

Health (Abortion Law Reform) Amendment Bill 2016

22nd September

Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
Brisbane QLD 4000

Dear Committee members,

I am writing to express my grave concerns regarding the proposed Abortion Law Reform Amendment Bill put forward to the Queensland Parliament this year. As a Queensland doctor, I am very concerned that approval of these changes will see abortion become common place, the health and safety of women will be in danger and doctors who are ethically opposed to being involved will be discriminated against.

CURRENT QUEENSLAND LAWS

The current laws do not in any way prevent women from accessing abortion procedures. Looking at case law decisions, there are obvious loopholes that allows abortion up to 20 weeks gestation for essentially any reason.

R v Davidson was a Victorian common law decision that stated '*termination of pregnancy is lawful on therapeutic grounds if the practitioner honestly believes on reasonable grounds that the act done was:*

- *Necessary to preserve the woman from a serious danger to her life or physical or mental health (not being merely the normal dangers of pregnancy and childbirth) and*
- *In the circumstances, not out of proportion to the danger to be averted'*

(R v Davidson [1969] VR 667)

This case was accepted into Queensland law in R v Bayliss and Cullen. '*The Judge stated that in order for a termination to be lawful, the doctor must honestly and reasonably believe that the continuation of the pregnancy would result in a serious danger to the woman's physical or mental health. These reasonable grounds can stem from **social, economic** or medical bases. Justice Macguire also stated: It may be that an honest belief be held that the woman's mental health was in serious danger at the very time when she was interviewed by a doctor, or that her mental health, although not then in serious danger, could reasonably be expected to be seriously endangered at some time during the currency of the pregnancy, if uninterrupted.*' (R v Bayliss & Cullen (1986) 9 QLD Lawyer Reports 8)

As an extension to this, it is also accepted that abortion is permissible if it will eliminate risk to the mother both during and after the birth of the child.

*'In a later Queensland civil court decision, Justice de Jersey held that Section 282 would stand as such a defence, and also that a relevant serious risk to the mother **could arise not only during the term of the pregnancy but even after the birth of the child.**'* (Vievers v Connolly [1995] 2 Qd R 326)

'This view has been approved and applied by Justice Kirby who further noted that, in light of growing recognition of postnatal depression and other 'serious economic and social pressures', the dangers of pregnancy have to be evaluated as they apply to each woman'

(CES v Superclinics (1995) ATR 81-360)

Although the law suggests that the risk to the mother must be of grave nature, these case law decisions suggest otherwise. If a pregnancy would interfere with a woman's career, then by the law it would be acceptable to terminate the pregnancy because having the baby will cause harm to the woman's psychological or social wellbeing. If a woman conceives in her 40's and she thought she had completed her family, then abortion by the law would be acceptable because the pregnancy will put social and economic pressure on her.

This means that in Queensland, by the current law, that a woman can access abortion for essentially any reason up to 20 weeks. The most common scenario I have come across in my own practice is that of the woman who discovers an unplanned pregnancy and decides that the pregnancy would be an inconvenience to her current state of life. The case that is often put forward by the opposite view, that abortion is carried out because the mother is at risk of grave physical harm or was raped or the baby has serious birth defects – I have never seen a case like this. They have all been lifestyle abortions.

Just on sheer numbers alone, given that there are over 80,000 abortions in Australia yearly, it would be impossible for all of these to be for extreme reasons such as rape, incest or birth defects.

So, if the law changes to include abortion from 24 weeks to full term, even though in the law it stipulates that it must be to protect the mother against **serious** physical, mental or social harm, realistically abortion will be legally available **FOR ANY REASON** up until term.


DECRIMINALISATION

The pro choice lobby would have you believe that abortion is 'criminalised' in Queensland. If this was the case, why are there lists of facilities advertising abortion services on-line.

Children By Choice state on their website: *'Surgical abortion is available to around 15 to 16 weeks gestation (from the first day of your last menstrual period) in most of Queensland's private abortion clinics. Some will provide to 18 weeks, and two clinics (one in Brisbane and one at the Gold Coast) offer the procedure to 19 weeks gestation. After this point, only a handful of public hospitals or a clinic in Victoria will be able to provide you with a termination.'* (<https://www.childrenbychoice.org.au/forwomen/abortion/howtogetanabortion>)

If abortion truly was illegal, why would these agencies be incriminating themselves by advertising such services?

No woman or doctor in Australia has ever been jailed for acquiring or providing abortion services. There have been charges, but none successfully resulting in sentences. Some of these cases have contributed case law reforms. For example, the case of Tegan Leach, 20 year old Cairns woman who was charged for taking RU486 to terminate her pregnancy, was acquitted. This was considered a land mark case contributing to the acceptance of RU486 use in Queensland. Since 2015, this drug has been easily accessible by telephone consultation, without the need to be physically examined by a doctor.



If no woman or doctor in Australia has ever been jailed for participating in abortion, why is it so necessary to change the law? It is because of the guilt associated with abortion. This is why we can't talk about abortion openly in the community, because it is a traumatic thing to undergo and there is a lot of taboo and stigma associated with it. The community don't want to think about it because, deep down, they know it's destroying a human life. Decriminalizing abortion is not going to change this fact.

The pro-choice lobby suggest that decriminalizing abortion will not increase the number of abortions performed. However, they also say that by decriminalizing abortion, more doctors will be more likely to provide this service. They say that currently doctors in Queensland do not perform abortion because of fears they will be prosecuted. So if the changes in the law will result in more doctors providing abortion services and abortion is allowable up to term for practically any reason, how can they argue that abortion numbers won't increase.

ABORTION UP TO FULL TERM

The amendment attempts to change the gestational age up to which abortion can be accessed, that is, up to full term pregnancy. I fail to see a situation where abortion at 38 weeks could ever be necessary for any reason.

One reason quoted for wanting legal abortion beyond 24 weeks is to deal with fetal anomaly. With the advancement of modern medicine, most fetal anomalies are detected between 12 to 20 weeks gestation. With this in mind, there is no reason why abortion would be required beyond 24 weeks gestation to deal with fetal anomaly.

The other issue that will likely come to light if abortion is legal beyond 24 weeks gestation, is abortion for gender selection. The gender of a fetus can usually reliably be determined at the 20 week morphology scan. In a country such as Australia that espouses equal opportunity for men and women, injustices against women are going to increase if couples can chose to terminate a pregnancy because it is female. This very thing occurred in Victoria when an Indian couple approached Dr Mark Hobart requesting a termination for a healthy 19 week female fetus because they wanted a boy. This occurred following Victoria's Abortion Reform Act of 2008. This is what we face in Queensland if these laws come into being.

Legalising abortion to term will set off a slippery slope between abortion and infanticide. How is abortion at 36 weeks any different to killing an infant after his or her birth. Physically, both of these babies would be viable outside the womb.

If a pregnant woman is beaten and miscarries her baby as a result of this, the law would charge her attacker with murder. This was seen in the Brisbane case of Joan Ryther in 2013. Mrs Ryther was 8 weeks pregnant. She was attacked, raped and murdered. Her attacker received two sentences, one for murdering her, the other for killing her 8wk old fetus.

After hearing this case, one can see the hypocrisy in the proposed Abortion Law Reform Amendments. If a baby in utero dies due to a violent attack, it's considered by the law as murder. However, if the mother consents to an abortion, the law does not protect the fetus because the mother has given consent for the termination of the child.

PROTECTION OF DOCTORS WHO CONCIENTIOUSLY OBJECT

The other thing that gravely concerns me is that this bill does not protect medical practitioners who ethically object to participate in the referral for abortion.

The pro-choice lobby suggest that the proposed changes to abortion laws will reduce discrimination against women who want free access to abortion services. However, what about the discrimination that doctors face when they are asked to provide a referral and cannot on ethical grounds. I have heard comments from the pro-choice lobby that if doctors refuse to refer for abortion, they should be de-registered. I find this view extremely insulting and disappointing and I guarantee that if such a mentality should become accepted, that many very good doctors will be lost to the medical system.

Reading through submissions made after the first amendment was brought to parliament, it is interesting to note that the vast majority of submissions made by doctors were in strong opposition to the amendments. Speaking from my own experience, the reason for this is that doctors are aware of the horrific truths of abortion. It is not a safe procedure and has long lasting effects on a woman's wellbeing. Although the abortion may quell the immediate anxiety that comes along with an unplanned pregnancy, women then are required to deal with the aftermath of abortion including depression, anxiety, suicidality, infertility, subsequent preterm birth, recurrent miscarriage etc. The mental health risks are compounded when women are coerced to have an abortion by an unsupportive partner or parents. I have seen all of these first hand in my own patients. When the prochoice lobby say that abortion is a safe backup for failed contraception, they couldn't be further from the truth.

I urge you to recommend that the Abortion Law Reform Amendment be opposed by the Queensland parliament. These changes would have a catastrophic effect on our state if they were allowed to come into effect. They will not protect Australian women but will put them further at risk. We have a responsibility to protect mothers as well as their unborn children.

Thank you kindly for considering my submission.

Yours truly,

Dr Ciara Ross
MBBS FRACGP DipCH
Mackay, Queensland

