Submission No 16

INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: St Thomas More Society

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Legislative Council Inquiry on *Reproductive Health Care Reform Bill 2019*

Submissions on Behalf of St Thomas More Society

1. Termination of pregnancy (abortion)[1] in New South Wales is currently legal, accessible (without referral) and safe.[2] While one can well understand the argument in favour of decriminalisation, one can only be surprised at the rush to pass this proposed legislation, the absence of effective assistance for women, the absence of regulation of abortion providers, the absence of measures against abuse (sex selective abortion, leaving babies born alive to die), abortion up to 40 weeks without proper safeguards – when babies with proper care can survive from 21 or 22 weeks, the proposed "setting up" of conscientious doctors who oppose abortion on demand. One can only be surprised at the failure to deal with this legislation in accordance with normal parliamentary processes.

2. By way of illustration of the proposition that termination of pregnancy (abortion) is currently legal, accessible (without referral) and safe, one can Google various abortion clinics.

Macquarie Street Clinic

3. The Macquarie Street Clinic is at Level 1, 195 Macquarie Street, Sydney. On its website it states that it has operated from its present location for over 50 years and has maintained a tradition of using advanced techniques and equipment to deliver the best in personalised medicine. As a part of this commitment, the Macquarie Street Clinic says that it is open six days per week and that we are always available to talk over the phone.

[1] This submission is made by Michael McAuley, President of the St Thomas More Society and Adjunct Professor at the University of Notre Dame Law School Sydney. The St Thomas More Society is a guild of Catholic lawyers – judges, barristers, solicitors, legal academics, law clerks and students – founded in 1945. It is part of a tradition of thinking about law and justice which has its origins in the work of Socrates, Plato and Aristotle, the writings of the Hebrew Bible (and the Septuagint), the stoics, Cicero, St Augustine, St Thomas Aquinas, John Locke, Immanuel Kant, as well as more contemporary writers such as Jacques Maritain, Martin Luther King, Karol Wojtyla, and the Australian legal philosopher, John Finnis. This tradition of thought emphasises objectivity, intelligibility, and universality in thinking about law and justice.

[2] An illustration of how abortion in Australia became legal is Gideon Haigh. *The Racket: How Abortion became legal in Australia*. Melbourne University Press, Carlton, 2008

4. Further, the Macquarie Street Clinic states:

On average every woman alive, during her fertile years, will have one induced abortion. In Australia alone, approximately 80,000 abortions are performed each year.

As a result, access to safe, legal abortion is essential to women's health and well-being and is an impressively safe procedure.

All terminations are performed in our state-of-the-art clinic by a specialist team.

You will be taken through a personal session with a specially trained counsellor, before talking directly with the doctor performing the procedure.

5. To the question – Is termination of pregnancy safe? - the Clinic responds:

Surgical termination is the most common procedure for termination of pregnancy world-wide.

It is an extremely safe and reliable operation for pregnancies from 3-20 weeks, and will be performed by a specialist medical team following both a counselling session and a meeting with the performing doctor to personalise the procedure to your individual medical needs.

6. To the question – **Do I need a referral?** - the Macquarie Street Clinic replies:

No, a friend, relative or partner may refer you for treatment or you may self-refer. A doctor's referral is always valued and helpful. However, if you are ***not comfortable confiding in your doctor concerning an unplanned pregnancy, it is not necessary to do so.***

7. To the question – How do I make an appointment? - the Macquarie Street Clinic replies:

A telephone call to our clinic is all that is necessary to arrange for an appointment….7 days per week. It is advisable to have a simple pregnancy test before setting up an appointment. However, if there is something preventing you from having a test prior to your appointment, every patient will have a confirming test with us.

8. To the question - What about fees? - the Macquarie Street Clinic replies:

Medicare cards will cover more than 50% of costs for pregnancy terminations of less than 12 weeks. The out-of-pocket, or non-claimable, portion may be paid by cash, Eftpos, Visa or Mastercard… If your fund agrees that you are covered for termination of pregnancy, you are issued a receipt which can be used to lodge a claim.

Clinic 66

9. Clinic 66, for instance, states:

We provide discrete, affordable excellence in abortion care. Accredited to National Standards and Safety and Quality for Day Surgery and with the Royal Australian College of GPs, you deserve nothing less.

Our clinic has been caring for women facing difficult pregnancy decisions for over 20 years. Amongst other services we offer termination of pregnancy (medical and surgical) at our Reproductive and Sexual Health Clinic in Chatswood in Sydney's North Shore.

Our expertly trained and caring staff will provide you with excellent care and non-judgmental support, working with your own agenda, in a timeframe which suits you.

10. In response to the question - Is it illegal for me to have an abortion? – the following reply is provided:

The legal position of abortion is different in different States in Australia. ***There are certain requirements which need to be met in order to legally undertake an abortion, i.e. the patient needs to be counselled regarding her options, care is provided by properly trained and registered doctors, the patient signs an informed consent. The counselling prior to the procedure provides legal documentation, that it would be too risky for the woman's physical or mental health and/or socio-economic reasons to continue with the pregnancy. It is very important that women are able to terminate a pregnancy, for their own physical, mental and emotional wellbeing, but abortion is not available on demand.***

At the Sydney Abortion Clinic, we offer surgical and medical termination of pregnancy, assisted by our specially trained doctors and expert nurses.

If your pregnancy is 9 weeks or less, you may be able to choose a medical or surgical termination, although after 8 weeks the medical termination has a higher risk of failure. If your pregnancy is more than 9 weeks gestation, you should have a surgical termination. If you are between 12 and 15 weeks gestation you will need to be in the clinic 3 hours before your procedure for premedication and if you are between 15 and 20 weeks you will need to attend the clinic on two separate consecutive days, a Thursday and a Friday.

11. In the response to the question – **Do I need a referral** to access abortion services at the Sydney Abortion Clinic? – the following reply is provided:

***No you don't**. Many of our clients refer themselves directly to us. No-one else needs to know that you are seeking an abortion, and we will not tell anyone you have been to see us, unless you request us to do so. However, many GPs do refer to us, as they trust our service and know that we have the experience and the skills to offer the best care to women seeking assistance with unplanned pregnancy. We do welcome referrals from other professionals, **but you can see us without a referral**. Just ring and make an appointment.*

Family Planning Association

12. The Family Planning Association's Fact Sheet states:

- *In Australia, **abortion is legal in all States and Territories** under certain circumstances and when it is done by a registered doctor.*
- *Each State and Territory has different laws.*
- *In NSW, "unlawful abortion" has been a criminal offence in NSW since 1900 under the Crimes Act.*
- ***In NSW the law allows you to have a "lawful abortion" if the doctor believes that your physical or mental health is in serious danger by continuing the pregnancy. The doctor takes your social/family situation, finances and health into consideration when making this decision.***

13. As to availability, the Family Planning Association says:

There are two types of abortion available in Australia: medical and surgical.

- *A medical abortion is performed up to 9 weeks from the first day of a woman's last period.*
- *A surgical abortion is usually carried out between 7 - 12 weeks from the first day of a woman's last period.*
- *Abortions in NSW must be carried out by a registered doctor.*
- *Most abortions in NSW are performed under 12 weeks of pregnancy.*
- *General practitioners can provide medical abortion after a completing training program.*

- *Women in NSW do not need a referral from a doctor to go to a clinic – you can call the clinic directly for an appointment.*
- *There is no law in NSW about how late an abortion can be done.*
- *In NSW services for abortion are available up to 20 weeks of pregnancy but services for later abortions are limited.*
- *Later abortions are sometimes performed for serious medical reasons.*

Marie Stopes Clinic

14. The Marie Stopes Clinic advertises:

Surgical abortion is a safe and straightforward day surgery procedure most often performed in the first trimester up to 14 weeks' gestation. Second trimester abortion up to 20 weeks is available in most States and up to 24 weeks in limited States, but requires a more specialised procedure.

Medical abortion is a safe and effective method of terminating an early pregnancy, up to 9 weeks gestation, using medication rather than surgery. Medical abortion is also known as nonsurgical abortion and is available in-clinic across Australia.

*A medical abortion **by phone**, also known as tele-abortion, provides a more private way to terminate an early pregnancy up to 8 weeks gestation with medication, without having to visit a clinic. Medical abortion by phone is not permitted in all States.*

15. The Marie Stopes Clinic states that "the cost of a termination as surgical in clinic from $440, medical and clinic from $440 and medical by phone from $290."

16. What the above demonstrates is that abortion in New South Wales is safe, accessible, not requiring a referral, readily available, regarded by the clinics as legal.

Prosecutions

17. In fact, there have been no significant prosecutions for breach of the relevant provisions of the *Crimes Act 1900* for many years - other than against doctors who, even by the standards of abortion providers, have been abusing their position. Given the widespread controversy within the community generally about termination, a prosecution under the *Crimes Act* is unlikely to succeed, it being unlikely that any jury would agree beyond reasonable doubt. Since the decision of Levine J in the District Court in *Wald's Case* (1971) 3 DCR NSW 25, the Director of Public Prosecutions has not sought to enforce the provisions of the *Crimes Act 1900* other than against a person who, even by the standards of abortion providers, was doing the wrong thing.

18. The history of the law in relation to abortions provides some background to the current situation.

Greece and Rome

19. In Greek and Roman times abortion, and especially infanticide, were socially and legally accepted.

Christianity

20. Primitive Christianity rejected both from the beginning. When Christianity became the religion of the Roman Empire, the condemnation of abortion and infanticide was enforced by law. In mediaeval England, abortion was a crime punished by the ecclesiastical courts. After the Reformation, and the decline of the ecclesiastical courts, common law courts punished abortion.

Lord Ellenborough's Act

21. In 1803, the protection provided by the common law for the unborn child was expressed in statute, Lord Ellenborough's Act, being passed by Parliament. Lord Ellenborough's Act was later amended to strengthen the protection provided to the unborn child.

Offences Against the Person Act 1861 (UK)

22. In 1861, the British Parliament passed the *Offences Against the Person Act 1861* (UK) which is the basis of the legislation in New South Wales.

23. Traditionally, the law has sought to protect the unborn child from abortion.[3]

Crimes Act 1900

24. The law presently applicable in New South Wales is the *Crimes Act 1900*, the relevant provisions of which are derived from the *Offences Against the Person Act 1861* (UK).

25. One cannot understand the law of abortion in New South Wales without considering the words of the legislation in s 83 *Crimes Act 1900*:

> *83 Administering drugs etc to woman with intent*

[3] John Keown has commented that "a central (though not exclusive) concern of the [medical] profession in both the restriction of the law in the nineteenth century and its relaxation in 1967 has been self-interest. The medical profession has been concerned with both freedom from control and the prevention of encroachment on its sphere of influence by the medically unqualified: *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803-1982*. Cambridge University Press, Cambridge, 1988, p 159.

Whosoever:

unlawfully administers to, or causes to be taken by, any woman, whether with child or not, any drug or noxious thing, or

unlawfully uses any instrument or other means, with intent in any such case to procure her miscarriage, shall be liable to imprisonment…

26. See also s 84 which provides:

84 Procuring drugs etc

Whosoever unlawfully supplies or procures any drug or noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used with intent to procure the miscarriage of any woman, whether with child or not, shall be liable to imprisonment…

Unlawfully

27. What does "unlawfully" mean? Is it a mere flourish intended to express Parliament's distaste for this crime against human life? As much as Parliament is said to pass laws for the peace, order and good government – such are words which the court has accorded no precise meaning. The courts have not treated “unlawfully” as a mere flourish, but have given that word substantial meaning.

Necessity

28. To understand how the courts have interpreted “unlawfully”, one needs to know something of the defence of necessity. St Thomas Aquinas thought necessity might justify an apparent breach of the law - in opening the gates of a besieged city after sunset to allow defenders who were outside its walls to retreat to safety, or in refusing to return a sword, the property of a madman. We can all think of other circumstances - exceeding the speed limit to drive a snake victim to hospital, a pregnant woman about to give birth and parking illegally outside a maternity hospital, breaking down the door of a burning house to rescue a child within. Yet English and Australian law has been extremely reluctant to accord the defence of necessity much scope. Indeed, some writers have suggested that the defence of necessity does not exist. This reluctance to accord the defence of necessity much scope is prompted by concern that necessity, as a defence to a criminal act, could easily be abused.

29. The reluctance of the law in relation to necessity is illustrated by the case of *R v Dudley and Stephens*.[4] Dudley and Stephens were two seamen who were shipwrecked, castaway on a boat 1600 miles from land, without food, without water. They killed and ate a cabin boy who was castaway with them, the boy being at the point of death. Surprisingly, shortly after, they were rescued by a passing ship. Dudley and Stephens were found guilty of murder, though Queen Victoria commuted the death penalty to 6 months imprisonment. If ever there was a case when necessity justified the criminal act, this was it.

30. Chief Justice Lord Coleridge said:

Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principal leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting was chosen. Was it more necessary to kill him than one of the grown men? The answer must be No.

31. Since *R v Dudley and Stephens*, the courts have given necessity as a defence no greater scope except in respect of one type of criminal offence – abortion.

14-Year-Old Rape Victim

32. The exceptional circumstances in which the courts have regarded abortion as lawful are illustrated by the case of *R v Bourne*.[5] In *Bourne*'s case, a 14-year-old girl had been repeatedly and violently raped. She became pregnant. The medical evidence was that the continuation of the pregnancy was likely to cause her to become a physical and mental wreck. Dr Bourne performed an abortion and was charged under the *Offences Against the Person Act* (1861), the relevant section being in similar terms to s 83 of the *Crimes Act 1900* (NSW). In instructing the jury, Macnaughton J stated abortion to be: "a very grave crime." But Macnaughton J directed the jury that "the burden rests on the Crown to satisfy you beyond reasonable doubt that the defendant did not procure the miscarriage of the girl in good faith for the purpose only of preserving her life." But what is it to preserve the life of a mother? According to Macnaughton J if the doctor is of the opinion that the probable consequence of continuous of the pregnancy will be to make a woman a physical or mental wreck, the jury ought to acquit. Macnaughton J opened the door to abortion very gingerly,

[4] (1884) 14 QBD 273; (1984-1985) All ER Rep 61

[5] [1938] 3 All ER 615

so gingerly that in 1958 Prof Glanville Williams, an advocate of legal abortion, stated that the law regarded any interference with pregnancy, however early it might take place, as criminal unless for therapeutic reasons.

Glanville Williams

33. According to Professor Glanville Williams, the foetus at law is a human life to be protected by the criminal law from the moment when the ovum is fertilised.

34. However, all that changed in Australia with the two decisions, ***Davidson's Case***[6] in the Supreme Court of Australia and ***Wald's*** case[7] in the District Court of New South Wales.

Davidson's case

35. In *Davidson's* Case, Menhennitt J in the Supreme Court of Victoria held that for an abortion to be performed unlawfully, the Crown must establish either the accused did not honestly believe on reasonable grounds that:

    1 The act done by him was necessary to protect the woman from a serious danger to her life or physical or mental health (not being the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail or;

    2 The act done by him was done in circumstances proportionate to the need to preserve the woman from a serious danger as above.

36. Menhennitt J opened wide the door which Macnaughton J had opened so gingerly thirty years before, broadening the ground for an abortion to be lawful to include not only the life of the mother, but also her physical or mental health. Given the plasticity of medical opinion about most matters, there would be little difficulty in obtaining an opinion that an abortion was necessary. The Menhennitt decision can be said, at the time, to have been the most decisive Australian case on abortion.

Wald's Case

37. In *Wald's Case* Levine J, in the District Court of New South Wales, rejected a submission that it is lawful for a doctor to perform an abortion on a pregnant woman "without cause." Levine J followed Menhennitt J in *Davidson* but also accepted economic or social reasons during the pregnancy as providing grounds for a danger

[6] [1969] VR 667

[7] [1971] 3DCR (NSW) 25

to the mother's health. If Macnaughton J had opened the door gingerly, Menhennitt J had opened the door wide, and Levine J held it fast in the open position.

38. Levine J's ruling has given rise, *de facto*, to abortion on demand. That is why abortion clinics, at the present time, and, indeed, for the last 50 years or so can confidently advertised abortion as safe, accessible (without a referral) and lawful.

Abortion on Demand

39. That this is the case was accepted by Kirby J (as he then was) in the NSW Court of Appeal in *CES v Superclinics (Australia) Pty Ltd*.[8] There, Kirby J referred to medical evidence from a specialist in "family planning" that, in the past 23 years, he could not recall an occasion when an abortion did not take place following a referral. Kirby referred to the "reality" of the prohibition of abortion in the *Crimes Act 1900* following *Wald*.

40. The significance given to *Wald's Case* was such that abortion in New South Wales became safe, accessible and legal, and did not require a referral as the majority of women seeking abortion simply went direct to the clinic.

Kerr's Case

41. The reluctance of the courts to get involved in controversy as to abortion is illustrated by *Kerr's Case*[9] where the then Chief Justice of the High Court of Australia, Justice Gibbs, refused to consider the principles according to which abortion is lawful, refusing to grant an injunction at the request of a father to prevent an abortion in circumstances where the mother was "perfectly healthy" and had no complaint of difficulty with her present pregnancy or an earlier pregnancy, and where the only reason she gave for the proposed abortion was that it would be "best for everybody."

CES v Superclinics

42. In *CES v Superclinics*[10] the plaintiff sought damages for the lost opportunity to have an abortion. Newman J accepted the statement of the law in *Davidson* and *Wald*. Newman J found that there was no serious danger to the mother's physical or mental health, and therefore held the abortion would have been unlawful. Therefore, he held that the parents could not recover for the lost opportunity to have an abortion:

[8] [1995] NSWCA 103

[9] (1983) 57 ALJR 285

[10] Supreme Court of NSW, Newman J, unreported 18 April 1994

The common law would not allow damages if a bank robber proved unsuccessful because of the negligent act of a person unconnected with the attempted robbery prevented it being successfully undertaken…The common law does not categorise the loss of an opportunity to perform an illegal act for which damages may be awarded.

Court of Appeal

43. The parents successfully appealed to the NSW Court of Appeal where Kirby ACJ and Priestley J held that the parents might successfully recover damages for the lost opportunity to have an abortion, Kirby ACJ and Priestley J expressly rejecting Newman J's view that an abortion would have been unlawful.[11] Justice Meagher dissented, stating that the abortion would have been unlawful, and that human life had always been held to be sacred.

Priestley J

44. Priestley J, who was in the majority, considered that the law, in abstract, could not say that an abortion would have been unlawful, having regard to the onus on the prosecution to prove lack of honest belief. Assuming the mother had accepted a doctor's advice that the abortion could be performed legally, the abortion would have been lawful, at least as far as the mother was concerned. So, the lost opportunity to undergo an abortion could be the subject of an award of damages. In the absence of any submission to the contrary, Priestley J accepted *Davidson* and *Wald* as accurate statements of the law.

Kirby ACJ

45. The third judge, Acting Chief Justice Kirby, subsequently a judge of the High Court, delivered the lengthiest reasons, which reasons in my opinion, were subsequently accepted by lawyers as the most accurate statement of the law relating to abortion. Kirby ACJ extended the Levine test significantly, stating that economic or social grounds constituting a danger to the health of the mother might arise at any time, not merely during the course of the pregnancy.

High Court

46. *CES v Superclinics* found its way on appeal to the High Court of Australia. But before the argument was concluded, and before a decision could be handed down, the case was settled.

[11] (1995) 38 NSWLR 47

Kirby View

47. If I am correct that the Kirby view of the lawfulness of abortion is generally accepted by lawyers, it is important to understand what that view is. In my view, the Kirby view can be stated as follows:

Abortion is lawful provided:

there is an honest belief on reasonable grounds

(1) that the abortion is necessary

to preserve the woman from serious danger

to her life

or physical health

or mental health

(taking into account economic, social and other matters)

such danger occurring at any time.

(2) the danger of the operation is not out of proportion to the dangers to be avoided.

48. Thus, it seems to me that the combined effect of the decision of Menhennitt J in *Davidson's Case* (1969), Levine DCJ in *Wald's Case* (1971), and Kirby ACJ in *CES v Superclinics*, was that abortion in New South Wales became safe, accessible (without a referral) and lawful. Abortion became a routine procedure.

Status of Unborn Child in Australian Law

49. Theoretically, the unborn child in Australian law has no status, not being a legal person, and therefore having no rights as such. The fiction that the unborn child is not a legal person dates from medieval times, and is influenced by a primitive biology. Opinion influenced possibly by Aristotle, the unborn child was popularly thought not to develop human characteristics for some time, possibly at quickening, when the mother first felt the movements of the child within her. Another popular view was that the unborn child was simply part of the mother. In 1788, the first English textbook on medical jurisprudence, written by William Farr, MD, demolished the old wives' tales stating: *"Life begins…immediately after conception."* However, by 1788, the legal fiction that the unborn child was not a legal person was part of the English law. The courts have recognised inconvenient consequences can result from the fiction that the unborn child is not a legal person, and have sought to avoid those consequences.

Thus, an unborn child, once born, can claim under an estate, can sue in respect of a parent, can claim worker's compensation in respect of the death of his or her father, can sue in negligence for injuries suffered before birth.[12]

50. Where a person injures an unborn child so that the unborn child dies of injuries suffered, the person who injured the unborn child is guilty of a criminal offence. Reconciling these decisions with the theory that the unborn child is not a legal person, and therefore has no legal rights is not easy. The law, in failing to recognise the unborn child as a legal person, has been influenced by a primitive biology failing to perceive that whoever is conceived by human parents is human. Nevertheless, the courts have often enhanced the status of the unborn child by refusing to give effect to the fiction that the unborn child is not a legal person.

Human Dignity

51. The complexity of the law in Australia as to the unborn child is illustrated by what Brennan J, as he then was, said in the High Court of Australia in *Marion's Case* (1991-1992) 175 CLR 219 at [266]:

…each person has a unique dignity which the law respects and which it will protect. Human dignity is a value common to our municipal law and to international instruments relating to human rights.

The law will protect the dignity of the hale and hearty and the dignity of the weak and lame; of the frail baby and of the frail aged; of the intellectually able and of the intellectually disabled…Our law admits of no discrimination against the weak and disadvantaged in their human dignity. Intellectual disability justifies no impairment of human dignity, no invasion of the right to personal integrity.

Universal Declaration of Human Rights

52. How is the proposed *Reproductive Health Care Reform Bill 2019* to be reconciled with the *Universal Declaration of Human Rights*? Such Declaration provides:

"Everyone has the right to life, liberty and security of person."

And:

"Everyone has the right to recognition everywhere as a person before the law."

[12] *Schofield v Orrell Colliery Company Ltd* [1901] 1 KB 178; *Villar v Gilbey* [1907] AC 139; *Williams v Ocean Coal* (1907) 2 KB 242; *Elliot v Joicey* [1935] AC 209; *X & Y v Pal* (1991) 23 NSWLR 26; *Lynch v Lynch* (1991) 25 NSWLR 411

And:

"All our equal before the law and are entitled without discrimination to equal protection of law."

International Covenant on Civil and Political Rights

53. How is the proposed *Reproductive Health Care Reform Bill 2019* to be reconciled with the *International Covenant on Civil and Political Rights*? This Covenant provides:

"Every human being has the inherent right to life. This right should be protected by law. No-one shall be arbitrarily deprived of his life."

54. Abortion today in New South Wales is safe, accessible (without a referral) and lawful as in any other state of Australia.

Reproductive Health Care Reform Bill 2019

55. So why, therefore, the *Reproductive Health Care Reform Bill 2019*? The circumstances in which the *Reproductive Health Care Reform Bill 2019* was introduced are set out opaquely in the second paragraph of the Second Reading Speech in the Legislative Assembly.

56. It is a reasonable inference that the *Reproductive Health Care Reform Bill 2019* has been introduced to respond to the interests of the abortion providers, in particular abortion clinics. In this regard what is notable about the *Reproductive Health Care Reform Bill 2019*, as originally introduced, and even as finally passed in the Legislative Assembly, is that it provides virtually no limits on the activities of the abortion providers, and provides little, by way of regulation. There is no regulatory body proposed. Nor are there specific measures proposed to help women who wish to have their baby, but whose circumstances, whether by reason of their physical or mental health, taking into account economic, social and other matters, is such that they face real difficulties in making the decision to have their baby. The mentality of the Bill is the "quick fix" – abortion is the solution – when the real solution may be helping a woman and her family deal with real challenges while preserving the life of the unborn child.

57. The *Reproductive Health Care Reform Bill 2019* contains an attempt to eliminate from healthcare any practitioners who may have a conscientious objection to abortion. The provisions of the Bill invite ideologically minded activists to "set up" doctors who are concerned to preserve the life of the unborn child. The refusal to accord respect to the conscientious objections of doctors who wish to care for the unborn child has

significant implications, not only for the doctor personally, but for the very many persons in the community who wish to receive medical care from doctors and institutions committed to the care of unborn human life. The conscientious objection provisions will cause doctors to move out of certain areas of health care (or not to go into those areas in the first place), and may cause institutions which provide valuable healthcare to the community to either close down or restrict their activities.

Key Provisions

58. The key provisions of the proposed legislation are as follows:

> ***5 Termination by medical practitioners at not more than 22 weeks***
>
> *(1) A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.*
>
> *(2) The medical practitioner may perform the termination only if the person has given **informed consent** to the termination.*
>
> *(3) However, subsection (2) does not apply if, **in an emergency**, it is not practicable to obtain the person's informed consent.*

59. Informed consent is defined to mean consent given (a) freely and voluntarily, and (b) in accordance with any guidelines applicable to the medical practitioner in relation to performance of the abortion. Nowhere does the legislation indicate what information is to be provided to the woman undergoing the abortion. There are no criteria indicated as to the grounds for the abortion, for instance, the physical or mental health of the mother. Abortion appears to be simply on demand. There seems to have been no consideration to the circumstances, if they exist, as to when an emergency would cause it not to be practicable to obtain a woman's informed consent. This provision makes no distinction between abortions performed in the first trimester and abortions performed in the second trimester.

> ***6 Termination by medical practitioner after 22 weeks***
>
> *(1) A specialist medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if-*
>
> *(a) the specialist **medical practitioner considers** that, in all the circumstances, the termination should be performed, and*

(b) *the specialist **medical practitioner** has **consulted** with another specialist medical practitioner who also **considers** that, in all the circumstances, the termination should be performed, and*

(c) *the medical practitioner has obtained the person's **informed consent** to the termination, and*

(d) *the termination is performed at-*

(i) *a hospital controlled by a statutory health organisation, within the meaning of the Health Services Act 1997, or*

(ii) *an approved health facility.*

(2) To remove any doubt, subsection (1)(d) does not require that any ancillary services necessary to support the performance of a termination be carried out only at the hospital or approved health facility at which the termination is, or is to be, performed.

*(3) In considering whether a termination should be performed on a person under this section, a **specialist medical practitioner** must consider-*

(a) *all relevant medical circumstances, and*

(b) *the person's current and future physical, psychological and social circumstances, and*

(c) *the professional standards and guidelines that apply to the specialist medical practitioner in relation to the performance of the termination.*

(4) In an emergency, a medical practitioner, whether or not a specialist medical practitioner, may perform a termination on a person who is more than 22 weeks pregnant, without acting under subsections (1) and (3), if the medical practitioner considers it necessary to perform the termination to— (a) save the person's life, or (b) save another foetus.

(5) …In this section

60. It is unclear precisely why a distinction is made between abortions not more than 22 weeks, and abortions from 22 weeks. I understand that a baby born at 22 weeks, if the baby receives appropriate care, is likely to survive. A baby born at 22 weeks will be small but fully formed. Subsection 3 provides some indication of the matters which the specialist medical practitioner should consider, but in such general terms as to provide little guidance. It is unclear what emergency would cause a medical

practitioner to be required to act so promptly so as to not obtain consent. This provision contains no criteria which the specialist medical practitioner must consider before arriving at the opinion that, in all the circumstances, the abortion should be performed. The requirement of consultation with another specialist medical practitioner does not require that the second specialist medical practitioner be independent nor that the second specialist medical practitioner have no financial interest in the practice conducted by the first medical practitioner. This provision contains nothing which will restrict abortions. This provision places control in the hands of the medical practitioner whose financial interest is in undertaking the proposed abortion. The requirement of informed consent contains no clue as to what information is to be provided to the woman undergoing the abortion.

7 Requirement for information about counselling

(1) Before performing a termination on a person under section 5 or 6, a medical practitioner must -

*(a) **assess** whether or not it would be beneficial to discuss with the person accessing counselling about the proposed termination, and*

*(b) if, in the **medical practitioner**'s assessment, it would be beneficial and the person is interested in accessing counselling, provide all necessary information to the person about access to counselling, including publicly-funded counselling.*

*(2) A medical practitioner may, in an **emergency**, perform a termination on a person without complying with subsection (1).*

61. The discretion seems to be on the part of the medical practitioner. No objective criteria is provided to enable a determination as to whether counselling is to be provided. There are no administrative provisions as to counselling and who will provide it. There is, as I understand, significant evidence of mental health issues associated with abortion. This provision fails to address such mental health issues. The decision to terminate the life of an unborn child, at whatever time, is, for most women, a very serious matter, not lightly entered into. Often women who are considering an abortion are in difficult circumstances, whether by reason of their health or by reason of relationships in which they find themselves or by reason of economic and other circumstances. This provision does not address the real needs

of women considering an abortion. It is unclear what emergency would require an abortion without first assessment as to whether or not it would be beneficial to discuss with the woman accessing counselling about the proposed abortion.

9 Registered health practitioner with conscientious objection

(1) This section applies if-

*(a) a person (the **first person**) asks a registered health practitioner to -*

*(i) perform a termination on **another person**, or*

*(ii) assist in the performance of a termination on **another person**, or*

*(iii) make a decision under section 6 whether a termination on **another person** should be performed, or*

*(iv) advise the **first person** about the performance of a termination on **another person**, and*

*(b) the practitioner has a **conscientious objection** to the performance of the termination.*

*(2) The registered health practitioner **must**, as soon as practicable after the **first person** makes the request, disclose the practitioner's conscientious objection to the **first person**.*

*(3) If the request by a person is for the registered health practitioner (the first practitioner) to perform a termination on the person, or to advise the person about the performance of a termination on the person, the practitioner **must**, without delay-*

*(a) **give information** to the person on how to locate or contact a medical practitioner who, in the first practitioner's reasonable belief, does not have a conscientious objection to the performance of the termination, or*

*(b) **transfer the person's care** to-*

(i) another registered health practitioner who, in the first practitioner's reasonable belief, can provide the requested service and does not have a conscientious objection to the performance of the termination, or

(ii) a health service provider at which, in the first practitioner's reasonable belief, the requested service can be provided by another

registered health practitioner who does not have a conscientious objection to the performance of the termination.

(4) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

62. Section 9(1) seems to make no sense, and illustrates the imprudence of enacting this Bill without adopting the normal parliamentary procedures. This provision may be misused by ideologically minded activists to bring a complaint against a medical practitioner who has a conscientious objection to abortion. The provision makes no sense in circumstances where there is no need for referral to an abortion clinic, with most abortions before 22 weeks apparently being performed not by specialists but by doctors whose principle activity is abortion. This provision is directed to driving out of the medical profession or out of certain areas of the medical profession doctors who are concerned to protect and preserve unborn human life. It may also have the effect of causing institutions (in particular religious institutions) to either close down or restrict their services. The impact of the so-called "conscientious objection" provision will be to restrict the availability of healthcare, both from doctors and from institutions, to the hundreds of thousands, possibly millions, of persons in the community who wish to take advantage of healthcare from doctors and institutions committed to human life.

Cooperation in Evil

63. Section 9(3) instead of making appropriate provision for conscientious objection requires the registered medical practitioner to **cooperate** with the proposed termination by providing information, and by transferring the patient to the care of the medical practitioner or health service who will perform the abortion.[13] This is quite unnecessary, given the ready availability of abortions at clinics without a referral. The effect of the provision is to stigmatise the medical practitioner who is unwilling to perform an abortion or cooperate with a proposed abortion. The long-term effect will be to cause persons who are unwilling to cooperate with an abortion or to perform an abortion to avoid wide areas of medical practice. In this regard, it is notable that very large numbers of persons within the community are opposed to abortion and have conscientious objection to abortion.

[13] For a technical explanation as to formal and material cooperation in others' wrongdoing, see German Grisez. *The Way of the Lord Jesus*. *Volume 3. Difficult Moral Questions.* Franciscan Press, Illinois, 1997, pp 871 – 897

64. To some extent this is based on religious grounds. The concept of human dignity has, for Christians, a scriptural basis.[14]

Catechism of the Catholic Church

65. The *Catechism of the Catholic Church*[15] says:

> *2272 Formal cooperation in an abortion constitutes a grave offense. The Church attaches a canonical penalty of excommunication to this crime against human life. "A person who procures a completed abortion incurs excommunication latae sententiae, "by the very commission of the offense," and subject to the conditions provided by Canon Law. The Church does not thereby intend to restrict the scope of mercy. Rather, she makes clear the gravity of the crime committed, the irreparable harm done to the innocent who is put to death, as well as to the parents and the whole of society.*
>
> *2273 The inalienable right to life of every innocent human individual is a constitutive element of a civil society and its legislation:*
>
> *"The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being's right to life and physical integrity from the moment of conception until death."*

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[14] Genesis 1:26-27 (*Let us make man in our image, after our likeness…, so God created man in his own image, in the image of God he created him; male and female he created them.*) 2:18 (*Then the Lord God said, 'It is not good that the man should be alone*; *I will make him a helper fit for him.'*); 4:1 (*Now Adam knew Eve his wife, and she conceived and bore Kain, saying, 'I have gotten a man with the help of the Lord.'*); Psalm 8:4-8; Psalm 22:10 (*Upon you I was cast from my birth and since my mother bore me, you have been my God*); Psalm 139:13-16 (*For you created my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made; your works are wonderful, I know that full well. My frame was not hidden from you when I was made in the secret place, when I was woven together in the depths of the earth. Your eyes saw my unformed body; all the days ordained for me were written in your book before one of them came to be*); Jeremiah 1:5 (*Before I formed you in the womb, I knew you, And before you were born I consecrated you.)* See also John Paul II. *Veritatis Splendor: Regarding Certain Fundamental Questions of the Church's Moral Teaching* (1993); *Evangelium Vitae: The Gospel of Life* (1995)

[15] Second Revised Edition (1992)

"The moment a positive law deprives a category of human beings of the protection which civil legislation ought to accord them, the state is denying the equality of all before the law. When the state does not place its power at the service of the rights of each citizen, and in particular of the more vulnerable, the very foundations of a state based on law are undermined….As a consequence of the respect and protection which must be ensured for the unborn child from the moment of conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights.

2274 Since it must be treated from conception as a person, the embryo must be defended in its integrity, cared for, and healed, as far as possible, like any other human being.

2319 Every human life, from the moment of conception until death, is sacred because the human person has been willed for its own sake in the image and likeness of the living and holy God.

2320 The murder of a human being is gravely contrary to the dignity of the person and the holiness of the Creator.

2322 From its conception, the child has the right to life. Direct abortion, that is, abortion willed as an end or as a means, is a "criminal" practice, gravely contrary to the criminal practice…gravely contrary to the moral law. The Church imposes the canonical penalty of excommunication for this crime against human life.

232 Because it should be treated as a person from conception, the embryo must be defended in its integrity, cared for, and healed like every other human being.

236 Scandal is a grave offense when by deed or omission it deliberately leads others to sin gravely.

Compendium of the Social Doctrine of the Church

66. Also relevant is the *Compendium of the Social Doctrine of the Church*:

155 The teachings of Pope John XXIII, the Second Vatican Council, and Pope Paul VI have given abundant indication of the concept of human rights as articulated by the Magisterium. Pope John Paul II has drawn up a list of them in the Encyclical Centesimus Annus: "the right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child's personality; the right to develop one's

intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth's material resources, and to derive from that work the means to support oneself and one's dependents; and the right freely to establish a family, to have and to rear children through the responsible exercise of one's sexuality. In a certain sense, the source and synthesis of these rights is religious freedom, understood as the right to live in the truth of one's faith and in conformity with one's transcendent dignity as a person"

The first right presented in this list is the right to life, from conception to its natural end, which is the condition for the exercise of all other rights and, in particular, implies the illicitness of every form of procured abortion…

568 *The lay faithful are called to identify steps that can be taken in concrete political situations in order to put into practice the principles and values proper to life in society. This calls for a method of discernment, at both the personal and community levels, structured around certain key elements: knowledge of the situations, analyzed with the help of the social sciences and other appropriate tools; systematic reflection on these realities in the light of the unchanging message of the Gospel and the Church's social teaching; identification of choices aimed at assuring that the situation will evolve positively. When reality is the subject of careful attention and proper interpretation, concrete and effective choices can be made. However, an absolute value must never be attributed to these choices because no problem can be solved once and for all. "Christian faith has never presumed to impose a rigid framework on social and political questions, conscious that the historical dimension requires men and women to live in imperfect situations, which are also susceptible to rapid change".*

569 *A characteristic context for the exercise of discernment can be found in the functioning of the democratic system, understood by many today in agnostic and relativistic terms that lead to the belief that truth is something determined by the majority and conditioned by political considerations. In such circumstances, discernment is particularly demanding when it is exercised with regard to the objectivity and accuracy of information, scientific research and economic decisions that affect the life of the poorest people. It is likewise demanding when dealing with realities that involve fundamental and unavoidable moral duties, such as the sacredness of life, the indissolubility of*

marriage, the promotion of the family founded on marriage between a man and a woman.

In such situations certain fundamental criteria are useful: the distinction and, simultaneously, the connection between the legal order and the moral order; fidelity to one's own identity and, at the same time, the willingness to engage in dialogue with all people; the need, in the social judgment and activity of Christians, to refer to the observance of three inseparable values — natural values, with respect for the legitimate autonomy of temporal realities; moral values, promoting an awareness of the intrinsic ethical dimension of every social and political issue; supernatural values, in order to fulfil one's duty in the spirit of the Gospel of Jesus Christ.

570 *When - concerning areas or realities that involve fundamental ethical duties - legislative or political choices contrary to Christian principles and values are proposed or made, the Magisterium teaches that "a well-formed Christian conscience does not permit one to vote for a political programme or an individual law which contradicts the fundamental contents of faith and morals." In cases where it is not possible to avoid the implementation of such political programmes or to block or abrogate such laws, the Magisterium teaches that a parliamentary representative, whose personal absolute opposition to these programmes or laws is clear and known to all, may legitimately support proposals aimed at limiting the damage caused by such programmes or laws and at diminishing their negative effects on the level of culture and public morality. In this regard, a typical example of such a case would be a law permitting abortion. The representative's vote, in any case, cannot be interpreted as support of an unjust law but only as a contribution to reducing the negative consequences of a legislative provision, the responsibility for which lies entirely with those who have brought it into being.*

Faced with the many situations involving fundamental and indispensable moral duties, it must be remembered that Christian witness is to be considered a fundamental obligation that can even lead to the sacrificing of one's life, to martyrdom in the name of love and human dignity. The history of the past twenty centuries, as well as that of the last century, is filled with martyrs for Christian truth, witnesses to the faith, hope and love founded on the Gospel. Martyrdom is the witness of one who has been personally conformed to Jesus crucified, expressed in the supreme form of shedding one's blood according to

the teaching of the Gospel: if "a grain of wheat falls into the earth and dies ... it bears much fruit" (Jn 12:24).

571 The political commitment of Catholics is often placed in the context of the "autonomy" of the State, that is, the distinction between the political and religious spheres. Catholic moral doctrine, however, clearly rejects the prospects of an autonomy that is understood as independence from the moral law: "Such 'autonomy' refers first of all to the attitude of the person who respects the truths that derive from natural knowledge regarding man's life in society, even if such truths may also be taught by a specific religion, because truth is one." A sincere quest for the truth, using legitimate means to promote and defend the moral truths concerning social life — justice, freedom, respect for life and for other human rights — is a right and duty of all members of a social and political community.

67. Respect for unborn human life does not depend on theology. Contemporary embryology, together with philosophical reasoning, provides a very adequate basis for respect for human life. Robert P George, Christopher Tollefsen argue that the embryo is, from the start, **distinct from any cell of the mother or of the father**. This is clear because it is **growing in its own distinct direction**. Its growth is internally directed to its own survival and maturation. The embryo has a **genetic makeup characteristic of human beings**. Most important, the embryo is a **complete or whole organism, though immature**. A human embryo is not something different in kind from a human being, like a rock, or a potato, or a rhinoceros. A human embryo is a whole living member of the species. The **embryonic, foetal, child, and adolescent stages are just that – stages in the development of a permanent and enduring entity** – a human being who develops into existence as a single cell organism (a zygote) and develops if all goes well, into adulthood many years later.[16] Different religious perspectives have different but highly nuanced, concerns with unborn human life. It is important in a pluralist society to take into account not only the perspective of both Jewish and Muslim members of the community. In a pluralist society, it is important to take into account not only Christian perspectives, but the perspective of both Jewish and Muslim members of the community.

[16] Robert P George and Christopher Tollefesen. *Embryo: A Defence of Human Life*. Doubleday, New York, 2008, pp 50-51

68. The effect of s 9 on the healthcare system is to render the healthcare system less open to the very large number of persons in the community who have different ethical views. Many of those persons may wish to be cared for by medical practitioners or health institutions who do not perform abortions. Section 9 will make it more difficult for them to find medical practitioners and health institutions who do not perform abortions. Section 9 of the Bill is inconsistent with contemporary pluralism, being an attempt to impose an ideological straitjacket on medical practitioners, healthcare institutions and also on the patients who are cared for by those medical practitioners and healthcare institutions.

10 Professionals conduct or performance

(1) In considering a matter under an Act about a registered health practitioner's professional conduct or performance, regard may be had to whether the practitioner-

(a) performs a termination on a person other than as authorised under section 5 or 6, or

(b) assists in the termination on a person other than as authorised under section 8, or

(c) **contravenes section 9**.

(2) The matters to which subsection (1) applies include matters arising in—

(a) a notification under the Health Practitioner Regulation National Law (NSW), or

(b) a complaint under the *Health Care Complaints Act 1993*.

(3) This Act does not limit any duty a registered health practitioner has to comply with professional standards or guidelines that apply to health practitioners.

69. Section 10 of the *Reproductive Health Care Form Bill* is to be read in conjunction with s 9. Section 10 is intended to impose the most drastic penalty possible on a medical practitioner who is concerned for unborn human life, namely professional disgrace and disqualification.

70. The debate so far in relation to the *Reproductive Health Care Form Bill 2019* raises a number of issues:

1 Why has the proposed legislation been the subject of such rush?

The Bill was announced on 28 July 2019. The Second Reading Speech in the Legislative Assembly occurred on 1 August 2019. The Bill was passed in the Legislative Assembly on 8 August 2019. The Bill was referred to the NSW Legislative Council's Standing Committee on Social Issues apparently on 6 August 2019, even before it was actually passed. The Committee is due to report by Tuesday, 20 August 2019. I was provided with a copy of the Bill, as amended, at 5:01 pm on Friday, 9 August 2019. I was advised at the time that the closing date for submissions was COB Tuesday, 13 August 2019. This is major legislation which has medical, social, economic, legal and philosophical aspects.[17] This has important implications for children, for disabled persons, for persons who are adopted, for families. This legislation requires more careful consideration than can be given in the time available. In particular, I have been considerably disadvantaged in preparing these submissions because of the very tight timeframe. The parliamentary system is dependent on the expression of views from different sources, and the provision of information, often of a technical or scientific nature, from different sources. The parliamentary system at its best works where there is debate. Here, the very tight timetable has the effect of restricting the availability of information which may be of value in assessing the *Reproductive Health Care Reform Bill 2019*. By way of example, if I had more time, I would have wished, from a legal perspective, to have provided the Committee with more information as to how best to assist the pregnant woman who wishes to preserve her child, but faces serious medical, social, economic or other obstacles which, if unresolved, may impel her to undergo an abortion.

[17] A very scholarly philosophical collection is Belinda Bennet (ed). *Abortion. Ashgate, Dartmouth, 2004*. This collection contains a genuine variety of conflicting views. More consistent with the personalist perspective is John Finnis. *Natural Law and Natural Rights*. Oxford University Press, Oxford, 2011, Second Edition; John Finnis. *Collected Essays: Volume 3: Human Rights and the Common Good*. Oxford University Press, 2011 and John Finnis. *Collected Essays: Volume 5: Religion and Public Reasons;* John Keown and Robert P George. *Reason, Morality and Law: The Philosophy of John Finnis*. Oxford University Press, Oxford, 2013; Thomas D Williams. *Who is my neighbour? Personalism and the Foundations of Human Rights*. The Catholic University of America Press, Washington DC, 2005.

2 Is this an emergency which requires abandonment of a normal parliamentary procedures?

3 What help should be available to pregnant women considering a termination?

4 What role do referrals have in the provision of abortion?

Most abortions, at least before 20 weeks, take place in clinics and therefore do not require "referral." This reality makes nonsense of s 9 of the Bill.

5 Is 22 weeks the correct time to distinguish between abortions which are "late" and abortions which are "early"?

In the Legislative Assembly, it was proposed to reduce the relevant period to 20 weeks. The rationale for this is that with medical advance, it is becoming more readily possible to preserve the life of the unborn child, even at, say, 21 or 22 weeks. Surgery is now being performed on babies before birth to address disability, 4D ultrasound has provided a window into the womb – and pre-modern notions of the unborn child as an unformed ball of cells – a kind of blob – are no longer sustainable in the light of contemporary embryology. Finally, there is scientific evidence that the unborn child at 20 weeks can experience pain.

6 Should there be any regulation of terminations from 22 weeks?

The proposed legislation provides insignificant regulation of termination from 22 weeks, albeit that at the time the child is capable of being born alive and, with appropriate care, capable of surviving.

7 Is disability (Down syndrome, dwarfism etc) an appropriate reason for terminations?

It would be important in assessing the significance of this proposed legislation that the views of members of the community who suffer from disability are obtained.

8 Is sex selection an appropriate reason for termination?

The practice of termination as a means of sex selection has significance, not only for the persons and their children who engage in such practice, but for the community as a whole.

9 What should happen, if despite the attempt at termination, the child is born alive?

The Bill makes no provision for the situation where, despite the attempt at termination, the child was born alive. I understand that in Victoria this occurs not infrequently, and the child is left to die.

10 How is the abortion industry to be regulated?

The Bill makes no provision for regulation. Abortion raises particular issues for women, for children and for families, as well as for the community – consideration needs to be made as to how it is to be regulated, and who is to be responsible.

11 Should there be criminal sanctions where the legislation is not complied with?

12 What ought be the role of doctors as gatekeepers to abortion?

Doctors, while having considerable knowledge and experience on technical issues, have little training in ethics. They may not have any more to contribute to ethical questions than other members of the community – other than their knowledge and experience of practical aspects of medicine.

13 What training do doctors have to make ethical decisions?

14 Do doctors have a conflict of interest?

15 Is there a risk of doctor shopping?

16 Given the large number of adverse events involving doctors and hospitals, why should their position be privileged?

The *Civil Liability Act 2002* (NSW) contains various provisions which privilege, doctors, clinics and hospitals against claims for professional negligence. For instance, s 5D (causation), s 5E (onus of proof) and s 5O (standard of care for professionals).

17 Should doctors performing terminations be privileged by the provisions of the *Civil Liability Act 2002* (NSW) which are intended to reduce the risk of being successfully sued?

18 Should doctors performing terminations be required to have specialist training?

19 What information should be recorded as a guide to policy in relation to abortions?

The purpose of the Bill is to take abortion out of the criminal system and to move it to health. The involvement of the Minister for Health as a co-sponsor makes this abundantly clear. For this to truly happen abortion should be treated as any other health procedure and not quarantined or treated differently. Collection of data is critical to:

- allow for sensible planning for provision of abortion services
- develop data about those populations most utilising this service and how their needs are to be met;
- provide for real data to allay community concerns about links between domestic violence and abortion and sex-selection and abortion; and that young girls are being coerced into abortion to cover up incest etc; the number of late term abortions which survive the process and need to be subsequently killed etc.
- consider maternal health issues arising from late term abortions

Data should also be collected longitudinally so that positive and adverse health consequences for women following abortion can be tracked, studied and reported on. This is a big data issue and such has no privacy issues - same as any other health data which is collected.

20 Should there be statistical records kept?

71. The mischief of *Reproductive Health Care Reform Bill 2019* is that it addresses the interest of abortion providers, particularly clinics, and of doctors who work in those clinics, but does not address adequately the needs of women who may be contemplating an abortion. Further, the Bill fails to establish a regulatory system, and the practical supports which are required to address the medical, social, economic and other challenges which confront many pregnant women. Finally, the mischief of this Bill is that it establishes provisions intended to drive certain medical practitioners and institutions from the healthcare system.

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