Submission

on the

Health (Abortion Law Reform) Amendment Bill 2016

to the

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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by

FamilyVoice Australia

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1. Introduction

On 17 August 2016 Mr Rob Pyne MP, the Member for Cairns, introduced the *Health (Abortion Law Reform) Amendment Bill 2016* as a Private Member's Bill.

The Bill was referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee ("the Committee") for consideration.

Submissions are due by 4.00pm, Thursday 6 October 2016.

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families can flourish, Australia's Christian heritage is valued, and fundamental freedoms are enjoyed.

We work with people from all mainstream Christian denominations. We engage with parliamentarians of all political persuasions and are independent of all political parties. We have full-time FamilyVoice representatives in all states.

FamilyVoice has had a longstanding interest advocating the sanctity of human life from conception to natural death.

2. Terms of Reference

The Committee's website states that:

> *The committee invites submissions on the Bill. Submissions should focus on the Bill, and where possible include evidence to support your opinions or recommendations.*[1]

3. The right to life

3.1. Universal Declaration of Human Rights

The right to life is the most fundamental of all human rights because without it all other rights are rendered meaningless. The right to life is enshrined in Article 3 of the Universal Declaration of Human Rights.

> *Everyone has the right to life, liberty and security of person.*[2]

The right to life is also enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR):

> *1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
>
> *2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

> *3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
>
> *4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
>
> *5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
>
> *6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*[3]

Article 6(5) of the ICCPR, which prohibits the death penalty being carried out on pregnant women, reinforces the biological reality that the unborn child is a human being that must be protected.

Just as the death penalty carried out on a pregnant woman ends an unborn child's life, so too does abortion end the life of an unborn child.

3.1. Convention on the Rights of the Child

Article 6 of the UN Convention on the Rights of the Child, to which Australia is a signatory, protects the right to life of the child:

> *1. States Parties recognize that every child has the inherent right to life.*
>
> *2. States Parties shall ensure to the maximum extent possible the survival and development of the child.*[4]

Article 3(1) provides that:

> *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*[5]

It is important to note that these rights do not simply apply to children post birth. The preamble to the Convention stresses that legal protections apply to children both before and after birth:

> *Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"…*[6]

Any change to abortion laws in Queensland should give primary consideration to, and be consistent with, the rights of the child as enunciated in this international instrument.

3.2. Human life begins at conception

The science is clear as to when human life begins, as emeritus professor at the University of Toronto Keith Moore explains:

> *Human development begins after the union of male and female gametes or germ cells during a process known as fertilization (conception)… Fertilization is a sequence of events that begins with the contact of a sperm (spermatozoon) with a secondary oocyte (ovum) and ends with the fusion of their pronuclei (the haploid nuclei of the sperm and ovum) and the mingling of their*

> *chromosomes to form a new cell. This fertilized ovum, known as a zygote, is a large diploid cell that is the beginning, or primordium, of a human being."*[7]

3.3. The unborn child

The unborn child is a human being

Every abortion ends the life of an unborn child. This is the disturbing reality. Abortion treats the unborn child as irrelevant and virtually invisible.

The view that an unborn child is not a human being is not realistic or sustainable in the light of current scientific evidence.

The science of foetology has dramatically improved our understanding of unborn human life. It is no longer possible in the age of 4-D ultrasound and *in utero* foetal surgery to hold that the foetus is just a bunch of cells.

These are some salient facts about the unborn child revealed by recent scientific developments:

- The unborn child's heartbeat can be detected as early as 5 weeks of pregnancy. At 6 weeks the mean heart rate is 117 beats per minute. At 10 weeks the mean heart rate is 171 beats per minute.[8]

- A motor response can first be seen as a whole body movement away from a stimulus and observed on ultrasound from as early as 7.5 weeks' gestational age. The area around the mouth is the first part of the body to respond to touch at approximately 8 weeks, but by 14 weeks most of the body is responsive to touch.[9]

- By 15 weeks gestation the human foetus has fully developed and functioning taste buds.[10]

- "Starting from the 14th week of gestation twin foetuses plan and execute movements specifically aimed at the co-twin. These findings force us to predate the emergence of social behaviour: when the context enables it, as in the case of twin foetuses, other-directed actions are not only possible but predominant over self-directed."[11]

The unborn child can feel pain

The fact that unborn children are capable of feeling pain emphasises the humanity of the foetus. Dr Kanwaljeet Anand, from the University of Arkansas for Medical Sciences and the Pain Neurobiology Laboratory at Arkansas Children's Hospital Research, has testified before the District Court of Nebraska:

> *It is my opinion that the human fetus possesses the ability to experience pain from 20 weeks of gestation, if not earlier, and the pain perceived by a fetus is possibly more intense than that perceived by term newborns or older children...*[12]

The reality that unborn children are capable of feeling pain highlights the inhumane nature of abortion.

Foetal viability

A new study has found that babies born at 22 weeks can survive. As *LifeSiteNews* reported:

> *The age of fetal viability may be revised downward, as a new study has found that a significant number of babies born at 22 weeks will survive if they receive life-saving treatment.*

> *Nearly one out of every four babies born at that early date was able to live after receiving medical treatment, according to a study published today in The New England Journal of Medicine.*
>
> *Five percent of babies born at 22 weeks survived without any outside assistance, according to the Wall Street Journal.*
>
> *In all, 18 of the 78 babies born at 22 weeks survived after being given treatment. Researchers found that 39 percent of these babies survived without even moderate impairments. Six of the survivors suffered from serious complications such as hearing loss, blindness, or cerebral palsy.*
>
> *The rate improved for babies born at 23 weeks gestation: About one-third of those babies survived, half with no serious complications.*
>
> *About 5,000 of the 18,000 babies born at a very premature age are born at 22 or 23 weeks of pregnancy.*
>
> *"It confirms that if you don't do anything, these babies will not make it, and if you do something, some of them will make it," said Dr. David Burchfield, the University of Florida's chief of neonatology, who did not take part in the study.*[13]

Babies capable of surviving outside of the womb are being aborted in Queensland.

Any consideration of abortion law must take into account the reality that abortion ends the life of an innocent human being, many of whom can survive outside of the womb. An approach to the law which makes the unborn child invisible is not rational or justifiable.

Presenting abortion as merely another medical procedure is misleading. Pregnancy as such is not a disease.

Abortion is only a medical procedure in the same sense as execution by lethal injection is a medical procedure. That is to say, both are procedures performed by a doctor using medical knowledge, but not for any identifiable medical purpose. Abortion is not aimed at achieving health but simply at ending pregnancy through terminating the life of the unborn child.

Recommendation 1:

Mothers seeking an abortion should be provided with a fact sheet detailing developmental stages of the unborn child.

4. Traditional freedoms

The provisions in Division 3 of the Bill for "patient protection" or "safe" zones around abortion facilities have the potential to breach fundamental freedoms of speech, association and religion.

4.1. Implied freedom of political communication

An implied freedom of political communication operates in Australia. The implied freedom was outlined in the High Court case of *Lange v Australian Broadcasting Corporation*:

> *Freedom of communication on matters of government and politics is an indispensable incident of that system of representative government which the Constitution creates by directing that the members of the House of Representatives and the Senate shall be "directly chosen by the people" of the Commonwealth and the States, respectively. At federation, representative government was understood to mean a system of government where the people in free*

> *elections elected their representatives to the legislative chamber which occupies the most powerful position in the political system. As Birch points out, "it is the manner of choice of members of the legislative assembly, rather than their characteristics or their behaviour, which is generally taken to be the criterion of a representative form of government." However, to have a full understanding of the concept of representative government, Birch also states that:*
>
> *"we need to add that the chamber must occupy a powerful position in the political system and that the elections to it must be free, with all that this implies in the way of freedom of speech and political organization."*
>
> *Communications concerning political or government matters between the electors and the elected representatives, between the electors and the candidates for election and between the electors themselves were central to the system of representative government, as it was understood at federation. While the system of representative government for which the Constitution provides does not expressly mention freedom of communication, it can hardly be doubted, given the history of representative government and the holding of elections under that system in Australia prior to federation, that the elections for which the Constitution provides were intended to be free elections in the sense explained by Birch. Furthermore, because the choice given by ss 7 and 24 must be a true choice with "an opportunity to gain an appreciation of the available alternatives", as Dawson J pointed out in Australian Capital Television Pty Ltd v The Commonwealth, legislative power cannot support an absolute denial of access by the people to relevant information about the functioning of government in Australia and about the policies of political parties and candidates for election.*
>
> *That being so, ss 7 and 24 and the related sections of the Constitution necessarily protect that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors. Those sections do not confer personal rights on individuals. Rather they preclude the curtailment of the protected freedom by the exercise of legislative or executive power. As Deane J said in Theophanous, they are "a limitation or confinement of laws and powers [which] gives rise to a pro tanto immunity on the part of the citizen from being adversely affected by those laws or by the exercise of those powers rather than to a 'right' in the strict sense". In Cunliffe v The Commonwealth, Brennan J pointed out that the freedom confers no rights on individuals and, to the extent that the freedom rests upon implication, that implication defines the nature and extent of the freedom. His Honour said:*
>
> *"The implication is negative in nature: it invalidates laws and consequently creates an area of immunity from legal control, particularly from legislative control."* [14]

In the later case of *McCloy v New South Wales*[15], the High Court detailed a three stage test for determining whether a law infringes the implied freedom.

University of Sydney Law School Professor Anne Twomey has summarised the test:

> *The first question remained whether the law effectively burdens the freedom in its terms, operation or effect. The second question was described as one that involves 'compatibility testing'. It requires the identification of the purpose of the law and the means adopted to achieve that purpose and asks whether they are compatible with the constitutionally prescribed system of representative government in the sense that 'they do not adversely impinge' upon it. This clarifies previous uncertainty as to what amounts to a 'legitimate end' under the former Lange test.*
>
> *The third question was described as requiring 'proportionality testing'. It is broken up into three parts. It asks whether the restriction imposed by the law on the freedom is justified as (a) suitable; (b) necessary; and (c) adequate in its balance. A law is 'suitable' if it has a rational connection to its purported purpose. It is 'necessary' if there is 'no obvious and compelling*

> *alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom'. It is 'adequate in its balance' if the court makes the value judgment that the importance of the purpose served by the law outweighs the extent of the restriction that it imposes on the freedom.*[16]

Any legislation which fails this test would be unlawful.

4.2. Freedom of speech

One of the most significant characteristics of the human race is our capacity for speech. Through speech people are able to share ideas, discover truth, form communities and develop nations. Human history, including the development of civilisation, owes much to the knowledge, inventions and culture made possible by the capacity of the human species for elaborate speech.

In Judaeo-Christian understanding, the human capacity for speech is a consequence of mankind being made in the image of the God. The Bible portrays God as one who speaks – to Adam and Eve in the Garden of Eden, to Job in his distress, and through Jesus when he walked on earth. Through prayer, man has the privilege of speaking to God.

Professor Paul Eidelberg, president of the Jerusalem-based think tank Foundation for Constitutional Democracy, traces the concept of freedom of speech to being made in the image of God:

> *Recall the patriarch Abraham's questioning God's decision to destroy Sodom: "What if there should be fifty righteous people in the midst of the city? Would you still stamp it out rather than spare the place for the sake of the fifty righteous people within it? It would be sacrilege to You to do such a thing, to bring death upon the righteous along with the wicked; … Shall the Judge of all the earth not do justice?" (Genesis 18:23-25.)*
>
> *God permits Abraham to question Him…*
>
> *Abraham's dialogue with God means that God is not only a God of justice, but also of reason.*
>
> *This tells us what it means to be created in the image of God. It tells us about man's unique power to speak and communicate with others. It needs to be stressed, however, that Abraham's dialogue with God reveals the ultimate object of speech—Truth.*[17]

Debate over the merits of freedom of speech were recorded as early as in ancient Greece:

> *Over time, opposing forces arose: the need to express ideas and opinions in written form, and the desire by some to control free expression. Thus, the Greek epic poet Homer (ninth or eighth century BC) supported free expression, but Solon (630–560 BC), the first great lawmaker of Athens, banned "speaking evil against the living and the dead." Pericles, the leader of democratic Athens, extolled freedom of speech as the defining distinction between the rival city-states of Athens and Sparta. Nonetheless, after the Peloponnesian Wars, the Athenian Assembly ordered Socrates to drink poison as punishment for lecturing about unrecognized gods and corrupting youth by encouraging them to question authority.*[18]

In the development of modern democratic societies, freedom of speech is seen as a *natural right* arising from the intrinsic nature of humanity and beyond the authority of governments. This is in contrast with *legal rights* that are bestowed by governments.

Democratic society considers freedom of speech or expression to be one of our most cherished freedoms. The essence of freedom of speech is not merely the freedom to express ideas, but the freedom to disagree, dispute or cause controversy – an idea often witnessed in our political arena. Indeed, a right not to be offended would stifle legitimate debate and limit political freedom – an

important concept in a functioning democracy. Speech also includes expression of personal beliefs which might not be supported by evidence, and may be controversial, leading to robust debate.

While freedom of expression is understood as a *natural right* beyond the authority of governments, it is not an absolute right. Free speech has purposes: the pursuit of truth and the common good. Most of the debate about freedom of speech centres on identifying legitimate limitations.

4.2.1. Justifiable limitations

The primary justifiable limitation on freedom of expression is harm to other individuals or society, generally known as the *harm principle*.

The English philosopher John Stuart Mill addressed the relationship between authority and liberty in his seminal work *On Liberty*, published in 1859. There he proposed that the only legitimate limitation on free expression is that now usually described as the *harm principle*:

> *the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.*[19]

Application of this principle to freedom of expression requires clarification of two concepts:

- the nature of the *harm* envisaged and
- identification of the *others* in consideration.

Given the importance of freedom of expression as a natural right flowing from being human, only serious *harms* would justify limiting this freedom, such as serious risks to life, health or property. The *others* who might be harmed should include both individuals and society and a whole.

Reasonable restrictions on freedom of speech are articulated well in the International Covenant on Civil and Political Rights (ICCPR), Article 19:

> *3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
>
> *(a) For respect of the rights or reputations of others;*
>
> *(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

These limitations helpfully address harms both to individuals and to society.

Personal reputation

Respect for the reputation of others is a legitimate restriction on speech freedom, as has been observed by the Australian Law reform Commission:

> *The common law tort of defamation has long protected personal reputation from untruthful attacks.*[20]

Since the pursuit of truth is an underlying purpose of freedom of speech, defamation laws should only limit *untruthful* speech, in accord with the common law tort. Since the introduction of uniform defamation laws throughout Australia, "substantial truth" is rightly a complete defence against a complaint of defamation.

National security

Since the first priority of government is defence of the realm, a serious threat to national security constitutes the crime of treason.[21] Violent overthrow of the Australian government, either by an external enemy or by internal civil war, would probably result in the loss of many lives. For this reason, a limitation on speech that threatens national security is justifiable.

Historically, however, some governments have imposed overly harsh restrictions of freedom of speech on national security grounds. To establish clear boundaries for limitations on fundamental freedoms, a group of 31 experts in international law at a 1984 conference in Siracusa, Italy, drafted the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.*[22]

The Siracusa Principles, as they are usually known, provide the following reasonable guidelines for national security limitations:

> ***vi. "national security"***
>
> *29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.*
>
> *30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.*
>
> *31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.*
>
> *32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.*[23]

Public order

Protection of public order is essential to preserve civilised society. In Australia a law against "urging violence and advocating terrorism" (formerly known as sedition) provides this protection.[24] Importantly, the law defines the crime in terms of *action*, such as urging the overthrow of the government or urging violence within the community. This action is *irrespective of whether associated with race, religion, nationality or political opinion*.[25] So the actions, rather than the protected attributes, are primary.

The *Siracusa Principles* provide the following guidelines for constraining limitations to fundamental freedoms on the basis of public safety (or order):

> ***vii. "public safety"***
>
> *33. Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.*
>
> *34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.*[26]

Public health

Limiting speech because of public health concerns reflects a high value on dignity of human life. For instance, banning advertisements for cigarette smoking may be justified to protect the health of the public.

Australian law prohibits the use of any carriage service (including the Internet) to "directly or indirectly counsel or incite committing or attempting to commit suicide" or that "promotes a particular method of committing suicide; or to provide instruction on a particular method of committing suicide".[27]

The *Siracusa Principles* again give helpful guidance for this limit:

> ***iv. "public health"***
>
> *25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.*
>
> *26. Due regard shall be had to the international health regulations of the World Health Organization.*[28]

Public morals

Some immoral behaviour is so grotesque that restricting related communication is justified. For example, child pornography material. Under Australian law, the production, possession or distribution of such material is prohibited.[29]

The Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (ODIHR) elaborates:

> *Measures purporting to safeguard public morals must, therefore, be tested against an objective standard of whether they meet a pressing social need and comply with the principle of proportionality. Indeed, it is not sufficient for the behaviour in question merely to offend morality – it must be behaviour that is deemed criminal and has been defined in law as such.*[30]

The *Siracusa Principles* provide the following guidelines:

> ***v. "public morals"***
>
> *27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.*
>
> *28. The margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.*

4.2.2. Unjustifiable limitations

In recent decades, Australia has experienced a growing assault on freedom of expression through the imposition of "political correctness".

Associate Professor Robert Sparrow of Murdoch University wrote in 2002:

> *Over the last seven years or so the expression "political correctness" has entered the political lexicon across the English speaking world. Hundreds of opinion pieces in newspaper and magazines have been written about political correctness as well of scores of academic articles*

> *about it and the debates in which the expression gained its currency. It is close to being received opinion in Anglo-American popular culture that a coalition of feminists, ethnic minorities, socialists and homosexuals have achieved such hegemony in the public sphere as to make possible their censorship, or at least the effective silencing, of views which differ from a supposed "politically correct" orthodoxy.*[31]

Sparrow then proceeds to criticise this silencing. Yet the term "political correctness" has gained currency precisely because its stifling pressure on freedom of speech is so pervasive and palpable. Senator Cory Bernardi expressed a widespread view when he addressed the question: exactly what is political correctness?

> *Some people claim that political correctness is about being nice to people, being tolerant and treating others with respect. But that's just good manners.*
>
> *Political correctness is designed to undermine free speech, common sense and debate in the public arena. It is an instrument of the Left, who use it to push their ideas onto society.*
>
> *Political correctness is not a concept that came about overnight. It has slowly been infiltrating our society and undermining our culture. And therefore we often fail to recognise the change that has occurred.*
>
> *Let me just give you a few examples of the extremes of PC that our society already has to put up with:*
>
> - *Santa was banned from saying "Ho ho ho", for fear of offending women.*
> - *Sea World re-named fairy penguins "little penguins" to avoid offending the gay community (and even the gay community thought that was a bit over the top).*
> - *A member of parliament's maiden speech is now called their "first speech".*
> - *We have "chairperson" instead of chairman, and "female actor" instead of "actress".*
> - *We shy away from saying "blackboard" and use "chalkboard" instead.*
>
> *The list goes on...*[32]

Initially, pejorative terms such as "sexist", "racist" and "homophobic" were invented as rhetorical devices for *ad hominem* attacks on opponents. Uttering these epithets often had the effect of stifling discussion and preventing an opposing viewpoint from being heard, much like dozens of people blowing whistles at a public meeting to prevent the speaker from being heard.

More recently, political correctness has been given the force of law through antidiscrimination, antivilification or anti-hate-speech laws. Professor James Allan of the Queensland University challenged such laws in a *Sydney Morning Herald* column, saying they erode democracy:

> *You need to ask yourself what you expect hate-speech laws to accomplish if you support them. There are only three possibilities. One is that you want to hide from the victims of such nasty speech how the speakers honestly feel about them. It's a sort of ''give them a false sense of security'' goal.*
>
> *Another is you hope to reform the speaker. You know, fine them and lock them up and maybe they'll see the errors of their ways.*
>
> *But both those supposed good outcomes of hate speech laws are patent nonsense. So that leaves a third possibility, one I believe almost all proponents of these laws implicitly suppose justifies their illiberal position. The goal of hate speech laws is to stop listeners who hear nasty words from being convinced by such speech…*
>
> *In other words, it is plain distrust of the abilities of one's fellow citizens to see through the rantings…*

> *If there was a polite way to express my disdain for that sort of elitist bull, I would use it. But there isn't. So I will just say it is wholly misconceived.*[33]

An egregious example of hate speech laws curtailing free expression on important public policy matters is the prosecution of *Herald Sun* columnist Andrew Bolt. In two columns published in 2009, he commented on scholarships and prizes intended to help disadvantaged indigenous people. He questioned the propriety of giving such awards to fair-skinned people with minority indigenous heritage who had suffered no apparent disadvantage.[34]

When charged under section 18C of the *Racial Discrimination Act 1975 (Cth)*, Andrew Bolt claimed his comments were part of a robust democratic debate – to no avail. He was found guilty in 2011 after a million dollar trial.

The huge cost of such cases, out of all proportion to the alleged hurt, has a "chilling" on free speech. Editors self-censor reports because they do not want to risk time, money and stress. Truth is the biggest casualty.

Jeremy Sammut, research fellow at the Centre for Independent Studies, feels that his freedom to address significant public policy questions is seriously constrained as a result of the Bolt case:

> *In the wake of the Andrew Bolt case, Section 18C will silence the important debates and discussions we should be having about Indigenous affairs.*
>
> *The fear of potential legal action under the [Racial Discrimination Act] also means the nation will debate the question of recognising Indigenous people in the constitution with its tongue tied.*
>
> *Academic Anthony Dillon has written that after the Bolt case, as a part-Indigenous man he can say, and not get sued for saying, statements about Indigenous identity that a non-Indigenous person would be highly likely to be sued for saying.*
>
> *With this advice ringing in my ears, Section 18C means I self-censor. I don't go as hard on the question of the [Aboriginal Child Placement Principle] and Indigenous identity as I might, because of what might happen if I push too hard.*
>
> *This is what critics of Section 18C mean when they talk about the silencing effect of so-called 'hate speech' laws. Free speech is stifled to avoid running the legal gauntlet, and public debate is the worse for it.*[35]

Breaches legal certainty

An internationally recognised principle for the rule of law is *legal certainty*. Professor Cameron Stewart, Pro Dean at Sydney Law School, explains that (emphasis added):

> *the rule of law principle requires that the legal system comply with minimum standards of **certainty**, **generality** and **equality**. The rule of law is a fundamental ideological principle of modern Western democracies…*[36]

The opportunity for a citizen to know *in advance* whether an intended action is lawful or not, is crucial for a free society. Arbitrary law, which leaves citizens uncertain about the legality of their actions, is the device exploited by tyrants to impose a reign of terror. At its core, legal certainty recognises the importance of human dignity and enables citizens to live autonomous lives in a community with mutual trust.[37]

4.3. Freedom of religion

The concept of *freedom of religion* arises from the capacity of humans to order their lives by thought, belief and reason, rather than by instinct. Governments acknowledging the humanity of their citizens will recognise their inalienable right to freedom of thought, belief and opinion, including the right to change religion or belief.

Christians understand the capacity of humans for thought, belief and reason to arise from being made in the image of God. As the Stanford Encyclopedia of Philosophy explains:

> *One of the chief features of the divine image in human beings, then, is the ability to form beliefs and to acquire knowledge. As Thomas Aquinas puts it, "Since human beings are said to be in the image of God in virtue of their having a nature that includes an intellect, such a nature is most in the image of God in virtue of being most able to imitate God".*[38]

Freedom of religion includes three distinct elements:

- the freedom to form, hold and change opinions and beliefs without government interference;
- the freedom to manifest those beliefs and opinions in public or private through speech and actions;
- the freedom of parents to raise their children in accordance with their opinions, beliefs and practices.

The ICCPR recognises these rights in Article 18:

> *1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
>
> *2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
>
> *3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
>
> *4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

The Australian Constitution, section 116, enshrines the principle of non-interference by government in religious belief or practice:

> *The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.*[39]

Consequently, the Commonwealth Parliament:

- cannot establish a State church;[40]
- cannot enforce religious observance;[41, 42, 43]
- cannot prohibit religious observance;[44] and
- cannot impose a religious test for public office.[45]

The High Court of Australia has confirmed, in its judgement on the "Scientology case", that the legal definition of religion involves both belief and conduct.[46] Justices Mason and Brennan held that "for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief…"[47] Consequently, freedom of religion in Australia involves both freedom of belief and freedom of conduct giving effect to that belief.

The most pressing human rights issues associated with freedom of religion in Australia today are the increasing denial of religious conscience and religious practice. This denial of religious freedom is often due to the application of antidiscrimination laws.

Many parts of antidiscrimination laws represent a direct assault on religious freedom by prohibiting some conduct that may be required to give effect to religious beliefs. Religious beliefs generally make moral distinctions between right and wrong, between good and bad, whereas antidiscrimination laws may declare conduct giving effect to such moral distinctions to be unlawful.

4.3.1. Justifiable limitations

Given that thought, belief and opinion are such a fundamental parts of being human, freedom of belief, conscience or religion can be justifiably limited only to prohibit *serious* harm to other individuals or society.

The ICCPR recognises this when it states in Article 18(3) that limitations are justifiable only "to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Religiously motivated violence, such as the siege of the Lindt Café in Sydney by Man Haron Monis,[48] that threatens public safety and order, is clearly unacceptable and may be justifiably prohibited. Even in the face of harsh mockery, such violence is never justified, as political commentator John Stonestreet aptly noted:

> *What happened in Paris [with Charlie Hebdo] was despicable. No matter how offensive the magazine's cartoons might have been, nothing justifies murder.*[49]

Limitations are also justified to protect individuals from serious harm. For example, in some parts of the world, abhorrent religious practices occur. Ritual child sacrifice, perpetrated by animistic witchdoctors on behalf of some people seeking fame and fortune, is still known in parts of sub-Saharan Africa.[50,51] Female genital mutilation is practised in some Islamic countries and promoted by some Islamic authorities.[52,53] With increasing migration from countries where these practices are known to occur, Australia must be vigilant prohibiting these harms to individuals.

4.4. Freedom of association

Human beings are, as Aristotle observed, "*zoon koinonikon*", social or communal animals.[54]

> *… so even when men have no need of assistance from each other they none the less desire to live together. At the same time they are also brought together by common interest, so far as each achieves a share of the good life. The good life then is the chief aim of society, both collectively for all its members and individually …*[55]

The right of voluntary association is a natural right, arising from man's nature and deep need to live in society – not a privilege endowed by the state.[56] This fundamental democratic right was recognised as early as ancient Greece.

The Athenians under Solon's rule seem to have been free to institute such societies as they pleased, so long as their action did not conflict with the public law. The multitude of societies and public gatherings for the celebration of religious festivals and the carrying on of games or other forms of public recreation and pleasure, which flourished for so many centuries throughout ancient Greece, indicates that a considerable measure of freedom of association was quite general in that country.[57]

The Roman authorities were more restrictive: no private association could be formed without a special decree of the senate or the emperor. Yet numerous voluntary societies, or collegia, were approved for such activities as religion, entertainment, politics, cemeteries and trades.[58]

In the centuries following the fall of the Roman Empire, numerous voluntary associations emerged: religious, charitable, educational and industrial. Many of the great religious orders and universities originated during this period. These voluntary associations constituted a considerable restraint on the exercise of arbitrary power by sovereigns and secured a significant degree of social peace.[59]

Throughout history and across cultures, humans have lived in communities. Aristotle acknowledged this in the fourth century BC. Long beforehand, around the twentieth century BC, Abraham received a vision of his descendants becoming a great community – a nation.[60] The code of Hammurabi, from the eighteenth century BC, provided laws to guide living in community. In ancient China, Confucius taught the basic principles of *ren*, an obligation of altruism towards others, and *yi*, a moral disposition to do good, as the foundations of good community life.[61] Jesus Christ reminded his followers of the second greatest commandment: "Love your neighbour as yourself,"[62] – included around 1500 years earlier in the Law of Moses.[63]

This natural right has long been recognised in common law countries such as Australia, where voluntary societies could be established without legal authorisation to pursue any aim whatsoever, provided their members did not engage in conspiracy or acts violating public order.

The right to freedom of association is recognised in Article 22 of the *International Covenant on Civil and Political Rights*.[64] It is ultimately a recognition that human beings are by very nature associational.

Karl Josef Partsch, a German expert in international law and human rights, has explained the breadth of the right to freedom of association, as Dutch legal expert Sharon Detrick explains:

> *According to Partsch, the right to freedom of association includes the right to come together with one or more other persons for social or cultural as well as for economic or political purposes. It includes association with only one person as well as group assembly, casual as well as formal, single and temporary as well as organized and continuing association. Furthermore the freedom of association implies the right to decide whether to associate and also the freedom not to associate.*[65]

American judge and political commentator, Andrew Napolitana, stresses that the **freedom not to associate** is as important as the freedom to associate:

> *The freedom to associate is based on mutual consent – each person must agree to associate with the other person. For example, when A and B agree to associate with one another, both A and B have that freedom. But if A wants to associate with B and B does not want to associate with A but is required to do so then B is not legally free to reject that association with A. Rather he is being forced to associate with A. This concept is called forced association. Forced association is completely counter to our natural rights as free individuals …*[66]

4.4.1. Justifiable limitations

As with freedom of speech, the primary justifiable limitation on freedom of association is governed by the *harm principle* - the avoidance of *harm* to others or to society.

Article 22 of the ICCPR, to which Australia is a signatory, recognises that the right to freedom of association is limited by what amounts to an expression of the harm principle:

> *2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

These limitations foster the common good by seeking to protect both society and individuals from harmful forms of association.

National security and public safety

In recent decades, the world has seen militant terrorist organisations threaten national governments, such as the Taliban in Afghanistan, Al-Qaeda in Somalia and Yemen, the Islamic State in Syria and Iraq, and Boko Haram in Nigeria. National governments have a responsibility to protect their peoples from insurgent attacks of this kind and can justifiably limit associations formed for the purpose of violent insurrection.

The Australian Attorney-General's department provides the example of criminalising association with terrorists as a justifiable limitation:

> *the Criminal Code criminalises associating with a member of a terrorist organisation and thereby providing support to it, if the person intends that the support assist the organisation. This restriction is applied on the grounds of national security and public safety.*[67]

Public order

Governments also have a responsibility to ensure public order and safety. The growth in recent decades of Outlaw Motorcycle Gangs (OMCGs), such as the Bandidos, Hells Angels and Gypsy Jokers, has become an increasing concern of governments. Such gangs have become one of the most identifiable components of Australia's criminal landscape, as the Australian Crime Commission explains:

> *OMCG chapters pose a serious risk to public safety because they are liable to react violently to attempts by rival OMCGs to poach members or encroach on their "territory". In these circumstances, OMCG members have on a number of occasions (notably on the Gold Coast and at Sydney Airport) paid scant regard to the safety of innocent bystanders.*[68]

Two inquiries conducted by the Commonwealth Parliamentary Joint Committee on the Australian Crime Commission between 2006 and 2009 have provided evidence that:

> *criminal gangs had diversified their activities across illicit drug trafficking, illegal firearms, money laundering, fraud, stock market manipulation, extortion and protection rackets, counterfeiting, and vehicle rebirthing; that groups were working collaboratively, flexibly and across state borders; and that the annual cost to the Australian economy was $10 billion. Motorcycle gangs were specifically labelled as being linked to most forms of serious organised crime.*[69]

Australian state governments have responded to this growing menace to public safety and order in several ways. One approach has been to strengthen laws against consorting with criminals, which

have a long legal history as explained by Sydney University law lecturer Andrew McLeod.[70] However, South Australian and New South Wales laws of this kind have been significantly constrained by two High Court decisions.

The South Australian *Serious and Organised Crime (Control) Act 2008* breached the vitally important separation of powers doctrine embedded in Chapter III of the Australian Constitution. The High Court declared the Act invalid because it intended to require:

> *the Magistrates Court to make a decision largely pre-ordained by an executive declaration for which no reasons need be given, the merits of which cannot be questioned in that Court and which is based on executive determinations of criminal conduct committed by persons who may not be before the Court.*[71]

The New South Wales *Crimes (Criminal Organisations Control) Act 2009* also breached the separation of powers doctrine, but in a different way. The High Court declared this Act invalid because it purported to "confer upon judges of a State court administrative functions which substantially impair its essential and defining characteristics as a court."[72]

Any limitation on freedom of association intended for the protection of public safety and order must be subject to proper judicial process.

Public health

Ebola outbreaks in West Africa generated renewed debate about mandatory human quarantine for public health reasons and whether it is a justifiable limitation on freedom of association.

In the USA, the governors of New York, New Jersey and Illinois imposed 21-day mandatory quarantine for all travellers arriving from West Africa who had been in contact with the Ebola virus.[73] The Australian government suspended the program for humanitarian immigration from Ebola-affected West African nations and imposed on permanent visa holders a mandatory 21-day quarantine period before their departure for Australia.[74]

An earlier generation of Australians was familiar with mandatory quarantine for tuberculosis patients before the advent of antibiotic treatments. The Waterfall Sanatorium near the Royal National Park south of Sydney, which operated from 1909 to 1958, was one of many such hospitals around Australia. Isolation limited the spread of infection in the public interest and recovery depended largely on an environment of fresh air and sunshine.[75]

Mandatory quarantine of tuberculosis patients continues today with a small number of patients. A 2004 paper reported the situation at that time:

> *Pulmonary tuberculosis is a highly contagious disease that accounted for 58% of the 1028 tuberculosis (TB) notifications in 2002 in Australia. Most patients complete therapy successfully. A study in San Francisco confirmed through DNA fingerprinting that a single non-compliant TB patient could infect large numbers of people. In Australia, non-compliant patients can be detained under coercive powers available to all states and territories. To our knowledge, 10 public health detention orders for TB carriers have been issued in Australia within the past 5 years. In New South Wales, there have been two recent cases in which this power was used.*[76]

Restrictions of this kind for the common good are justifiable limitations on freedom of association.

Public morals

Public nudity and lewd behaviour can be offensive and disrupt social harmony.

Controversy over such behaviour occurred recently at the Mornington Peninsula Shire Council in Victoria. A resident close to Sunnyside North – one of four ''clothing optional'' beaches in Melbourne – complained that the area "had become a notorious pick-up spot for homosexuals, who created 'love nests' among foreshore vegetation."[77] Similar complaints have been made about other "optional clothing" beaches, such as Maslin Beach in South Australia.[78]

These examples illustrate the tension between the **freedom to associate** and the **freedom not to associate**. Some beach-goers may want to bathe nude in the company of others similarly unclad. Other beach-goers may want the freedom to enjoy the beach without naked people nearby.

Limitations on freedom of association for the protection of public morals are justifiable if both freedom to associate and freedom from forced association are respected.

Freedoms of others

Freedom of assembly and freedom of association are often considered together as cognate freedoms, since members of associations usually assemble and assemblies of people are usually associated for a purpose.

An assembly of people advancing a cause can provide an opportunity for opponents of the cause to form a counter-assembly. This situation brings into sharp focus the need for the freedom of association and assembly to take into consideration potential conflict with the freedoms of others.

For example, when the leader of the Party for Freedom in the Dutch House of Representatives, Geert Wilders, visited Australia in February 2013, an Australian association booked venues where he could speak and many people wanted to assemble to hear him.[79] However, other people assembled outside the venue to protest against his visit and created a human blockade at the entrance in an attempt to prevent those who had bought tickets from entering – as a newspaper reported:

> *"Trevor" had attempted to break through the protesters' picket line to hear the controversial Dutchman speak. The school teacher from Adelaide was pictured grappling with protesters and being shoved to the ground.*
>
> *"It is a freedom of speech thing," he said.*
>
> *"They pulled me down and ripped my jacket when all I was doing was listening to a speech. All the while screaming scum at me.*
>
> *"They say they are arguing for tolerance but it is them being intolerant to opposing views."*[80]

A justifiable limitation of freedom of association and assembly is a requirement for the respect of others to associate and assemble for a contrary purpose. The Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (ODIHR) describes the necessary balance in the following terms:

> *That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens. Temporary disruption of vehicular or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly. Nor is opposition to an assembly sufficient, of itself, to justify prior limitations. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.*[81]

Recommendation 2:

(a) All Queensland laws, including any relating to abortion, should respect the fundamental freedoms of speech (including political communication), religion and association and

(b) any limitations on these freedoms should be restricted to those justifiable for the protection of national security, public order, public health, public morals or the fundamental freedoms of others.

5. Health (Abortion Law Reform) Amendment Bill 2016

5.1. Abortion on woman more than 24 weeks pregnant (s21)

Section 21 of the Bill would effectively legalise abortion right up until birth. It states:

> ***21 Abortion on woman more than 24 weeks pregnant***
>
> *A doctor may perform an abortion, or direct a registered nurse to perform an abortion by administering a drug, on a woman who is more than 24 weeks pregnant only if the doctor—*
>
> *(a) reasonably believes the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated; and*
>
> *(b) has consulted at least 1 other doctor who also reasonably believes the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated.*[82]

The Committee has summarised the current law regarding abortion in Queensland in an Information Paper:

> - *Abortion is a crime for women and for doctors procuring it.*
> - *It is legal if the doctor believes a woman's physical and/or mental health is in serious danger.*[83]

Whereas currently the test is that the doctor believes that there is a "serious danger" to the woman's physical or mental health, the proposed new test is whether there is a "greater risk", which is a balance of probabilities proposition. The proposed law therefore sets the bar much lower.

A note at the end of section 21 provides:

> *A failure by a doctor to comply with this section does not constitute an offence but may constitute behaviour for which action may be taken under the Health Practitioner Regulation National Law (Queensland), Part 8 or the Health Ombudsman Act 2013.*[84]

The humanity of the unborn is further undermined by the treating of any breach of the law as merely professional misconduct rather than an offence.

The proposed section is very similar to that which operates in Victoria, which is one of the most radical abortion laws in the world, as highlighted in a speech by Victorian MP Rachael Carling-Jenkins:

> *Victoria's abortion laws are extreme in comparison to those of most countries in the Western world which acknowledge viable preborn babies. For example, 43 states in the US prohibit abortion after a specified point in pregnancy, most commonly from 20 to 24 weeks. There is*

> *now a federal push to ban late-term abortion across the US. In Europe most countries, including those known to be strong on social liberty, such as Belgium and the Netherlands, only allow abortion on demand during the first trimester, after which restrictions and regulations increase the later a pregnancy progresses.*
>
> *In Victoria our current laws do not place adequate restrictions on abortions, which have been recorded as occurring at as late as 37 weeks gestation for psychosocial reasons, according to a 2011 report by the Consultative Council on Obstetric and Paediatric Mortality and Morbidity.*[85]

Recommendation 3

The proposal in section 21 of the Bill to give legal sanction to abortion on a woman more than 24 weeks pregnant is not compatible with respect for human life before as well as after birth and should not be supported.

5.2. Duty to perform or assist in abortions (s22)

Section 22(3) of the Bill would require a doctor to perform an abortion:

> *However, a doctor has a duty to perform, and a registered nurse has a duty to assist a doctor in the performance of, an abortion on a woman in an emergency if the abortion is necessary to save the life of, or to prevent a serious physical injury to, the woman.*[86]

The idea that a doctor would need to perform an emergency abortion is a furphy, as Dr Anthony Levatino, an obstetrician-gynaecologist who once performed abortions and has treated women with high-risk pregnancies, testified before a Congressional subcommittee in 2013:

> *Before I close, I want to make a comment on the necessity and usefulness of utilizing second and third trimester abortion to save women's lives. I often hear the argument that we must keep abortion legal in order to save women's lives in cases of life threatening conditions that can and do arise in pregnancy.*
>
> *Albany Medical Center, where I worked for over seven years, is a tertiary referral center that accepts patients with life threatening conditions related to or caused by pregnancy. I personally treated hundreds of women with such conditions in my tenure there. There are several conditions that can arise or worsen typically during the late second or third trimester of pregnancy that require immediate care. In many of those cases, ending or "terminating" the pregnancy, if you prefer, can be life saving. But is abortion a viable treatment option in this setting? I maintain that it usually, if not always, is not.*
>
> *Before a Suction D & E procedure can be performed, the cervix must first be sufficiently dilated. In my practice, this was accomplished with serial placement of laminaria. Laminaria is a type of sterilized seaweed that absorbs water over several hours and swells to several times its original diameter. Multiple placements of several laminaria at a time are absolutely required prior to attempting a suction D & E.*
>
> *In the mid second trimester, this requires approximately 36 hours to accomplish. When utilizing the D & X abortion procedure, popularly known as Partial-Birth Abortion, this process requires three days as explained by Dr. Martin Haskell in his 1992 paper that first described this type of abortion.*
>
> *In cases where a mother's life is seriously threatened by her pregnancy, a doctor more often than not doesn't have 36 hours, much less 72 hours, to resolve the problem. Let me illustrate with a real -life case that I managed while at the Albany Medical Center. A patient arrived one night at 28 weeks gestation with severe pre-eclampsia or toxemia.*

> *Her blood pressure on admission was 220/160. As you are probably aware, a normal blood pressure is approximately 120/80. This patient's pregnancy was a threat to her life and the life of her unborn child. She could very well be minutes or hours away from a major stroke. This case was managed successfully by rapidly stabilizing the patient's blood pressure and "terminating" her pregnancy by Cesarean section. She and her baby did well. This is a typical case in the world of high-risk obstetrics. In most such cases, any attempt to perform an abortion "to save the mother's life" would entail undue and dangerous delay in providing appropriate, truly life-saving care.*
>
> *During my time at Albany Medical Center I managed hundreds of such cases by "terminating" pregnancies to save mother's lives. In all those hundreds of cases, the number of unborn children that I had to deliberately kill was zero.*[87]

It is nonsensical to speak of abortion as saving a life when the reality is it always takes one.

Forcing a doctor to perform a violent and heinous act is also not only morally reprehensible but a fundamental breach of the freedom of conscience principle, detailed in Article 18 of the ICCPR.

Recommendation 4

Since the proposal in section 22(3) of the Bill would impose on medical professionals an obligation that may be in conflict with their fundamental freedom of belief, conscience or religion, this section should not be supported.

5.3. Exclusion zones (ss23 & 24)

Section 23 & 24 of the Bill create exclusion zones (termed "protected areas") around abortion facilities.

"Abortion facility" is defined to mean "a medical facility, or a part of a medical facility, in which abortions are performed." "Abortion" is defined to mean causing a woman's miscarriage by an instrument, administering a drug or other means.[88] GP medical clinics where the abortion drug RU486 is administered are therefore covered. This means that a large part of Brisbane would be covered by the proposed law.

Under section 23, the Minister must declare an area of at least 50 metres around an abortion facility to be a protected area. There is no limit on the distance that the Minister can prescribe, except that it be "sufficient to ensure the privacy of, and unimpeded access for, anyone entering, trying to enter or leaving the abortion facility; and "no bigger than necessary." The Minister could therefore potentially set an exclusion zone of 200 metres or more.

Exclusion zones are a blatant attack on the right to freedom of speech, religion, association and, most importantly in Australia, the implied constitutional freedom of political communication.

The case of 75-year-old Kerry Mellor in the Australian Capital Territory, where exclusion laws apply, highlights the draconian nature of such laws. *The Canberra Times* reported earlier this year:

> *[Mr Mellor] said that when he and other pro-life supporters went to the Moore Street clinic at 8am, there were already six police officers there.*
>
> *The rest of his group dispersed, he said, but he remained in place outside PJ O'Reilly pub and was again fined $750.*
>
> *"The moment that I produced my rosary and made a sign of the cross, they were on to me right away," he said.*

> *Mr Mellor argues that praying does not amount to either protest or prohibited behaviour under the exclusion zone laws.*
>
> *He said he intended to challenge the fine in court.*[89]

Mr Mellor formally requested that the charge be withdrawn on the basis that quiet prayer cannot possibly be interpreted as "prohibited behaviour" in the law. Curiously, the police withdrew the notice on a different ground: that Mr Mellor wasn't within the "protected area" at the time. Nevertheless, the police should never have been empowered to impose a penalty for such an innocuous activity in the first place.

The Tasmanian case of Graham Preston also illustrates the extreme nature of exclusion zone laws. Preston was convicted for holding a sign which read 'Everyone has a right to life - Article 3 Universal Declaration of Rights' in such a zone. He is appealing the conviction over the constitutional validity of the law.[90]

The exclusion zone sections of the Bill would likely be held unconstitutional for failing the test laid out in *McCloy v New South Wales*.[91] This decision of the High Court of Australia requires any restriction on political communication to have a purpose that is "compatible" with representative government and to be "proportional" to that purpose. The proportionality test

> *asks whether the restriction imposed by the law on the freedom is justified as (a) suitable; (b) necessary; and (c) adequate in its balance. A law is 'suitable' if it has a rational connection to its purported purpose. It is 'necessary' if there is 'no obvious and compelling alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom'. It is 'adequate in its balance' if the court makes the value judgment that the importance of the purpose served by the law outweighs the extent of the restriction that it imposes on the freedom.*[92]

In keeping with this right, the Queensland Parliament should not consider, let alone pass, legislation which infringes the implied freedom of political communication.

Recommendation 5

Since the proposal in sections 23 and 24 to create "protected areas" around abortion facilities is in direct conflict with the fundamental freedoms of speech, association and assembly, it should not be supported.

6. Existing practices in Queensland concerning termination of pregnancy by medical practitioners

Twenty-seven babies aged 20 weeks or more survived abortions in Queensland in 2015, the Queensland Minister for Health and Minister for Ambulance Services Cameron Dick has revealed.[93]

Shockingly, *ABC News* reported:

> *Queensland Health confirmed that in such cases, care is not rendered to the baby after a decision to terminate is made and it is left to perish in the clinic.*[94]

In his response to a question on notice, the Queensland Minister for Health revealed the following abortion live births since 2005:[95]

Calendar year	Termination with live birth outcome
2005	8
2006	16
2007	20
2008	15
2009	13
2010	17
2011	20
2012	20
2013	23
2014	25
2015	27

These figures clearly show more than a tripling of the number of babies surviving abortion since 2005. The *Daily Mail Australia* reported the Queensland Health Minister as saying the number could be much higher when non-confirmed incidents are taken into account.[96]

A recent parliamentary inquiry into laws governing abortion in Queensland confirmed that babies who survive abortion are not rendered life sustaining care (emphasis added):

> *The committee asked clinicians about late-gestation abortions and live deliveries. Professor Ellwood explained that Queensland Health policy requires discussion of foeticide with parents above 22 weeks gestation,*
>
> *"…but not all women will accept that as part of the process and there is no requirement for them to accept that. Somebody may choose to terminate a pregnancy for what is essentially a lethal foetal abnormality such an anencephaly or trisomy 18 or trisomy 13 and choose not to have a feticide procedure done and following induction of labour that baby is very likely to be born alive…* ***It is not failed termination of pregnancy, it is just the way that the process was carried out and the choice that that woman made****."*
>
> *Several witnesses noted that any sign of life must be recorded as a live birth in Queensland. In response to committee questions about Queensland Health's procedure to assist when there is a live birth following a late-gestation termination, Professor Kimble said that compassionate palliation would be provided.*
>
> *"The paediatricians, our neonatal colleagues, would be there to provide care and, generally speaking, would provide pain relief for the baby and stay with it. It depends on gestation and whether it is one gasp or whether it is a baby that might demise in 30 minutes. Whatever the situation may be, the neonatologists generally tend to be there to provide what we would call palliative care, and that is reducing pain and suffering for the baby."*
>
> ***Professor Kimble clarified that following a termination there is generally no resuscitation****, but pain relief is provided.*[97]

The law should not turn a blind eye to infanticide.

Recommendation 6:

Queensland law should require health professionals to ensure that all babies born alive from 24 weeks gestation are provided with appropriate neonatal care to preserve the child's life.

7. Community attitudes about abortion

No amount of public support for something that is inherently wrong, namely the taking of innocent human life, can make it right. If that were the case, some of the worst human rights abuses in history could be justified.

If community attitudes were considered, however, it is worth noting public support for strengthening Queensland abortion laws rather than liberalising them. A Galaxy poll conducted in May 2016 found that:

- *Most voters in Queensland (55%) believe abortion involves the taking of a human life. This view is most commonly held by women (56%), those that have not completed year 12 (58%) and those living in regional and rural Queensland (58%).*
- *Two thirds of voters in Queensland (66%) believe that an unborn child at 20 weeks of pregnancy is a human person with human rights.*
- *It is widely accepted that abortion can harm the mental and physical health of a woman (84%). Those aged 18-34 years (90%) are the most likely to have concerns about the harm to the physical and mental health of the woman.*
- *Only 38% of Queensland voters support abortion in cases where a healthy mother is carrying a healthy unborn baby. In contrast, 45% are opposed to abortion under these circumstances and 17% are uncommitted.*
- *Those aged 18-34 years are the most likely to be in favour of abortion in circumstances when the mother and baby are both healthy. In contrast, among those aged 50 years and older those opposed to abortion in these circumstances outnumber those in favour by more than two to one.*
- *Most voters in Queensland (72%) would not allow abortion after 13 weeks. This includes 50% that would allow abortion up to 13 weeks and 22% opposed to abortion at any time.*
- *There is widespread belief in Queensland (94%) that before having an abortion a woman should receive free independent counselling and information so that she can make a fully informed decision.*
- *There is also strong support (87%) for a cooling off period of several days between making an appointment for an abortion and the actual operation.*
- *Three quarters of Queensland voters (75%) believe parental consent should normally be required for girls under the age of 16 to have an abortion.*
- *Eight in ten voters (79%) support conscientious objection provisions allowing doctors and nurses to opt out of having to perform abortion operations against their will.*
- *The community is divided over abortion laws in Queensland with 39% of the opinion that the law as it currently stands is too restrictive and 42% thinking it is about right. A further 11% do not believe the law is restrictive enough.*

> - *Those that believe abortion should not be decriminalised (49%) outnumber those in favour of the decriminalisation of abortion (43%).*
> - *Around half of all Queensland voters (48%) say that if their local Member of Parliament voted in favour of decriminalising abortion it would influence their vote, and this issue would be more likely to cost the MP votes (50%) than be a vote winner (38%).*[98]

Any changes to the abortion law based on community attitudes should therefore strengthen the rights of the unborn, not weaken them.

Recommendation 7:

Any change to Queensland abortion laws, purportedly on the basis of current community attitudes, should give full weight to the 94% support for free information and counselling, the 84% who believe abortion can harm the woman's mental and physical health and the 72% who oppose abortions after 13 weeks.

8. Provision of counselling and support services for women

In 2009, *The Sydney Morning Herald* reported on the pressure placed upon women to undergo abortions:

> *Seven out of 10 men involved in unwanted pregnancies try to influence women to have abortions, according to a prominent Brisbane pregnancy clinic.*
>
> *A senior counsellor from Pregnancy Counselling Link, which receives up to 3000 calls a year, believes up to 70 per cent of cases involve men pressuring their partners to have terminations.*[99]

The prevalence of coerced abortion indicates a need to strengthen current laws to better protect women from such pressure.

Recommendation 8

To protect women from being coerced into undergoing an abortion, a 72 hour cooling-off period should apply.

9. Conclusion

The right to life is the most basic and fundamental of all human rights. The right is recognised in the United Nations Declaration of Human Rights and in the International Covenant on Civil and Political Rights (ICCPR). The fact that the ICCPR prohibits the death penalty being carried out on pregnant women further highlights that the unborn child has an inalienable right to life.

Beyond these philosophical and legal instruments, science is clear that human life begins at conception. Modern advancements in technology make it untenable to hold the view that the unborn child is just a bunch of cells.

Presently in Queensland, babies capable of surviving outside of the womb are being aborted. Rather than address this tragedy, the *Health (Abortion Law Reform) Amendment Bill 2016* would make it more prevalent by effectively legalising abortion right up until birth.

Exclusion zone laws are draconian and inimical to the democratic freedoms of speech, association and religion. They should not be enacted in Queensland.

10. Endnotes

[1] http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC/inquiries/current-inquiries/18-HealthAbortion

[2] The Universal Declaration of Human Rights, Article 3, http://www.claiminghumanrights.org/udhr_article_3.html

[3] International Covenant on Civil & Political Rights, Article 6, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[4] International Covenant on Civil & Political Rights, Article 6, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[5] UN Convention on the Rights of the Child, Article 3(1), http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[6] UN Convention on the Rights of the Child, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[7] Keith L. Moore, *Essentials of Human Embryology*, Toronto: B.C. Decker Inc, 1988, p2.

[8] A. Wloch et al., "Doppler study of the embryonic heart in normal pregnant women", *Journal of maternal-fetal and neonatal medicine*, 2007, 20:533-9.

[9] L. B. Myers et al., "Fetal endoscopic surgery: indications and anaesthetic management", *Best Practice & Research Clinical Anaesthesiology*, 2004, 18:231-258.

[10] M. Witt and K. Reutter, "Embryonic and early fetal development of human taste buds: a transmission electron microscopical study", *The Anatomical Record*, 1996, 246:507-523.

[11] U. Castiello et al., "Wired to Be Social: The Ontogeny of Human Interaction", *PLoS One*, 2010: 5, published online: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2951360/

[12] Ashley Morrow Fragoso, "Fetal Pain: Can Unborn Children Feel Pain in the Womb?", Family Research Council, p5, http://downloads.frc.org/EF/EF10H06.pdf

[13] Ben Johnson, "New standard of viability? Many babies born at 22 weeks can survive with treatment, study finds", LifeSiteNews, 7 May 2015, https://www.lifesitenews.com/news/new-standard-of-viability-many-babies-born-at-22-weeks-can-survive-with-tre

[14] Lange v Australian Broadcasting Corporation, (1997) 189 CLR 520, paras 40-47, http://www.austlii.edu.au/au/cases/cth/HCA/1997/25.html

[15] *McCloy v New South Wales* [2015] HCA 34

[16] Professor Anne Twomey, Sydney Law School, University of Sydney, speaking notes from the ALRC Freedoms Symposium, Federal Court, Queens Square, 8 October 2015, https://www.alrc.gov.au/proportionality-constitution-anne-twomey

[17] Paul Eidelberg, "The Biblical Foundation for Freedom of Speech", *Eidelberg Report*, Israel National Radio's *Tamar Yonah Show* (22 February 2010)

[18] "Freedom of Expression: History", *Democracy Web: Comparative Studies in Freedom*: http://www.democracyweb.org/expression/history.php (accessed 17 February 2015)

[19] "Freedom of Speech", *Stanford Encyclopedia of Philosophy* (1 July 2012)

[20] "Authorising what would otherwise be a Tort", *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, Issues Paper IP46, Chapter 16, Australian Law Reform Commission (10 December 2014)

[21] In Australia, the crime of treason is defined in section 80.1 of the Criminal Code, contained in the schedule of the *Australian Criminal Code Act 1995*

[22] "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights", *Human Rights Quarterly* (1985), 7(1), 3

[23] *Siracusa Principles*

[24] *Cth Criminal Code Act 1995*, s80.2

[25] *Cth Criminal Code Act 1995*, s80.2(5)

[26] United Nations, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex, 1985: http://www1.umn.edu/humanrts/instree/siracusaprinciples.html

[27] *Criminal Code Act 1995*, Schedule, s474.29A

[28] United Nations, *Siracusa Principles*

[29] *Criminal Code Act 1995*, Schedule, s273

[30] "Guidelines on Freedom of Peaceful Assembly: 2nd ed.", Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (2010), para 78, pp 51-52

[31] Robert Sparrow, "Talking sense about political correctness", *Journal of Australian Studies*, (2002), 73:119-133

[32] Cory Bernardi, "How political correctness threatens Australian culture", *News Weekly*, (21 June 2008)

[33] James Allan, "These elitist hate-speech laws erode democracy", *The Sydney Morning Herald* (3 March 2014)

[34] David Phillips, "Truth and freedom: the importance of robust debate", *VoxPoint* (August 2011), pp A-D

[35] J. Sammut, "18C makes us all tongue-tied", *The Centre for Independent Studies* (20 Jan 2015): http://www.cis.org.au/media-information/opinion-pieces/article/5446-18c-makes-us-all-tongue-tied

[36] Cameron Stewart, "The Rule of Law and the Tinkerbell Effect: Theoretical Considerations, Criticisms and Justifications for the Rule of Law", *Macquarie Law Journal* (2004), Vol 4, 135-164

[37] Erik Claes, Wouter Devroe and Bert Keirsbilck, *Facing the Limits of the Law*, Springer Science & Business Media (21 Apr 2009), 104

[38] "Religion and Science", 3.1 Concord, *Stanford Encyclopedia of Philosophy* (27 May 2010)

[39] *Commonwealth of Australia Constitution Act 1900*, s116

[40] Established churches include the Church of England in UK, the Lutheran Church in Denmark, the Eastern Orthodox Church in Greece and the Roman Catholic Church in Argentina

[41] Saudi Arabia enforces five daily prayers, fasting during Ramadan and the modesty of women's dress under *sharia* law by the religious police, or *mutawwiin*; see "Saudi Arabia Law Enforcement", *Encyclopedia of the Nations* (Illinois: Advameg, 2007–2013)

[42] Eric Westervelt, "Police Enforce Ramadan Fasting Rules in West Bank", *NPR* (Washington, DC, 11 October 2007)

[43] Jane Perlez,"Spread of Islamic Law in Indonesia Takes Toll on Women", *The New York Times* (New York, 27 June 2006)

[44] Prohibition of house churches in the People's Republic of China has been reported. See "China—Son of Christian Leader Beaten Unconscious", *Barnabas Fund Prayer Focus* Update, No 145 (November 2008)

[45] Pakistan-born Daniel Scot had to pass an exam on Islam before gaining a lectureship in mathematics at the University of Punjab. See Roslyn Phillips, "Religious Vilification: The Daniel Scot Decision", resource paper in *Light* (Adelaide, May 2005), 8–11

[46] *Church of the New Faith v Commissioner of Pay-Roll Tax* (Vic) [1983] HCA 40; (1983) 154 CLR 120

[47] *Ibid*., para 17; their judgement was qualified by also holding that "though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion."

[48] Dan Box, "Sydney siege inquest: Lindt Cafe deaths investigated", *The Australian* (29 January 2015): http://www.theaustralian.com.au/in-depth/sydney-siege/sydney-siege-inquest-lindt-cafe-deaths-investigated/story-fnqxbywy-1227200443586

[49] J. Stonestreet, "We Aren't Charlie: The Decline of Satire and Culture", *Breakpoint* (16 Jan 2015), http://www.breakpoint.org/bpcommentaries/entry/13/26699

[50] Sadio Kante, "Mali's human sacrifice - myth or reality?", *BBC News* (20 September 2004)

[51] Amy Fallon and Amy Corderoy, "Tortured by a witch doctor, saved by Australian surgeons", *Sydney Morning Herald* (12 May 2012)

[52] Janet Fife-Yeomans and Matthew Benns, "Peddling pages of barbaric savagery: Islamic shops still selling female mutilation books", *Daily Telegraph* (17 November 2014): http://www.dailytelegraph.com.au/news/national/peddling-pages-of-barbaric-savagery-islamic-shops-still-selling-female-mutilation-books/story-fnpn0zn5-1227125017909

[53] "Iraq crisis: Islamic State militants order genital mutilation for females in Mosul, says United Nations", *ABC News* (15 September 2014): http://www.abc.net.au/news/2014-07-25/militants-order-female-genital-mutilation-in-iraq/5622826

[54] Aristotle, *Eudemian Ethics*, 1242 a25

[55] Aristotle, *Politics*, 1278b20

[56] *Ibid.* The right of voluntary association is defended by Pope Leo XIII in his encyclical *Rerum Novarum*: "To enter into private societies is a natural right of man, and the state must protect natural rights, not destroy them. If it forbids its citizens to form associations, it contradicts the very principle of its own existence; for both they and it exist in virtue of the same principle, namely, the natural propensity of man to live in society."

[57] James Ryan, "Right of Voluntary Association", *The Catholic Encyclopedia*, Volume II, 1907, Online Edition (1999)

[58] *Ibid*

[59] *Ibid*

[60] Genesis 12:2-3, *Holy Bible*, New International Version (Biblica, 2011)

[61] "Confucianism", *Wikipedia*: http://en.wikipedia.org/wiki/Confucianism

[62] Matthew 22:39, Mark 12:31, *Holy Bible*, New International Version (Biblica, 2011)

[63] Leviticus 19:18, *Holy Bible*, New International Version (Biblica, 2011)

[64] International Covenant of Civil and Political Righs, *Article 22 – 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*

[65] Sharon Detrick, "A commentary on the United Nations Convention on the Rights of the Child", Martinus Nijhoff Publishers (1999), p. 261, citing K. J. Partsch, "Freedom of Conscience and Expression, Political Freedoms", in L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights,* New York, Columbia University Press (1981), p235

[66] Andrew P. Napolitana, "It is dangerous to be right when the government is wrong: the case for personal freedom", (Thomas Nelson, 2011), p52

[67] Attorney-General's Department, "Right to freedom of assembly and association"

[68] Australian Crime Commission, *Crime Profile Series — Outlaw Motorcycle Gangs*, Australian Government, (29 July 2013):

https://www.crimecommission.gov.au/sites/default/files/OUTLAW%20MOTORCYCLE%20GANGS%20JULY%202013.pdf

[69] Andrew McLeod, "On the Origins of Consorting Laws", *Melbourne University Law Review*, (2013), Vol 37, 103-142

[70] Andrew McLeod, "On the Origins of Consorting Laws", *Melbourne University Law Review*, (2013), Vol 37, 103-142

[71] *South Australia v Totani* [2010] HCA 39 at 4

[72] *Wainohu v New South Wales* [2011] HCA 24 at 7

[73] "Ebola quarantine a sound idea", *The Australian*, Opinion (27 October 2014): http://www.theaustralian.com.au/opinion/editorials/ebola-quarantine-a-sound-idea/story-e6frg71x-1227102882641

[74] Dan Harrison, "Australia shuts borders to Ebola-affected countries", *The Sydney Morning Herald* (28 October 2014): http://www.smh.com.au/federal-politics/political-news/australia-shuts-borders-to-ebolaaffected-countries-20141027-11ciut.html

[75] "Waterfall Sanatorium", State Records, NSW Government: http://investigator.records.nsw.gov.au/entity.aspx?path=%5Cagency%5C1995 (accessed 3 March 2015).

[76] Sanjaya N. Senanayake and Mark J. Ferson, "Detention for tuberculosis: public health and the law", *The Medical Journal of Australia*, 180/11 (2004), 573-576: https://www.mja.com.au/journal/2004/180/11/detention-tuberculosis-public-health-and-law

[77] Cameron Houston, "Anger swells over bid to gay-proof beach", *The Age* (5 June 2011): http://www.theage.com.au/victoria/anger-swells-over-bid-to-gayproof-beach-20110604-1fmdh.html

[78] Jason Om, "Keeping Maslin Beach Safe...and Nude", *ABC Stateline South Australia* (27 April 2007): http://www.abc.net.au/stateline/sa/content/2006/s1909854.htm

[79] Q Society of Australia Inc.: www.qsociety.org.au

[80] James Dowling, "Protestors attacked me, claims member of Geert Wilders audience", *Herald Sun* (21 February 2013): http://www.heraldsun.com.au/news/victoria/protestors-attacked-me-claims-member-of-geert-wilders-audience/story-e6frf7kx-1226583027521

[81] OSCE Office for Democratic Institutions and Human Rights, "Guidelines on Freedom of Peaceful Assembly: 2nd ed.", para. 80, p52

[82] *Health (Abortion Law Reform) Amendment Bill 2016*, s21

[83] Information paper on current law in Queensland and other Australian jurisdictions, Inquiry into Abortion Law Reform, Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, p4, http://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/AbortionLR-WRC-AB2016/14-infop-16June2016.pdf

[84] *Health (Abortion Law Reform) Amendment Bill 2016*, s21

[85] Rachael Carling-Jenkins, Infant Viability Bill Second Reading Speech, 14 April 2016, http://www.rachelmp.com.au/Media/News-Articles/ID/122/Infant-Viability-Bill-Second-Reading-Speech

[86] *Health (Abortion Law Reform) Amendment Bill 2016*, s22(3)

[87] "Doctors: Abortion Not Necessary to Save Mothers' Lives", AfterAbortion.org, 9 September 2014, http://afterabortion.org/2014/doctors-abortion-not-necessary-to-save-mothers-lives/

[88] *Health (Abortion Law Reform) Amendment Bill 2016*, Division 1

[89] Alexandra Back, "Pro-life supporter fined for breaching abortion clinic exclusion zone", *The Canberra Times*, 3 June 2016, http://www.canberratimes.com.au/act-news/prolife-supporter-fined-for-breaching-abortion-clinic-exclusion-zone-20160602-gp9wax.html

[90] Edith Bevin, "Anti-abortion protester Graham Preston to be first to appeal conviction under Tasmanian law", ABC News, 19 September 2016, http://www.abc.net.au/news/2016-09-19/anti-abortion-protester-to-appeal-conviction-under-tasmanian-law/7856290

[91] *McCloy v New South Wales* [2015] HCA 34

[92] Anne Twomey, "Proportionality and the Constitution", speaking notes at ALRC Freedoms Symposium on 8 October 2015, https://www.alrc.gov.au/proportionality-constitution-anne-twomey

[93] Question on Notice by Mark Robinson MP to Hon Cameron Dick, No. 779, asked on 11 May 2016, https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2016/779-2016.pdf

[94] Josh Bavas, "Rise in Queensland babies surviving late-term abortions and being left to die, figures show", ABC News, 15 June 2016, http://mobile.abc.net.au/news/2016-06-15/babies-of-late-terminations-left-to-die-without-care/7512618

[95] Question on Notice by Mark Robinson MP to Hon Cameron Dick, No. 779, asked on 11 May 2016, https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2016/779-2016.pdf

[96] Liam Quinn, "At least 27 babies SURVIVED being born during late term abortions and were left to die in clinics in Queensland last year", *Daily Mail Australia*, 15 June 2016, www.dailymail.co.uk/news/article-3642611/At-27-babies-survived-late-term-abortions-Queensland-year-left-die.html#ixzz4BhuQpmJA

[97] Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 and Inquiry into laws governing termination of pregnancy in Queensland, Report No. 24, 55th Parliament, Health, Communities, Disability Services and Domestic Family Violence Prevention Committee, August 2016, p69, http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1337.pdf

[98] Galaxy research, Abortion study, May 2016, http://www.family.org.au/reports/May_2016_Abortion_Galaxy_poll.pdf

[99] Tony Moore, "Hidden abortion pressure revealed", *Sydney Morning Herald*, 2 September 2009, http://www.smh.com.au/lifestyle/hidden-abortion-pressure-revealed-20090901-f6tk.html