I am writing to express my concern about the Termination of Pregnancy Bill 2018 that is currently before the Queensland Parliament. I strongly disagree with this Bill for the reasons outlined below.

1. Moral and ethical principles

First and foremost, the act of abortion is wrong. It is the taking of an innocent life. I understand that there are various scientific and theological debates about the moment that life begins, but:¹

- (a) A fetus has a heartbeat which can be detected by twelve weeks gestation
- (b) All body parts of the fetus are present by ten weeks gestation
- (c) The fetus is able to hear by nineteen weeks gestation
- (d) The sex of the fetus can be detected between sixteen and twenty weeks gestation

It is clear that his or her development as a baby begins well before 22 weeks gestation, which has been selected as a threshold for this Bill due to the viability of the fetus if it is born before that time. However, basing the Bill on the threshold that a fetus cannot survive outside of womb does not change the fact that it is a living being. As a 31 year old woman, I have watched my friends conceive and deliver babies that they have waited and prayed for. Their (and my own) regard for that child as a living being in need of protection began well before 22 weeks of pregnancy. Any society that regards a child (or fetus or baby or whatever term is used – terminology does not change the fact it is a living being) inside its mother's womb as liable to be "terminated" without consequences is a society in downfall. Queensland should not go down this path as a matter of moral and ethical principle.

2. Extreme legal permissiveness of the Bill

Legally, this Bill is extremely permissive. Proposed clause 5 removes all restrictions on abortion before 22 weeks, when the fetus is a living being as outlined above. There is not even any provision for consideration of whether abortion would be appropriate under the circumstances before 22 weeks gestation.

Proposed clause 6 effectively removes all restrictions upon abortion from 22 weeks gestation until birth. The wording of the legislation as 'the medical practitioner

¹ There are many sources which support this information but see for example:



considers that, in all the circumstances, the termination should be performed'² in conjunction with consideration of 'current and *future* physical, psychological and *social* circumstances'³ is drafted extremely broadly. It is able to be interpreted extremely widely to effectively allow an abortion in any circumstance for any reason. For example, the mother may be distressed that the sex of the baby is not her preference, or that she will not be able to maintain her current lifestyle financially if she has the child. I am not suggesting that women would commonly choose to terminate a pregnancy for such trivial reasons, but the Bill as it stands could easily be interpreted to allow termination for such reasons.

I consider that treating the decision of whether to allow an abortion on such permissive legislative grounds is a fundamental and grave legal error. Indeed, that was the opinion of learned minds such as Judge McGuire not so long ago in this State:

'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.'⁴

However, the Bill as it stands allows for abortion on demand as a consequence of proposed clauses 5 and 6.

3. The current law is sufficient

The law in Queensland as it currently stands already effectively allows abortion in limited circumstances and does not need to be expanded. Section 282 of the *Criminal Code 1899* (Qld) and *R v Bayliss and Cullen*,⁵ read together, allow abortion where there is a serious danger to the life or physical or mental health of the mother.

Notably, there have been no successful prosecutions (and only one attempted prosecution)⁶ under sections 224 – 226 of the *Criminal Code 1899* (Qld). This points to the conclusion that although abortion in Queensland is technically illegal, authorities will largely turn a blind eye to its practice, and juries will certainly hesitate to convict under these provisions.

The current law of Queensland is sufficient in dealing with the act of abortion. It does not need to be expanded to allow abortion for any reason at any time up until birth.

² Proposed clause 6(1)(a).

³ Proposed clause 6(2)(b).

⁴ *R v Bayliss and Cullen* (1986) 8 Qld Lawyer Reps 8.

⁵ *Ibid.*

⁶ *R v Leach & Brennan* [2010] QDC 329 under ss 225, 226 *Criminal Code 1899* (Qld).

4. Abortion as a result of rape or sexual abuse

There is often an argument advanced by pro-choice advocates that legalisation of abortion for pregnancy caused by rape or sexual abuse is necessary. Firstly, I note that abortion in this case would fall into an allowable category of abortion due to an arguable danger to the mental health of the mother by continuance of the pregnancy.⁷ However, statistics in Australia and worldwide show that abortions under these circumstances constitute a tiny proportion of abortions performed. Furthermore, undergoing an abortion and taking the life of an innocent party cannot right the tragic circumstances of pregnancy due to rape or sexual abuse. Two wrongs don't make a right and do not promote healing for a vulnerable woman in this situation.

5. Consideration of further policy options

I ask that the Government would explore other policy options surrounding this issue other than a blanket allowal of abortion until birth for any reason. Other policy options could include adoption policies and further counselling and support services for pregnant women. Abortion is a delicate, sensitive and extremely complex topic. It is a matter of life or death. Such a complex topic should not be dealt with by simply legalising abortion under all circumstances but rather by implementing comprehensive policy solutions. Please hold our government accountable and don't let them take the easy way out on this issue by simply legalising abortion. The women (and men) of Queensland deserve better this.

6. Conscientious objection under the Bill

Finally, I have concerns about the clause in the draft Bill requiring doctors who conscientiously object to refer a woman to another health care provider who will provide an abortion. I do not believe doctors should be compelled to do this.

⁷ By a combination of *Criminal Code 1899* (Qld) s 282 and *R v Bayliss & Cullen* (1986) 8 Qld Lawyer Repts 8.