5 September 2018

Submission – Termination of Pregnancy Bill 2018

Introduction

As a young woman born and raised in Queensland, I welcome the Legislative Assembly's consideration of statutory measures to decriminalise and commence destigmatising the seeking of services for the termination of pregnancy in this State. Women require access to safe and legal termination services for their own physical and mental health, as well as to ensure that children are brought into the world in loving environments where they can be adequately cared for. Moreover, the rule of law is promoted by the abandonment of laws which are not enforced due to the fact that societal values have, by and large, moved on from the historical contexts in which they were introduced.

This submission provides some brief comments on the draft Termination of Pregnancy Bill 2018 ('Bill'), which it is hoped the Legislative Assembly will take into account when considering the Bill.

Section 3

This provision sets out the purposes of the Bill as follows:

> '(a) to enable reasonable and safe access by women to terminations; and
> (b) to regulate the conduct of registered health practitioners in relation to terminations.'

The reference to 'reasonable… access' is concerning on its face, suggesting that an external and objective approach to the appropriateness of a woman obtaining a termination will be retained rather than the woman's subjective rights and needs being prioritised. The Explanatory Notes to the Bill suggest that this 'reasonableness' relates to ensuring the provision of termination services to women in the context of others' disapproval – for example, balancing the conscientious objection of some health practitioners with the woman's right to a termination by requiring appropriate referral to be made in the case of such objection.[1] It is of course appropriate to leave room for others' freedoms of belief and expression, to the extent that the woman's rights to health and autonomy are not compromised. The reference to 'reasonable… access' is unproblematic to the extent that this is its intent but should otherwise be reconsidered.

Sections 5-7

These provisions create much needed clarity around the legality of the conduct of medical practitioners who perform or assist in the conduct of terminations. Nonetheless, I remain concerned about the decision to adopt a gestational limit.

The QLRC may indeed be correct in noting that to adopt such a limit 'is… consistent with the view of the majority of Australians who support a woman's right to choose, but not all of whom consider that this right should be absolute'.[2] With respect, although the views of all Australians on this issue should be considered, not all of those views should be given equal weight. No man nor organisation will ever be in the position of being required by law to carry a foetus inside one's body for a period of up to four-and-a-half months contrary to their will. This is akin to refusing an individual intervention for a life impacting medical condition, forcing the individual to experience the effects that this has on their body for an extended period of time, despite the psychological and physiological distress that this may cause. Nor will any man or organisation ever have to make the difficult and possibly traumatic decision of whether to continue with a pregnancy or to terminate it – having to consider, in particular, what impact this decision may have on a future career and economic independence. While male partners may be involved in a decision to obtain a termination, ultimately it is one for the woman to take, it being her body and thus her consent that is required.

Regardless that, if the Bill passes, women may no longer be prosecuted for obtaining terminations, the unlawfulness of termination provision after 22 weeks will in practice prevent some women from obtaining

[1] See Explanatory Notes, pages 4-5.
[2] Quoted in Explanatory Notes at page 4.

medical treatment – as is indeed the design. Yet there may be reasons why women do not access these services earlier in their pregnancies, including shame, lack of knowledge and information, or changes in personal circumstances such as loss of a job or partner. While the Bill criminalises the provision of terminations by unqualified persons by the insertion of s 319A into the Queensland *Criminal Code*, women desperate to obtain terminations may nonetheless turn to unregulated and unsafe alternative, placing them in a position of unnecessary risk.

These concerns are not ameliorated by the requirements of proposed section 6, as these will likely inhibit registered health practitioners from carrying out a termination after 22 weeks in all but the clearest cases. This is so considering particularly that practitioners are specifically directed to consider 'the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination' – encouraging the direction of their attention to their own professional futures rather than simply the wellbeing of the patient. Moreover, the requirement that another practitioner agree that 'in all the circumstances, the termination should be performed' may be burdensome outside major centres, to which a woman may not be prepared to travel for financial or other reasons until she has assurances that she will be able to obtain a termination. It also slows down the process, creating greater uncertainty for a woman already likely experiencing considerable stress and pushing her further into the pregnancy with the ever-decreasing likelihood on that basis that a termination will be permitted.

Significantly, allowing women to obtain access to termination at any time during their pregnancies does not trample on the right to freedom of belief of anyone who considers termination to be wrong. This legislation does not force anyone to undergo a termination to which she does not consent. Meanwhile, health practitioners with conscientious objections may decline to provide termination services on that basis, such that their freedom of belief is not infringed (regarding which, see below). Others in society remain free to believe what they choose, but such beliefs are entirely unconnected with the practice of termination and should not be implicated within it. Simply stated, one person's freedom of belief is not inhibited by another person's freedom to choose a termination as an aspect of of their right to healthcare. In contrast, a woman's right to physical and mental health, as well as her future life choices, are severely burdened by the restriction of her ability to make that choice due to another's beliefs that have no relevance to her particular situation. Nor is it acceptable to place the 'interests' of an unborn and dependent foetus – which, by use of that terminology, is recognised by the QLRC not to have the same rights as a human being post-birth – at the same level as a woman whose being is not in question.

For these reasons, the gestational limit should be abandoned and termination should simply be available on request.

Section 8

The references in this provision to 'conscientious objection' are undefined and thus leave the term's meaning open to question. It may be that a registered health practitioner personally believes that termination is wrong but also considers that their professional duty overrides their personal views, such that they are prepared to undertake a requested termination. In that case, it may be considered a breach of the practitioner's right to privacy to require disclosure. It is really only in the circumstance that a practitioner is not prepared to undertake the procedure to professional standards that such objection is relevant. As such, it is suggested that this concept should be defined in accordance with the Australian Medical Association's guidance on the issue,[3] making clear that it is not merely relevant that an individual *has* an objection but chooses to *act* on that objection. An appropriate definition on that footing might be as follows:

> ***conscientious objection*** means a refusal by a registered health practitioner, in exceptional circumstances and as a last resort, to provide or participate in a legally-recognised treatment or procedure because of its conflict with the practitioner's sincerely-held beliefs and/or moral concerns.

[3] See

Note that this was under review as at 17 August 2018:

It is likely that a court interpreting the provision would arrive at a similar interpretation, given the context in which the term is used and the apparent legislative intent. Nonetheless, it is preferable to be explicit in legislation as to the meaning of such important terms.

Further, as regards subsection (3)(b), it is insufficient for an objecting practitioner to have a 'belief' that the practitioner to which they refer or transfer a woman can provide the service and does not have any conscientious objection. The objecting practitioner should be required to have actual knowledge that this is the case, lest the woman be passed between various services on the basis of mistaken beliefs. Moreover, the service to which referral or transfer is made ought to be one that is practicably accessible to the woman; if there is no such service, then the objecting practitioner should be required to provide the assistance requested. Otherwise, women who are young, in remote or regional areas, incarcerated, or at a later stage in their pregnancy may risk being unable to obtain a termination in time for it to be undertaken lawfully, or to access these services at all.

Section 10

This provision, combined with the amendments to the *Criminal Code* in Part 5, Division 2, is particularly significant for its decriminalisation of a woman's conduct in consenting to, assisting in, or self-administering a termination – regardless of whether the conduct of any other person providing or participating in the termination is itself lawful. This is a major step forward for Queensland in recognising that access to termination is a health issue, not a criminal justice issue. I simply wish to underscore that it is high time that Queensland takes this approach.

Part 4

The introduction of safe access zones via Part 4 is another significant step toward increasing women's safety. However, it is recommended that the definition of 'termination services premises' should be extended to include premises at which information or advice regarding any service of performing terminations on women is ordinarily provided, and also to pharmacies, which are expressly excluded at present. The latter are particularly likely to be targeted if in the vicinity of premises at which terminations are performed, which are themselves protected by safe access zones.

Furthermore, section 15 should not only prohibit the conduct specified in subsections (1)(a) to (c) within the safe access zone, but also any conduct outside of it which is visible or audible within the safe access zone. Simply pushing the area in which objection can be expressed further away from termination services premises, but still within a vicinity that they can be seen or heard from those premises, may through intimidation still impinge upon a woman's right to access termination services safely. It is one thing for objectors to express their views in a neutral space where a rational and reasonable exchange may be encouraged. Yet it is another thing entirely to target women seeking access to a medical service at what is already likely to be a difficult time in order to dissuade them from taking a lawful decision. By its terms, subsection 15(1)(c) recognises that this is largely the purpose of the picketing that takes place outside termination clinics. The section should go the entire way necessary to protect women exercising their right from this oppressive conduct.

Conclusion

The Bill represents a significant step forward in Queensland's attitudes toward women's rights to health, safety and bodily integrity. It is not perfect, but if passed would be a substantial improvement. I urge the Legislative Assembly to give serious consideration to the issues raised in this submission, and eventually to vote on the Bill in a manner that gives full weight to every woman's health, safety and autonomy.

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