Termination of Pregnancy (Live Births) Amendment Bill 2024

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RANZCOG
Excellence in Women's Health

Submission

Inquiry into the Termination of Pregnancy (Live Births) Amendment Bill 2024

Thank you for inviting the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) to make a submission to the Health, Environment and Agriculture Committee's Inquiry into the Termination of Pregnancy (Live Births) Amendment Bill 2024.

RANZCOG is the lead standards body in women's health in Australia and New Zealand, with responsibility for postgraduate education, accreditation, recertification, and the continuing professional development of practitioners in women's health, including both specialist obstetricians and gynaecologists, and GP obstetricians.

This submission is made on behalf of the College in my capacity as President.

RANZCOG is interested in nominating a representative to offer testimony at the scheduled public hearing on this Bill on Monday 10 June 2024 in Brisbane.

Background Summary

RANZCOG sees five main lines of argument that, taken together, make further consideration – let alone potential adoption – of this amendment entirely unnecessary and even harmful to women:

1. All Australians have a right to access the full range of sexual and reproductive health services, including safe and affordable abortion. This right is recognised in international law.
2. The experience with the legal regulation of abortion has shown that the imposition of legal requirements and conditions over and above those required for other medical procedures acts as a barrier to access – whether this is intended by the regulation or not.
3. The Bill is unnecessary in that health professionals already owe a duty of care to all their patients, including babies born alive whether this happens following an abortion or otherwise. There are well-established guidelines and professional standards to guide clinical practice in this area. Further legal regulation will be confusing and unhelpful.
4. Feticide is a routinely offered practice when contemplating abortion of later gestation (post 22 week) fetuses. Scenarios envisaged by the Bill are uncommon in practice. In rare cases, parents may choose not to have feticide because they want to hold their (non-viable) baby while it dies. In such cases, they should be supported through this intensely emotional and difficult time without there being any fear of legal consequences for the health professionals involved.
5. Any legal regulation that risks limiting access to abortion (as this Bill does) disproportionately affects disadvantaged women and those from rural and remote areas, especially First Nations women.

Specific Feedback

Right of Access

The 'right to health' is enshrined in several International Human Rights Treaties and Covenants including the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 12)[1] and the Universal Declaration of Human Rights (UDHR) (Article 25)[2] which have been ratified by Australia. Securing sexual and reproductive health including the availability of safe abortion respects, protects and fulfils the right to health.[3] All Australian States and Territories have decriminalised abortion, thereby recognising the right to health. Therefore, all Australians are entitled to safe, affordable and unencumbered sexual and reproductive health care services, including – if and when necessary – abortion services.

Most Australians "support both a woman's right to choose abortion and the provision of safe, legal accessible services to make that choice possible."[4] Abortion after 20 weeks comprises only about 1% of all abortions. This can be due to late presentation to request an abortion (particularly among vulnerable populations) or later diagnosis of major fetal structural issues, genetic syndromes, severe fetal growth restriction, or maternal conditions where pregnancy continuation would be significantly detrimental to the mental or physical health of the woman. The right to access abortion services continues to hold widespread popular support and is a well-established social and cultural norm in Australia.

Effect of Legal Regulation of Abortion in Practice

The experience with the legal regulation of abortion in Australia over many decades has demonstrated that attempts to control the provision of abortion services through legal means have impeded access to abortion. The proposed Bill is another example of proposed legal regulation that would have the effect in practice of reducing abortion access by creating anxiety on the part of health professionals about possible legal consequences of performing abortions.

To this end, RANZCOG's view is that the Bill inappropriately increases regulation of abortion, creating barriers, and anxiety, for patients and practitioners when access to health services is already strained. It also interferes with the doctor-patient relationship. Furthermore, it potentially disincentivises health care providers from providing abortion care at all, for fear of prosecution. Thus, the Bill is an unnecessary legislative barrier that interferes with the person's right to access lawful abortion.

Moreover, given that the clinical practice and scenarios are always going to vary, RANZCOG supports that the decisions regarding care of a child born alive, independent of the circumstances, should be a matter between the woman/ pregnant person and their treating health practitioners. To this end, RANZCOG opposes "abortion exceptionalism", namely, the creation of laws that treat abortion differently from any other medical procedure. This amendment falls clearly into the category of abortion exceptionalism.

Existing Duty of Care

The Inquiry overview outlines that the "stated objective of the Bill is to enshrine in legislation the protections for babies born as a result of a termination of pregnancy procedure. The Bill is intended to remove any doubt that babies born in these circumstances are entitled to the same degree of medical care and attention as a baby born in any way."[5]

Given that the first and most important duty of all medical practitioners and health professionals is to always provide appropriate care to their patients, this Bill is entirely unnecessary, without merit (medically or legally) and therefore should not be considered further. As the peak body in education, training and advocacy in obstetrics and gynaecology, the College supports all women and the clinicians who treat them in recognising that abortion is essential health care. RANZCOG strongly opposes any action, including legislation, that limits

access to essential health care services for Australian women, whether that action to limit access to abortion is explicit or implicit. The rationale for the College's position is no different to that provided in response to the *Human Rights (Children Born Alive Protection) Bill 2022*.

RANZCOG's clinical practice in abortion care is evidence-based and our Fellows and Associates adhere to strict professional standards and guidelines to ensure care is safe and effective[6]. There is no need for a separate Bill (or any law, for that matter) to instruct doctors on how to provide appropriate care for a patient in specific circumstances. Clinical and ethical considerations should be applied to the same standard, as would apply in any other clinical situation. This Bill is redundant in the absence of any justifiable evidence or grounds for the introduction of the Bill outside of medical and ethical considerations that are already well understood and uniformly practised. No such evidence or grounds have been provided.

Feticide

Standard, evidence-based practice in Australia determines that where abortion is undertaken at later gestations, feticide is routinely undertaken. Contemporary evidence suggests that most parents and health care professionals prefer fetal death prior to termination.[7] Since 1996, the Royal College of Obstetricians and Gynaecologists (RCOG) has recommended consideration of feticide after 21+6 weeks 'to ensure there is no risk of a live birth'.[8] Queensland maternity guidelines also recommend feticide beyond 22+0 weeks gestations.[9] Babies born with signs of live prior to 22 weeks are extremely unlikely to survive even with the most interventionist medical choices. Health professionals manage such cases in accordance with existing professional and ethical standards.

Impact of the Bill on Rural and Remote Communities

Approximately 38 per cent of Queenslanders live in rural and remote areas, and face unique challenges in terms of resources and access to medical services compared with people living in metropolitan areas.[10] In RANZCOG's view, the Bill if passed would further increase the existing disparities for rural and First Nations women and their families. For instance, while intracardiac injections are available in many tertiary centres, they are unavailable in regional areas. This in turn increases the risk for rural women having children born alive, if abortions are undertaken in rural areas. Furthermore, it may also limit First Nations women's' opportunity to deliver 'on country' which is an important cultural aspect in their lives. Moreover, it is also important for babies to 'die' on country. Hence, in RANZCOG's view the Bill implicitly disadvantages rural and remote populations seeking a lawful abortion and it adversely impacts the First Nations people's right to practise their culture.

Moreover, the Bill discourages rural health care providers to perform abortion services based on maternal choice or major congenital abnormalities, due to fear of criminal liability. Also, finding a service provider to perform a legal abortion would be a challenge that would take away rural and Aboriginal women from their communities, families, and support networks during such psychologically and physically challenging times. Furthermore, the Bill will have a ripple effect on added costs, lack of access and many women may be forced to abandon what they would elect to do, due to the inability to find a service locally. The physical and socio-economic stressors to visit a larger centre with abortion services will place an extreme and unreasonable burden on women living rurally, and especially so for Aboriginal women living in remote communities.

Additionally, maternal health will be jeopardised, given that the rural health care providers will seek to consider potential need to resuscitate a baby, in the event that the delivery is solely to preserve a mother's life. For instance, a life-threatening pregnancy complication in a rural setting is the mother suffering from 'chorioamnionitis' – a bacterial infection of the placenta and the amniotic fluid, that results in significant maternal, perinatal, and long-term adverse outcomes[11]. Under such circumstances, the health care providers

will face a dilemma seeking to provide best possible care for the delivery and deciding on provision of resuscitation, if the baby is born alive. As a result, the maternal life is at risk, as the health care providers may elect to transfer or delay induction, which then will result in suboptimal treatment.

Further, RANZCOG believes the Bill would reduce the opportunity for First Nations women to choose and access abortion in ways that are culturally important for them, particularly around concerns relating to birth and death on country. The Bill will also have an adverse impact on the provision of rural abortion services, limiting patient choice and adding an unnecessary emotional, physical, and economic stress on women and their families.

Summary

The 'right to health' is enshrined in several International Human Rights Treaties and Covenants and safe abortion services and post abortion health care interventions in pregnancy have profound implications for health of women and children. RANZCOG recognises and upholds that abortion is lawful and is essential health care. RANZCOG opposes the Bill on the grounds that it will limit access for Australian women to healthcare, that is their fundamental right. Furthermore, the Bill imposes additional burden on already disadvantaged rural and remote communities for resources and access to essential abortion care. Finally, the proposed Bill will not contribute meaningfully to any aspect of care that is not already widely practised as a matter of course in accordance with existing clinical, professional, and ethical standards.

Accordingly, RANZCOG is of the view that this Bill will create an unnecessary legislative barrier that will inappropriately increase regulation of abortion, interfering with good doctor-patient relationships and curtailing a person's right to a lawful abortion in Australia. It should not be considered further.

RANZCOG acknowledges with thanks, the contribution of Dr Elisha Broom, Dr Leigh Grant, Dr Kathryn Saba, Dr Jared Watts, and Ms Julie Hamblin for this submission.

Yours sincerely,

Dr Gillian Gibson
President

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