



THE ARCHBISHOP OF BRISBANE

5 October 2016

Research Director  
Health, Communities, Disability Services and  
Domestic and Family Violence Prevention Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Research Director,

To this letter I attach a submission to the Committee's Inquiry into the Abortion Law Reform Bill.

A representative of the Archdiocese of Brisbane would be happy to appear before the Committee to discuss further the submission or answer any questions. Our representative is Dr Ray Campbell, Director of the Queensland Bioethics Centre, whose contact details appear on the first page of the submission. The Queensland Bioethics Centre is an agency of the Archdiocese of Brisbane.

Thank you for this opportunity to contribute to the Committee's deliberations on this important matter.

Yours sincerely,

Archbishop of Brisbane

Submission to  
Health, Communities, Disability Services and Domestic and Family  
Violence Prevention Committee

Re:

Health (Abortion Law Reform) Amendment Bill 2016.

Submitted by

The Most Reverend Mark Coleridge

Archbishop of Brisbane.

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## Introduction

The Catholic Archdiocese of Brisbane welcomes this opportunity to make a submission to the Parliamentary Committee's inquiry into the Health (Abortion Law Reform) Amendment Bill 2016.

Please note that this submission follows on from my earlier submission to the Inquiry into the Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016.

## The Current Bill

It is regrettable that a Bill seeking to amend the Health Act actually displays very little concern for the health of women, and that Division 3 entitled "Patient Protection" ignores the various ways in which women's health might be more sufficiently addressed in regard to abortion.

**Paragraph 20** of the Bill seeks to legitimize abortion on demand up to 24 weeks of gestation. This flies in the face of the common law grounds which sought to make limited abortion legal in Queensland, and contradicts society's expectations.

As well as in the Criminal Code, in Queensland the law on abortion is governed by legal precedent: the decision in *R v. Bayliss and Cullen* in 1986. While that decision allowed for abortion in certain restricted circumstances. Justice McGuire stated:

*The law in this State has not abdicated its responsibility as guardian of the silent innocence of the unborn. It should rightly use its authority to see that a mentality of abortion on whim or caprice, does not insidiously filter into our society. There is no legal justification for abortion on demand.*<sup>1</sup>

It is sometimes suggested that times have moved on and community expectations are different. But this would not seem to be the case. It is true that the majority of the population believe that women should have access to abortion, but it is also true that there is preference for women to have real and immediate access to alternatives to abortion. Furthermore it would appear that even among those who support abortion in principle, many do not support it other than for medical reasons.<sup>2</sup> A recent Galaxy Poll in Queensland found that 72 per cent of Queenslanders were opposed to abortion after three months.

For most medical procedures, one needs to indicate that there is a medical reason for undertaking the procedure. The Bill being considered makes no such provision. Indeed it treats abortion as a trivial procedure. Abortion is a procedure with surgical risks and great personal significance. The complete deregulation of abortion up to 24 weeks as embodied in this Bill does not meet the minimal standards of care for women's health.

<sup>1</sup> See John Fleming, PhD and Nicholas Tonti-Filippini PhD (eds) *Common Ground?* St Pauls: Strathfield, 2007, p. 32 and the citations given there. This work contains the results of one of the most extensive surveys undertaken in Australia into Australians' attitude towards abortion.

<sup>2</sup> See the research results published in *Common Ground?*, *ibid.*, and the results of the Galaxy Research Poll of May 2016.

**Paragraph 21** of the Bill deals with abortion on women who are more than 24 weeks pregnant. We are not told why the end of 24 weeks is significant. We already know that children 24 weeks and younger can survive premature birth, so the end of 24 weeks appears as a relatively arbitrary marker. Indeed the Bill glosses over a very obvious fact. After 24 weeks there are really two decisions. One is to end the pregnancy, and the other is to kill the child (feticide), as there is a good chance the child could be born alive and then possibly offered for adoption. In other words, the pregnancy can be “terminated” without necessarily killing the child.

The grounds given for killing the post-24 weeks child is that the doctor “reasonably believes the continuation of the woman’s pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated”. As noted above this wording ignores the fact that the pregnancy could be “terminated” by early induction, and the life of the child saved. Given that there is solid expert opinion that we cannot say that killing the child would present a greater risk to a woman’s physical or mental health than having an early induction and possibly offering the child for adoption, it would appear that this condition is either meaningless or an invitation to subterfuge. The condition that a second doctor be consulted by the first doctor, does not give one grounds for confidence.

Paragraph 21 opens the door for gruesome late-term abortions to be performed in Queensland with once again minimal protection for women.

**Paragraph 22** deals with the issue of conscientious objection in a partial fashion. Sections (1) and (2) rightly uphold the right to conscientiously object to taking part in an abortion. Section (3) however puts dubious restrictions upon that right for both doctors and nurses. The Bill asserts that a doctor has a duty to perform an abortion in an emergency if the abortion is necessary to save the life of, or to prevent a serious physical injury to the woman.

As noted at the earlier inquiry many doctors, including obstetricians and gynecologists believe that a situation which requires a direct abortion to “save the life of the mother” should never arise (see for example the declaration from conference of obstetricians and others in Dublin, 2012). There are other options, some of which might lead to the death of the child indirectly. If the doctor chooses to pursue one of these options because they believe that is the best medical option, is the doctor open to prosecution even if the woman survives? As for the case of the undefined “serious physical injury”, once again what is the criterion? Abortion itself risks “serious physical injury” to the mother, and is very “serious physical injury” for the fetus. If the doctor believes that medically, abortion is a greater risk, then, is the doctor liable for prosecution for following their professional judgment?

The nurse is in an even worse situation. Nurses are told that they must put their own professional judgment and standards aside and abide by the judgment of the doctor.

One wonders why this clause is even considered. Conscientious objection is something normally dealt with within the Code of Ethics of a profession, and is dealt with in the AMA Code of

Ethics. There would appear to be no need for the legislature to intrude into this area. There is no evidence that the health of any woman has suffered as a result of a doctor refusing to treat her on the grounds of conscientious objection.

**Division 3** headed “Patient Protection” has next to nothing to do with health or the protection of the patient. It seems to be more about protecting “the abortion facility”. Should we not be asking why these facilities exist and how are they regulated? What other surgical procedure has facilities dedicated to doing only that procedure?

The need for Division 3 would become obsolete if abortions followed the normal process for surgery i.e. that there was a referral process and the abortion took place in properly regulated medical facilities with the ability to cope with emergencies that might occur in surgery. As these facilities deal with a variety of medical conditions, the likelihood of any potential patients being interfered with would be minimal and capable of being dealt with under existing laws.

Doing away with “abortion facilities” and ensuring that abortions took place in the same way as other medical procedures would do more for the protection and health of women than what is proposed here.

As was mentioned in my earlier submission, pregnant women facing decisions about continuing a pregnancy would be well served by mandating that independent pre-decision making counselling be offered by qualified pregnancy counsellors (hence improving the opportunities for free and informed consent).

Given that there is great support for alternatives to abortion, the government should promote programs of practical assistance to pregnant women and develop social policies which provide real alternatives to abortion.