



Speech by

Lawrence Springborg

MEMBER FOR SOUTHERN DOWNS

Hansard Thursday, 3 September 2009

CRIMINAL CODE (MEDICAL TREATMENT) AMENDMENT BILL

Mr SPRINGBORG (Southern Downs—LNP) (Deputy Leader of the Opposition) (11.30 am): I rise today to indicate that the LNP will be supporting the bill before the Queensland Parliament. However, I need to point out at the outset that our support of this bill has some qualifications. The first of those qualifications is that we are making this particular decision based on not having the legal advice which is available to the government. The other qualification is that we have been assured that there are no unforeseen circumstances as a consequence of the amendments that are being proposed to the Criminal Code.

In relation to the issue of the legal advice, I have been assured by the Attorney-General that there is nothing that is available to them in their legal advice that should lead us to believe that this bill before the parliament today would extend in any way the opportunities for termination of pregnancy in Queensland. This legal advice indicates that the bill before the House today will clearly address the policy direction of the government to ensure that the law as has been taken to exist and operate in Queensland since 1986 will continue.

This is a highly personal and emotive issue for most members of this place. As I said yesterday when I stood to speak on the motion moved by the government to make this an urgent bill, there would be an extraordinary diversity of views within this parliament. Indeed, there are probably as many views on this particular issue as there are members who occupy this House. In the context of that we and members of the government have tried in good faith to come up with a legislative solution that we can endorse that provides support for the operation of the law that has existed in Queensland since 1986.

I am grateful that yesterday the government provided an opportunity for the opposition to have an additional 24 hours to allow us to consider this particular legislation in its broadest context because we all know that any legislation devised in haste in response to a problem can open up a range of other potential questions, problems and quandaries further down the track, and therefore we have to make sure that we get the best outcome.

This matter came before the parliament for the simple reason that in recent months there has been a growing question amongst some in the medical community who have been performing medical pregnancy terminations in accordance with the test that exists under section 282 of the Criminal Code that they indeed may not be covered by the general protections that exist therein. As a consequence, this has raised a diversity of legal concerns. It is important to point out that there is a great diversity of legal concerns. There is the view at one extreme that the existing law and the protections that are in section 282 of the Criminal Code cover off adequately. However, there is another view, based on advice that has been received and some comments by a judge, that this indeed might not be the case and that the protections that exist under section 282 of the Criminal Code for a surgical termination of pregnancy, if it can be justified in the circumstances of protecting the life, health and wellbeing of the mother, would not indeed extend if such a termination were to happen in a medical form—that is, a drug induced form.

During the debate today honourable members on both sides of this parliament should not cloud this issue. What we are dealing with is something that is extremely narrow in its application. It simply seeks to

ensure that the law which has operated in Queensland since 1986 by virtue of legislative change and by virtue of the McGuire decision can continue to operate as many of us believe it has operated in the past 23 years. This is a medical debate. A pregnancy termination remains a criminal offence unless the life of the mother is jeopardised. The fundamental principle is not changed, impinged or affected in any way whatsoever by this bill before the parliament today. I will say it again: it is a medical debate, not a debate about the extensions of provisions in the criminal law in relation to termination of pregnancy. Those particular tests remain absolutely the same. There will be people in this place on either side who have a diversity of views, but as we start off this debate we need to understand that this is a medical debate.

This is indeed a difficult and complex matter. It is overlaid by the rights of a mother and certain rights to consider the unborn. It is overlaid by the concerns of the medical profession who has, as a part of its Hippocratic Oath, the responsibility to protect human life at all costs. It is also overlaid by the complexity of the medico-legal argument that has ensued in recent weeks and has played out to a small extent in a judgement in the court.

This law needs to be amended to provide unequivocal assurance that Queensland women can be protected and are not denied access to a particular procedure that they may have reasonably been able to expect to receive without legal question only a matter of weeks ago. This debate is about passing this bill to ensure that the law as we have believed it to exist since 1986 will continue to operate in Queensland in a way that will protect the interests of those particular women that I have referred to. I will labour this point for a moment: the test is absolutely the same in the Criminal Code in relation to the application of this law insofar as it refers to a reasonable case to request a termination of pregnancy when the life of the mother is jeopardised. The test is exactly the same. This does in no way liberalise that test, it in no way restricts that test and it does not in any way modify that test. All it seeks to do is to clarify the law in light of technology. These terminations are happening increasingly using a medical means rather than a surgical means. In no way does it mean that there will be more terminations. That test still continues to exist insofar as those women who require a pregnancy termination in order to save their lives and their fit state.

We do know that medical technology does change. That should be the only real consideration of the Queensland parliament today as it looks at this issue: what has happened with medical technology and the way it has evolved over time? Interestingly, what we are debating here today is to give clarity to the fact that certain procedures have been happening medically which we have felt were always legal within the Queensland law. But, again, there has been that question. Certainly these procedures—principally drug induced terminations—have been happening in Queensland for a great number of years, and this bill gives legal recognition of that in light of the protection that exists in section 282 of the Criminal Code, which will be modified by this amending bill to include paragraphs 282(1)(a) and (b).

The other issue that should not be lost in all of this is that the protection with regard to a medical termination is only one aspect of the bill that is before the House. Indeed, if you look at the broader context of the amendment—the rather short amendment that we are debating here today—you see that it simply seeks to provide general protection for those people who are involved in medical or clinical fields or at the direction of a medical practitioner insofar as the treatment which they may recommend in the case of their patient is concerned. So this could simply be the case of a mother who under the direction of a doctor is providing a prescribed antibiotic to her child, or a carer who is providing at the direction of the doctor a prescribed antibiotic to somebody who is in their care.

These questions arose, as I understand it, during the course of consultations undertaken by the government once it sought to address this issue which had been raised by people in the field with regard to medical terminations. That is why the amendment is not as simple as some people thought—that it could simply be a surgical or medical procedure. It needed to be somewhat broader—to consider not only medical advances in the area of terminations but also necessary protections for those people who are legitimately engaged in the protection of people's health and welfare in carrying out their day-to-day operations in the health field in Queensland. So it is an amendment that seeks to recognise and to provide assurance for those people who are medical practitioners in their various derivations.

It would be wrong if we as a parliament—with advancing technology, with more access to information—and as an advancing and compassionate society did not legislate to update the criminal law to take into consideration those particular concerns that are brought to our attention from time to time. That is all this bill seeks to do today. It would be wrong and derelict of this parliament if we did not do that.

In conclusion, I simply say to honourable members that, as we debate this bill during the course of the day, we are not here debating the issue of termination of pregnancy and the extension or restriction of that. This is simply about the maintenance of the existing test. This is about the way technology has advanced over time. This is about providing particular protections to ensure that people who qualify under the criminal exemption clause in the Criminal Code are able to access the treatment which is necessary to save their life. That is the question which members of this House need to occupy their mind with, not broader issues which, frankly, are extraneous to the debate that is before the parliament today.

With that qualification about us making the decision based on our access to a briefing about what the legal advice says and assurances given to us that there will not be unforeseen consequences, the LNP will be supporting this bill before the parliament today as we recognise that the law does need to take into consideration changing circumstances.