Submission No 35

INQUIRY INTO REPRODUCTIVE HEALTH CARE REFORM BILL 2019

Organisation: The Australian Family Association

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THE AUSTRALIAN FAMILY ASSOCIATION

The Australian Family Association welcomes the opportunity to make a submission to the Legislative Council's Standing Committee on Social Issues inquiry into the Reproductive Health Care Reform Bill 2019.

INTRODUCTION

THE AUSTRALIAN FAMILY ASSOCIATION (the AFA) is a voluntary, (non-party) political organisation concerned with strengthening and support of the natural family. Among its objectives are "to analyse laws and policies for their effect on the family … ".
In pursuing these objectives the AFA makes submissions to government inquiries on matters that have an impact on the family.

The AFA holds that the family is the basic unit on which human societies are built and is the prime agency for the delivery of care to all family members from conception to natural death.

In pursuance of its objectives therefore the AFA has an interest in the matters raised by the inquiry and makes the following Submission.

THRESHOLD ISSUES

1. The AFA asks the Committee to consider the very nature of the act that the Bill seeks to de-criminalise. What does "termination" involve? What does science reveal about foetal development? What is it that is destroyed in a "termination"? It is incontrovertible that it is a human life. That a woman must carry and nurture this life within her own body for the nine months gestation period for it to survive is also incontrovertible. But it is a separate life which, if left to develop, will be completely separate from and independent of the woman. Does a person have the right to end this life? If so then aren't all dependent persons are at risk? Should the law allow the continued existence of a person who is dependent on another to depend on the decision of the person(s) caring for them? A seriously mentally and/or physically disabled adult makes much greater demands on the time, resources (emotional and physical and financial) than an unborn baby makes on its mother during pregnancy. Should these dependent persons also be allowed to be terminated on the request of their carers?
   Is this the sort of society we want? – where it is lawful for a person to request a medical practitioner to "terminate" an innocent, unborn human life? Should the law allow this? This is the decision the Committee will make in formulating its recommendations in this inquiry.

The Bill allows abortion to birth. Yet at 20 weeks the unborn baby is more than 6 inches long and can suck a thumb, yawn, stretch, and make faces.

2. The Bill is being presented as a women's health issue. The AFA asks the Committee to consider whether abortion is in the best interests of women. There is much research on post abortion trauma to show that abortion is not a solution to a challenging pregnancy but rather more than likely to create further, deeper mental and physical health problems. David Reardon has been researching this issue since the 1980s and published his latest findings in 2018. In particular the study found that: "Although there is disagreement between pro-abortion researchers and mental health researchers on post abortion trauma " both sides agree that (a) abortion is consistently associated with elevated rates of mental illness compared to women without a history of abortion; (b) the abortion experience directly contributes to mental health problems for at least some women; (c) there are risk factors, such as pre-existing mental illness, that identify women at greatest risk of mental health problems after an abortion; and (d) it is impossible to conduct research in this field in a manner that can definitively identify the extent to which any mental illnesses following abortion can be reliably attributed to abortion in and of itself."
   The AFA asks the Committee to inquire what information is presently available on all the health risks of abortion and how accessible this information is to women seeking abortions and how such information can be made more accessible to them. The AFA asks the Committee to inquire what pregnancy support services there are available and in what ways these support services can be improved, expanded and/or better funded. The Bill does not support women. It does not provide for information on the health risks or on support services available nor even require counselling to ensure informed consent. The Bill is directed to removing any legal risk to medical practitioners in performing abortions.

SPECIFIC POINTS IN RELATION TO THE BILL

1. The most notable omission in the provisions of the Bill is that there is no requirement in Clause 5 or 6 that the person on whom the abortion is to be performed has to make a request to the medical practitioner.
   A request presumably can be made by another person. Clause 9 (1) bears this out. It refers to a "first person" making a request for an abortion to be performed on "another person."
   So much for empowering women. What about coercion – that the person requesting an abortion on another person is coercing that other person? What about domestic violence, a violent partner requesting an abortion be performed on their partner? What about a father requesting an abortion for his daughter to cover up incest? What about possible child sex abuse in the case of a person requesting an abortion on a young girl? And what about mandatory reporting requirements?
   There is plenty of evidence of coercion, overt or subtle, in relation to abortion. The most basic protection against coercion is surely to require that the person on whom the abortion is to be performed must make a clear and direct request to the medical practitioner for the abortion.

2. Should Clause 6 (1) (c) refer to "the *specialist* medical practitioner"? Or is informed consent not required for post 22 week abortions?

3. Clauses 5 and 6 require the medical practitioner to obtain the person's "informed consent" to perform an abortion. However "informed consent" is simply defined as consent given "freely and voluntarily". The Bill makes no provision for the medical practitioner to have to make any inquiry in this regard or that the medical practitioner must satisfy him/herself that the consent is given freely and voluntarily.
   Coercion is a serious issue with abortion. As the Bill does not provide even basic protection from coercion or require counselling that could reveal coercion and provide a woman with the opportunity to consider and make her own decision, then women's rights and women's choice are empty rhetoric.
   Further how can there be *fully informed* consent when the Bill has no provision that a medical practitioner must be satisfied that the woman has been provided with full information on all the health risks of abortion and on what support services and counselling are available? And where is a woman's choice if she does not know what alternatives there are and what support is available?

4. There is nothing in the bill that respects the health of women. There is no recognition of the immense physical and psychological damage abortion causes a significant proportion of women.

   Clause 5 allows a medical practitioner to perform an abortion up to 22 weeks with no conditions. Why shouldn't abortions up to 22 weeks only be allowed for serious reason?

   Between 22 weeks and the day of birth, two doctors have to agree that, "in all the circumstances" the abortion should be performed. "Circumstances" that must be

considered include “current and future physical, psychological and social circumstances”.

What does “future” circumstances” mean? How can anyone know what future circumstances may be? Does it mean just the immediate future? What about medium/ long term welfare? What about the risk of post-abortion trauma?

What is covered by “social” circumstances? – would it include financial issues such as that the person would suffer a loss of income if having to work fewer hours or lose career prospects? Would it include needing a bigger house, a bigger car, increased costs of school fees or having to forgo holidays?

What does “psychological” include? When were psychological problems ever resolved by abortion? Why doesn’t the Bill require psychological assistance/counselling to be offered before the abortion?

The AFA draws to the attention of the Committee that a baby born at 26 weeks has an expected survival rate of ~94%, and survival without major morbidity among those surviving to discharge would be expected to be ~ 59%. Yet the Bill allows abortion of unborn babies well beyond 26 weeks, to birth, for social/psychological circumstances.

The AFA is of the view that because and because of the serious nature of what is involved in the act of abortion, the taking of a life, and the serious consequences of abortion for a significant number of women, that there should need to be a correspondingly serious reason for performing an abortion at any stage ie a threat to the life of the mother.

5. The Bill does not provide any legal protection for babies born alive after late term abortions. Premature babies born at 20 weeks can survive yet if a baby of the same gestational age is aborted there is no requirement that medical assistance, or even comfort, be provided. This is inhumane. A tiny human manages to survive the awful process of abortion but is not even then offered warmth much less medical care to give him/her a chance to live.

6. Clause 7 provides that the medical practitioner will assess whether it would be beneficial to discuss counselling.

   The decision to have an abortion is a fraught decision with very serious implications for a woman’s health and welfare. Why doesn’t the Bill recognise this and require the medical practitioner to provide information on what counselling is available so the woman can decide for herself whether to avail herself of it? Or at least that the medical practitioner should have to be satisfied that the woman requesting an abortion has been provided with information on what counselling is available?

   Most Australians want help for women. A 2017 survey of people in NSW found that 90% agreed a woman should have the right to independent counselling from a source that has no financial interest in her decision, so that she can make a fully informed decision. It also found that 93% agreed that a woman considering abortion should have the right

to be informed of the physical and psychological risks associated with abortion and the support available should she wish to continue with the pregnancy.

A 2005 survey of 1200 Australians by the Southern Cross Bioethics Centre showed that 98% wanted women to be given information on the health risks of abortion; 99% wanted access to counselling for women contemplating abortion; 86% wanted independent counselling from someone independent of the abortion provider; 94% wanted women contemplating abortion to be provided with information on alternatives and support services.

And a 2018 survey of Queenslanders showed that 88% supported counselling and 85% supported full information for women so they can give informed consent.

7. The Bill fails to protect the right to conscience of medical and health practitioners, a right recognised in international treaties and instruments. Clause 9 (3) requires not only that a medical practitioner disclose a conscientious objection to abortion but that they must give information on "*how to locate or contact a medical practitioner...* who does not have a conscientious objection *…."* Or "*transfer the person's care*" to another practitioner or a health service where there are medical practitioners who do not have a conscientious objection.
   Clause 9 (3) effectively forces medical practitioners with a conscientious objection to abortion to act as an abortion referral service. This is a complete denial of the right to freedom of conscience of those practitioners.
   The AFA asks the Committee to investigate the ease of access to abortion referral or information services. Unless that access is not easily available then there is no reason recognised in international human rights law that would allow this abrogation of the right to conscience in Clause 9.
   Clause 9 also does not protect the right to freedom of conscience of health practitioners employed in a "health service provider." If abortions are performed in hospitals, medical/paramedical staff are often rostered for theatre duty and some will have conscience issues. The rosters would be drawn up the evening before scheduled operations and that process draws in staff who may have conscientious objections with no means of withdrawing their services without massive disruption of the schedule. Disclosing their conscientious objection could mean losing their jobs.

RECOMMENDATIONS

(a) That the Committee recommend the Legislative Council oppose the Reproductive Health Care Reform Bill 2019.

(b) That an inquiry be held into what support services are available for women facing unexpected or challenging pregnancies so no woman is left feeling she has no choice but abortion.

(c) That, if the Committee fails to recommend the Legislative Council oppose the Bill, that the Bill be amended:

- to require that any abortion must be requested by the person on whom the abortion is to be performed and that, in the absence of such a request, the abortion is "unlawful";
- to require a medical practitioner to provide a person on whom an abortion has been requested to be performed with full information about all the health risks of abortion and information on support and counselling services available and that failure to do so will mean that abortion is "unlawful" for failure to obtain "informed consent";
- to require that all abortions, pre and post 22 weeks, be "lawful" only if there is a serious risk to the life of the woman if the pregnancy continues.
- to provide that medical assistance must be rendered to any baby born alive from an abortion.
- to provide that no medical or health practitioner who has a conscientious objection to abortion is required to perform, assist in or participate in abortion.

The AFA thanks the Committee for the opportunity to make a submission to this inquiry and we are available to assist if the Committee is so minded.