



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Secretary
Health, Communities Disability Services and Domestic Family Violence Prevention Committee
Parliament house
George Street
BRISBANE QLD 4000

By Email: abortion.bill@parliament.qld.gov.au

Dear Madam

Health (Abortion Law Reform) Amendment Bill 2016

Thank you for the opportunity to make a submission relation to the above Bill.

We refer the committee to our submission in relation to the *Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016*.

That submission set out our support for the Victorian model of reform in this area. We apply that point of principle to this bill:

1. Section 21-We submit that the Victorian formulation of when an abortion is lawful after 24 weeks gestation is to be preferred. We feel in particular that the formulation in the draft does not adequately deal with the situation where a foetus with a severe abnormality is detected. It is not clear to us that the birth of such foetus would involve a greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated. In our previous submission we referred to discussions with medical practitioners in this area and it was this issue that led them to favour a broader level of discretion post 24 weeks. We refer to section 12.2.4 of the Committee's report no 24 in which evidence is cited that supports this concern.
2. Section 22-The QCCL supports this provision. At the individual level the law ought to reflect the position that a person is not entitled to exercise a right in such a way as to do harm to another person. So the first question to be asked is whether or not conscientious refusal of a person to assist in provision of abortion would represent a threat to the safety or health of the woman. In that case the first duty of the health professional must be to the woman.

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@LibertyQld

GPO Box 2281, Brisbane QLD 4001 forum.qccl@gmail.com Enquiries: 0409 574 318

Media Enquiries: Michael Cope, President:

In *Shelton v. University of Medicine & Dentistry*, Dentistry of New Jersey, 223 F.3d 220 the U.S. Court of Appeals for the Third Circuit rejected a nurse's claim that she was subject to discrimination when she was fired from a public hospital for having refused on religious grounds to participate in two emergency procedures. She had refused because the procedures would have required the termination of pregnancy. In dismissing the claim, the Court noted: "It would seem unremarkable that public protectors such as police and firefighters must be neutral in providing their services. We would include public health care providers among such public protectors [W]e believe public trust and confidence requires that a public hospital's health care practitioners – with professional ethical obligations to care for the sick and injured – will provide treatment in time of emergency.

The QCCL endorses that view.

3. Section 24- This law does not regulate the content of speech. A law is acceptable if it regulates the manner place and time of speech for legitimate purposes. It is our view that this law does regulate the manner place and time speech for the legitimate purposes of protecting those visiting the abortion facility from harassment. It also protects the privacy of those women visiting the facility. The distance here is only 50 m in comparison with the 150 m legislated for in Victoria and Tasmania.

Even in the United States, it would appear, that sub paragraphs (a) and (b) of proposed section 24 (2) would not be considered a breach of the First Amendment - *McCullen Et Al. V. Coakley*, Attorney General Of Massachusetts, Et Al. 573 US (2014)

4. Section 24-in this case, the right to free speech comes up against the right to privacy of those visiting the clinic. The fact that a person is having an abortion is in most cases an entirely private matter, with no public interest aspects. Just as there is, for example, usually no public interest in whether a politician visits a gay nightclub. However, there might be cases in which that right to privacy should give way for example if a person visiting the clinic was a public figure who had a well-known public position opposing abortion.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
6 October 2016