



13 August 2019

Committee Secretary
NSW Legislative Council Standing Committee on Social Issues
NSW Parliament
Sydney 2000

By email: socialissues@parliament.nsw.gov.au

Dear Secretary

Submission to Inquiry on Reproductive Health Care Reform Bill 2019

We are grateful to the Committee for the opportunity to provide this submission in relation to the reference to the Committee on the Reproductive Health Care Reform Bill 2019 (NSW) (the Bill). Freedom for Faith is a Christian think tank that exists to see religious freedom protected and promoted in Australia. We want a better conversation about how we all live together well in a multicultural society in which many people have a strong religious faith, and an increasing number define themselves as having no religion.

We have confined our comments to the way the Bill would deal with conscientious objections to abortion. This issue raises deeper questions about the relationship between Australia's very sizeable communities of faith and the wider community of which they are a part.

The international law

Conscientious objection is recognised under international instruments as a basic civil and political right. Article 18 of the ICCPR, to which Australia is a signatory, states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

That right is only qualified by limitations in the very strictly limited circumstances set out in 18(3) where:

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

It is not sufficient to argue that abortion is a 'health' issue under 18(3) and that conscience can be overridden. Rather, the limitation on conscience must be 'necessary' to protect health. That is simply not the case here. The uncommon case of the conscientious objector will not frustrate the

ability of a pregnant woman desiring an abortion to find a medical practitioner without such a conscientious objection.

The importance of conscience

Respecting consciences informed by religious belief should be a matter of principle for a well functioning civil society. That parliamentarians are themselves offered a conscience vote on this Bill speaks to both the relevance and importance of conscience when it comes to abortion. Opinions here are deeply held and a failure to reasonably accommodate them can generate resentment and discord within the state. The parliament would therefore be wise to anticipate and understand difficulties religious believers may have with the legislation.

The particular conscience issue raised by the bill

For many people, the termination of a pregnancy will be seen as a morally wrong act which they cannot participate in without violating their deeply held conscientious or religious beliefs. To put the issue in deliberately stark form - many would view abortion, and particularly late term abortion, as morally equivalent to infanticide. This will include many health practitioners.

We have had the opportunity to see the submission of Professor Michael Quinlan to this inquiry and endorse his explanation of how the bill would particularly impact the consciences of catholic health practitioners:

For some medical practitioners providing information of the type mandated by s9 would be a very serious breach of conscience and an affront to their religious dignity. For Catholic medical practitioners in particular participation in a termination, which providing information of someone who is willing to carry out a termination would amount to, would result in an immediate excommunication from their church. It is unreasonable and unnecessary for the State to mandate this.

It is not necessary to share catholic beliefs on termination or excommunication. Parliamentarians should not judge other people's convictions by their own. It is essential though that the parliament recognises the crucial importance of these beliefs to conscientious objectors.

The simplest way to deal with this conscientious objection

The Bill should include an express waiver from participation on the grounds of conscience. The Tasmanian legislation gives an example of this, where there is no duty for a conscientious objector to participate in the termination of pregnancy outside of an emergency.

Section 6 of the Tasmanian Reproductive Health (Access to Terminations) Act 2013 provides:

Conscientious objection and duty to treat

- (1) Subject to subsection (2), no individual has a duty, whether by contract or by any statutory or other legal requirement, to participate in treatment authorised by section 4 or 5 of this Act if the individual has a conscientious objection to terminations.
- (2) Subsection (1) does not apply to an individual who has a duty set out in subsection (3) or (4).
- (3) A medical practitioner has a duty to perform a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious physical injury.
- (4) A nurse or midwife has a duty to assist a medical practitioner in performing a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious physical injury.

Significant problems in the the way the Bill deals with conscientious objection to abortion.

We note the following:

1. Section 9 is designed to deal with the conscientious objections of registered health practitioners.
2. However the section will only apply in the limited circumstances set out in section 9(1):
 - (1) This section applies if—
 - (a) a person (the **first person**) asks a registered health practitioner to—
 - (i) perform a termination on another person...
3. As drafted the section thus distinguishes between “the first person” (who makes a request), the “registered health practitioner” (who is requested to do something) and “another person” (who must be neither of the first two mentioned), upon whom the termination of the pregnancy is to be performed.
4. The bill will therefore only allow for conscientious objection where someone other than the pregnant woman has asked for the termination to be performed. We can only assume this absurd result is a drafting error and does not reflect the intent of the movers.
5. Requiring the health practitioner to give information on how to locate a practitioner without a conscientious objection, or transferring them to such a practitioner (under s9(3)) is no solution as:
 1. It does not resolve the conscience problem of the practitioner who views this as participation in the abortion,
 2. At a practical level, it is hard to imagine how a practitioner could form the requisite ‘reasonable belief’ that the second practitioner has no conscientious objection. There is no public register of conscientious objectors and there may be many providers who raise a conscientious objection in some circumstances (gender selection, late term) but not others,
 3. The Bill is silent on what should be done if a referral is mistakenly made to a health practitioner who does in fact hold a conscientious objection.

The problems caused by failing to adequately deal with conscientious objectors are manifold. It would be better for Parliament to recognise the genuine difficulties such health practitioners are under and try to meet them with better legislation. The clearest way for that to happen, if this bill is to become law, would be for the replacement of Section 9 with a general exemption along the lines of the Tasmanian legislation.

More time should be allocated to enable careful consideration of the issues the subject of this Bill. The drafting errors in section 9 demonstrate the perils of fast tracking legislation. The failure to properly allow for conscientious objection suggests inadequate consultation with those most affected by these provisions.

Regards

Yours faithfully

Michael Kellahan
Executive Director
Freedom for Faith