



Submission

Proposed changes to pregnancy termination laws in Tasmania - *Reproductive Health (Access to Terminations) Bill 2013*.¹

Executive Summary

On 7 March 2013, the Tasmanian Health Minister, Michelle O'Byrne, announced her intention to introduce a Private Member's Bill proposing changes to pregnancy termination laws in Tasmania. The Tasmanian Department of Health and Human Services has sought public comment on the proposed changes by 5 April 2013. Women's Forum Australia wishes to make the following submission in response to the proposed changes.

Women's Forum Australia

Women's Forum Australia is a national women's research and education organisation. We strive to achieve pro-woman cultural change in Australia through high quality evidence-based research, education efforts and policy advocacy efforts.

Our interest in women's health, safety, wellbeing and freedom means that we have a particular focus on addressing behaviour that is harmful and abusive to women.

Our Position

Women's Forum Australia considers the proposed *Reproductive Health (Access to Terminations) Bill 2013* and the accompanying Information Paper² do not take into account the physical, emotional and psychological risks faced by women who undergo abortion. Abortion and women's experiences of abortion cannot and should not be trivialised and treated as though they are a simple medical procedure with no repercussions for the women involved. Furthermore we are concerned about the potentially harmful implications of the proposed legislation for those people involved in providing advice, support and counselling to women considering abortion.

¹ *Reproductive Health (Access to Terminations) Bill 2013*, TASMANIA,

http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0018/126720/ReproductiveHealth_Consult_Draft.pdf

² *INFORMATION PAPER relating to the Draft Reproductive Health (Access to Terminations) Bill*, Department of Health and Human Services, March 2013,

http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0020/126641/INFO_PAPER_for_consult_FINAL.pdf

We will address the following key points in this submission:

1. The proposed changes to pregnancy termination laws in Tasmania do not take into consideration the health, safety and well-being of Australian women. The accompanying Information Paper to the Bill contains a series of misconceptions and errors that, if acted upon, will result in legislation that is potentially harmful to women. Specifically:
 - a) the Information Paper ignores the link between abortion and maternal mortality;
 - b) the Information Paper ignores the link between abortion and infertility;
 - c) the Information Paper ignores the link between abortion and mental health problems in women and does not highlight the suicide risks of women who have had abortions;
 - d) the link between abortion and an increase in the risk of breast cancer is not addressed; and
 - e) the Information Paper does not include information on the benefits to women who choose to proceed with their pregnancies rather than undergoing abortion.
2. The proposed changes to pregnancy termination laws in Tasmania do not provide women with real choices. There is no requirement to provide counselling about the risks of abortion and the alternatives to abortion for women considering a pregnancy termination. Without counselling, it cannot be assumed that women are in a position to provide informed consent. Furthermore the lack of counselling may result in a failure to identify the potentially harmful underlying causes leading a woman to seek an abortion. These causes could include serious and harmful behaviours including domestic abuse, depression and financial stress.
3. The *Reproductive Health (Access to Terminations) Bill 2013* does not advance the rights of women; rather it seeks to criminalise conscientious objection and seeks to limit rights to peaceful protest – both of which are critical to democracy. The Bill does not provide a clear justification for infringing the right to peaceful protest in the "access zones". Conduct that will be punishable by up to 12 months imprisonment/500 penalty units, or both, should be based on clear and compelling evidence-based reasons not emotive ideological justifications.

Behaviour that is Harmful to Australian Women

Federal and State governments are charged with responsibility for enacting legislation in the interests of the people they serve. The health, safety, wellbeing and freedom of the Australian people should be of paramount concern to legislators. The benefits and risks of all proposed legislation should be well-researched and carefully considered before any proposed legislation is introduced into law.

However, the proposed Bill and the accompanying Information Paper fail to do this. They fail to acknowledge the documented evidence about the risks of abortion to women as outlined below.

Abortion and Maternal Mortality

The proposed Bill and accompanying Information Paper ignore the link between abortion and maternal mortality. Research has shown that compared to women who deliver a child, women who have early or late abortions have a significantly higher mortality rate within 1 through 10 years post-abortion.³

Abortion and Infertility

The Information Paper falsely asserts that abortion does not result in infertility. However, research has shown that up to 10% of women suffer an infection after abortion that can affect future fertility. The risk of infection is also higher amongst women who have a sexually transmitted infection at the time of abortion.^{4 5} Research also indicates that up to 5% of women can suffer trauma and/or severe bleeding requiring further treatment post-abortion, which can also impact future fertility, and enhances the risk of future premature births significantly.⁶

Abortion and Mental Health

The Information Paper falsely asserts that women do not experience mental health problems following abortion. This is simply untrue. International evidence has confirmed that at least 20% of women suffer serious prolonged psychological trauma after abortion, which is linked to substantially increased risks of anxiety, depression, alcohol and drug use, and suicidal behaviours.⁷

³ D Reardon and P Coleman, Short and long term mortality rates associated with first pregnancy outcome: Population register based study for Denmark 1980-2004, *Med Sci Monit*, 2012, 18(9): PH 71-76

⁴ N Thorpe, Post pregnancy genital tract and womb infections, *Journal of Midwifery Women's Health* 2008 Vol 53.

⁵ N Zenner and R Crawford, Chlamydia screening and treatment in patients undergoing evacuation of retained products of conception or vaginal termination of pregnancy: an audit of the Royal College of Obstetricians and Gynaecologists' Guidelines in practice. *Journal of Family Planning and reproductive Health Care* Vol 33 No 2

⁶ M Voigt et. al., Is Induced Abortion a Risk Factor in Subsequent Pregnancy? *Journal of Perinatal Medicine* Vol. 37, 2009

⁷ P.K. Coleman, Reproductive Outcomes and Mortality: Debunking the Myth that Abortion is Safer than Childbirth, *Presentation: 2nd National Convention, Real Choices Australia*, Melbourne 2012

A study of the medical records of 56,741 California medicaid patients revealed that women who had abortions were 160 percent more likely than delivering women to be hospitalized for psychiatric treatment in the first 90 days following abortion or delivery.⁸

In addition, in a study of post-abortion patients only 8 weeks after their abortion, researchers found that 44% complained of nervous disorders, 36% had experienced sleep disturbances, 31% had regrets about their decision, and 11% had been prescribed psychotropic medicine by their family doctor.⁹

The assertion that abortion is not linked to mental health problems in women is poorly-researched and ill-considered. Enacting legislation on the basis of this claim would be harmful to the health, well-being and safety of women.

Abortion and Breast Cancer

The Information Paper also denies the link between abortion and breast cancer. The US-based Breast Cancer Prevention Institute lists over 50 studies from 1957 on showing the increased risk of breast cancer caused by induced abortion.¹⁰

In 2012 the *Asian Pacific Journal of Breast Cancer Prevention* published a study on 669 cases in the Jiangsu Province of China, concluding: "In this study we found that induced abortion was associated with increased risk for breast cancer and with a dose-response relationship. The result of our study supported the hypothesis that prior induced abortion represents significant risk factors for later development of breast cancer."¹¹

It is surprising that the link between abortion and breast cancer has been rejected in the Information Paper. The Information Paper relies upon a 2011 source which is not peer-reviewed and there is no attempt in the Information Paper to address the evidence-based approach of the more recent 2012 study identified in the preceding paragraph. Again, this is misleading and harmful to Australian women.

⁸ Abortion Risks: A list of major psychological complications related to abortion, *Afterabortion.org*
<http://afterabortion.org/2011/abortion-risks-a-list-of-major-psychological-complications-related-to-abortion/>

⁹ Abortion Risks: A list of major psychological complications related to abortion, *Afterabortion.org*,
<http://afterabortion.org/2011/abortion-risks-a-list-of-major-psychological-complications-related-to-abortion/>

¹⁰ Epidemiologic Studies: Induced Abortion and Breast Cancer Risk, Breast Cancer Prevention Institute, September 2012, <http://www.bcpinstitute.org/FactSheets/BCPI-FactSheet-Epidemiol-studies.pdf>

¹¹ Ai-Ren Jiang et al, Abortions and Breast Cancer Risk in Premenopausal and Postmenopausal Women in Jiangsu Province of China, *Asian Pacific Journal of Breast Cancer Prevention* VOLUME 13, 2012

Real Choices for Women

Sections 4 and 5 of the Bill state that:

“The pregnancy of a woman who is not more than 24 weeks pregnant may be terminated by a medical practitioner.¹²”

and

“The pregnancy of a woman who is more than 24 weeks pregnant may be terminated by a medical practitioner – (a) if – (i) two medical practitioners have certified, in writing, that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated; and (ii) the woman has given informed consent unless it is impracticable for her to do so...¹³”

No Requirement for Counselling

Women’s Forum is concerned that there is no requirement in the legislation for a medical practitioner to refer for counselling a woman who is considering abortion. Research has shown that many abortion decisions are motivated by a lack of emotional, social and material support and not necessarily because the pregnancy is unwanted or unintended. Abortion is also strongly associated with poor-quality intimate relationships, domestic violence and abuse of women. Depression and depressed mood are also common during pregnancy and may be related to abortion decisions.¹⁴

Women are entitled to receive full and frank information about all their options, including the risks associated with abortion and the alternatives to abortion. Counselling for women considering an abortion should be required in order to ensure women are fully aware of the consequences of their decision. Counselling should also be provided to ensure that the underlying and potentially serious causes leading a woman to consider abortion, such as domestic abuse, are identified and addressed. Without this information, women cannot provide fully informed consent. It is negligent for legislators to politicians to enact legislation that fails to address this need for women.

Lack of Due Process

Aborting pregnancy of 24 weeks or more, which involves a fully formed foetus, is a serious and traumatic experience for women. The changes listed in section 5 will introduce a relatively simple process that fails to acknowledge the seriousness of this procedure and the potential emotional, psychological and physical risks associated

¹² *Reproductive Health (Access to Terminations) Act 2013* section 4

¹³ *Reproductive Health (Access to Terminations) Act 2013* section 5

¹⁴ S Ewing, *Women and Abortion: An Evidence-Based Review*, 2007 pp.2-10

with it. Obtaining consent for an abortion at 24 weeks should be treated as a very serious matter and handled accordingly. It should not be the relatively simple process of obtaining the written consent of two medical practitioners.

Informed consent...unless it is impracticable

Women's Forum is also concerned with the statement that a woman must give informed consent "unless it is impracticable for her to do so..." There is no explanation of the kind of situation that may arise in which it is "impracticable" for a woman to make informed consent. Would a woman who has been knocked unconscious by her partner be deemed unable to make informed consent about her pregnancy? Would a 16-year old girl who wants to proceed with a pregnancy against the wishes of her parents be considered unable to make informed consent? Would a woman who has been involved in a serious accident be forced to undergo an abortion before her next-of-kin are contacted? Would a woman with mental disabilities be forced to undergo an abortion because it is "impracticable" for her to provide informed consent?

Secondly, there is no provision in the existing legislation for anyone with knowledge of a woman (such as next-of-kin or a person with medical power-of-attorney) to be involved in making a decision on behalf of a woman who may be temporarily or permanently incapacitated. As a result the decision to terminate a pregnancy could be left in the hands of someone with no knowledge of the woman involved, her history, beliefs, values, preferences or physical well-being. It should be mandatory to seek approval for medical decisions from someone authorised to act on behalf of a person who is temporarily or permanently incapacitated, regardless of the medical procedure.

Criminalising Conscientious Objection

Women's Forum Australia is deeply concerned about the impact of the Bill on one's right to conscientiously object to participation in an abortion (see *Reproductive Health (Access to Terminations) Bill 2013, sections 6 and 7*).

Freedom of conscience, an internationally recognised individual right,¹⁵ is among the most fundamental of personal liberties.¹⁶ It affords an individual the freedom to act in a manner consistent with the dictates of his or her conscience, or to *refrain from acting where* such action would violate those demands. Though freedom of conscience can be intimately related to religion, it also protects decision-making that is based on moral or philosophical grounds.

The Bill seeks to constrain freedom of conscience for medical practitioners by imposing upon them mandatory referral obligations. This violates the *Good Medical Practice: A Code of Conduct for Doctors in Australia*, which has been endorsed by all Australian State and Territory medical boards and the Australian Medical Council, and states at 2.4.6 that good medical practice involves:

*Being aware of your right to not provide or directly participate in treatments to which you conscientiously object, informing your patients and, if relevant, colleagues, of your objection, and not using your objection to impede access to treatments that are legal.*¹⁷

The Bill also contradicts the Australian Medical Association Code of Ethics, which provides that a doctor with a conscientious objection to a particular service must inform the patient of that conscientious objection and ensure that a service is available elsewhere but has no obligation to refer the patient on to a provider of the service.¹⁸

Additionally, in a measure that has no national or international precedent, the Bill seeks to constrain the freedom of conscience of those providing advice to a woman about her pregnancy options. This is an extreme provision that cannot be justified in a democratic nation such as Australia. The Bill's definition of a counsellor is broad,

¹⁵ *UN International Covenant on Civil and Political Rights*, Article 18(1).

¹⁶ *R. v. Morgentaler*, I S.C.R. 30, 165 (1988) (Wilson, J., concurring) ("An emphasis on individual conscience and individual judgment . . . lies at the heart of our democratic political tradition.") Julie Cantor & Ken Baum, *The Limits of Conscientious Objection - May Pharmacists Refuse to Fill Prescriptions for Emergency Contraception?* (2004) 351 *New Eng J Med* 2008, 2009: "The right to refuse to participate in acts that conflict with personal ethical, moral, or religious convictions is accepted as an essential element of a democratic society."

¹⁷ *Good Medical Practice: A Code of Conduct for Doctors in Australia* S. 2.4.6, Medical Board of Australia, 1 July 2010

¹⁸ Specifically, this Code states: "When a personal moral judgment or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere. Recognise that you may decline to enter into a therapeutic relationship where an alternative health care provider is available ... You must inform your patient so that they may seek care elsewhere."

and includes anyone who gives “advice or information relating to pregnancy options... whether or not for fee or reward”¹⁹.

If the Bill passes:

- medical practitioners will be obliged under threat of a \$65,000 fine to make referrals for abortion even if they have a conscientious objection.
- a volunteer counsellor for an organisation supporting pregnant women could be jailed for a year and fined up to \$65,000 if they fail to refer a woman to another organisation where she can obtain an abortion.²⁰
- a friend, relative or work colleague who offers advice to a woman considering abortion could potentially be fined or jailed for not suggesting options that include referral for abortion.

The Bill does not merely attempt to criminalise expressing one’s objection to abortion; by imposing mandatory referral obligations it is coercing participation in the overall process of abortion. The Government cannot pass a Bill that removes the right of a person to offer abortion alternatives or to express their objection to the practice of abortion.

Furthermore, the proposed Bill attempts to criminalise peaceful protest within the vicinity of an “access zone”.²¹ The Bill does not provide a clear justification for infringing the right to peaceful protest: a critical element of any democratic system. Conduct that will be punishable by up to 12 months imprisonment/500 penalty units, or both, should be based on clear and compelling evidence-based reasons not emotive ideological justifications.

¹⁹ *INFORMATION PAPER relating to the Draft Reproductive Health (Access to Terminations) Bill*, Department of Health and Human Services, March 2013

²⁰ Mishka Gora, *New frontiers in repressing dissent*, *MercatorNet* 11 March 2013, http://www.mercatornet.com/articles/view/new_frontiers_in_repressing_dissent

²¹ *Reproductive Health (Access to Terminations) Act 2013* section 9

Conclusion

The proposed *Reproductive Health (Access to Terminations) Bill 2013* will legalise systems and behaviour that is harmful to Australian women. The proposed Bill:

- ignores the risks of abortion to women;
- ignores the right of women to be fully informed about the risks associated with their decision to abort and the alternatives;
- fails to enshrine systems that will enable counsellors and others to identify the potentially harmful underlying causes of a woman's decision to abort;
- legalises systems that will permit a woman to undergo an abortion against her consent;
- criminalises conscientious objection by medical practitioners, counsellors and anyone else who provides advice to a woman considering abortion, including friends, family and colleagues; and
- criminalises peaceful protest: a critical element of any democracy.

In short, the *Reproductive Health (Access to Terminations) Bill 2013* legalises behaviour that is ignorant, coercive and punitive and that will prove harmful to Tasmanian women and the broader Australian community.

Women's Forum Australia urges the Tasmanian government to reject the proposed changes to pregnancy termination laws in Tasmania, and recognise that the proposed Bill will not provide Australian women with real choices.

Thank you for the opportunity to make this submission.