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Submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee concerning the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*

Dear Committee Members,

The following submission is intended to bring to your attention a number of serious issues that pertain to the proposed Abortion Law Reform Amendment Bill.

In light of what is presented below, I strongly recommend all of the following courses of action in relation to the proposed bill:

1) The committee recommend that the bill be rejected by Queensland Parliament.

2) The committee recommend that Parliament consider greater legal protections for unborn children in Queensland, rather than weakening them through the decriminalisation of abortion.

3) The committee recommend tighter regulations regarding the conduct and practice of medical professionals when it comes to procedures that result in deliberate termination of a pregnancy.

Issues of concern related to the bill

In its current form, the bill removes all references to abortion in the Criminal Code of Queensland. This is concerning for the following reasons:

1) *The bill annuls all criminality with respect to abortion, but does not provide any safeguards for the lives of unborn children under the law*.

At best, this creates significant legal ambiguity about whether unborn children in Queensland have any legal rights or protections afforded to them and whether there are any legal deterrents against the destruction of innocent, unborn life in this state. At worst, it creates the possibility of any child that remains in utero (including those well into the third trimester of development) being killed in a hospital or specialised clinic without any protection from the law or legal accountability for those who take the child's life. Abortion would be decriminalised without any legal safeguards. This would make Queensland the most dangerously unregulated jurisdiction within Australia with respect to abortion.

2) *Abolishing sections 224, 225 and 226 of the Criminal Code degrades the value of human life in Queensland by arbitrarily excluding unborn children from appropriate protections under the law.*

To decriminalise abortion is to suggest that children who are conceived in Queensland (along with those conceived elsewhere, who would be born within Queensland jurisdiction) are unworthy of legal protection under the law of the State. This is a serious problem because it arbitrarily excludes a section of our State's population from basic human rights and cannot be justified by serious medical or philosophical arguments.

Medically speaking, human life begins at conception. When an ovum is fertilised by a sperm cell, a new human being has been formed and the processes of human growth and development have begun.[1] It is disingenuous and medically unfounded to speak of an "embryo" or a "foetus" in a manner that implies that the entity in question is not a human being. The embryo or foetus is a "human embryo" or "human foetus" (rather than an unspecified entity, or a potential member of another species). As genuine human beings, unborn children should be afforded full protection of their lives under Queensland law, just as all citizens and other residents are.

Arguments against human rights and legal protections for the unborn on other grounds are similarly problematic. The suggestion that unborn children should not be afforded full legal rights and protections because they are dependent on their mother for survival is unwarranted. Newly born children are also completely dependent upon adults for survival and yet their lives are fully protected under Queensland law. Heavy criminal penalties are imposed whenever someone is found guilty of killing a newborn child or causing their death through abandonment or similar negligence. For the law to be consistent, dependency cannot be used as grounds to exclude unborn children from legal protections. Either unborn children ought to have the same rights and protections as any infant, or – as some extreme ethicists have recently suggested – parents and medical professionals should have the option to legally end the lives of infants.[2]

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[1] "Fertilization is the process by which male and female haploid gametes (sperm and egg) unite to produce a genetically distinct individual." Signorelli et al., "Kinases, phosphatases and proteases during sperm capacitation" CELL TISSUE RES. 349(3):765 (Mar. 20, 2012).
"[The zygote], formed by the union of an oocyte and a sperm, is the beginning of a new human being." Keith L. Moore, Before We Are Born: Essentials of Embryology, 7th edition. Philadelphia, PA: Saunders, 2008. p. 2.
"Although life is a continuous process, fertilization… is a critical landmark because, under ordinary circumstances, a new genetically distinct human organism is formed when the chromosomes of the male and female pronuclei blend in the oocyte." Ronan O'Rahilly and Fabiola Miller, *Human Embryology and Teratology*, 3rd edition. New York: Wiley-Liss, 2001. p. 8.
Quoted in [redacted]

[2] **See** Alberto Giubilini & Francesca Minerva **"After-birth abortion: why should the baby live?"** *Journal of Medical Ethics* (2011) http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full

The same principle covers any suggestions that a foetus is not sufficiently developed to be recognised as a human being with the legal right to life. Irrespective of whether the development in question is physical or psychological, this premise is flawed and dangerous. A six month old infant is manifestly less physically and psychologically developed than a 30 year old man or woman, and yet the infant is afforded the exact same protection of their life under Queensland law that every adult enjoys.

The assertion that the unborn (and perhaps even the newly born) do not possess sufficient self-awareness and fully developed consciousness to be considered a true "person" is a disturbing philosophical argument that has potentially horrific ramifications if applied consistently across the community. Philosophical arguments that classify unborn children and infants as "potential persons" - without an intrinsic right to life as a human being – could equally be used to classify elderly dementia patients as "former persons" without legal protections, and to exclude people with mental disabilities from legal personhood. Such reclassification of some members of the community as "non-persons" is dangerous and must be rejected.

3) *Abolishing sections 224, 225 and 226 of the Criminal Code is inconsistent with other elements of the State's laws and Criminal Code.*

There is a disparity between the legal principle expressed in Section 313 of the Criminal Code and the proposed abolition of all references to abortion and the procurement of miscarriages in the Criminal Code. Section 313 rightly views the destruction of the life of an unborn child by a third party as a serious criminal offence – which makes the offender liable to a sentence of life imprisonment.

> **313 Killing unborn child**
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> (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.
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> (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.
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> Maximum penalty—imprisonment for life.[3]

Section 313 has been left untouched by the Abortion Law Reform bill and the promoter of the bill has stated that it should "rightly remain in the Criminal Code." This article of the Criminal Code recognises the unborn human as a "child" and makes the destruction of the child's life legally punishable by life imprisonment. The serious penalty for this crime is equal to that which would be imposed upon the murderer of an adult citizen. This would suggest that the Criminal Code is here recognising the equal value of postnatal and prenatal human

[3] http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/s313.html

life under the law of Queensland. As stated above, to remove abortion from the Criminal Code is to suggest that the life of an unborn child is not equal in value to that of other people living in Queensland. Thus, passing the bill into law creates a contradiction with Section 313 which will result in a serious inconsistency under the law.

Legislators in Queensland should only create such a legal inconsistency if they accept the following premise: That the expressed will of a child's mother is the primary determining factor as to whether that child is recognised by the law as a human being and afforded full legal protection by the State. If the majority of Queensland parliamentarians accept the premise that the will of the mother determines legal rights and legal personhood with respect to unborn children – this ought to be clearly stated in the law of the State.

However, such a premise is fundamentally flawed, as it makes the humanity and legal status of thousands of children who are conceived and carried in Queensland in every year, a completely subjective matter. The Abortion Law Reform Bill would in effect create an inequality under the law, where some unborn children are recognised as humans because of their mother's positive attitude towards them, while others are not recognised as humans on the sole basis of their mother's negative attitude towards them.

Under this scenario, if a child is "wanted" by his or her parents, they earn the right to life and the protection from harm by others, under the law. If the child is "unwanted" – for whatever reason – the State will be granting the right to a pregnant woman to abrogate the child's human dignity and their right under the law to protection from harm. Likewise, in such cases, the State will be granting the right to medical professionals to destroy human life without fear of legal repercussions. This is problematic, because it is the appropriate role of the State to recognise and safeguard the human rights of its citizens, rather than granting select individuals the power to arbitrarily determine whether or not a child lives or dies (and whether or not the law will protect the child's rights).

For Queensland law to be consistent and capable of maintaining an appropriate quality of justice for all Queenslanders – irrespective of their age, physical size, gender, health, mental capacity and socioeconomic situation – all unborn children must be recognised as human beings with a right to full protection of their lives by the law.

4) Abolishing sections 224, 225 and 226 of the Criminal Code effectively legislates "abortion on demand" in Queensland, which goes far beyond the legal status quo and is contrary to the intent of the case law in the R v Bayliss and Cullen ruling (1986)

As Committee members would be aware, as it currently stands in Queensland abortion is only permissible if a medical professional believes there is a significant threat posed to the pregnant woman's life or her physical or mental health, should the pregnancy be permitted to continue.

The intent of the proposed bill is to remove this necessary criterion and allow abortion to occur even in cases where there is no risk to the woman seeking to terminate her pregnancy.

In the introduction of the bill to Parliament, Mr Rob Pyne MP stated: "*Should this bill pass, the decision for the doctor would simply need to be that continuing the pregnancy poses a bigger risk to the woman than terminating it.*"[4] However, if the bill were to pass in its present form, there would in fact be no such need at all. Legally speaking, there would be no impediment to a doctor agreeing to carry out the termination of a pregnancy without inquiring as to the particular reason it was being sought. There would be no apparent legal ramifications for a doctor who destroyed the life of a healthy unborn baby, simply because the child's mother found it to be an inconvenience to her lifestyle.

There is no legal or ethical justification for the State of Queensland to permit the killing of innocent children, solely on the basis that they are unwanted at that point in time. The rights and freedoms of individuals and women to make private choices about their lifestyle and the expression of their sexuality are significant, but by no means absolute. Justice in Queensland is being compromised if these rights and freedoms are used to justify the destruction of innocent and helpless lives through abortion on demand. Legislators are in fact derelict in their duty as protectors and upholders of essential rights and freedoms when they fail to enshrine the fundamental right to life of thousands of children conceived within our State every year.

When Judge McGuire gave his ruling in R v Bayliss and Cullen (1986) – which provided the case law used to conditionally permit some abortions in Queensland in the subsequent years – he made it clear that the State had a role to protect unborn children and that abortion on demand was an unacceptable outcome in Queensland.

> The law in this State has not abdicated its responsibility as guardian of the silent innocence of the unborn. It must rightly use its authority to ensure that abortion on whim or caprice does not insidiously filter into our society. There is no legal justification for abortion on demand."[5]

Successive Queensland governments have, to a large extent, failed to prevent this from happening. In current practice, the provisions granted by the case law are implemented quite liberally and the ruling itself is interpreted quite broadly. By allowing doctors to conduct terminations in a relatively unchecked manner and refusing to prosecute abortionists or tighten laws or health regulations, Queensland has in the last 30 years moved closer to "abortion on whim or caprice." But if the proposed bill is carried, it will represent the greatest failure of the State in recent years to be the "guardian of the silent innocence of the unborn" and will open the door for widespread "abortion on whim or caprice" and general abortion on demand.

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[4] http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/160510/Abortion.pdf

[5] *R v Bayliss & Cullen* **[1986] QDC 011 ; (1986) 9 Qld Lawyer Reps 8 McGuire DCJ. 22 January 1986**

5) Legalising abortion on demand in Queensland will potentially open up the way for gender-selective abortions to be carried out in this State.

If the bill is passed and removes all legal prohibitions relating to abortion in Queensland, there will theoretically be no obstacle to parents requesting their unborn child be terminated for any reason at all. While some members of the community are in favour of children being aborted on the basis of suspected foetal abnormalities or because they would cause economic difficulties to their parents, all Queenslanders should be disturbed by the prospect of unborn children being killed on the sole basis of their gender.

While abortion is often framed as a women's health or women's rights issue, the incidental or even deliberate destruction of thousands of female lives through termination procedures is often ignored. Female deaths resulting from abortion are not necessarily the result of an indiscriminate approach to the termination of pregnancy.

In a multicultural society, Queenslanders need to recognise that our state is home to diverse ethnic communities, some of which have a strong cultural bias towards males. In certain cultures, having a son is seen as much more desirable and beneficial than having a daughter. In certain cases, this cultural bias may be strong enough to motivate a couple to contemplate abortion of a female child.

While the evidence that gender selective abortions are already taking place in other parts of Australia is not conclusive,[6] the Committee must recognise that the bill has the potential to allow them to take place within Queensland. Whereas we could reasonably expect medical professionals to currently refuse an explicit request to terminate a pregnancy on the basis of gender, they would lack reasonable grounds to do so if the current provisions that govern abortion procedures were abolished by the proposed bill.

6) The relaxation of restrictions around abortion, as proposed by the bill in question, is strangely inconsistent with our positive societal impetus for increasing protection for women, children and people with disabilities.

It is strangely inconsistent for parliamentarians to support a bill that will make it easier for females to be killed in Queensland while supporting initiatives to stop violence against women. All women and girls in Queensland should enjoy full legal protection from all forms of violence from the time they are conceived to when they die of natural causes. The future of thousands of young girls are being literally ripped apart - along with their fragile bodies - when we inexplicably say "Yes" to violence against them, while saying "No" to violence against women who differ from them mainly in size and age.

Likewise, the advances our society is making in protecting children from various forms of harm is undermined by the refusal of parliamentarians to stop the most heinous form of

[6] http://www.sbs.com.au/news/article/2015/08/17/could-gender-selective-abortions-be-happening-australia

harm – the destruction of life – from coming upon the most vulnerable members of the human race in our State. What are the logical grounds for protecting children from harm in the home, at school and in public – but not in the womb or at the hospital?

Again, there has been significant political leadership recently on issues of better care, support and protections for people with disabilities in our community. This displays our societal ethic of compassion and concern for the vulnerable and a "fair go" for everyone. This bill does nothing to protect those who lack the capacity to speak for themselves. It fails to be a voice for unborn children who may be in danger of being killed through abortion because they are suspected of having a deformity or disability of some kind. The bill does nothing to challenge the unfortunate devaluation of children with Downs Syndrome – who would be far more easily aborted prior to being born if the bill were to be passed.

In summary, the proposed bill adds nothing positive to the conversations about violence against women, child protection or the issues surrounding people with disabilities. Instead, it sends a completely different message about how females, children and people with disabilities should be treated.

7) Abolishing sections 224, 225 and 226 of the Criminal Code, as the bill proposes, would potentially endanger many women, as well as unborn children, by eliminating any legal ramifications for those who carry out abortions independently of a hospital or specialised clinic.

The bill is irresponsible in this area. In the eagerness to decriminalise abortion – supposedly on the grounds that women will not resort to so-called "backyard abortions" (using dangerous, high-risk methods to end their pregnancies) – the drafters of the bill do not seem to have given adequate thought to its potential contribution to these very scenarios.

Under the current Criminal Code, the laws prohibiting abortion are far more likely to be used to prosecute an offender if an attempted termination of a pregnancy involved persons who were not registered medical professionals and who attempted such a procedure outside a recognised health facility. The Committee must recognise that there appears to be very little direct legal prohibition of unprofessional abortion procedures left in the Criminal Code if the above sections are repealed.

It would be very difficult to build a case for prosecution that an individual had acted "unlawfully" towards a pregnant woman, resulting in her miscarriage if the woman had requested that someone assist in the independent abortion of her child. Parliamentarians cannot afford to accept the argument that all women will naturally go to hospitals and specialised clinics to seek abortion, should the procedures be completely legal. There must be serious legal consequences for those who seek to perform abortive procedures outside of licenced medical facilities.

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Conclusions

There are numerous other areas of concern that could be raised in relation to the proposed bill, however I believe the above issues are sufficient grounds for the Committee to recommend that the bill be rejected. While some of the issues I have raised could be somewhat mitigated through amendments, the essential matter of equality for all human beings under Queensland law can only be taken seriously through the rejection of the bill.

The bill's intended goal of decriminalising abortion in Queensland and liberalising the restrictions and conditions around the medical termination of pregnancies is fundamentally flawed. Abortion must remain prohibited by the Criminal Code if the genuine human life and value of unborn children is to be recognised and protected. If the law relating to abortion in Queensland is to be changed by Parliament, it should be altered to:
a) better reflect the basic right to life of all children within Queensland jurisdiction.
b) increase scrutiny, transparency and accountability when it comes to the way abortion is approached by medical professionals and institutions.
c) apply heavy penalties to medical professionals who knowingly violate the rights of children in Queensland and treat them as though they are not human beings.

There are no grounds to liberalise abortive practices in Queensland. It would be more fitting for Parliament to consider how the Criminal Code or other statutes might be amended to lower the number of abortions in Queensland every year and restrict the power of individuals to harm innocent unborn lives.

I thank Committee members for taking time to consider this submission and once again urge that the recommendation be made that Parliament reject this bill and instead affirm the human dignity of all present and future unborn children in Queensland.

Yarran Johnston,