Speech By

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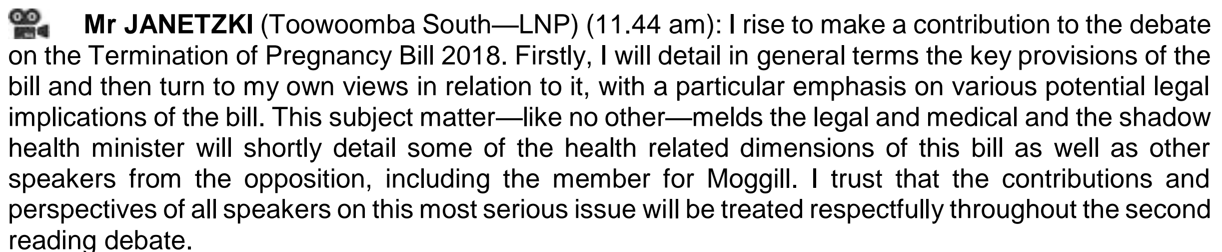
TERMINATION OF PREGNANCY BILL



Mr JANETZKI (Toowoomba South—LNP) (11.44 am): I rise to make a contribution to the debate on the Termination of Pregnancy Bill 2018. Firstly, I will detail in general terms the key provisions of the bill and then turn to my own views in relation to it, with a particular emphasis on various potential legal implications of the bill. This subject matter—like no other—melds the legal and medical and the shadow health minister will shortly detail some of the health related dimensions of this bill as well as other speakers from the opposition, including the member for Moggill. I trust that the contributions and perspectives of all speakers on this most serious issue will be treated respectfully throughout the second reading debate.

The bill proposes the law relating to the termination of pregnancy in Queensland be radically overhauled. It is proposed that a medical practitioner be allowed to perform a lawful termination on demand during the first 22 weeks of pregnancy and after 22 weeks of pregnancy if the medical practitioner considers that the termination should be performed and has consulted with another medical practitioner who also agrees that the termination should be performed. The matters which a medical practitioner must consider include all relevant medical circumstances; the woman's current and future physical, psychological and social circumstances; and the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.

Another medical practitioner, a nurse, midwife, pharmacist, Aboriginal and Torres Strait Island health practitioner or other registered health practitioner may assist in a termination of pregnancy performed by a medical practitioner. A medical practitioner may conscientiously object to the performance of a termination of pregnancy. The medical practitioner is required to disclose their conscientious objection and refer or transfer the woman to another health practitioner or health service provider. This provision does not limit any duty owed by a registered health practitioner to provide a termination of pregnancy service in an emergency.

Finally, a safe access zone will apply to an area within 150 metres of the entrance of an abortion facility. New criminal offences for prohibited conduct or taking a restricted recording of a person in, entering or leaving an abortion facility, including the publication and distribution of a restricted recording within the safe access zone, are proposed.

The law relating to abortion has deep and significant roots in the common law and statutory framework over the centuries. English legal jurist William Blackstone expressly recognised that personhood and the right to life existed before birth with a simple and clear legal standard—that is, where life can be shown to exist, legal personhood exists. The adoption of anti-abortion statutory measures from the mid-19th century was the natural progression of the long common law history regulating abortion. The Queensland Criminal Code Act 1899 draws on these centuries of jurisprudence and lays down three offences relating to procuring an abortion in sections 224 through to 226. Each of these sections refers to the unlawful procurement of an abortion, but it is not defined in what circumstances such a procurement would be considered lawful.

The common law has expounded on the Criminal Code. In 1986 the District Court in the Crown v Bayliss and Cullen substantiated the law on abortion. The case involved the trial of medical practitioners who had been operating an abortion clinic. The prosecution led evidence to suggest that many terminations at the clinic were being performed on economic grounds. Judge McGuire extensively examined the law and common law determinations of other jurisdictions, including the 1969 Victorian case of the Crown v Davidson. Judge McGuire held that abortion is lawful in Queensland where it is carried out to prevent serious danger to the woman's physical and mental health from the continuance of the pregnancy. Judge McGuire added that there is no legal justification for abortion on demand. This decision remains the current legal basis for exemption from criminal liability for procuring a termination in Queensland.

Against this legal background, we know that there are approximately 14,000 abortions performed in Queensland every year in complete accordance with the common law's interpretation of the Queensland Criminal Code. Many of these terminations are conducted in connection with severe foetal abnormalities that lawfully seek to preserve the mental health of the mother. This is the legal framework on which laws relating to the termination of pregnancy stand today.

The LNP will allow its members to have a conscience vote on this issue to determine on the basis of their personal beliefs and using their individual skills, judgement and expertise as members of this parliament on the appropriate way they will vote. What a stark contrast to the members of the Labor government, who are ostensibly granted a conscience vote here, but this comes just ahead of a motion to be presented to the Labor national convention in December by Labor for Choice, which seeks to remove the ability of state Labor MPs to vote in accordance with their conscience on this issue in the future. I will be opposing the bill.

An incident having occurred in the public gallery—

Mr DEPUTY SPEAKER (Mr Stewart): Order! Members of the gallery, you are not permitted to applaud or make comment.

Mr JANETZKI: Like many of those opposing the bill, I have grave concerns about the 22 week gestation on demand threshold, the lawful potential for late-gestation terminations for undefined social reasons, the lack of a true and complete conscientious objection right for medical professionals and the potential unconstitutionality of the safe access zone provisions. Put simply, the Labor government has not made the case for such an extreme piece of legislation.

No-one in this House would hold the view that a woman should run the risk of going to jail for having an abortion, but it is not right for supporters of the bill to say that this is just about decriminalising terminations in Queensland. It is not. No convictions have ever been recorded in Queensland and in all likelihood never will. As I have outlined already, every year in Queensland thousands of terminations are conducted lawfully. Rather, this bill is all about ideology—an ideology that seeks to divide and turn us against each other.

At 22 weeks, an unborn child waits at the threshold of life. Just last week, my local newspaper, the *Chronicle*, highlighted the miraculous survival of a baby at 24 weeks who today is a thriving and healthy young man entering secondary school. We joyfully celebrate babies born from 22 weeks, 23 weeks and 24 weeks who successfully survive and ultimately thrive in neonatal wards in our hospitals, yet here we have a proposed unlimited termination for any reason to 22 weeks.

I accept that late-term terminations are very rare and in most cases in the most heartbreaking of circumstances of expectant parents often facing the imminent death of their baby from a severe genetic abnormality or other medical condition—terminations already permitted by Queensland law. However, this bill allows the potential lawful late-term abortion of the unborn for undefined social reasons with the approval of two doctors. No matter what supporters of the bill may argue about clinical practice and practical rarity, it remains a legal possibility and, as the Victorian experience proves, it does happen. This possibility takes Queensland into new and uncharted territory and at the very least demands an exploration of the rights of the unborn at law and how this bill ignores them.

Queensland's statute book is awash with legislative references to the unborn and, by corollary their interests, their rights and, arguably, their personhood in a variety of legislative instruments and in a variety of contexts. The Child Protection Act 1999 requires the chief executive to make provision for an unborn child's protection after birth. The Civil Liability Act 2003 allows for potential certain damages in connection to an unborn child of an injured person. The Domestic and Family Violence Protection Act 2012 sets conditions for the protection of an unborn child. The Industrial Relations Act 2016 requires a female employee to be transferred to a safe job if there is a risk to the health or safety of her unborn child. The Maintenance Act 1965 contemplates orders against putative fathers for maintenance of unborn children. The Payroll Tax Act 1971 requires record keeping on a range of matters, including in certain circumstances regarding an unborn child. The Property Law Act 1974 and the Trusts Act 1973 refer to unborn persons who at birth may become members or potential members of a class and

expresses the contingent rights of unborn persons. The Births, Deaths and Marriages Registration Act 2003 requires the birth of all children born in Queensland after 20 weeks gestation or, if gestational age is not known, weighing more than 400 grams to be registered and provides that a child includes a stillborn child.

There are other state examples and that is even before we come to federal regulation contemplating and protecting the unborn, whether that be in regard to tobacco advertising, or radiation and nuclear safety regulation. Of course, we have the two relevant provisions of the Criminal Code, namely, sections 282 and 313. Section 282 permits a surgical operations and medical treatment defence. Section 313 creates an offence to kill a child about to be delivered or unlawfully assault a pregnant woman.

But for the amendment of these last two sections of the Criminal Code by this bill, the bill would mention 'unborn' only once. Can members imagine a bill for an act about the termination of pregnancy that barely mentions the unborn? Why has the Queensland Law Reform Commission failed to properly address the question of the legal rights—perhaps one could argue the human rights—of the unborn? Why is there no analysis of domestic law in Europe, where abortion law on demand for any reason in Germany, Belgium, France, Norway, Switzerland and Austria is strictly capped at 12 weeks? Supporters of the bill say that the vast majority of on-demand terminations are conducted prior to 12 weeks. Why then does the bill not reflect this fact?

Why, when the Queensland Law Reform Commission report runs to 324 pages, are there no more than seven perfunctory pages dedicated to these questions? Even then, those seven pages were dedicated to articulating international covenants and conventions that the commission essentially concluded deny any rights to the unborn. That is notwithstanding the preamble of the UN Declaration of the Rights of the Child that observes that governments are obliged to provide appropriate legislative protection for the child before as well as after birth and the International Covenant on Civil and Political Rights recognising that the sentence of death shall not be carried out on pregnant women.

However, there was one brief but notable comment from the Queensland Law Reform Commission on page 248—namely, that 'whilst the fetus or unborn child may be entitled to some protections, it is left to individual countries to provide for any such protections in their domestic laws'. The jurisprudential construction of this bill diminishes the debate because I believe that there are profound legal and ethical interests, including the nature of necessary protections, at stake that have not been properly considered by the commission and those members supporting the bill. The Queensland Law Reform Commission cannot be used as a fig leaf by supporters of this bill while they disown their responsibility to, in the words of the LNP members' statement of reservation, 'ensure the terms of any Bill presented to it'—that is our sovereign parliament—'are in the best interests of Queenslanders'.

In the 1991 UK decision of Rance v Mid-Downs Health Authority, it was held that a 26-week-, 27-week-old foetus was capable of being born alive, indicating that the foetus in such circumstance was granted legal personhood. Victoria's Charter of Human Rights and Responsibilities arguably recognises that an unborn child obtains legal personhood because it expressly excludes the charter's application to laws relating to termination, which would have been unnecessary had an unborn child not been a person in the first place. This bill before us is based on Labor's Victorian termination legislation.

I ask members to look to societal attitudes towards an unborn child when the child is wanted. We call it a baby. We seek to protect it. Legal rights are enforced if it is injured through assault to its mother. It seems illogical that this child might otherwise have no other legal interest simply because someone may want to end it. Similarly, we demand the highest standards of child safety as we are all rightly appalled by the cruelty all too often inflicted on young children, often by those people whose responsibility it is to care for them. If we require protection for a child from its very first breath, then how can we accept potential suffering inflicted on a child in the last few weeks before its birth?

Science is increasingly demonstrating that the unborn has the capacity for hearing, for feeling, for pain and even memory. At 20 weeks the nervous system has developed with a withdrawal reflex and in the event of early delivery there is evidence of high levels of stress hormones released into the bloodstream. It is not clear if any consideration was given in relation to this most basic pain management question. That being so, the bill does not even provide the unborn with the protection of the right to a painless death. It is these reasons that, in my opinion, require us at the very least to acknowledge that there is a second interest to be weighed in any termination of pregnancy.

Pregnancy cannot be treated as though it is childless. Once this acknowledgement is granted then it is incumbent on us to be willing to acknowledge and, yes, protect that interest: the right of the unborn. It is because of this second interest that abortion ought to be regulated differently from any other medical procedure. This is because, unlike any other medical procedures I can think of, there are two interests involved and one of those interests is unable to defend itself, instead relying on lawmakers

like us to do so. This bill, with its 22-week termination-on-request gestation limit and the potential for terminations until full term for undefined social reasons with the approval of two doctors, is an abrogation of this lawmaking obligation.

I do not think anyone in this House would argue that pregnancy terminations can have a profound and life-changing consequence for women. It is in the failure to address that potential that the bill fails most egregiously. Where are the measures for the protection of women: offering counselling, informed consent, stopping coercion and safeguarding against family violence, overcoming social disadvantage, ensuring the highest possible consumer protection standards, the provision of additional post-abortive support for women, better record keeping and data collection or finally doing something about the appallingly complicated adoption system in Queensland?

I find the failure to address reproductive coercion particularly troubling. It is true that there is evidence to suggest that abusive partners exert control over women through pregnancy, but it is also equally true, or even more so, that abusive partners exert power and control over women through pressure to terminate a pregnancy. This leaves vulnerable women all the more vulnerable. With no protection available they find themselves experiencing a form of domestic violence. Yes, it is domestic violence; let us call it what it is.

Even termination provider, Dr Carol Portmann, has admitted that she and colleagues sometimes perform terminations on women who appear not to be wanting them of their own free will. I had the privilege of meeting Jaya Taki, a young woman who was coerced by her NRL player boyfriend into having a termination through emotional and psychological blackmail. She has been very brave. Her message is clear: all that she needed was someone to say she could do it. She reflected on how the termination clinic counsellor was casual, bordering on flippant, about the procedure. Tellingly, she said that choosing life, the birth of her daughter, positively changed her life—'ending life almost ended mine'.

I turn next to the proposed introduction of safe access zones. I appreciate that many who support safe access zones do so with the very best intentions of protecting women from harassment in what is an extraordinarily difficult time. I share the desire to protect women from harassment of this nature. Across Australia there are hundreds of peaceful protestors gathering outside termination facilities as they have done for decades. I have seen no charges or convictions in connection with violence, harassment or intimidation and if there were such offences being committed I know that they would be dealt with by the Queensland police under the current laws.

Our Criminal Code prevents and punishes violence and there are existing laws that protect the community from harassment or intimidation. These protestors put no-one's safety at risk, they do not endanger their own lives or the lives of police, they are not trespassing on private land but are on public land, they are not chaining themselves to objects, they are not seeking to conduct corporate espionage; they simply hold a view that is different from that of supporters of this bill and that is why what is being proposed is essentially censorship zones, not safe access zones.

The prohibition has been described by academics, including Professor Nicholas Aroney, as potentially unconstitutional. It is currently being tested before the High Court and Professor Aroney has made compelling submissions, arguing that the act of protesting goes to the heart of political communication. This freedom was first recognised in Australian Capital Television v Commonwealth in 1992 and has been subsequently affirmed.

The High Court of Australia has also affirmed that the freedom of political communication extends in principle to conduct that conveys a political message such as the physical entry into a prescribed duck hunting area as a means of protesting against the shooting of ducks. Again, no woman should ever have to suffer harassment or intimidation upon entering a termination facility, but the introduction of safe access zones begs one basic question: why are we using the machinery of the state to shut down free speech, deeply held opinion and the right to peaceful protest?

When in opposition it was the Deputy Premier who said ahead of the G20 meeting in Brisbane, 'I support the right of citizens to demonstrate peacefully and I am sure that there will be some demonstrations associated with the G20.' In opposition, the Deputy Premier, speaking in relation to an Industrial Relations bill, commented, 'It stifles freedom of political expression and is a curtailment of participation in our democratic system.' When in opposition the Premier said, 'To stifle freedom of speech is to apply a gag to the very core of our society. It tramples important history.'

When in opposition the Premier said, 'This is about curtailing fundamental freedoms of association, freedom of expression and freedom of speech in Queensland.' However, on the basis of the bill before the House, it appears the Labor government is more than happy to apply a gag or curtail fundamental freedoms when it comes to concern about causes it supports by creating zones of exclusion while arguing elsewhere for inclusion, by requiring the police to arrest people for simply expressing an opinion, by legally leaving the door open to a late-term termination for social reasons yet

potentially criminalising a conversation between a mother and her daughter within 150 metres of a termination facility, a mother who may be speaking love and offering support to help with her daughter's pregnancy.

One can draw no other conclusion than that the authors of the bill do not understand what constitutes conscientious objection. In my opinion, the conscientious objection provision qualifies as a compulsory participation provision. It mandates a health practitioner with a conscientious objection to in fact do something that they do not want to do, and non-medical professionals, such as cleaners or administrative staffers, are excluded from the opportunity to exercise a conscientious objection. A health practitioner will technically be lawfully obliged to refer women for terminations regardless of the state of pregnancy, risks or reasons. It does not facilitate doctor-patient care autonomy as it may potentially force them to work against their perception of what is in the best interests of their patient. One need only recall the Victorian case of Dr Mark Hobart who risked deregistration for refusing to refer a couple seeking a sex-selection termination to a non-objecting practitioner.

One cannot form views on a topic as important as this bill in a vacuum. One must hear the experiences and stories of women who have been there and faced the decision. It is a profound decision that they and their families will reflect on for years to come. We all have friends and relatives who have gone through the agonies of the choice of whether or not to proceed with a pregnancy. Some have chosen to proceed with their pregnancies while others have not. Over the last six months I have quietly spent time with women from both perspectives and lobby groups supporting and opposing the bill. I also spent precious time with a dear friend of mine who chose to unexpectedly reveal her termination and, with it, the raw emotion that she has carried for 40 years. I honour her courage and thank her for trusting me with her story. She is loved by so many.

Another remarkable woman, Madeleine Weidemann, has courageously shared her story over the past few years. Madeleine has been a courageous advocate for women to receive full and frank information about foetal development and the need for young and vulnerable women to understand the risks that might be associated with a termination. Madeleine has called for a coherent and unified body of research that takes into account the many stories not just of the impact of an abortion on women's lives but also of the loss of any child in utero to miscarriage and stillbirth, and the grief that flows therefrom. Madeleine reflects deeply on her loss and the loss felt by her sister and mother through miscarriage, and my own wife does too.

Finally, and in an atmosphere where the community is evermore distrustful of promises made by us as elected representatives, I affirm the position of the LNP membership. The grassroots members of my party have repeatedly debated termination laws and have repeatedly concluded that there is no reason to change them. I also affirm the position of the parliamentary wing of the LNP, which, prior to the state election in 2017, gave a commitment that they would not amend the termination laws in Queensland. I will not walk away from that commitment to the Queensland people or the people of Toowoomba South, who have inundated my electorate office with their concerns regarding this bill, overwhelmingly so by the ratio of 100 to one.

My wife and I have been blessed with three precious children. Yesterday I missed the 10th birthday of my daughter. We knew their gender and had them named by week 19 or 20 of my wife's pregnancy. Nothing compares with hearing the heartbeat of your child for the very first time. Sadly, this bill fails dismally in searching the heart of this parliament's responsibility to care for the most vulnerable—in this case, the unborn—while maintaining appropriate supports and protections for women facing the most challenging decision of their lives. As Jaya Taki says, women deserve better.

In 1986, Judge McGuire expounded the legal framework by which lawful terminations are conducted in Queensland today—around 14,000 of them. He confirmed that this state, Queensland, has not abdicated its responsibility as a guardian of the silent innocence of the unborn. I profoundly hope that we in this House do not abdicate that responsibility to the unborn today.