

Submission to
Health, Communities, Disability Services and
Domestic and Family Violence Prevention
Committee
in their review of
Health (Abortion Law Reform) Amendment
Bill 2016
Introduced by Mr Rob Pyne MP
on 17 August 2016

Opening Statements

We acknowledge the tireless work of this committee in its recent review of Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 (first Bill), introduced to parliament on 10th May 2016 by Mr Rob Pyne MP. The committee's review was unbiased, extensive and well referenced.

Once again, the Committee is to be commended on calling for public comment on the Health (Abortion Law Reform) Amendment Bill 2016 (second Bill) as introduced by Mr Rob Pyne MP on 17 August 2016.

This second Bill ostensibly attempts to achieve a similar outcome to the first Bill but is based around health matters rather than criminal aspects. It is interesting to note that a second Bill should be tabled in parliament before the committee had finalized its findings and made recommendation.

This being said, both Bills attempt to provide ease of access to abortion services in Queensland.

About Us

Unborn Children's advocacy Network (UCaN) is a registered non-partisan, non-denominational and not-for-profit organisation (ABN 39 118 752 458 – Dec. 2013) promoting respect and protection for human life from conception to birth.

UCaN operates solely on the in-kind generosity of altruistic individuals and serves as a platform for like minded people to speak for the voiceless and vulnerable in our society – the unborn. This commitment to respect for human life at such a vulnerable stage runs contrary to any belief that such life can be deliberately and knowingly extinguished.

We are based in Queensland Australia and have a worldwide network of contributors.

We provide platforms for sharing information via website www.ucan.org.au and Facebook.

This submission has been authored by contributor Simon Croft (for and on behalf of UCaN) and can be contacted via email at:

We will now respond to sections of the Bill currently under review.

Part 3 Abortions Division 1 Preliminary

19 Definitions for part

It was interesting to say the least that this section was void of a definition for 'qualified health practitioner' for the purposes of this Bill (as referred to in Division 2 – Section 20). It can be reasonably assumed that they would be registered to be qualified and thus overseen by the National Health Practitioners Board.

A health practitioner is defined under Queensland Law as: . . . an individual who practises a health profession.^{1 2} However, the scope of this definition includes Chiropractors, Dentists, Occupational Therapists, Optometrists, Pharmacists, Physiotherapists, Podiatrists and Psychologists (among others).³ As such, it would imply that a Pharmacist (a qualified health practitioner) could in fact dispense an abortifacient over the counter without prescription.

Division 2 Abortion generally

20 Only qualified health practitioner may perform abortion

As referred to in the explanatory notes, health practitioners currently refer to the *Queensland Clinical Guideline for Therapeutic Termination of Pregnancy* (Guidelines)⁴, endorsed by the Queensland Government, in the area of medical termination of pregnancy. These guidelines were most recently update and published in April 2013 and are scheduled for review in April 2018.⁵

The guidelines provide precise and clear principles of practice in the provision of terminating a pregnancy that protect both patient and practitioner.

A medical practitioner's defense to a charge under provisions of the *Queensland Criminal Code Act 1899* (Section 224) can be found in Section 282 of the Code.⁶

(1) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of—

(a) a person or an unborn child for the patient's benefit; or

(b) a person or an unborn child to preserve the mother's life; if performing the

1 Health Practitioner Regulation National Law (Queensland) Part 1, Preliminary – 5. Definitions: pg. 25

2 Schedule Health Practitioner Regulation National Law Act – Part 1: Preliminary, 5, Definitions: Pg.65

3 Office of the Health Ombudsman:

<http://www.oho.qld.gov.au/health-consumers/what-can-i-complain-about/registered-and-unregistered-health-practitioners/>

4 Queensland Maternity and Neonatal Clinical Guideline: Therapeutic termination of pregnancy – 1. Introduction, pg 6

5 Queensland Maternity and Neonatal Clinical Guideline: Therapeutic termination of pregnancy: pg.2

6 Queensland Maternity and Neonatal Clinical Guideline: Therapeutic termination of pregnancy – 1.1 Queensland Law pg. 6

operation or providing the medical treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Section 20.2(a) of the Health (Abortion Law Reform) Amendment Bill 2016 (the Bill) confirms that a doctor is a qualified health practitioner, as is a registered nurse in administering a drug at the written direction of a doctor under section 20.2(b). However, such a provision does not preclude other qualified health practitioners from performing an abortion.

A medical dictionary defines doctor [dok'ter]⁷ as:

1/- a holder of a diploma of the highest degree from a university, qualified as a specialist in a particular field of knowledge

and 2/- a practitioner of the healing arts, as one graduated from a college of medicine, osteopathy, chiropractic, optometry, podiatry, dentistry, or veterinary medicine, and licensed to practice.

It is quite clear from this section that, although undefined in this Bill, only a qualified health practitioner (or doctor) can perform an abortion with penalties of up to 10 years imprisonment for a breach. However, section 20.3(a)&(b) directly contradicts the previous section by stating a woman (who is unlikely in most cases to be a qualified health practitioner) does not commit an offence against this section by (a) performing an abortion on herself or (b) consenting to, or assisting in the performance of an abortion on herself.

This contradiction does not provide clarity sought by introduction of this Bill.

21 Abortion on woman more than 24 weeks pregnant

It is appropriate to identify the two main types of intentional pregnancy termination. Firstly, there is pharmaceutical abortion by administration of an abortifacient accessed under prescription from a medical/family doctor. Mifepristone (RU 486) is a Therapeutic Goods Administration (TGA) registered prescription medicine effective up to 49 days of pregnancy gestation.⁸ Medical abortions are also performed in the second trimester but are performed under supervision at a medical facility as they often require surgical procedure as part of the process.

⁷ Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. All rights reserved.

⁸ Therapeutic Goods Administration (TGA) <https://www.tga.gov.au/registration-medicines-medical-termination-early-pregnancy>

Secondly, there is surgical abortion which is available in all three trimesters. While procedures may vary depending on term of pregnancy, surgical abortion is performed by a medical practitioner at a medical facility.⁹

It is worth noting that two thirds of babies born at 24 weeks gestation who are admitted to a neonatal intensive care unit (NICU) will survive to go home. Ninety eight per cent of babies born at 30 weeks gestation will survive.¹⁰ The usual gestation period for a baby is 40 weeks.

A recent news story from Israel has identified the youngest premature baby to ever survive. Baby boy Aharon was born at just 22 weeks gestation, two weeks earlier than the standard age of viability at 24 weeks and given only a 20 percent chance of survival. Baby Aharon has now been released from Tel Aviv's Ichilov Hospital.¹¹

What this section supports is termination of a pregnancy from 24 weeks until birth. Essentially, under this provision, a baby could be aborted up till the time of birth. This would provide opportunity for the practice of partial birth abortion to be revisited.

The act of infanticide (a mother killing her newborn child within a year of birth) is considered a criminal offense equivalent to murder.¹² The *Criminal Code Act 1899* (the Code) also confirms disapproval of killing a child:

294 - Death by acts done at childbirth:

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child.

In summary, the Code considers it an offense to end the life of another human being before, during or after birth. Section 21 [of the Bill] effectively supports sanction of pregnancy termination up till birth. Such a scenario would present conscientious objections from those involved in performing these procedures.

9 Health Department of Western Australia: Termination of Pregnancy - 5. Methods of induced abortion
https://www.health.wa.gov.au/publications/documents/Termination_of_Pregnancy_Info_for_Medical_Practitioners_Dec_07.pdf

10 <https://www.betterhealth.vic.gov.au/health/healthyliving/premature-babies>

11 <http://liveactionnews.org/born-22-weeks-youngest-premature-baby-survive-israel-leaves-hospital/>

12 NSW CRIMES ACT 1900 - SECT 22A : 22A Infanticide (a)

22 Duty to perform or assist in abortion

Subsections (1) and (2) do not seem to be necessary or required other than for perhaps an attempt to appease and placate objectors to this Bill.

(1) *No-one is under a duty (by contract or by statutory or other legal requirement) to perform or assist in performing an abortion.*

(2) *A person is entitled to refuse to assist in performing an abortion.*

However, subsection (3) contradicts the previous 2 subsections by stating a doctor and a registered nurse have a duty to perform an abortion in an emergency.

The Australian Medical Association (AMA) is the most influential membership organisation representing registered medical practitioners and medical students of Australia. The AMA Code of Ethics states: 1.1 Patient Care (p)

When a personal moral judgement or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere.¹³

AMA membership provides members with a range of support including medico-legal advice and specialty representation.¹⁴ Members can practice without fear or favor.

Further, protections for persons performing surgical operations and medical treatments are provided in the QLD Criminal Code:¹⁵

(1) *A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of—*

(a) a person or an unborn child for the patient's benefit; or

(b) a person or an unborn child to preserve the mother's life;

if performing the operation or providing the medical treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

(2) *If the administration by a health professional of a substance to a patient would be lawful under this section, the health professional may lawfully direct or advise another person, whether the patient or another person, to administer the substance to the patient or procure or supply the substance for that purpose.*

¹³ AMA Code of Ethics: <https://ama.com.au/position-statement/ama-code-ethics-2004-editorially-revised-2006>

¹⁴ AMA Membership: <https://ama.com.au/full-membership>

¹⁵ The Criminal Code 1899 - Schedule 1: Part 5 Offences against the person and relating to marriage and parental rights and duties, Chapter 26 Assaults and violence to the person generally—justification and excuse: Section 282 Surgical operations and medical treatment

(3) It is lawful for a person acting under the lawful direction or advice, or in the reasonable belief that the advice or direction was lawful, to administer the substance, or supply or procure the substance, in accordance with the direction or advice.

The Hippocratic Oath is one of the oldest binding documents in history and is often taken by graduating medical students. Part of the Oath reads:

Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play at God.¹⁶

Further, C. Everett Koop, M.D.,¹⁷ former U.S. Surgeon General, has this to say about abortion to preserve the Mother's life:

"Protection of the life of the mother as an excuse for an abortion is a smoke screen. In my 36 years of pediatric surgery, I have never known of one instance where the child had to be aborted to save the mother's life. If toward the end of the pregnancy complications arise that threaten the mother's health, the doctor will induce labor or perform a Cesarean section. His intention is to save the life of both the mother and the baby. The baby's life is never willfully destroyed because the mother's life is in danger."

Society in general has confidence in the honesty and capacity of the medical profession. We trust them with our very lives and believe their decisions are founded in the best interests of our health and wellbeing. They face difficult decisions during emergency situations and will call on their extensive training [and collaboration with colleagues] to achieve the best outcome for patients.

In summary, section 22.3 mandates a duty on a doctor and a registered nurse to perform an abortion in an emergency situation despite being afforded an entitlement to refuse involvement in performing an abortion in section 22.2 and removed from any contractual, statutory and legal requirement to do so in section 22.1.

¹⁶ Hippocratic Oath: Modern Version – Written in 1964 by Louis Lasagna, Academic Dean of the School of Medicine at Tufts University, and is used in many medical schools today.

¹⁷ https://en.wikipedia.org/wiki/C._Everett_Koop

Division 3 Patient protection

23 Declarations for abortion facility

This division is noticeably absent from VIC legislation addressing abortion law reform.¹⁸ Once again, a definition of an 'abortion facility' is not provided in this Bill. Does this include public and private hospitals and will this provision compromise rule and regulations afforded to them? It seems quite clear that this section attempts to provide powers to the Minister to respond to matters relating to 'abortion facilities'. The Health minister already has extensive powers and responsibilities.¹⁹

24 Prohibited behaviour in relation to abortion facility

It is important to note that this Bill is promoted from a health aspect in order to make abortion services lawful. Behavior is not a health issue (unless construed as a mental health matter) but one of criminal consequence. These matters have already been addressed and are covered under provisions of the QLD Summary Offences Act 2005.²⁰

6 Public nuisance

(2) A person commits a public nuisance offence if—

(a) the person behaves in—

(i) a disorderly way; or

(ii) an offensive way; or

(iii) a threatening way; or

(iv) a violent way; and

*(b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.*²¹

10A Unlawful assembly

(1) If—

(a) 3 or more persons are present together for a common purpose; and

*(b) the conduct of them taken together would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property;*²²

¹⁸ Abortion Law Reform Act 2008 - No. 58 of 2008

¹⁹ <https://www.health.qld.gov.au/system-governance/health-system/managing/responsibilities/default.asp>

²⁰ Summary Offences Act 2005 - <https://apps.legislation.qld.gov.au/Search/isysquery/efd0ae11-28e7-4550-bd63-9fa517ff6500/20/doc/SumOffA05.pdf#xml=https://www.legislation.qld.gov.au/Search/isysquery/efd0ae11-28e7-4550-bd63-9fa517ff6500/20/hilite/>

²¹ Summary Offences Act 2005 – Part 2: Offences, Division 1 (6) Public Nuisance

²² Summary Offences Act 2005 – Part 2: Offences, Division 1A (10A) Unlawful assembly

12 Persons unlawfully gathering in or on a building or structure

(1) Two or more persons must not, together—

(a) unlawfully enter—

(i) any part of a public building or structure or a building or structure used for a business purpose; or

(ii) any land occupied by or used in connection with any public building or structure or a building or structure used for a business purpose; or

(b) unlawfully remain in or on—

(i) any part of a public building or structure or a building or structure used for a business purpose; or

(ii) any land occupied by or used in connection with any public building or structure or a building or structure used for a business purpose.

Maximum penalty—10 penalty units or 6 months imprisonment.²³

And further in the Criminal Code:

75 Threatening violence

(1) Any person who—

(a) with intent to intimidate or annoy any person, by words or conduct threatens to enter or damage a dwelling or other premises; or
commits a crime.

Maximum penalty—2 years imprisonment.²⁴

25 Publishing image**Publishing images of person entering or leaving abortion facility**

Unlawful use of visual images is already covered under the QLD Criminal Code 1899.²⁵

²³ Summary Offences Act 2005 – Part 2: Offences, Division 2 (12) Persons unlawfully gathering in or on a building structure

²⁴ The Criminal Code – Schedule 1: Part 2 Offences against public order, Chapter 9 Breaches of the peace: Section 75

²⁵ The Criminal Code – Schedule 1: Part 4 Acts injurious to the public in general, Chapter 22 Offences against morality: Section 227B Distributing prohibited visual recordings.

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227B Distributing prohibited visual recordings

(1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits a misdemeanour.

Maximum penalty—2 years imprisonment.

Publishing these images is also covered:²⁶

365 Criminal defamation

*(1) Any person who, without lawful excuse, publishes matter defamatory of another living person (the **relevant person**)—*

(a) knowing the matter to be false or without having regard to whether the matter is true or false; and

(b) intending to cause serious harm to the relevant person or any other person or without having regard to whether serious harm to the relevant person or any other person is caused;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

It is quite obvious from these provisions that the protections sought in this section of the Bill are already covered. Including Division 3 of the Bill serves only to duplicate established legislation.

²⁶ The Criminal Code - Schedule 1: Part 5 Offences against the person and relating to marriage and parental rights and duties, Chapter 35 Criminal defamation: Section 365 Criminal defamation.

Closing Statements

We believe that Health (Abortion Law Reform) Amendment Bill 2016 is ineffective in achieving its stated purpose to improve clarity for health professionals and patients in the area of medical termination of pregnancy.

Both the *Health Practitioner Regulation National Law (Queensland)* and the *Health Ombudsman Act 2013*, along with the *Queensland Clinical Guideline for Therapeutic Termination of Pregnancy*, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (*Termination of Pregnancy (C-Gyn 17)*),²⁷ provide clearer, more extensive guidelines and protections for health practitioners and patients relating to the termination of pregnancy.

In summary:

- ***Only a doctor may perform an abortion***

The lack of definition for both 'qualified health practitioner' and 'doctor' contained in [and for the purposes of] this Bill does not provide clarity.

- ***A woman does not commit an offence by performing, consenting to or assisting in an abortion on herself***

Provisions of section 20.1 stating that only a 'qualified health practitioner' or 20.2(a) a 'doctor' and 20.2(b) a 'registered nurse' can perform an abortion diametrically oppose the provisions of section 20.3(a) & (b) which states a woman can perform and assist in an abortion on herself, despite not meeting the requirements of sections 20.1 and 20.2.

- ***Abortion on a woman who is more than 24 weeks pregnant***

This section presents the greatest concern for the health and wellbeing of gestating humans. Babies born at this stage of pregnancy have a very high survival rate. The fact that no 'up till' period for terminations is defined suggests that abortion services would be lawful just prior to birth.

In effect, the return of partial birth abortions would be sanctioned.

It could be reasonably argued that ending the life of a human being one minute before birth would be considered lawful while doing so one minute after birth would be defined as murder. Such a proposition would be considered ethically void and morally repugnant by most citizens.

²⁷ <http://www.ranzcog.edu.au/>

- ***Duty to perform or assist in abortion***

Section 22 confirms that (a) no-one has a duty [by contract or by statutory or other legal requirement] and (b) is entitled to refuse to perform or assist in performing an abortion. Yet, 22 (c) imposes a duty to perform an abortion under certain circumstances. Once again, a clear contradiction that provides no clarity whatsoever.

- ***Patient protection or ‘safe zones’ and publishing images***

It was interesting to see what is essentially a behavioral offence appear in a Health Bill. As already demonstrated, protections are in place to address the kind of behaviors described in section 24.1 & 24.2, and also 25.1 & 25.2. These are not health matters and as such do not belong in a Health Bill.

Nothing in this Bill improves clarity of existing provisions for health professionals and patients as suggested in the explanatory notes.

It would be extremely disappointing if Parliament and the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee were being derogated on what appears to be the indulgences and personal [or sponsored] crusade by the Member for Cairns.

In short, this Bill is ill-conceived, drafted in haste and only serves to muddy the waters rather than clarify lawfulness of pregnancy terminations performed in Queensland.

As such, we recommend that the committee do not support the passing of this bill.