29 September, 2016

Submission re: Health (Abortion Law Reform) Amendment Bill 2016

In writing this submission it will be assumed that much of what the Committee wrote in their report on the **Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016** will be relevant to their inquiry into this Bill.

1. With this in view, it is deeply disturbing that the very matter that makes abortion such a contentious issue was essentially evaded in the Committee's first report. At 10.1 in the report it is stated, "The committee considers that a decision to terminate a pregnancy is a serious one . . ." and "There was a common view among stakeholders that a decision to have an abortion is a serious one."

What is it that makes abortion such a uniquely serious issue? After all, have there ever been any equivalent parliamentary inquiries about having teeth or the appendix removed?

No, what makes abortion so controversial is that every abortion ends the life of a child.

Section 313 (2) ***Killing unborn child*** of the Queensland Criminal Code reads:

> (2) Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.
>
> Maximum penalty—imprisonment for life

While this section does not refer to abortion per se, it nevertheless plays the vitally important role of making it unambiguously clear that Queensland law recognises that the entity carried by a pregnant female, throughout the pregnancy, is a *living child* who can be killed. Moreover, the penalty for killing such a child can be life imprisonment, the same penalty as for murdering born human beings.

The life of the child in the womb is fully recognised and given the same value as any other human life. This is crucial to note in any consideration being made to legalise abortion.

According to present Queensland law, every abortion ends the life of a child.

At 2.3 of the Committee's report this section of the Code is merely noted without any attempt whatsoever to analyse its profound significance. It is incredible that the Committee could note the section and then somehow pretend that it has no bearing on its considerations.

This second inquiry must not evade its responsibility and must directly address the fact that the Criminal Code makes it clear that every abortion ends the life of a child.

It should be evident to the Committee that in view of the above there is the potential for an egregious double standard to be created by any changes to the present law on abortion. Should the Committee recommend any decriminalisation of abortion while section 313(2) of the Criminal Code remains in place, then we would have a completely untenable situation.

To make this clear, consider the following scenario: a pregnant woman is walking down the street. A person shouts at her that he intends to kill her unborn child. She runs, but the assailant catches her, and kicks her in the abdomen. The woman receives minor injuries but the child dies in utero and she delivers a dead baby. The assailant is charged under section 313 (2) for having destroyed the life of the child before birth and is found guilty. It could be expected that in these circumstances the assailant would receive the maximum penalty, life in prison, for this offence.

But after the assailant is imprisoned it is then revealed by the woman that at the time of the assault she had in fact been on her way to an abortion clinic to have her unborn child's life ended. It would then be the case that even though an identical outcome would have been arrived at in both scenarios – the child being killed - the person who kills the child would be treated completely differently in each instance. In the first scenario the one who did the killing of the child would be sent to jail for life, while in the second, the one who would have killed the child would have gone unpunished. Indeed, the abortionist would have been paid for having done the deed.

In the first scenario the only reason that an assailant could be given such a severe sentence, life imprisonment, would be because the attack had taken the life of the unborn child. It is effectively recognising that a homicide has taken place.

Section 313(2) is located in Chapter 28 of the Criminal Code, the chapter which deals with unlawful killing (homicide, suicide and concealment of birth). The section is <u>not</u> located in chapter 30 of the Code – the chapter which deals with assault. The essential element of the offence in 313(2) is therefore the killing of the unborn child – as the title of this section "Killing unborn child" – clearly affirms.

Of course, in killing or harming an unborn child an assailant must also commit an assault against the mother but the assault against the mother is not the essential element of this offence. This is further affirmed by the severity of the penalty that can be applied under 313(2) – life imprisonment. Assault is not an offence that can be penalised with life imprisonment.

Returning to the above scenario: in the alternate version the child's life was also taken, but in that instance by an abortionist acting at the request of the mother. Thus the only relevant difference between the two scenarios is that in the first the child is killed without the consent of the mother and in the second the child is killed with the consent of the mother.

One human being cannot lawfully give consent for an action to be done to another human being, where, merely in the absence of the first person's consent, such action would be regarded as a major crime. For example, a paedophile would not be able to get away with using the defence that the mother of the child whom he had raped had given consent to the rape. Such a defence would fail even if the mother had requested that the paedophile carry out such an horrific act. Simply because one human being has given consent for a criminal act to be done to a second human being, such consent does not make the criminal act any less criminal.

Section 313 (2) of the Queensland Criminal Code must mean that a woman cannot give lawful consent to an abortionist to kill her baby. This section recognises that when a person attacks a pregnant woman and kills the baby in her womb a major offence has occurred and the maximum penalty available, life imprisonment, reflects the enormous seriousness of the crime. Just because in the situation of abortion the mother *consents* to the killing of her unborn child, this does not change the fact that the child is killed, just as the child may be killed by a person who assaults her. No one can lawfully consent to the homicide of another human being.

It could be argued that the double standard could be resolved by eliminating section 313(2) from the Code. While this may superficially eliminate the problem, what principled justification could there be for taking such a course of action?

This section was added to the Code after the child of a pregnant woman was killed when her boyfriend assaulted her. There has been no push by anyone at any point to have this manifestly just section of the Code removed. We all recognise that a major crime has been committed when a child is killed in such circumstances so such a section is appropriate and must remain in place.

No, rather than doing away with the good, just law of section 313(2), the double standard must be resolved by the Committee, the Parliament, and the wider society facing the fact that every abortion ends the life of a child and rejecting such behaviour.

The Committee must also take into serious consideration the 2001 case here in Queensland of *Bowditch v McEwan and Ors ([2001] QSC 448, 30.11.01*). Justice White ruled that a mother had a duty of care for her son, who, while an unborn child, was injured in a car accident that was caused by the mother's negligent driving. This ruling

was upheld in the Court of Appeal – *Bowditch v McEwan and Ors ([2002] QCA 172, 17.5.02).*

It would be untenable that we could have a situation where it is found that a woman does have a duty of care and so can be sued by a child whom she *injured* through her carelessness while carrying him in the womb, yet this woman could be allowed to have the same child *killed* by abortion. How can a duty of care to an unborn child apparently just evaporate in order to allow for abortion? Either a duty of care to the unborn exists or it does not: the courts have ruled that it is does exist and therefore it would make no sense to allow people to take their unborn children to be killed at abortion clinics.

To paraphrase Judge McGuire's 1986 ruling, the State must not abdicate its responsibility as guardian of the silent innocence of the unborn.

The Committee must address and not evade these points.

2. At 5.6 of the Committee's report it is stated, "International instruments, while clearly recognising the right to life, are silent on whether the rights and protections conferred by the instruments are accorded to a foetus." Yet the Preamble of the Universal Declaration of Human Rights spells out clearly to whom all the rights contained therein apply: *"(Whereas) recognition of the inherent dignity and of the equal and inalienable rights of* ***all members*** ***of the human family*** *is the foundation of freedom, justice and peace in the world"* (emphasis added).

Would anyone seriously suggest that the foetus ("fetus - An unborn or unhatched offspring of a mammal, in particular an unborn human more than eight weeks after conception." [redacted] created by human parents is anything other than human?

No, there is absolutely no justification - except to try to manufacture room for abortion - to exclude the unborn child from the parameters of the UDHR. Article 3 of the UDHR unambiguously states, "Everyone has the right to life" and that "everyone" means every member of the human family, including the human foetus.

Similarly, The Convention on the Rights of the Child (1990) reaffirms in the Preamble the following statement from the earlier Declaration of the Rights of the Child (1959): *"Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including* ***appropriate legal protection, both before as well as after birth."*** (emphasis added) This passage cannot be summarily dismissed simply because it falls within the Preamble. The intent of the Convention is perfectly clear and it is nothing but chicanery to try to pretend otherwise.

The first and sixth articles of the Convention read:

"*Article 1: For the purposes of the Convention,* ***a child means every human being below the age of 18 years . . .***

Article 6: (1) States Parties recognise 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."(emphasis added)

The child in the womb is a human being under the age of 18 years and thus falls within the scope of this Convention: "Every child has the right to life." Special pleading to try and find room within these documents (both of which Australia is signatory to) for abortion, should not be cynically resorted to.

3. At 6.3.1 it is noted that Mr Pyne described sections 224-226 as '…archaic, outdated…' and as having 'no place in a modern, liberal democracy'. To suggest as he, and other submitters to the inquiry do, that a law is archaic and outdated simply because it has been in place for an extended period is an absurdity. Would anyone suggest that the same thinking should apply to laws relating to rape and murder that have been in place for a long time?

4. At 6.5.1.3 it is noted that submitters often referred to legislation in other states, which has partially or completely removed abortion from criminal law, and argued that women in Queensland should have the same rights to abortion as those in other states.

However, logically, it is not relevant what the laws of the other States of Australia are in relation to abortion. For example, if every State in the USA except one had allowed slavery that would not have justified the remaining State in adopting the monstrous practice.

The principled position that the Committee should adopt is not to simply follow after others like sheep but rather to consider what abortion actually involves. So, is it acceptable to make it legal to kill children? The answer should be obvious. If Queensland is the only State that has the integrity to value all human lives, that is to our credit.

After all, even Cairns abortionist, Caroline de Costa, at 12.1 refers to the entity carried by the pregnant woman as an "infant". And she is far from being the only abortionist or abortion advocate to give candid recognition to the humanity of the child in the womb.

In my submission to the first inquiry I cited about ten such examples but will repeat only three here:

It is morally and ethically wrong to do abortions without acknowledging what it means to do them. I performed abortions. I have had an abortion and I am in favour of women having abortions when we choose to do so.

> But we should never disregard the fact that being pregnant means that there is a baby growing inside of a woman, a baby whose life is ended. We ought not to pretend this is not happening.
>
> Judith Arcana, British abortionist

> "There are many sperm cells in the [seminal] fluid. If one of them meets an egg cell inside the mother, new life can begin to grow. … If one of your friends is pregnant, ask her to let your child feel the baby move. … A baby grows in a special place inside the mother, called the uterus — not in her stomach. In nine months, it is born."
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> Faye Wattleton, former president of Planned Parenthood (USA), the leading provider of abortions in America, How to Talk to Your Child About Sexuality, 1986

> "Any woman who has felt a baby stir inside her [and] any man who has seen the tiny heart pulsing on an ultrasound screen knows that abortion is about ending a life."
>
> Leslie Cannold, *The Abortion Myth: Feminism, Morality, and the Hard Choices Women Make*,1998

5. At 17.1 the Committee says of **safe access zones**, "The objective of safe access zones is to protect the safety, and respect the privacy, of people accessing abortion services and employees who work at the facilities by prohibiting protest activities in the immediate vicinity".

Regarding "safety", the Committee provides no evidence whatsoever to substantiate any suggestion that there even <u>is</u> a threat to the safety of those entering abortion clinics. But if there should be genuine threats to a person's safety entering an abortion clinic, laws already exist that give protection to people in public places. On this ground such a law would be unnecessary, redundant, and oppressive.

I have personally stood outside Brisbane abortion clinics for over 25 years peacefully offering help to those entering and there has never been any hint that my being there has ever compromised anyone's safety. Yet if such zones are completely needlessly introduced on this ground then I would, in all likelihood, be prosecuted for continuing to do that.

Regarding "privacy", the Committee provides no grounds for why abortion clinics should be given an extra measure of privacy that no other premises have. If abortion is just another medical procedure and nothing special, as many want to claim, then why does it need any special privacy protection?

If however abortion takes the life of a child, as s 313(2) the Queensland Criminal Code makes clear and will continue to make clear even if abortion is legalised, then why should involvement in such an act be subject to special privacy provisions? It would be completely unwarranted and completely unjustifiable to create a unique zone around places where the taking of innocent human life is carried out on the grounds of protecting privacy. (Not even brothels have such zones.) And to legislate to punish any pro-life activity within these zones is untenable.

Furthermore, many of the abortion clinics are located on busy roads. Anyone entering these places can be seen by many people passing by so no "privacy" is created by the creation of such zones.

No, clearly, any institution of "safety zones" has nothing to do with either safety or privacy as such. Rather they are simply an attempt to try and shield the consciences of those entering. Everyone knows that abortion ends the life of a child, but they want to try and pretend to themselves that it is not so. It seems that anyone peacefully pointing out the truth or even offering help must not be allowed to do so.

Such a move to suppress freedom of speech creates a very dangerous precedent for our democratic society.

The Committee notes other jurisdictions that, to their shame, have gone down this dangerous path. Curiously though (despite my having pointed this out in my first submission), there is no mention of the fact that in June 2014 in *McCullen v. Coakley* the full bench of the US Supreme Court ruled 9- 0 against the validity of such zones. The justices ruled that the buffer zone law represented an "extreme step of closing a substantial portion of a traditional public forum to all speakers". (And this was for a zone of about 10m not 50m or 150m!)

Freedom of speech must be equally protected in Australia. It should be noted that Tim Wilson, while he was the Australian Human Rights Commissioner, said of the Tasmanian "safety zone" law that, it places "egregious restrictions on free speech" and that it "is excessive and violates people's liberties".

It is also curious to note at 17.2 that the Committee said in reference to "safety zone" laws in Tasmania, Victoria and the ACT, that "There are no known legal challenges to these laws". I say curious, because in my previous submission I also pointed out that I am presently involved in legal action regarding the Tasmanian law. (It makes me wonder

how carefully those submissions were actually read and whether this one will be read any more carefully!)

In April 2015 I was arrested in Hobart for standing a few metres from the door of an abortion clinic while holding a sign which read, "Everyone has the right to life, Article 3, Universal Declaration of Human Rights". For doing that I was convicted and fined $3 000. Is that what this Committee wants, that people in Queensland should be convicted and heavily fined for promoting the Universal Declaration of Human Rights – should they dare to do so near an abortion clinic? (What does "universal" mean by the way?)

(It should also be noted that Article 19 of the Universal Declaration of Human Rights states: *"Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."* But do we care in this country what the UDHR actually says?)

I am in the process of appealing that Tasmanian opinion, so yes, there is an ongoing challenge to these laws which, my legal counsel advise me, is likely to end up in the High Court.

In summary then The Committee must give recognition that:

- every abortion ends the life of a child (viz s313(2) Qld Criminal Code)
- the Universal Declaration of Human Rights and The Convention of the Rights of the Child do recognise the unborn child's right to life
- the age of a law has no bearing on its validity
- there is no virtue in simply following other jurisdictions – things must be determined on their merits
- safe access zones are unnecessary, redundant, and very oppressive to a foundational principle of democracy, freedom of speech

The silent innocence of the unborn must be protected, not destroyed .

If however this Committee, despite everything, should give recommendation to any legalisation of abortion, I would urge you to at least have the integrity not to try and hide behind euphemisms. Speak clearly.

- Say that you think it should be legal for people to have their children killed.

- Say that you think people should be prosecuted for promoting the Universal Declaration of Human Rights and for simply offering help to people.

Graham Preston