




Speech By  
**Linus Power**

**MEMBER FOR LOGAN**

---

Record of Proceedings, 16 October 2018

### **TERMINATION OF PREGNANCY BILL**

 **Mr POWER** (Logan—ALP) (4.48 pm): Our role as parliamentarians is to make laws for all Queenslanders recognising that many may not share our values, that situations confronting people are complex and that the law, especially the criminal law, may not anticipate every difficult circumstance that Queenslanders face.

In a submission to the former health committee, Father Frank Brennan told a story to illustrate the difficulty of his own personal conscience on the issue and our role as lawmakers. When he was a masters student he was told in the strictest confidence that a fellow student would be having a termination the next day. He stated that he is morally opposed to abortion and he remains so, but he tossed and turned throughout the night questioning what to do. The next day he did not go to the woman's door to try to stop her or indeed take any action. The question he posed was that, if in that situation he did nothing, how could he expect the law to act when he did not? This was confronting to me because I related it to a personal story of my own.

I was visiting a friend I had not seen for many years. We caught up in a sunny park in London surrounded by people playing soccer or walking through the park. We started talking about all of the things we had done through the years apart—where we had travelled, where we had worked and our partners. Sitting there on the grass, as we talked more deeply and personally, she told me that she had had an abortion, that it had been a surprise and was not the right time. Then we paused. I did not quite know what to say. She began crying, right there sitting in that busy park. In an instant, I reached out and hugged her. She cried and cried, deep visceral sobbing that I hope never to experience again. In some ways that single moment sums up my dilemma with this legislation.

I know from my instinctive behaviour that I do not want to punish women making difficult decisions. At the same time, I want every part of our health system to recognise the enormity of the decisions we make. Unlike any other successful health process, no other patient years later sobs in a park in the arms of a friend. I think respectfully that Frank Brennan had it wrong. The question is not whether we would break a confidence to confront someone but instead what advice would I give my friend if she asked for help and I had the knowledge that she would cry and cry and cry over her decision. I know that laws and regulations are not the best processes through which to do that, but I wish we could come closer to that goal.

Today the bill before us seeks to change the legal status of abortion in Queensland. It does not, as some on both sides of this debate have claimed, move abortion from being illegal to being legal. It does not remove abortion from the Queensland Criminal Code. Section 25 makes it clear that this bill firmly keeps abortion in the Criminal Code, at least for unqualified persons. Under the new bill we do not expect that we would see an increase in the number of abortions performed in Queensland. The Law Reform Commission tells us that more than 14,000 abortions occurred last year in Queensland. Even if this new bill does not pass, there will still be the legal, if somewhat confused, framework for abortion in Queensland. The bill before the House does not legalise or decriminalise abortion but instead puts forward an alternative legal framework.

When locals in Logan have asked to speak to me they have often been uncomfortable about abortion. They feel that the new bill, from what they know of it, does not give sufficient regard to the value of the foetus that is being aborted. Recently I sat down with two couples on a back deck in Munruben, where they made a strong and impassioned case to keep the current laws. However, when I asked them whether they wished to see a system of laws that would actually imprison a woman for abortion, they were a lot less certain about the role of criminal law. I do not want to see a woman who seeks or has a termination face criminal sanction, but I respect those who have spoken to me and who feel that this society should show a greater regard for the value of the human potential that is ended with a termination.

During the last parliament, and this one, I read carefully the submissions that were put forward before the committee. Many made reference to abortions later in the term of pregnancy. Under the current legal framework there is no distinction around gestational term, whereas under the new bill there is a marker that requires the medical profession to treat patients who are more than 22 weeks pregnant differently, requiring doctors to ultimately consider whether termination should be performed. It is clear that doctors have a tough job to do with little guidance from legislation. It is clear that, after considering the circumstances, doctors have a responsibility to sometimes not perform a termination, but ultimately it is not clear, except through their professional standards and guidelines.

When the constituents of Logan spoke to me about this, I think they were surprised that the current legal framework makes no distinction or limit. The report noted that the AMA suggested the limit of 22 weeks, which they defined as 'prior to possible survival' outside the womb. Obviously this is a decision of ethics. Others have put forward that a lower limit be considered, especially as medical technology improves outcomes for premature babies. The report noted that a medical submitter stated, 'There will never be a consensus between those who believe the foetus gains full rights at conception and those who believe the woman's right to autonomy is absolute throughout pregnancy.' This is ultimately an ethical question. Even before this date, the ethical decision for a doctor simply changes to ethically deciding whether it is acceptable for the patient to continue the pregnancy for just another week or two weeks or longer to change the status of viability. This means that this is not an easy or clear-cut decision for doctors and is ultimately an ethical decision as much as a scientific one.

I note that the member for Caloundra has put forward an alternative limit. We should note that this requires a second doctor to consult with another medical practitioner who has considered the circumstances and agrees after consideration that the termination should be performed. In reality, at a later stage of pregnancy these terminations are not without complexity and within Queensland Health there are much more rigorous processes. The requirement for two doctors to consider the circumstances of the termination is then a legal minimum. Doctors in reality have to satisfy both the medical situation and their own conscience about these complex situations. We should note that some submitters felt that the distinction of a gestational limit created a time pressure for pregnant women making this difficult decision. However, the legal minimum of two doctors consulting is not the hard limit that submitters were anticipating and, as I have said, Queensland Health has much more rigorous internal procedures regardless.

I also recognise that our health workers have their own views that are both complex and nuanced. The doctor who faced charges in the nineties, Dr Peter Bayliss, on the complex issue of gestational limits stated, 'Up to 20 weeks you're pretty sure you're terminating a pregnancy and that you're not killing a viable child.' From that viewpoint, Dr Bayliss had a conscience position for himself. He stated, 'If medical technology gets to salvage a 20-weeker, I'm moving back to 18 weeks; if they save an 18-weeker, I'm back to 16 weeks.' This is ultimately a decision that is ethical, not medical, in nature and one where Dr Bayliss had a conscience position.

I am concerned that the conscientious objection is prescriptive on the doctor involved in an abortion. If someone had a similar genuine conscience position to Dr Bayliss that a 20-weeker would be, as he described it, 'a viable child', can we really require them to refer, to have to find a provider who will terminate what they believe to be a viable child? I grew up with my father's passionate involvement with the deaf community. Can we really then in this legislation condemn a doctor who has a deaf brother or sister and who cannot in good conscience refer to someone who they believe does not have any problem with that termination? Doctors confronted with a patient seeking an abortion for reasons of gender selection may not even be able to refer to a doctor who they believe would perform a termination for that reason. I am concerned that this prescription does not anticipate the many difficult, ethical and conscience decisions that Queensland doctors face. I also think that if this bill were to pass then the problems of access that this section hopes to address will not be the same as before.

These are difficult issues. We cannot prescribe for all of the difficult situations we are faced with. I do know that the situation we have now is irrational and, as the previous speaker said, has never been used to prosecute a woman in the hundred years or so that it has been in place. That does not mean that it is right. If we believe that it is not the correct way to go, to prosecute a woman, then we have to make the hard decisions, even if we personally have problems with abortion, about the role of the law as we go forward. I will be considering the bill and the amendments. I intend to vote for the bill on the second reading and consider all of the amendments put forward before my final vote.