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Received 29 June 2016

Dear Chair,

When we legislate to decriminalise abortion, babies die for much less.
In general, I think it is right that people have the right to autonomy, but within parameters where those decisions do not harm others. I do believe that women own their bodies, but I don't personally hold that they own the life of the child they are carrying. I don't think anyone owns the life of anybody else, no matter how young they are. How precious my life or your life is, or anyone's life, isn't determined by third party opinions, and it seems to me the same should apply for these children.

It is very important that the case for these babies are pleaded for. We can see the profound consequences of late-term abortions. I was recently on Q&A and asked a question on late-term abortions to the Prime Minister, detailing how 27 babies last year, all aged more than 5 months survived late-term abortions but were left to perish. We know that at least 2 were viable babies. I am a final year medical student, and having been in Neonatal Intensive Care Units, I can attest to premature babies being so beautiful and precious. It is important for the State to protect these most vulnerable, especially when the mother does not feel equipped to have the baby. Our focus should be on improving the system surrounding care of both mothers in vulnerable situations and their precious unborn babies.

Please find my Op Ed in the following pages,

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Why I asked the Q&A Question on Late-Term Abortions

Ashley Leong, final year medical student, all opinions are my own

On Monday, 20th June 2016 the political ABC television show Q&A was airing live from the Brisbane Powerhouse during election season. They had the Prime Minister on the panel that evening. On this occasion, ABC shortlisted one of my previously submitted questions and I was able to ask the Prime Minister the following question:

Twenty-seven babies aged five months gestation or more survived late-term abortions in Queensland hospitals last year; the highest number of survivals followings attempted terminations in 10 years. But each of these 27 babies were not rendered care and allowed to die. As a medical student who has seen many deliveries and loving care of premature babies, nothing is quite so horrifying as letting a baby perish in a clinic. Is it not the federal government's onus to protect all citizens, especially those who cannot speak for themselves?

The Prime Minister responded in saying this area fell in the jurisdiction of the State government, he said he wasn't familiar with the precise terms of the law relating to abortion, late-term or otherwise, in Queensland. He acknowledged the cases described were 'shocking' though he didn't know about the circumstances.

The Q&A Video of the above is available here:
https://www.facebook.com/abcqanda/videos/10153496754451831/

Why did I ask him that?

I follow many Pages on Facebook, including the Page for my local Member of Parliament, Mark Robinson MP. The week before Q&A, an ABC article he had posted came up on my newsfeed entitled **Rise in Queensland babies surviving late-term abortions and being left to die, figures show** by Josh Bavas. I read how *'Twenty-seven babies survived late-term abortions in Queensland hospitals last year but were not rendered care and allowed to die, figures released by Health Minister Cameron Dick [had] shown.'* I was horrified by these findings. Reading the article, I learnt that the only reason this figure of Twenty-seven babies was released, was that the Member of Parliament had asked the Health Minister this question on Notice in May (if a question is asked on Notice the due date for the answer is 30 days' time).

The ABC article by Josh Bavas is available here: http://www.abc.net.au/news/2016-06-15/babies-of-late-terminations-left-to-die-without-care/7512618

I was horrified by the facts I read in this article. I am a final year medical student at the University of Queensland (all views are my own and not representative of my university or medical school) and earlier this year I had completed my Paediatrics rotation over 2 months where a great deal of my time was spent in the Neonatal Intensive Care Unit (NICU). In the NICU I saw many premature babies receiving treatment. Doing newborn checks and monitoring on these small babies, I saw how precious each and every one was, I loved them, and so I couldn't imagine the horror of neonates surviving a termination not being administered treatment, whether this be palliative or interventional, if this were the case. As mystery shrouds this whole area of abortion in Queensland, my stance is that more light and transparency has to be shed and revealed to the public.

A few days following reading this article, I received an email to say I had been successful in the ballot to be an audience member for the Q&A showing in Brisbane. 3 days before the show, audience

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members receive an email calling for submission of questions directed towards the Prime Minister. I took this opportunity to submit 7 questions on topics I felt strongly about:

- Inhumanity of offshore processing centres
- Inhumanity of bipartisan government approach to treatment of asylum seekers
- Gender inequality in pay for medical professionals
- Privatisation of Medicare
- And my question on late-term abortions from the article I had recently read

Two hours before going into the studio, ABC rang me to let me know that my question on late-term abortions had been shortlisted into the 23 that would be asked to the Prime Minister that evening.

In asking the question to the Prime Minister, my aim was not to put him on the spot, nor to embarrass him, but to plead with the most powerful man in Australia, for protection of these babies, to expose the details of these 27 cases, investigate what care if any were administered to them, and to call into question the barbaric practice of late-term abortion.

Medical practitioners have a social contract with society to do no harm, and plead for their patients, and I saw it as a responsibility of a good future clinician to speak for these surviving babies who could not speak for themselves.

What I discovered about abortion in Queensland

- At least 2 of the 27 terminations done, were NOT on the basis of congenital abnormality, but rather the mother's psychosocial condition (see Appendix 1)
- There have been 204 live birth outcomes following attempted late-term terminations in the last 10 years (https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2016/779-2016.pdf)
- Under the current Queensland legislative framework and case law interpretation, there is minimal if any difficulty in women accessing abortion services, though it is 'officially' a criminal activity (see Appendix 2)
- Indeed, in the last 10 years, there have been 125,000 documented admissions of patient episodes of care for pregnancy termination services in licensed Queensland private health facilities (https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2016/883-2016.pdf)

What I learned from asking the Prime Minister my question

- Young people have a voice that they should use for good
- It is important for young people to engage their hearts and minds on issues that are important
- Advocacy is best done with as much information that is available, and where it is not, with reasonable deductive power, in a non-deceitful, non-scaremongering way, not painting false realities
- I do not believe the late-term abortion debate to be necessarily choosing the mother, or choosing the unborn child but rather improving the system – I'm not convinced that scared, vulnerable women facing crisis pregnancies or antenatal tests revealing chromosomal abnormalities such as Down's syndrome or other defects compatible with life are given support to believe they can go on to have a beautiful, meaningful relationship with this child, I also am not convinced that the system facilitates adoption options as it should
- My focus in this issue is the health system

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My related stances on late-term abortion

- My general principle is if a baby has an interest in living, irrespective of its mother not wanting it to survive, the State has a responsibility to ensure it does all it can to assist that baby.
- I do not believe in senseless suffering, or prolonging a life for suffering with no hope of living
- I do not believe in administering futile intervention as it strips the dignity of the living being
- If a baby has an interest in living, and the mother does not want the baby to live, I believe the State should intervene to give that baby the best fighting chance of living
- I believe in many cases of congenital abnormality, limb defects, and trisomy abnormalities like Down Syndrome, the baby certainly has an interest in living
- If a baby is incompatible with life, I believe the highest level of medical care should be administered to alleviate suffering of the baby
- I consider that it is hard to determine prognosis in a baby, but if it has an interest in living and potential viability, the baby should be given the best fighting chance of living
- I do not actually see a difference between early or late-term abortion, in both cases the baby is yet unborn and given time would have matured into a person; abortion is abortion (see Appendix 3)

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Appendix 1: At least 2 of the 27 babies surviving late-term abortions were healthy and viable

The following snapshots are taken from the same table in the **Queensland Maternal and Perinatal Quality Council Report 2015**, pages 105-107

The full report is available here: https://www.health.qld.gov.au/caru/networks/qmpqc.asp

PSANZ-PDC Cause of death	Perinatal deaths		Stillbirths		Neonatal deaths	
	n	%	n	%	n	%
1. Congenital abnormality (including terminations for congenital abnormalities)						
1.0 Congenital abnormality unspecified	1	0.1	1	0.1		
1.1 Central nervous system	87	6.8	63	7.2	24	6.0
1.2 Cardiovascular system	68	5.3	44	5.1	24	6.0
1.3 Urinary system	25	2.0	15	1.7	10	2.5
1.4 Gastrointestinal system	10	0.8	3	0.3	7	1.7
1.5 Chromosomal	82	6.4	54	6.2	28	7.0
1.6 Metabolic	1	0.1			1	0.2
1.7 Multiple/non chromosomal syndromes	38	3.0	28	3.2	10	2.5
1.8 Other congenital abnormality	46	3.6	22	2.5	24	6.0
1.9 Unspecified congenital abnormality	8	0.6	7	0.8	1	0.2

PSANZ-PDC Cause of death	Perinatal deaths		Stillbirths		Neonatal deaths	
	n	%	n	%	n	%
5. Maternal conditions						
5.1 Termination of pregnancy for maternal psychosocial indications	4	0.3	2	0.2	2	0.5
5.2 Diabetes / Gestational diabetes	6	0.5	6	0.7		
5.3 Maternal injury						
5.31 Accidental	4	0.3	3	0.3	1	0.2
5.32 Non-accidental	1	0.1			1	0.2
5.4 Maternal sepsis	1	0.1	1	0.1		
5.5 Lupus obstetric syndrome						
5.6 Obstetric cholestasis						
5.8 Other specified maternal conditions	4	0.3	3	0.3	1	0.2

Total	**1272**	**100.0**	**871**	**100.0**	**401**	**100.0**

Stillbirth: born dead
Neonatal death: died after birth

We see that there are two mutually exclusive Causes of death: **1. Congenital abnormality (including terminations for congenital abnormalities) and 5. Maternal Conditions: 5.1 Termination of pregnancy for maternal psychosocial indications.**

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In the case of the 2 neonatal deaths highlighted under **5.1 Termination of pregnancy for maternal psychosocial indications**, we see that the clinician has coded the primary reason for the baby being terminated was on the basis of the mother's psychosocial indication. Given these 2 deaths were not coded under **1. Congenital abnormality (including terminations for congenital abnormalities)**, it is likely these babies were healthy and viable, received an attempted termination due to conditions external to them - the mother's mental health, proceeded to be born alive, and then passed away.

The 2 neonatal deaths coded under **5.1 Termination of pregnancy for maternal psychosocial indications** does not necessarily exclude the baby having a congenital abnormality, but it seems unlikely giving the coding options, and at least the primary reason appears to be the Maternal psychosocial indication. Though it is unlikely, if these 2 babies suffered a Congenital abnormality, this would have been a secondary reason, otherwise their cause of death would have been classified under **1. Congenital abnormality (including terminations for congenital abnormalities).**

They were not terminated **on the basis** of Congenital abnormality, otherwise they would have been marked under section 1**. Congenital abnormality (including terminations for congenital abnormalities).** They were terminated **on the basis** of the mother's psychosocial indication and therefore were probably healthy and normal babies.

It also appears that the numbers counted 'n' columns under Stillbirth and Neonatal Deaths also add up to the totals presented at the very bottom of the table. The totals adding up to 100% suggest that none of the pregnancies were recorded as more than one section. Therefore babies could not have fallen under multiple causes of death, they were only counted once and therefore would only have one cause of death attributed to their death, not 2 causes. This seems more evidence that a baby suffering a termination for maternal psychosocial reasons was interpreted totally exclusively from having a congenital abnormality.

Each baby was given a single cause of death alone, one classification → and so were classified into termination due to Congenital Abnormality or Maternal Condition.

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Appendix 2: There is minimal, if any difficulty in women accessing abortion services under the current Queensland legislative framework

Would some of the 27 surviving babies of late-term abortion have an interest in living? I would say, most likely, given the current scope of Queensland legislation where terminations (and late ones) are granted to a mother (see Appendix 2).

The current legislation is detailed in the **Queensland Maternity and Neonatal Clinical Guideline: Therapeutic termination of pregnancy** (https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf), here is a screenshot:

4.1 Legal test for each case

All health professionals involved in termination of pregnancy should be familiar with the legal requirements of the Criminal Code[4] as it pertains to termination of pregnancy.[15]

Consider each woman's circumstances on an individual basis.

- The legal test that ought to be applied in each individual case is:
  - Whether a termination of the pregnancy is necessary to preserve the woman involved from a serious danger to her life or her physical or mental health **and**
  - That in the circumstances, the danger of the medical treatment or surgical operation is not out of proportion to the danger intended to be averted
- Assess the legal test in light of the woman's:
  - Social and
  - Economic and
  - Medical circumstances
- An abnormal fetus with high likelihood for disability or death is not of itself a basis for termination being lawfully performed. Therefore this issue should be explored as to how it affects the woman

The current QLD Criminal Code (s282) permits abortion to "preserve the mother's life" and in recent cases, this statement has shown progressive interpretation. Queensland criteria use Judge Menhennit's rules – the principles of necessity and proportion. Yet this decision was extended in the recent case *R v Wald NSW* to include any social or economic grounds which may result in a serious danger to the mental health of the woman. Effectively, if the clinician thinks that economic hardship of having the baby is a serious danger to the mother's mental health that can pass as a lawful termination.

Then in another case accepted in Queensland law *R v Bayliss & Cullen*, Justice Macguire said "It may be that an honest belief be held that the woman's mental health was in serious danger at the very time when she was interviewed by a doctor, or that her mental health, **although not then in serious danger**, could reasonably be expected to be seriously endangered **at some time** during the currency of the pregnancy, if uninterrupted." So now we see, the doctor doesn't even have to perceive serious danger when they see the patient, but if they can loosely expect that danger to apply at any time during pregnancy.

It is nigh impossible to prosecute a doctor for performing an abortion in Queensland. The Queensland Guideline quotes one legal academic as saying "The standard of proof required (beyond reasonable doubt) coupled with the Crown having to prove that a doctor did not hold an honest belief makes Section 224 of the Criminal Code an extremely difficult conviction for the Crown to achieve." Effectively, doctors have a lot of licence for interpreting if a woman will be harmed by having her baby.

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Current Queensland legislation has a wide scope. A lawful termination is granted where the mother's potential risk of mental health harm can be on any socioeconomic ground, and not necessarily seen at the time she sees a doctor. Therefore it is highly likely that some of the 27 babies surviving late-term abortions, even if suffering a congenital abnormality, would still have had an interest in life. They were not given the opportunity to receive intervention, as age-matched counterparts would do, as the law so considers the mother as being excused from having the baby.

When abortion was decriminalised in Victoria in 2008, one nurse anecdotally reported that she was seeing an increase in late-term abortions 6-fold. To grant a termination after 24 weeks in Victoria, only 2 doctors need to sign off on it, and these can be the 2 doctors working at the abortion centre. Of course, it's not possible that there was suddenly a 600% increase in serious foetal abnormalities. When we legislate to decriminalise abortion, babies die for much less.

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Appendix 3: My answers to other questions I've been asked

Question: How can you not know it would have been futile to intervene in the 27 babies surviving late-term abortion in Queensland last year, as we only know they were more than 20 weeks old? Did any of the 27 babies have potential viability, and an interest in living.

Unfortunately the exact gestational ages and case details of those 27 babies are still a question on Notice and haven't yet been answered by the Health Minister. As we can't wage this debate on nuanced information for the specific cases, we will have to deduce likelihoods on what information we have, and go off principles.

Here is a snapshot of the current **Queensland Clinical Guideline: Perinatal care at the threshold of viability** (https://www.health.qld.gov.au/qcg/documents/g-viability.pdf)

Estimated chance of poor outcome* if intensive treatment provided	PAGE#	Treatment category	Obstetric management
≥ 90%	20–22 weeks gestation	**Not indicated** Life sustaining treatment should usually not be provided	Maternal focused
50–90%	23–24 weeks gestation	**Optional** Life sustaining treatment should be guided by parents' wishes	Depends on parents' wishes
≤ 50%	25 weeks gestation	**Usual** Life sustaining treatment should usually be provided	Maternal/fetus focused

For 23-24 week olds, it is possible they could have a 10-50% chance of viability. My argument would be that I think it is wrong to palliate an unwanted 23-24 week old when its wanted counterpart is receiving NICU intervention.

Would some of the 27 surviving babies of late-term abortion have an interest in living? I would say, most likely, given the current scope of Queensland legislation where terminations (and late ones) are granted to a mother (see Appendix 2).

I concede that it is likely many 20 week or later abortions are usually due to foetal abnormality. I suspect late-term abortions are in large part due to diagnostic tests only being available to the mother later in the piece with amniocentesis at 15 to 18 weeks (mainly for Down Syndrome), second trimester US scans 18-20 weeks to rule out abnormalities including limb defects. As you know, there is a spectrum of severity for things like congenital abnormalities, cerebral palsy, limb defects and manifestations of Down's syndrome. Certainly, many Down's syndrome children and other children with congenital abnormalities have an interest in life.

Notwithstanding, the current law says, "An abnormal foetus with high likelihood for disability or death is not of itself a basis for termination being lawfully performed. Therefore this issue should be explored as to how it affects the woman."

Question: What is your opinion on early-term abortions? Can we really compromise the autonomy and psychological wellbeing of a very vulnerable population of mothers by making their choice for them?

While I'm not trying at all to belittle the emotional turmoil these women are going through, and of which I couldn't imagine, I do believe that terrible cost is outweighed by the wonderful benefit of allowing another precious human to live. Through this process, I absolutely would want to mitigate the harm to the mother through the greatest support and human care. In general, I very much agree that people should have the right to autonomy, but within parameters where those decisions do not harm others. I do believe that women own their bodies, but I don't personally hold that they own the life of the child they are carrying. I don't think anyone owns the life of anybody else, no matter how young they are. How precious my life or your life is, or anyone's life, isn't determined by third party opinions, and it seems to me the same should apply for these children.

It is very important that the case for these babies are pleaded for.

Question: What do you think about the PM's reply?

I must preface my answer by first saying how nervous I was in the studio audience at Q&A to ask a single question that I had written down. I can't imagine how Malcolm Turnbull was feeling sitting at the desk by himself fielding 23+ very hot and very controversial topics. Yes, he is our Prime Minister, but he is also human and can't be expected to know nuanced legislation about everything. So I think it is fair to say that he didn't know much about the late-term abortion situation in Queensland, but I hope now he will take the time to learn what is going on in this area and improve outcomes for unwanted babies.

Question: If you had more time on the show, what else would you have liked to say?

That though abortion fell into the jurisdiction of Queensland law, Medicare is federally-funded, and Medicare can fund abortions. Further, there are precedents for Federal government enacting laws to protect certain vulnerable groups of people. You would be hard-pressed to find a demographic more vulnerable than these babies.

Question: It was clear that Prime Minister Malcolm Turnbull was unaware of the 27 babies who died after being born alive in Queensland last year - does that surprise you?

No, it is an indictment on Queensland Health that so little information surrounding abortions in general, much less late-term abortion, is released to the public. It is important to have transparency in these areas.

Question: What does this say about the reporting of the Queensland findings?

I have been disappointed by the paucity in exposure of any conservative opinion surrounding abortion by any major news outlets. Moreover, paucity in exposure of any facts, unpalatable or no, that would support a conservative opinion in protecting babies from abortion, especially late-term abortion.