



## **HEALTH (ABORTION LAW REFORM) AMENDMENT BILL 2016 SUBMISSION**

1. Women's Forum Australia recently made detailed written and oral submissions on the *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016* ('first Bill') and Inquiry into Laws Governing Termination of Pregnancy in Queensland. Much of what we submitted to that inquiry is relevant to the *Health (Abortion Law Reform) Amendment Bill 2016* ('the Bill').
2. While the Committee has indicated that it will consider submissions made to that inquiry, we believe it is important firstly to highlight that despite Mr Rob Pyne's contention that "passionate individuals and organisations" have "had their say", the Bill still fails to address the major concerns we and others raised in relation to the first Bill. We will then turn our focus to further issues raised by the Bill and the Committee's recent report on its inquiry.

### **The Bill fails to address concerns of first Bill**

3. The Bill displays the same shallow ideology and lack of consideration for the real needs of women that were the hallmarks of his first Bill. While similarly put forward as promoting women's health and rights, like the first Bill, the Bill is also counter-productive to both (please see first submission for elaboration on the following points).<sup>1</sup>
4. First, the Bill treats abortion as simply another medical procedure and fails to recognise the physical and psychological harms posed to women who abort. Even women who abort in the first trimester can suffer physical and psychological harm. The introduction of a gestational limit in the Bill does nothing to address the potential harm caused to women by abortion *at any stage of pregnancy*.
5. Second, the Bill does not include safeguards to ensure that women are giving fully informed consent. Safeguards such as the provision of counselling

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<sup>1</sup> This summary of the shortcomings of both bills was also published on ABC Religion and Ethics: Wong R., "Women deserve better than the proposed abortion law reform", 23 August 2016: <http://www.abc.net.au/religion/articles/2016/08/23/4524762.htm>.

independent of abortion providers; information about the risks of abortion, the stages of foetal development and the alternatives to abortion; the opportunity to view ultrasounds; and mandatory waiting periods - these are all critical to ensure that women can make a real "choice" when it comes to abortion.

6. Third, the Bill does not make any attempt to understand and address the societal issues, which might make women view abortion as their only choice. Women who abort often cite reasons such as fear of intimate partner violence, coercion from their partner or others, psychological pressures due to the pregnancy or otherwise, study and career pressures, and/or a lack of financial and emotional support. Abortion under these circumstances is not choice – it is desperation.
7. Instead of simply providing women with the so-called "choice" of abortion on demand, in an attempt to address the symptoms of their situation, we need to do far more as a society to address the underlying causes and provide them with positive alternatives that are not going to expose them to further harm. This includes progressing real alternatives for women facing unplanned pregnancies (including much needed adoption law reform), and addressing issues of domestic violence, access and affordability of child care, flexible workplace and study arrangements and access to pregnancy and counselling support.
8. Finally, the Bill provides no regulatory framework for the mandatory collection and reporting of data on abortions, including how many abortions are taking place, what reasons are cited, and how many women suffer physical and psychological harm post-abortion. In the absence of such data, there is a woeful lack of evidence to support these proposed changes.

### **Comments on the Bill**

9. In addition to the concerns raised in our submission on Mr Pyne's first Bill, there are several comments we wish to make particularly in relation to section 21 of the Bill.
10. In his explanatory note and speech, Mr Pyne maintains that, "[t]he Bill will improve clarity for health professionals and patients...around what point during gestation and for what reasons a termination of pregnancy may be performed in Queensland."<sup>2</sup> However, the Bill fails to meet this objective and raises various concerns.

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<sup>2</sup> Pyne, R., Explanatory notes for the *Health (Abortion Law Reform) Amendment Bill 2016*, p 1; Pyne, R., First Reading Speech, *Health (Abortion Law Reform) Amendment Bill 2016*, Hansard p 2892.

11. First, it is unclear what, if any regulation or safeguards would apply in the case of a woman seeking an abortion who is less than 24 weeks pregnant. Under section 21 of the Bill, an abortion may only be performed on a woman who is more than 24 weeks pregnant if a 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” and if that doctor has consulted at least one other doctor who holds the same view.
12. It is unclear why such safeguards should not also apply to women who are less than 24 weeks pregnant. By not including such safeguards for these women, the Bill appears to leave open the possibility that they could undergo an abortion where termination poses a greater risk of injury than continuation of the pregnancy.
13. Second, the Bill affords no more clarity than the current law. Currently in Queensland, abortion is lawful under case law to prevent serious danger to the woman’s physical or mental health. The discretion for performing an abortion under the current law – which is apparently unclear – is the same discretion being introduced by the Bill for women who are more than 24 weeks pregnant. The main difference as noted above, is that under the Bill, women under 24 weeks pregnant will not longer benefit from this safeguard.
14. Third, while obtaining an abortion after 24 weeks under section 21 of the Bill requires the agreement of two doctors, the two doctors could both be abortionists, at the same private clinic. Given the ease with which agreement could be obtained under this provision (as demonstrated by the willingness of some doctors to provide abortions for social reasons despite the current law), not to mention the financial conflict of interest that could arise, the Bill will in reality still allow for abortions through all nine months of pregnancy, with little, if any, impediment.
15. Fourth, the distinction between abortions before and after 24 weeks is completely arbitrary. Law reform should be based on sound reasons and evidence and so far none have been provided to support this distinction.
16. As noted above, this arbitrary distinction ignores the fact that women can suffer physical and psychological harm from abortion at any stage of pregnancy. Moreover, we must seriously consider how legislating for abortion on request up until 24 weeks gestation – particularly when there are children who are being helped to survive, and in fact do survive outside the womb, from as young as 21 weeks – could impact not only the women who undergo abortions, but also women who suffer miscarriages or stillbirths or

lose their children through accident, assault or other circumstances, and how society views these losses.

17. As highlighted recently in the media,<sup>3</sup> it is already difficult enough for such women to talk about and thus deal with the grief they experience after losing a child through miscarriage or stillbirth, due to society's lack of understanding and education around such issues. It is not unreasonable to consider that legislating for abortion on request up until 24 weeks gestation and thus legitimising the ending of a preborn child's life up until that point for any reason, might cause these women to feel even less able to talk about the loss they have experienced. Explicitly legitimising abortion through all nine months of pregnancy for reasons that are already used to obtain abortions on request compounds such concerns.
18. Ultimately, our approach to miscarriage, stillbirth, or loss of a child through accident, assault or other circumstances is not logically consistent with the approach of the Bill to abortion, and this logical disconnect is harmful to women.
19. Allowing abortion on request up until 24 weeks also increases the risk of abortions being requested based on disability or the sex of the child. International trends and evidence show that baby girls are by and large the targets of sex selective abortion. Such risk will be even greater if a push for all women to have access to an early prenatal blood test under Medicare is approved.<sup>4</sup>
20. Mr Pyne also stated that "[t]he Bill seeks to clarify when care can be imparted and to avoid prolonged approval and ethics processes (not conducted for the patients' wellbeing but to substantiate lawfulness)."<sup>5</sup> Besides from the rare case of the 12 year old girl raised by Mr Pyne, there is little evidence that abortions in Queensland are subject to "prolonged approval and ethics processes".

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<sup>3</sup> Vincent, J., "Video: Calls for more help for miscarriage sufferers" (*sic*), 25 September 2016: <http://www.9news.com.au/national/2016/09/25/20/42/calls-for-more-help-for-miscarriage-suffers/?ocid=9newsmb>; Meade, A., "Keneally 'incredibly disappointed' by ABC journalist's reply to stillbirth release", 30 September 2016: [https://www.theguardian.com/lifeandstyle/2016/sep/30/keneally-incredibly-disappointed-by-abc-journalists-reply-to-stillbirth-release?CMP=share\\_btn\\_fb](https://www.theguardian.com/lifeandstyle/2016/sep/30/keneally-incredibly-disappointed-by-abc-journalists-reply-to-stillbirth-release?CMP=share_btn_fb).

<sup>4</sup> Sinnerton, J., "Down Syndrome screening sparks abortion fears", 5 October 2016: <http://www.couriermail.com.au/lifestyle/parenting/down-syndrome-screening-sparks-abortion-fears/news-story/50fe1fccdf18c03c031a819adbdf8b1c>; Sinnerton, J., "Gender test stirs abortion concerns", 6 October 2016: <http://www.couriermail.com.au/news/queensland/gender-test-stirs-abortion-concerns/news-story/7300ccf130905cc922617b81b89dd397>.

<sup>5</sup> *Id.*, note 2.

21. Furthermore, we submit that the process followed in that case to substantiate lawfulness was indeed in pursuit of the patient's wellbeing. Requiring a court to intervene in the case of a minor seeking an abortion is to ensure that proper consent is being given to what is a significant procedure with profound consequences and that no undue pressure is being exerted on her. It also provides an opportunity to detect any abuse or unsafe behaviour. It is crucial that any law reform maintains the current safeguards for minors seeking an abortion, rather than removing them as Mr Pyne would do.
22. Finally, in his explanatory note, Mr Pyne states that in relation to performing an abortion on a woman more than 24 weeks pregnant, section 21 draws on Victorian legislation.<sup>6</sup> In passing the *Abortion Law Reform Act 2008*, the Victorian Parliament voted down amendments to: provide support and counselling for women seeking abortions; provide women with information on the health risks of abortion; require mandatory reporting of suspected child victims of sexual abuse when a suspected abuser takes them to an abortion clinic; protect the life of a child born alive after an abortion; and to ban partial birth abortion. The Victorian legislation is hardly a model on which to base law reform that is in the best interests of women and children.

#### **Comments on the Committee's report on its inquiry**

23. There are several areas of the report that give cause for concern in relation to any future reform of abortion laws in Queensland and in particular, in relation to the Bill.
24. First, the report places a large emphasis on women's sexual and reproductive health rights and Australia's duty to meet its legal obligations under international human rights law. Aside from implying that abortion is a right under international human rights law when it is not, and that Australia is failing to protect this right, the report fails to recognise that in order for women's "right to choose" to have real meaning, women must have the information and support required to make a real choice.
25. Second, the report discounts the psychological risks of abortion. Inferences that rates of mental health problems are the same for women with an unwanted pregnancy whether they have an abortion or give birth, that abortion rarely causes lasting psychological consequences in healthy women and that a prior history of mental health issues is the most reliable indicator of post-abortion mental health issues, are at odds with the significant evidence of the causal relationship between abortion and mental health

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<sup>6</sup> Pyne, R., Explanatory notes for the *Health (Abortion Law Reform) Amendment Bill 2016*, p 2.

outcomes.<sup>7</sup> The Queensland Government itself has reported that rates of suicide in women post-abortion are higher than those in women carrying their pregnancies to full term.<sup>8</sup>

26. Third, statements in the report that abortion is a safe procedure, that major complications are rare and that abortion does not carry with it greater risks than carrying the pregnancy to term, downplay the physical risks associated with abortion and are characteristic of current practice where women are not properly informed of the risks that abortion poses.
27. The attempts in the report to discount and downplay the psychological and physical risks of abortion conflict with the Committee's own position and that of stakeholders that "a decision to terminate a pregnancy is a serious one" and with stakeholders' views that "no woman wants to have an abortion" and that "no woman takes this decision lightly".
28. Fourth, the report highlights concerns about the processes in place for minors obtaining an abortion. As noted above, such safeguards are for the benefit of vulnerable girls and should be maintained for this purpose.
29. Fifth, the report emphasises concerns regarding women seeking unsafe abortions under the current law. There is no evidence to support this concern and, with an estimated 10,000-14,000 abortions taking place in Queensland each year, access to abortion is clearly not an issue.
30. Finally, the report indicates that the lack of doctors presently willing to perform abortions is due to fear of sanctions under the current law. No consideration is given to the possibility that this reluctance may be due to doctors' commitment to the wellbeing of their patients.

## **Conclusion**

31. For the reasons above and in addition to those in our first submission, we do not support the *Health (Abortion Law Reform) Amendment Bill 2016*.
32. We are disappointed that, despite recommending the first Bill not be passed, the Parliamentary Committee's report has dismissed and downplayed the impact of abortion on women's health, despite significant evidence to the contrary. The Parliamentary Committee has missed a valuable opportunity to

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<sup>7</sup> See research cited in our first submission in addition to: Coleman, P. K., Does abortion cause mental health problems?, 2012: <http://realchoices.org.au/wp-content/uploads/2012/07/Causal-evidence-abortion-and-mental-health.pdf>.

<sup>8</sup> Queensland Maternal and Perinatal Quality Council Report 2013, State of Queensland (Department of Health), September 2013, p.16.

contribute meaningfully to the improvement of women's health in Queensland.

33. We would welcome the opportunity to expand on the above points in an oral submission to the Committee.