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To the NSW Legislative Council's Standing Committee on Social Issues on the Inquiry into the Reproductive Health Care Reform Bill 2019

Introduction and concerns for process

The Baptist Association of NSW & ACT is a movement of 350 congregations committed to voluntarily serving together with a common purpose, values, vision and goals. We welcome the opportunity to make a submission to the Inquiry into the Reproductive Health Care Reform Bill (RHCR Bill) 2019. However, we would like it noted that we are disappointed at the speed in which the RHCR Bill has been introduced and moved through parliament. There is no urgency for this Bill as abortion is currently lawful in NSW, following the Levine ruling of the District Court in 1971, which has been judicially affirmed in NSW on a number of occasions. Statistics from 2004 to 2005 indicate that there were likely at least (based on Medicare codes) 30,608 abortions in one year alone (p 4).[1] There are clearly abortions happening without threat of prosecution under the criminal code.

The RHCR Bill does much more than merely codify the current practice (as some have claimed). It significantly changes the framework of how we approach this complex issue and it does so with very inadequate process and opportunity for public discussion. Momentum should not be what carries a bill forward in our democracy but rather considered debate and consultation with the constituents whom our MP's represent.

Supporting women in difficult situations

As an Association we strongly affirm the importance of supporting women who find themselves in difficult situations created by their pregnancies, or whose unborn babies face difficulties surviving post birth. As much as we dislike abortion and wish that it did not have to happen, we know that it is a complex and difficult decision. We have great empathy for people who find themselves in situations where they do not feel ready to bring a child into the world or who have an infant who has significant medical issues and we strongly support providing services to women so that abortion becomes an option that women do not feel they have to take. We know that for some women, the decision to abort a baby is made after knowing that the baby would have suffered considerably upon birth before dying shortly after, conditions that specialist medical practitioners would know about and be able to advise upon. It is our desire that women be given access to counselling and be able to make an informed choice as they deliberate on these difficult decisions. We believe that the system and community can greater support women who find themselves in these situations including access to domestic and family violence services, provision of safe and affordable housing, and education and access to contraception. We also strongly affirm that the lives of the unborn

[1] Drabsch, T. 2005. "Abortion and the law in NSW". Accessed at https://www.parliament.nsw.gov.au/researchpapers/Documents/abortion-and-the-law-in-new-south-wales/Abortion%20and%20index.pdf

should be treated with the utmost care, as they are among the most vulnerable members of our society. Sadly, we believe the RHCR Bill does neither of these things.

Terminations prior to 22 weeks

This bill allows for abortion well into the second trimester, around 5 months, for no other reason than the mother wants her pregnancy to end. The doctor performing this operation does not even have to ask for a reason. This removes the need for a medical practitioner to be under the belief that "the continuation of the pregnancy places the woman's life or health in greater jeopardy than its termination" as outlined in the current law (p 21).[2] The RHCR Bill does not merely codify current practice as it should be conducted under law, it expands it. Surely there can be more consideration given to the circumstances in which abortions can be performed.

Terminations after 22 weeks

In addition, the Bill allows for late term abortions, past the point at which we know an infant's life could be viable out of the womb.[3] It is disingenuous to claim that this provision is rarely used.[4] Provision for emergency procedures are already captured in Clause 6(4) of the Bill. In addition, if late-term abortions are typically performed in circumstances where the infant has a severe abnormality and is likely to die very quickly outside of the womb, a provision for this circumstance can be written into the bill. This would be similar to the way the law is written in the state of New York, where late term abortions are allowed if there is lack of foetal viability or if the mother's health is at risk (paras 4-6).[5]

Perhaps the provisions of New York's Reproductive Health Act (albeit these can also be interpreted broadly) are what the authors of the RHCR Bill meant to imply. That is certainly not what is written though. There are three parallel actions in Clause 6(3) to consider, not grounds for a decision as serious as this one. As it is currently written, for a late-term abortion all that the two medical practitioners 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' and 'the professional standards and guidelines that apply'. The first two guidelines are so vague and broad that in effect there would be very few circumstances that would not be caught by them.

It would be nice to believe that the two specialist medical practitioners would always act in the best interest of both the mother and the infant however that is not how this bill is written. In this bill, the mother's condition (physical, psychological and social) and choice trumps the right of the infant every single time as though the infant was never a patient of the medical practitioner in the first place. The infant is provided no protection in this bill in the way that it is currently written. We can absolutely foresee a future scenario where women who want a late term abortion can find two specialist medical practitioners who would agree even if the woman was initially denied. Even those medical practitioners who may question the woman's decision could ultimately decide that it is her choice, not theirs to make. Read this reflection in the New York Times by Dr. Christine Henneberg, a doctor and a writer:

> As a doctor, I can draw a distinction, a boundary, between a foetus and a baby. When I became a mother, I learned that there are no boundaries, really. The moment you become a mother, the moment another heartbeat flickers inside of you, all boundaries fall away.

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[2] Ibid (p 21)
[3] Westcott, L. 7 May 2015. "Finding that babies born at 22 weeks can survive could change the abortion debate." Accessed at https://www.newsweek.com/babies-born-22-weeks-can-survive-medical-care-new-study-finds-329518
[4] Marie Stopes Australia. Updated 2019. "Abortion in Australia." Accessed at: https://www.mariestopes.org.au/your-choices/abortion-laws-australia/
[5] The New York State Senate. 12 Feb 2019. "FAQ's about the Reproductive Health Act." Accessed at: https://www.nysenate.gov/newsroom/articles/2019/liz-krueger/faqs-about-reproductive-health-act

> Nevertheless, as mothers, we must all make choices. And we must live with the choices that aren't ours to make. We can try to compartmentalize. We can try to keep things tidy and acceptable. But in reality, everything is messy: the work of doctors, the work of mothers, and the love of each one of us for our children.
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> And yet somebody has to do the work (paras 26-28).[6]

Commentary released in March 2019 in *Health Services Research and Managerial Epidemiology*, by the Vice President and Director of Data Analytics at the Charlotte Lozier Institute in Arlington, VA, James Studnicki argues that "…the trajectory of the peer-reviewed research literature has been obvious for decades: most late-term abortions are elective, done on healthy women with healthy foetuses, and for the same reasons given by women experiencing first trimester abortions (p 1)."[7] Studnicki goes on to say,

> The Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships. A more recent Guttmacher study focused on abortions after 20 weeks of gestation and similarly concluded that women seeking late-term abortions were not doing so for reasons of foetal anomaly or life endangerment (p 1).[8]

Similarly, Foster and Kimport (2013) found that, "women in our study who obtained first-trimester abortions and women who obtained abortions at or after 20 weeks' gestation were remarkably similar" (p 216).[9] They tended to have late term abortions for the following reasons: not recognising pregnancy, trouble deciding about the abortion, disagreeing with the man involved, finding and getting to a facility, costs and insurance coverage (pgs 214-215).[10]

We find it hard to understand how the media can report with such certainty that in the vast majority of cases late term abortions are carried out when the mother's life is at risk or the foetus has a severe abnormality when there is also low reporting of abortions and poor data collection across Australia. Pratt et al. (2005) as reported in Drabsch (2005) state, "…there is no national data collection on abortion, there is no uniform method of data collection, collation or publication across the states and territories, and the data sources that are available all have several significant limitations (p 3).[11]

Lawmakers are not merely creating laws to encapsulate current scenarios. Laws have the power to shape culture and culture shapes the future. When the vague grounds for abortion under the current law (written as serious danger) were changed in the current RHCR Bill, broad reasons for abortion in the late term became in even broader and more open to the interpretation of medical practitioners. Studnicki (2019) quotes proabortion author Daniel Skinner saying, "the 'rhetoric of medical necessity' is a mistaken strategy because 'it is not the empirical evidence of what is or is not medically necessary which is important,' but rather 'who possesses the ability to interpret necessity within key political contexts. (p2)'"[12]

Direction of society and culture

We are in a moment where we have an opportunity to say that there has to be a better line drawn. Refusing to recognise that there is more than the mother to consider in these situations means the

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[6] Henneberg, C. 27 June 2019. "When an abortion doctor becomes a mother." Accessed at: https://www.nytimes.com/2019/06/27/opinion/abortion-doctor.html
[7] Studnicki J. 2019. "Late-term abortion and medical necessity: a failure of science." Health Services Research and Managerial Epidemiology. Volume 6: 1-3. Accessed at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6457018/pdf/10.1177_2333392819841781.pdf
[8] Ibid (p 1)
[9] Foster D. G. and K. Kimport. (2013). "Who seeks abortions at or after 20 weeks?" Perspectives on Sexual and Reproductive Health. Volume 45, number 4: 210-218.
[10] Ibid (pgs 214-215)
[11] n(1) p3
[12] n(7) p2

failure to protect the most vulnerable in our society. Maybe the bill is trying to put protections in when it talks about “relevant medical circumstances” but this description is far too vague.

At what point does a child come under the protection of the OHCR Convention on the Rights of the Child, a convention that recognises the individual personhood of the child and guarantees him or her rights?[13] If the infant can be born alive and live, even with disability, then certainly we owe these vulnerable lives some protection under this Convention and under the RHCR Bill (See Articles 6 and 23 specifically of the OHCR Convention on the Rights of the Child). The RHCR Bill as it currently stands fails to recognise that government does sometimes have to step in and say that there are two lives to consider and the rights of one do not entirely trump the rights of another.

Language shapes culture and in the absence of clear language in this bill, our culture will be shaped by the mindset of medical practitioners, practitioners who will likely also be performing abortions on infants prior to 22 weeks. What is a few more weeks if the mother’s mental health may be severely affected, all that is required is for two specialist medical practitioners to agree? The compartmentalisation that may have had to occur to allow a medical practitioner to cope with these difficult circumstances may allow him or her to justify a late term abortion even if the infant could have lived outside of the womb. In addition, the outline of this subspecialty of specialist medical practitioners who can perform these late term abortions will create the necessity for training, which will in and of itself help to normalise the procedure.[14]

Conclusion

Due to the unrealistically short time frame we have had in which to prepare submissions and indeed the unhelpfully short timetable since the bill was introduced into parliament, it has not been possible for us to consider the bill and its consequences in as much detail as we would have liked. There may well be further contributions we would have liked to make had there been a more satisfactory process of consulting the broader community.

In short, we believe the RHCR Bill to be poorly written. It creates broad scenarios in which abortions can occur and we can’t help but wonder whether or not these scenarios have been intentionally created because of the vague nature in which the clauses are written. This Bill, in the way it is written does nothing to recognise that more than the mother’s life exists in the scenario, being even willing to disregard the life of the infant if it could have lived outside of the womb. We ask that you seriously consider stronger wording around the circumstances in which an abortion can be performed and also greater restrictions on the circumstances under which a late term abortion can be performed specifically protecting infants who could be born alive and have a viable life outside the womb.

Yours sincerely,

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Director of Ministries
NSW & ACT Baptist Association

[13] United Nations Human Rights Office of the High Commissioner. 2 Sept 1990. Convention on the Rights of a Child. Accessed at https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[14] n(7)