

INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: Anglican Church Diocese of Sydney

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Archbishop of Sydney

13 August 2019

To the Honourable Members of the Legislative Council's Standing Committee on Social Issues

Dear honourable members

I write with a heavy heart, knowing the grave responsibility that you have in assessing the merits of the Reproductive Health Care Reform Bill 2019, in order to make recommendations to the Legislative Council.

I am attaching a submission from the Diocese of Sydney's own Social Issues Committee, which is self-explanatory.

The 2016 National Census revealed that NSW has the highest percentage of citizens of religious affiliation in our country. This is a pertinent factor in the current debate surrounding this Bill, where 66% of its population has a religious affiliation, with 55% identifying themselves as Christians. While the percentage of people of faith in the Chamber may not reflect the percentage of people of faith in our State, as representatives of the State as a whole, the level of community outrage that this Bill has caused ought to caution the Council in its deliberations.

Furthermore, as a House of Review, it is the task of the Legislative Council, not merely to rubber stamp decisions of the Legislative Assembly, but to consider the merits of any Bill and its effect upon the people of NSW. When a Private Members' Bill comes before the House, and a conscience vote has been allowed by all political parties, it is especially important that the Bill receive the utmost scrutiny.

With this in mind, I consider the significance of this Bill demands more consultation with the community than the limited opportunity that the present enquiry has to provide a comprehensive analysis of the text of this Bill given the emotionally charged subject of abortion.

While the catchcry of 'decriminalisation' has had the power of any mantra that skates over the details, it should not be lost on the Standing Committee that abortion is not currently prohibited by the Crimes Act 1900. What the Crimes Act prohibits is 'unlawful' abortion. Thus since 1971, following the Levine judgment, provision for lawful abortion, or more correctly abortion which is 'not unlawful', has been available in NSW. Abortion is not unlawful if a doctor honestly believes on reasonable grounds that 'the operation was necessary to preserve the woman involved from serious danger to her life or physical or mental health which the continuance of pregnancy would entail' (R v Wald [1971]). While various other judicial judgments have expanded the semantic range of 'mental health', the reasons provided were still 'health reasons', not merely personal preference.

Thus the call for urgency on the passing of this Bill cannot be sustained, since abortion is currently available. When one adds the level of secrecy about the text of this Bill, which only became publicly available when it was tabled in the Legislative Assembly less than two weeks ago, the need for caution and wider consultation is all the more pressing. That Mr Greenwich gave notice of his intention in March this year is of no assistance to the members of the public, let alone the Parliament, when the text of his Bill was kept hidden from any form of public scrutiny and the most limited time frame for parliamentary scrutiny. When a Bill affects the lives of unborn babies, there is all the more reason to take care that we do not rush into legislation that has the effect of multiplying abortions for other than health reasons.

The Most Rev Dr Glenn N Davies

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While it may be true that I and many leaders of faith communities, consider abortion to be a last resort only when the health of the mother is threatened, I recognise that many in the community consider abnormalities or chromosomal deficiency in the unborn child to be sufficient reason to terminate the pregnancy. I also recognise that for nearly 50 years this has been the practice in NSW.

Yet I also know of too many cases of pregnant mothers being readily advised by doctors of the need for an amniocentesis in order to prepare for an abortion, should the test identify any abnormality in the child.

Furthermore, I recognise that lack of legislation with regard to 'lawful' abortions is undesirable, depending as it does upon the judiciary, rather than the Parliament. Yet this Bill does so much more, and to the mind of many, so much more harm.

If the NSW Parliament had merely considered a Bill which enshrined in legislation the current practice, arising from the Levine Judgment and other subsequent judgments, then the outcry would not have been as fierce or as widespread. If abortion was legislated for reasons of health, then the average citizen, even if they held strong beliefs to the contrary, would have accepted the normalisation, by way of statute, of a practice that has been in operation for 50 years.

However, this Bill opens the floodgates, as I indicated in an earlier letter to all Members of Parliament. For there is no requirement of any reason to be given, prior to a woman's procuring an abortion – and this would be permissible up to 5½ months of pregnancy, towards the end of her second trimester, the same stage at which children can be born and survive outside the womb. If the reasons for the health of the mother or the baby were required for such abortions, then one could see the trajectory from the Levine judgment, but this Bill provides absolutely no limits on legalising abortions of unborn children. I am unpersuaded by the remarks of senior members of the Liberal Party declaring that sex-selection would not be tolerated under this Bill, when a clear reading of the Bill does not prevent it, in fact, I would argue it allows it, because no reason need be given for requesting an abortion prior to 22 weeks.

At the very least, the Standing Committee ought to consider all the amendments proposed but not passed by the Legislative Assembly. In particular, the questions about honouring the professional and conscientious objections of doctors for whom an abortion would be immoral need to be revisited. Other items of concern, you will find in our submission.

Finally, I am grateful to the Legislative Council for referring this Bill to the Standing Committee. I pray that you will consider the gravity of the consequences of the Bill in its current form, so that the value of life in the womb might receive the esteem and honour that each unborn child deserves, and where that needs to be balanced with the health of the mother that our legislation might be truly just and fair for all.

With every good wish

Yours sincerely

Glenn N Davies
Archbishop of Sydney
Metropolitan of New South Wales and
President NSW Council of Churches



13 August 2019

The Hon Shayne Mallard MLC
Chair
The NSW Legislative Council Standing Committee on Social Issues
6 Macquarie Street
Parliament of NSW
SYDNEY NSW 2000

Submission on the Reproductive Health Care Reform Bill 2019

Dear Mr Mallard

This submission is being made by the Social Issues Committee (SIC) of the Anglican Church Diocese of Sydney. The SIC is grateful for the role of the Legislative Council as a 'House of Review'. We are particularly thankful for the calling of this inquiry into the Reproductive Health Care Reform Bill 2019 (the Bill). It is with disappointment that we witnessed the rushed and unannounced process of the Bill in the Legislative Assembly. Bills which herald significant turns in the moral basis of our society deserve the application of due care and due process before being passed.

We note your message that the 'Committee is aware of the significant community interest in this bill' and we urge the Legislative Council as a whole, and its Social Issues Committee (the Committee) in particular, to come to this inquiry with an openness to hear the 'significant community interest' in the impact of this Bill, and to allow time for public discussion of these issues.

At the outset, it is important to acknowledge the women who today are experiencing the deep sense of loss and grief in the case of losing a child in utero, whether it be through an abortion, miscarriage, or a stillbirth. The profundity of such feelings points to the deep sense of connectedness that one feels towards another human being, even though unseen and unheard. Our sympathies go to those who are continuing to experience such pain.

1. *This Bill is not pro-woman*

In respect to abortion, most women know that any abortion is tragic. Women who contemplate abortions do not do so lightly. Women who have had abortions often struggle with the implications of having done so. We do not seek to condemn women who have had to make this tragic choice, but there should be every opportunity for women not to have to make this choice. The problem with this Bill is that it will have the effect of normalising the termination of human life in the first 22 weeks of pregnancy. The Bill makes a pretence that the decision to have an abortion does not involve a heart-rending and agonising decision. A foetus has a life of its own, it is not on any way similar, for example, to something like a melanoma that is being cut away from someone's body and it does not deserve to be treated as such.

This Bill is premised on the idea that once a pregnancy is determined to be problematic, that the only viable solution is to terminate the pregnancy. For all its flaws, the current system in NSW recognises that ending a child's life in utero is a terrible thing. If as a society we are going to permit abortion, then we also need to do everything that we can to ensure that no woman is led to make that tragic choice because she had no other alternatives. No woman should feel that she has no one to speak to about

her concerns regarding parenthood. No doctor should be silenced into quiet acquiescence when such requests or concerns are raised.

This Bill is not pro-woman because it fails to acknowledge the emotionally confronting choice she will need to make. It leaves no room for other options as would be the case with any other healthcare plan.

2. What is life?

The legal definition which holds that life begins when a baby makes her¹ way out of the womb is as big a legal fiction as the legal construct of a corporation having legal personhood. A corporation is not a person (yet the law says it is) and an unborn baby is a person (although the law says that she has no rights as a human).

Life is a gift, it is not something that we have earned. It is a glorious and at times a tortuous journey, from the earliest moments as a zygote through to that moment when we draw our final breath as we prepare to meet our Maker. Not one of us had the opportunity to refuse this journey, and not one of us would have made it out into the world and drawn our first breath had we not been nurtured in the wombs of our mothers. We didn't get a say as to whether we would be born. Yet, we are sure that each of us are glad that we were. Why would we take that gift away from someone else? Why would we deny her the ability to take her place in this world?

The Bible holds that life is a gift from God, each baby is lovingly fashioned and stitched together by the breath of God. Each baby reflects his image through their imperfect perfection. We each are created at the very moment of conception. Life begins at this point in the womb and it is just the first stage of our humanly journey. We reject the legal falsehood that defines life as beginning when a baby is born.

3. New phraseology is masking the ethical rights of the unborn child

We point to the changing discourse in respect to the topic of abortion since the last Bill which was debated in the New South Wales Parliament in 2016. The arguments have been rephrased such that it is no longer a debate about 'abortion', the act of aborting a baby from its natural state of development. The revised phraseology is 'reproductive health' and the rights of the mother to self-determination. The argument is compelling because no one wants to see another human being subjugated or losing rights.

However, the revised phraseology omits the fact that there are at least two lives that the situation involves – the mother and the unborn baby.

Abortion is not just about reproductive health. Abortion is equally about the right of the unborn child to continue to experience their life journey: to have the right to be born, to have the right to experience life outside of the womb. The refocussing and narrowing of the discussion to only reproductive health is unhelpful because in the process it must dehumanise the unborn child for the argument to prevail. Where is the debate which wrestles with the ethical rights of a mother vis-à-vis the ethical rights of her unborn baby? As legislators, it is incumbent upon you to give due consideration to the voiceless in this matter. What ethical rights do unborn humans have? On what basis does society deem it permissible to become the enablers of cutting off someone's life journey?

4. Abortion is not just about reproductive health

A study² which was published in *BMC Womens Health* in 2013 undertook a survey of 954 women who had had abortions. The women responded as follows for their reasons for having abortions³:

¹ Throughout this paper the terms 'she' and 'her' are used to refer to the unborn baby, whether male or female.

² Briggs, Gould, Foster (2013) *BMC Womens Health* 13:29 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3729671/>

³ Note that some women gave more than one response, and some women gave more than 2 responses, resulting in a total percentage score of over 100%.

- 40% were not financially prepared for a child
- 36% did not feel it was the right time for a baby
- 31% had partner-related issues
- 29% needed to focus on other children
- 20% said it interfered with future opportunities
- 19% were not emotionally or mentally prepared
- 12% cited health reasons
- 12% wanted a better life for the baby than she would provide
- 7% said that they were not independent or mature enough for having a baby
- 5% influenced by family or friends
- 4% did not want a baby and did not want to place baby for adoption
- 1% other reasons

The main motivation by far for having an abortion was **not** health related, with only 12% of the (multiple) responses citing health as a reason for the abortion. The main reasons for abortion were lifestyle or socially driven factors. As a society, we need to ask ourselves: is it right that we preclude another person's life journey because of the types of worries and concerns that most people would be feeling in life?

5. The permissioning of selective abortions

We acknowledge the inclusion of Clause 14 of the Bill regarding a review as to whether or not terminations are being performed for the purposes of gender selection. However, we note that if this Bill were passed in its present form, it will give unhindered permission for selective abortions to occur. Experience in the USA points to a strong preference for 'perfect' babies.

Still, social policy may be unable to sway a seemingly strong personal preference for avoiding children with perceived genetic defects. About 90 percent of women who learn they are carrying a fetus with the extra 21st chromosome that causes Down Syndrome choose an abortion. Studies have shown that many women choose to abort for diagnoses of less serious conditions.⁴

Other cases point to doctor's who advise parents of unborn babies with potentially significant health issues to abort their babies. Natalie Halson, speaks of her experience with doctors offering her an abortion on 10 different occasions when the 22-week scan revealed that her baby had spina bifida.⁵

As Christians, we believe that all life, irrespective of its genetic blueprint and potential genetic errors is a gift, to be cherished and nurtured. We are most concerned about the potential that this Bill provides for the growth of selective engineering of offspring.

6. Public opinion may support 'reproductive health' but does not support unqualified abortion

A YouGov Galaxy⁶ poll of 1000 people who were surveyed in August 2018 found:

- 62% of respondents believed that an unborn baby at 23 weeks is a person with rights

⁴ Harmon, 2007, <https://www.nytimes.com/2007/05/13/weekinreview/13harm.html>

⁵ Griffiths and Bishop, 2019 <https://www.thesun.co.uk/fabulous/9225777/offered-10-abortions-due-date-healthy-baby-girl/>

⁶ https://www.cherishlife.org.au/images/media-releases/2018/You_Gov_Galaxy_poll_August_2018_-_What_Queenslanders_Really_Think_About_Abortion.pdf

- 75% believed that abortion harmed women's health
- 60% opposed mid-term abortions past 13 weeks
- 75% opposed late-term abortions past 23 weeks
- 62% opposed abortion past 22 weeks for social reasons
- 83% opposed sex-selective abortion
- 52% opposed abortion for any reason until 22 weeks
- 74% supported conscientious objection

On this basis, it is not correct to say that Australians believe that abortion is another 'health matter'. Indeed, based on these results Australians appear to believe that abortion is harmful to a woman's health; that abortion past the first trimester should not be countenanced; selective abortion is wrong; and that the views of conscientious objectors should be respected.

7. This Bill is flawed

(a) *This Bill extends current practice*

Proponents of this Bill state that the Bill simply legalises current practice and protects women from prosecution. However, neither claim is an accurate reflection of either the current law or the effect of the proposed Bill.

Abortion is currently lawful in NSW, following the Levine ruling of the District Court in 1971. This ruling allows doctors to approve an abortion in the event where the mother's health, physical or mental, is at risk. The Levine ruling has been judicially affirmed in NSW on several occasions.

In a judicial environment where lawful actions are determined by both legislative instruments and common law, it is simply untrue to say that abortion is illegal or a 'grey area' where women may be prosecuted. The argument is made on a technicality and it is used to stoke public opinion. The prosecutions which have been made in recent years are not standard cases of women seeking abortions. To imply this to be the case is an irresponsible promotion of the Bill to the public.

In fact, the NSW Parliament was so confident in the legality of abortion in this state that it recently passed laws preventing people from protesting within proximity of clinics where abortions were known to be taking place.

The Bill extends the current practice in several ways:

First, the Bill allows for the abortion of a baby well into the second trimester, namely 5 ½ months, for any reason or no reason at all. Currently, abortions are permitted on economic, social or medical ground where there is a basis for believing that the pregnancy poses a danger to the mother.

Second, the Bill allows for the abortion of a baby **after** 22 weeks (5 ½ months), where clause 6(1) is satisfied, namely, if '(a) the medical practitioner considers that, in all the circumstances, the termination should be performed, and (b) the medical practitioner has consulted with another medical practitioner who also considers that, in all the circumstances, the termination should be performed'.

By allowing for an abortion up to the end of the third trimester, namely 9 months or full-term, all that the two doctors need to consider is 'that, in all the circumstances, the termination should be performed', on the basis of the undefined, 'relevant medical circumstances' and the 'person's current and future physical, psychological and social circumstances'. It is difficult to see how the two doctors could justify not performing the abortion based on such a broad 'consideration'.

Most Australians do not support abortion at this late point because they know instinctively what biology tells us: that a baby of this age is able to survive outside the womb. The baby is fully formed, she can hear, taste, move and suck her thumb.

The SIC recommends that the Committee give further consideration to the 22-week demarcation that the Bill introduces. We suggest that duly appointed and constructed research be undertaken into the attitudes of the community. The YouGov Galaxy research indicates that the 22 weeks currently drafted into the Bill may not be reflecting the community beliefs it purports to reflect.

Further, the SIC recommends that if any gestational timeframes are to be specified in the legislation that the following general principle be applied: Once the point of viability has been reached, only abortions required to save the life of the mother should be permitted, and even then, the life of the child should be preserved if possible.

(b) The Bill creates inconsistent standards of care for the pregnant woman

The SIC acknowledges the provision for counselling as a supportive mechanism for the woman to walk through the process towards abortion. While this is a good first step, it is insufficient. "Consideration" of the need for counselling is inadequate, counselling should be offered as a default and the woman should be free to accept or refuse the offer. The remit of the counselling should extend to support the woman with consideration of other options alongside the option for abortion.

Most notably, the Bill is silent on the emotional well-being of a woman after the abortion has been carried out. It is likely that the woman will be feeling guilt, remorse, relief, numbness and regret⁷. The response is akin to post traumatic stress disorder. If we are going to take our society into this area, we need to acknowledge and provide care for those women who are going to have the lived post-abortion experience. The SIC recommends that Clause 7 be reviewed.

(c) The Bill creates legal inconsistencies

NSW laws already recognise a baby at 20 weeks gestation to be a person⁸ requiring burial:

If your baby was born when you were 20 weeks pregnant or more, or weighed at least 400 grams, or if he or she took a breath after the birth then you are legally required to have him or her cremated or buried in a cemetery. You are also required to register your baby with the registry of births, deaths and marriages. The social worker at the hospital can help you with this process.⁹

A plain reading of these requirements would indicate that any baby that was aborted in utero post 20 weeks gestation under this Bill would require a burial. This Bill introduces legislative inconsistency on a deeply moral issue. The SIC recommends the Committee takes the time to undertake a thorough legislative scan.

(d) The Bill stipulates a review but does not provide for the data to be collected

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists recommends the collection of data¹⁰:

⁷ <https://www.psychologytoday.com/au/blog/somatic-psychology/201010/post-abortion-stress-syndrome-pass-does-it-exist>

Speckhard, A. C., & Rue, V. M. (1992). Postabortion syndrome: An emerging public health concern. *Journal of Social Issues*, 48(3), 95-119.

⁸ We use the term 'person' because only a person needs a burial and registration in government records, as evidenced by the use of the personal pronouns 'he or she' and 'him or her'. If the baby was considered 'medical waste' at this stage of the pregnancy, it would be disposed of in accordance with medical waste disposal procedures.

⁹ <https://www.health.nsw.gov.au/kidsfamilies/MCFhealth/Publications/pregnancy-and-infant-loss-parents.pdf>

¹⁰ Refer to *Termination of Pregnancy C-Gyn 17*, page 4.

'4.5 Monitoring and research In order to better understand the individual and public health impacts of termination of pregnancy, the College supports the monitoring and collection of statistics relating to termination of pregnancy, including the occurrence of complications of these procedures.'

We submit that the 12-month review as envisaged in Clause 14 will have next to no data on which to undertake the analysis. Medicare data cannot be relied upon for analysis as Medicare uses four different item numbers under which both miscarriages and elective abortions can be categorised (35643, 16525, 16505, 16564). Implementation of reporting on abortions (as distinct from miscarriages) at the State level will be required. There is little information relating to terminations of pregnancy in NSW and currently South Australia is the only state in Australia which collects data regarding abortions.

Therefore, the SIC recommends that specific reporting measures will need to be mandated in this Bill. Examples of measures to be reported should include: number of terminations, types of clinicians and healthcare services involved, reported reason for termination, age of gestation at time of termination, method of pregnancy termination, and complications. Demographics would include the age of women, information about residential region, and previous pregnancy terminations. The data should be anonymised.

The SIC recommends that with each abortion that doctors are to be required to report in a prescribed form so that the Secretary of the Ministry of Health may keep statistical records. Further, we recommend that the legislation incorporates an additional review in 5 years. The terms of both reviews should extend beyond gender selection and should be constructed to provide a true picture of the state of abortions in NSW.

(e) Not an authentic carve out for conscientious objection

Clause 9 of the Bill attempts to prescribe means for conscientious objection. The Bill requires the doctor to refer the pregnant woman to another practitioner who does not have conscientious objections to abortion. The act of referring a woman to someone who is willing to take her baby's life is itself a violation of that doctor's conscience.

At a minimum, the doctor should have the right to refuse to perform the abortion without being required to make a referral. At best, the doctor should be given the opportunity to have a discussion with the woman to understand her concerns for herself and her baby and possibly to provide assistance to both the mother and the baby.

The potential sanctions which are placed upon doctors who refuse to refer women to other abortion-practising doctors further erodes the concept of conscientious objection. Furthermore, it disregards the Hippocratic Oath which notes: 'I will maintain the utmost respect for human life at the time of conception.'

There is ample publicly available information about how to obtain an abortion. The loss of registration for a medical practitioner is a very heinous penalty for exercising the human right of conscience.

Concluding points

As members of the Legislative Council's Social Issues Committee, we respectfully submit that you have a heavy burden with many perspectives in your examination of this Bill.

- The Bill has been rushed through the Legislative Assembly without providing the community an opportunity to appropriately engage and debate.
- The rights of one person have been amplified in this debate and her child's voice remains muted in the murky waters of the womb. If her mother won't defend her right to her life's journey, who will?

- This Bill does not consider the importance of providing counselling services to the woman in the days and months following the abortion.
- The ethics of selective abortion have not been fully explored. This Bill leaves society open to issues which to date it has not needed to contend with – selective abortions will be a real phenomenon. Babies will be rejected, not just for their gender but also because of their genetic code.
- This Bill entails an approach which undermines a doctor's genuine ability to conscientiously object and help a woman through a most traumatic time.

Our prayer is that you will take these points into your consideration. It is our wish that you would reject the Bill but failing that, we recommend that the Committee at least revisit areas where amendments were suggested but failed in the Legislative Assembly.

Kind regards,

Ms Emma Penzo
Chair, Social Issues Committee
Anglican Church Diocese of Sydney