014-13

Tabled by Hon. C. Fuse

Legislative Council – Rob Valentine MLC

24/9/13

Response to E Petition

Reproductive Health (Access to Terminations) Bill 2013

The Petition of the undersigned Citizens of Tasmania draw to the attention of the Legislative Council that:

If allowed to pass, the Reproductive Health (Access to Terminations) Bill 2013 will:

1 Allow the abortion on demand of unborn babies up to 16 weeks of age from conception for any reason and allow the abortion of unborn babies from 16 weeks of age to term for such a wide range of reasons (current and future physical, psychological, social and economic concerns) as to effectively constitute abortion on demand. As such, this Bill fails to acknowledge or protect the human rights of unborn babies.

2 Remove any requirement for offering counselling prior to a woman undergoing an abortion.

3 Continue to impose possible short and long term physical and psychological consequences of abortion on women's health.

4 Impose professional and legal sanctions on doctors and counsellors who do not refer to abortion services for reasons of conscientious objection.

5 Restrict free speech by placing further sanctions on peaceful protest within 150 metres of an abortion facility.

And your petitioners therefore request the Legislative Council reject the Reproductive Health (Access to Terminations) Bill 2013 in its entirety.

Government's Position:

Every person is entitled, indeed encouraged, to respectfully share their views and opinions and provide input into the development of policies and laws for the people of Tasmania.

This petition presents one set of views regarding proposed changes to pregnancy termination laws contained in the Reproductive Health (Access to Terminations) Bill.

Of course, there are alternative views. Nationwide surveys have consistently shown support for access to safe and legal termination services.

A statistically substantive Tasmanian survey conducted on behalf of Family Planning last year found that 86 per cent of respondents across the State and across ages support termination being treated as a health issue between a woman and her doctor rather than as a criminal matter.

The Bill acknowledges this and respects that there are many and varied views on the topic. The Bill neither forces women to have a termination nor imposes significant legal hurdles or the threat of criminal sanctions for those that do.

Public dialogue on this matter clearly demonstrates that there are many and varied views amongst Tasmanian individuals and organisations.

Unfortunately, a lot of misinformation has found its way into the public discourse on this matter.

The Reproductive Health (Access to Terminations) Bill 2013 will improve the health and wellbeing of Tasmanian women by placing law relating to terminations in a health, not a criminal, context; reducing impediments to service delivery in Tasmania; and addressing access and equity issues caused by current laws.

Access to safe and legal termination services with a capacity for timely and local access is a key component of a broad range of strategies to achieve positive sexual and reproductive health outcomes.

A decision to terminate a pregnancy is a complex and deeply personal decision and it should be a decision for a woman to make, in consultation with her doctor and any other person she chooses.

As noted by the Victorian Law Reform Commission, termination is a decision of deep moral significance for many people and the woman herself is the best person to make such a decision.

Up to and including 16 weeks, the Bill will enable a woman to make this decision based on her own needs and circumstances at the time. It will be a private decision for a woman in consultation with her doctor and any other person she may choose and the woman's consent will provide the legal authority for the termination.

After 16 weeks, the current involvement of two doctors will continue to apply. A doctor may terminate a pregnancy as long as two doctors (one being a specialist in obstetrics or gynaecology) have certified in writing that the woman's physical or mental health is at greater risk of injury from continuing the pregnancy than from terminating it.

For the very small number of women who terminate a pregnancy in the latter stages, there are usually severe, unavoidable and distressing circumstances that lead to that situation.

Under the new framework the law will provide greater certainty to women and doctors by providing that in assessing the physical and mental risk, doctors must have regard to the current and future physical, psychological, economic and social circumstances of the woman.

This Bill provides a 'middle ground' between the existing model and a model based on nothing more than maternal consent at all stages of gestation.

Many people have strong views about terminations and dialogue about terminations often raises questions about where life begins. These are not questions that can be easily answered.

The new Bill will not affect the ability of individuals who hold strong moral beliefs about terminations to uphold these beliefs within their own lives. What it will do is remove the potential for these beliefs to be imposed on someone whose beliefs are different.

In relation to counselling, the Bill supports the view that women have the capacity to make their own decisions regarding the need for counselling. Under the current laws only the referral to counselling is mandatory – attendance at counselling by the woman is not mandated, however it does place doctors in an ambiguos position if women do not take up counselling to which they are referred.

Removing this requirement recognises women as capable and conscientious decision makers and that the woman herself is in the best position to make decisions in relation to her pregnancy – taking into account her own personal values and beliefs, her unique set of circumstances, and the advice and information of such persons as she chooses. As such, the decision to attend counselling sits best with the individual woman, rather than being required by law.

Mandatory counselling also runs the risk of establishing additional legal barriers because counselling services may not exist in a particular geographic area. Mandating counselling may result in women having to travel long distances for multiple medical assessments and counselling sessions before they can proceed. This would exacerbate existing inequities.

The Bill will require doctors and counsellors holding a conscientious objection to terminations to refer a woman who seeks a termination, or counselling in relation to pregnancy options, to a service provider who does not hold such an objection. This clause is critical in ensuring women receive access to quality and non-judgemental healthcare and to unbiased information from which to make informed choices.

The referral obligation ensures doctors and counsellors can adhere to their personal beliefs whilst not imposing them on patients. Women can seek pregnancy options advice without fear of being denied knowledge of the full range of options available to them and without fear of their doctor or counsellor attempting to dissuade them from a decided view or push them in a certain direction.

This obligation to refer balances the right of doctors to operate within their own personal values, with the equally important ethical obligation to act in the best interests of the patient and to not deny or impede access to medical care and treatments that are legal. These responsibilities are contained in the professional code of conduct for doctors issued by the Medical Board of Australia (the Board). The Board sets national policies and standards for the medical profession and is the body to which the Australian Health Practitioners Agency, which governs the National Registration and Accreditation Scheme in the area of health, refers matters relating to the regulation of medical practitioners. Doctors failing to comply with the referral requirement will risk professional, not criminal, sanctions.

As for other medical procedures, it is appropriate to rely on professional sanctions imposed by national boards established for the express purpose of overseeing the conduct of doctors.

The different consequences for counsellors for non-compliance reflect that, unlike doctors, counsellors are not currently regulated by professional boards established under national laws for regulating health practitioners and as such do not face similar professional sanctions for non-compliances.

This Bill does not impose short and long term physical and psychological consequences of pregnancy termination on women's health. In fact, central to improved sexual and reproductive health outcomes is ready access to reproductive and contraceptive choices. For women, in particular, full management and control of their fertility is critical.

There is no medical basis for singling out terminations and regulating access in a different way to other medical procedures.

New surgical techniques, medications approved for use by the Therapeutic Goods Administration, regulation of service providers and facilities ensure terminations today are low risk medical procedures.

Evidence does not support an association between terminations and an increased risk of breast cancer or infertility or subsequent ectopic pregnancy or placenta praevia. There may be a small increase in risk of subsequent pre-term birth, although there is insufficient evidence to imply causality.

In terms of psychological harm the best available evidence as assessed by the American Psychological Society (2008), is that a causal relationship between termination and mental ill health has not been established.

Similarly, the Academy of Medical Royal Colleges and the National Collaboration Centre for Mental Health (UK) (2011) have concluded (from their comprehensive and systematic study) that having a termination does not increase the risk of mental health problems.

In relation to access zones the Government supports clause 9 in its entirety and believes there is a need for the establishment of access zones in order to ensure women are not subjected to harassment, distress and a lack of privacy while accessing a reproductive health service.

The Government notes the Bill will not stop a religious sermon against terminations in churches that fall within an access zone - unless they publicly broadcast it. Nor will it stop an exchange of personal views between friends at any place that falls within an access zone.

It will however stop a person from standing in an access zone holding up a placard or handing out pamphlets denouncing terminations. It will stop a person from engaging in a vocal anti-choice protest. It will stop the silent protests outside termination clinics that claim to be a vigil of sorts or a peaceful protest but which, by their very location and purpose are expressions of disapproval of the decision a woman has chosen in relation to her future and her reproductive health.