

5 September 2018

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By email

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

Dear Committee Secretary

Termination of Pregnancy Bill 2018 (Qld)

I make this submission in my capacity as an individual Queensland and solicitor.

I refer to the *Termination of Pregnancy Bill 2018* (Qld) (**Bill**) introduced to parliament on 22 August 2018.

1 Executive summary

- 1.1 The Bill is objectionable and is directly at odds with extant legislation that reflects community expectations in relation to the protection of unborn children.
- 1.2 The effect of the Bill would be that criminal responsibility or the committing of an offence in relation to:
 - (a) the destroying of the life of an unborn child; or
 - (b) the act of preventing an unborn child from being born alive,shifts with the subjective preference of the unborn child's mother.
- 1.3 In other words, the effect of the Bill is that it would be an individual, not society, who determines the worth or value of the life of an unborn child.
- 1.4 I disclaim that my objection to the Bill is not religious but instead is grounded in moral, logical and public policy bases.

2 Section 10 of the Bill

- 2.1 The Bill suffers from a number of fundamental flaws, but I will deal only with the most significant.
- 2.2 Section 10 of the Bill provides that '*Despite any other Act, a woman who consents to, assists in, or performs a termination on herself does not commit an offence.*'
- 2.3 Section 10 of the Bill would appear to achieve the underlying objective of the Bill which is the decriminalisation of the termination of an unborn child in Queensland. In that sense, section 10 is the cornerstone of the Bill.
- 2.4 A necessary result of section 10 of the Bill is the proposed amendments to the *Criminal Code Act 1899* (Qld) (**Criminal Code**) set out in sections 21 to 25 of the Bill.

- 2.5 The major problem with the Bill is the interaction between section 10 of the Bill and section 313 of the Criminal Code.

3 Section 313 of the Criminal Code

- 3.1 The effect of section 313 of the Criminal Code is that it is an offence to kill an unborn child by preventing it from being born alive, including as a result of unlawfully assaulting a pregnant woman.
- 3.2 The public policy motivation for section 313 of the Criminal Code is immediately obvious – if a person assaults a pregnant woman, and as a consequence an unborn child's life is destroyed before its birth, the person has committed an offence (the maximum penalty is the same as murder – imprisonment for life). I suspect most people would agree that is not controversial and is a just and desirable societal outcome. Put simply, society says that killing unborn babies is bad.
- 3.3 In other words, we as a society have determined that an unborn child has intrinsic moral value, and that it is offensive to interfere with it. That must be case, because if it was not, the offences in section 313 of the Criminal Code would not exist (and the inference in that situation would be that a person can only 'kill' a child after it has been born and not before).
- 3.4 In simpler terms, the current law with respect to preventing a child from being born alive reflects society's position which is that killing unborn children is an offence that should carry with it the maximum available penalty.
- 3.5 This is the starting point.

4 Interplay between section 10 of the Bill and section 313 of the Criminal Code

- 4.1 Section 24 of the Bill amends section 313 of the Criminal Code in such a way that, if passed into law, section 313 of the Criminal Code would appear as follows:

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.*
- (1A) *A person does not commit an offence against subsection (1) by performing a termination, or assisting in the performance of a termination, under the Termination of Pregnancy Act 2018.*
- (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.*

Maximum penalty—imprisonment for life.

- 4.2 Proposed section 313(1A) of the Criminal Code would effectively operate as a defence to the otherwise extant offence of killing an unborn child.
- 4.3 That is illogical and as a result, bad law. It is illogical because an identical societal outcome (i.e. an unborn child is prevented from living) attracts different consequences depending on the subjective preferences of the individuals involved, rather than the preference of society as a whole.
- 4.4 Considered from a different (and equally undesirable angle), the effect of the proposed amendment to section 313 of the Criminal Code would be to make whether a woman wants to

give birth or not the determining factor about whether an offence is committed. That is, under the proposed legislation:

- (a) if a woman wants to give birth, and a person kills the unborn child, society has determined that the unborn child is sufficiently valuable that the most serious of offences has been committed; whereas
- (b) if the same woman does not want to give birth, and a person (including the woman herself) kills the unborn child, no offence has been committed (in spite of the already-established position that society has determined that the unborn child is has intrinsic moral value).

- 4.5 A further hypothetical confirms the absurdity of the Bill. In this hypothetical a pregnant woman wishes to terminate her pregnancy by procuring medicine herself in order to achieve that outcome. Before she can take the medicine, a person unlawfully assaults her, and the baby's life is destroyed as a consequence. Pursuant to section 313 of the Criminal Code (as it is proposed to be amended) the person who unlawfully assaulted the pregnant woman has committed an offence punishable by imprisonment for life notwithstanding that the baby's mother intended to destroy its life in any event. However, if the assault had not occurred, and the child's life was destroyed by medicinal means later that day by its mother, no offence has been committed. That is absurd.
- 4.6 It cannot be the case that the moral value attributed by society to an unborn child fluctuates with the subjective preference of the individual pregnant with the unborn child.
- 4.7 The effect of the Bill therefore is to repose in the mother alone the ability to decide an unborn child's worth or moral value. It is certainly not the case that an individual mother or individual father alone determines the worth or moral value of a new born child – it is society (by its laws) that does so. There is no legal, moral or logical justification to alter that position in the case of a child prior to his or her birth.
- 4.8 It is incompatible with logic that the killing of an unborn child is either legislatively permissible or legislatively offensive depending solely on the subjective preference of one individual. Either society considers an unborn child has worth and intrinsic moral value or it does not – we cannot have it both ways.
- 4.9 Therefore the only solution to this impasse would be to legislate to remove entirely the offence presently captured by section 313 of the Criminal Code (in other words, it would not an offence to kill an unborn child regardless of whether it is wanted by its mother or not). That of course will never happen. No Queenslander will ever say that an unborn child, if it is wanted by its mother, has no worth. To the contrary, society places almost infinite worth on an unborn child and it follows that the offence, which is abhorrent and of the worst kind, is catered for by section 313 of the Criminal Code.
- 4.10 As a result, the only satisfactory option is to maintain the status quo.

5 Explanatory notes

- 5.1 The proposed amendment to section 313 of the Criminal Code by clause 24 of the Bill does not address these issues and is dealt with in the most cursory of manners.

6 Summary

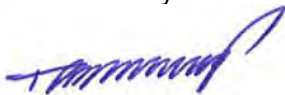
- 6.1 For the reasons set out above, the Bill not only does not meet community expectations (that are reflected in in-force legislation) in relation to the protection of unborn children, but it flies in the face of them.

6.2 The Bill is:

- (a) illogical and contradictory;
- (b) objectionable for failing the test of good laws required by the rule of law (which is that they must be predictable – i.e. the law either must recognise and protect the worth and value of unborn children or it must not) ; and
- (c) wrong for failing the test of morality.

6.3 Please let me know if you have any questions. I would be happy to speak further to the problems with the Bill, including those not discussed in this letter.

Yours faithfully



Thomas McKillop

