




Speech By
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TERMINATION OF PREGNANCY BILL

 **Ms LINARD** (Nudgee—ALP) (5.32 pm): I rise to speak to the Termination of Pregnancy Bill 2018. Any public discourse regarding an issue as deeply contested as abortion law can be expected to attract a high level of interest. Community opinions about abortion are complex, divergent and often based on deeply held values. It is unlikely that public consensus about abortion can be achieved and legislation cannot impose consensus. These are the words I used in my foreword as chair of the committee that considered the first two inquiries into abortion law reform last term and I believe they hold as true now as they did then. The former committee's examination of both bills, concurrent with an initial broader terms of reference, was protracted—spanning 10 months. As anticipated, the evidence conveyed in submissions and during hearings was conflicting and contested and views shared were deeply held and often irreconcilable. I am sure that the views and evidence tendered at the recent inquiry were equally as contested.

Under Queensland law, as it currently stands, it is a criminal offence to attempt to procure an abortion for oneself or another or to knowingly supply drugs or instruments to a person seeking to procure an abortion. Sections 224, 225 and 226 of the Criminal Code relate and refer to the 'unlawful' procurement of an abortion. The Criminal Code contains a defence to liability under section 282. The inclusion of the word 'unlawful' implies that there are circumstances where an abortion is lawful. However, the act does not define when and in what circumstances an abortion may be considered 'lawful' and hence the common law has become unusually instructive in the case of abortion law in Queensland.

Currently, there is no national monitoring of statistics with regard to the incidence of abortion and hence only incomplete data exists for Queensland and most other states and territories. There was significant evidence presented to the committee inquiries last term that the criminal offences for abortion in Queensland contribute to limits on data collection and transparency. However, what we can estimate by drawing on admitted patient episodes for licensed private health facilities, Medicare data, Queensland perinatal data collection and prescriptions for abortifacients is that between 10,000 and 14,000 abortions are performed annually in Queensland. The majority of these—an estimated 99 per cent—occur in private health facilities during the first trimester of pregnancy. An estimated one per cent take place in public health facilities beyond 20 weeks gestation, most for foetal abnormalities, maternal illness or complications.

Public debate about abortion law has historically been dominated by interest groups with strong views on both sides of the debate, as has been evidenced in the debate to date in Queensland. Both the former and current committee reports recognised that the views that are most often prominent in public debate are not necessarily reflective of the full range of community views. With the objective of understanding community attitudes and expectations, the former committee commissioned researchers from ANU to assess the reliability of seven Australian community attitude surveys and opinion polls

about abortion undertaken over the past 10 years. The review found that recent surveys of attitudes towards abortion suggest that a majority of Australians support women being able to obtain an abortion if required.

Many of the submissions and testimony received throughout the debate on this issue have been premised on the question being one of abortion or no abortion. It is not—and I do not believe ever could be—a simple yes or no proposition. The question for me is whether the current law in Queensland is working or adequate. For many, abortion is a great travesty and loss of human life and for this reason it should sit in the Criminal Code as a deterrent. Some argue that thousands of women successfully access abortions in Queensland without prosecution and, hence, change to the law is not necessary. Conversely, many believe passionately that the current law in Queensland impedes a woman's right to make personal decisions regarding her health and in particular her right to maintain control over her own fertility, with access to health care only compounded by the tyranny of distance and/or financial hardship.

The committee received no evidence that the current legislation has any deterrent effect on women seeking a termination. Rather, the committee heard that women in large part are unaware that abortion is a criminal offence. The inquiries have, however, received consistent testimony that the current legal situation in Queensland has created uncertainty among doctors about how the law works in practice and that the threat of criminal prosecution acts to impede the provision of a full range of safe, accessible and timely reproductive services for women.

It is for these reasons that I believe that the current legal situation in Queensland is ambiguous and does not serve the rule of law, and that is that the law should be readily known, certain and clear, that it should be accessible and obeyed, and that the law should reflect community expectations. Instead, it ignores the reality of unplanned pregnancies and abortion. I do not believe it is fair and just to criminalise women for making what is invariably a deeply personal, difficult and sometimes impossible decision and I believe that the discussion would be better served for all involved by taking a public health approach and seeking to reduce the incidence of abortion rather than criminalising those who seek it.

Professor Eleanor Milligan, clinical ethicist and academic in medical ethics and professional practice at Griffith's School of Medicine, submitted to the initial inquiry that international medical research confirms that it is through public health and social policy measures that termination rates are reduced. I appreciate that, reciprocally, many fear that decriminalising will lead to an increase in the incidence of abortion in Queensland. Importantly, a recent study of abortion incidence between 1990 and 2014 published in the *Lancet* international medical journal found that in the developed world the annual abortion rate has declined significantly. It also found no evidence that abortion rates were associated with the legal status of abortion. Having spoken to the first question of whether the current law in Queensland is working or adequate leads naturally to the second of whether the bill before the House presents a sound opportunity to improve the current legal position in Queensland.

The Termination of Pregnancy Bill treats abortion as a health issue rather than a criminal matter and seeks to bring our current law into line with contemporary and safe clinical practice. The bill is designed to work in tandem with clinical guidelines, including the offering of counselling and a medical practitioner's common law obligations to obtain informed consent, not in isolation. It reflects the positions of informed healthcare organisations and stakeholders, including the AMA and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.

The bill provides for termination up to 22 weeks gestation. This limit was chosen on the basis of current clinical practice that considers that this represents the stage immediately before the threshold of viability and, further, to allow a woman who receives a poor or fatal foetal diagnosis at her 18- to 20-week routine scan time to seek further expert medical opinions and make difficult decisions.

However, after 22 weeks gestation, two doctors must agree that performing an abortion is appropriate in all the circumstances. Currently, this is not a requirement. Each year in Queensland, approximately 140 abortions are conducted after 20 weeks. All involve complex medical and personal circumstances. Most involve wanted pregnancies where a termination is necessary owing to severe health problems faced by the foetus or the mother or to save the life of another foetus in a multiple pregnancy. Such cases are very rare and very sad.

The bill establishes safe access zones of 150 metres around clinics where abortions are performed to protect the safety, privacy and dignity of women and staff accessing clinics. I believe that the right to protest should be protected. However, I also believe that women do not make these decisions lightly and to seek to invoke feelings of guilt or deeper pain at such a vulnerable time is

unnecessary and, at worst, cruel. Under the bill, medical practitioners retain the right to conscientious objection, but will be required to refer to another health practitioner or service that does not have a conscientious objection.

I believe that the bill strikes the necessary balance between a practitioner's right to freedom of thought, conscience and religion and the need for the transfer of care for a woman seeking timely clinical information or services. This is particularly pertinent to regional Queenslanders.

Time does not allow me to expand further. I would like to say in summary that I have not taken a position or formed my views in regard to this debate lightly. My position was significantly informed by the evidence, submissions and testimony tendered during those first two inquiries and confirmed by the recent Queensland Law Reform Commission report. The committee of which I was the chair during the last term rejected the first of the bills that sought to legalise termination of pregnancy and was not able to reach a consensus on the second bill owing in large part to the legal uncertainty created by the interaction of the two bills and the potential for unintended consequences. As some have sought to propagate, it was not because the case for law reform had not been made.

It is time we stopped ignoring the reality of unplanned pregnancies and abortion in Queensland and seek to do more about it by treating it as a public health issue. I have met with the health minister, Steven Miles, regarding my hope that we can do more in this space. I thank him for being so available and receptive to our discussions. I thank him particularly for his commitment this morning to an impartial women's health hotline and the provision of supporting information based on clinical guidelines to genuinely inform and support Queensland women.

Finally, I would like to acknowledge those constituents who contacted me, all of whom I sought to speak or write to personally. To talk about something so personal and contested takes courage. I know that many of them will be listening. Whether my position in support of this bill reflects the position and arguments that they put forward, please know that I listened and thank them for their contribution to this debate.