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The Honourable Michelle O'Byrne MP
Parliament House
HOBART TAS 7000

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By email: public.health@dhhs.tas.gov.au

Dear Ms O'Byrne

Reproductive Health (Access to Terminations) Bill 2013

I am writing to let you know that I ***do not support*** your decision to introduce the *Reproductive Health (Access to Terminations) Bill 2013* into Parliament.

More than that, I am deeply saddened that you wish to do so.

About 4 years ago I was driving north along Penquite Road in Launceston late one afternoon and stopped at a red light at the Hoblers Bridge Road intersection outside the Newstead Hotel.

I was about 4 cars back from the intersection. It was raining.

I saw the lights change to green and made preparations to move off. But the cars in front of me did not move. We stayed where we were.

I wondered what the hold-up was and was about to press on the horn when I saw what was causing the delay.

An old man, shuffling very slowly and bent almost double over a walking frame was being helped across the road by a man in his late 20's. None of the drivers pressed their horn. As far as I could tell none of them became impatient. When the two men reached the kerb we moved carefully away from the intersection.

I had recognised both men. They lived around the corner from me in Norwood. I'd visited them. The old man, in younger and more able days, had been a school principal in Canberra. The young man, a fierce Essendon supporter and inveterate hugger, was his adopted son.

He had Downs Syndrome.

It was, for me, a moment of rare beauty. These two men are representatives of the outer limits of our society. The fringes of humanity. Latter-day outcasts. They are the most vulnerable and at-risk people in their street.

One is old and weak. The other, disabled and naïve. They do not make friends easily. They do not get invited to dinner parties. People (like me, *to my shame*) are uncomfortable and ill at ease around them. They are often lonely and isolated.

And yet the bond of affection between them was very real. On the day I saw them their love for each other, quite literally, stopped the traffic. From the most unlikely source, I was seeing the very best that humankind is capable of.

What's this got to do with Abortion?

Simply this – if that young man had been terminated in his mother's womb, a father would never have known the love of an adopted son, we in our cars would have been deprived of a moment of profound beauty. And society, as a whole, would have lost the chance of witnessing a surprising act of love in the most unusual, unlikely and seemingly impossible of situations.

Had that young man been terminated as a fetus, the world would have been very different. Poorer.

I have read the Bill that you are proposing to introduce into Parliament and I would like to make the following four comments.

1. Abortion is not a health issue, it's a human rights issue
2. Your proposed safeguards for a post 24 week abortion are useless
3. Infanticide has the same moral consequence as the abortions you are proposing
4. You must not attempt to rush this Bill through parliament

1. Abortion is not a health issue, it's a human rights issue

In your discussion paper you write that “the word ‘termination’ is used to describe the medical procedures that bring about the end of a woman’s pregnancy.”

This is like saying that the word “amputation” is used to describe the medical procedures that bring about the end of a man’s football career.

A termination does more than end a woman’s pregnancy. It ends the life of the human being who is growing inside her. To say that a termination or an abortion does nothing more than “bring about the end of a woman’s pregnancy” seems to be an attempt to shift the focus away from the killing of a growing baby to the inconvenience of the mother’s condition.

That would be all well and good if we were absolutely sure that the cells growing inside the mother were sub-human. But we cannot be absolutely sure.

The atheist Christopher Hitchens was not sure that the cells were sub-human.

In an article in 2003¹ he, surprisingly, argued against abortion. After briefly rehearsing the historical arguments put forward by feminists in favour of abortion, he wrote:

As the evidence about early “viability” mounted, and as advances in medicine made it ever easier for even a distressingly premature fetus to survive outside its mother, the argument showed a tendency to shift. Suddenly, we were talking trimesters. And there was no longer much dispute about whether the unborn subject was alive. It certainly couldn’t be dead, since the whole battle consisted in how or whether to stop its growing and developing (not metastasizing).

Now and then there would be a tussle over whether it was a fully “human” life, but this was casuistry. What other species of life could it be?

When it comes to human life, when in doubt, we who are compassionate, must err on the side of life.

I have always thought that one of the great strengths of the political Left is its strong social concern for the human rights of refugees. A refugee is, so the argument rightly goes, a human being. Consequently he or she must be treated with dignity and respect regardless of the cost to his or her new mother country.

I greatly respect people like Julian Burnside who welcome in to their own home, without regard for their “current and future physical, psychological, economic and social circumstances” men, women and children who, even though not yet proven to be refugees, are fully human, albeit unwanted. When in doubt, these people err on the side of life.

We should be doing the same with the unborn. Especially for those who are potentially disabled or vulnerable like the Downs Syndrome man helping his father cross the street. I am in no doubt that a fetus is a human (as Christopher Hitchens says “What other species of life could it be?”).

¹ Christopher Hitchens, *Fetal Distraction*, Slate February 2003.
<http://www.vanityfair.com/politics/features/2003/02/hitchens200302>

But, if there is any doubt that a fetus is a human then we must not, as a matter of basic human rights, end that life simply because of our “current and future physical, psychological, economic and social circumstances”.

2. The safeguards for a post 24 week abortion are useless

The Bill proposes to have a two-stage approach to abortions. If a woman is less than 24 weeks pregnant she may have an abortion on a whim.

If she is more than 24 weeks pregnant she is required to be assessed by 2 doctors.

Section 5 (2)(a)(i) of the Bill provides that the pregnancy of a woman who is more than 24 weeks pregnant may be terminated if

two medical practitioners have certified, in writing, that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated

The problem with this section is that I am struggling to think of a single situation in which two medical practitioners would not be able certify such an opinion in writing if asked to do so.

There is always a “risk” of injury to the mother in carrying a child to full term. There is always a “risk” of crippling PND post birth. There is a sense in which it is would always be less “risky” to the mother if the child was terminated.

So your safeguard is practically useless.

Section 5(3) doesn't help. It provides that

in assessing the risk referred to in subsection (2)(a)(i), the medical practitioners must have regard to the woman's current and future physical, psychological, economic and social circumstances.

This is meaningless.

A woman who has given birth will always have a change to her physical circumstances. Furthermore, there is always a risk of psychological illness or trauma. Raising children is expensive and will nearly always effect the mother's economic circumstance. And as far as "social" circumstances are concerned, a mother's family life will be changed forever when she has a baby.

The upshot of all of this is that under your proposal gaining the permission of two doctors so that she can have a post 24 week termination will be a very simple task for a pregnant woman.

What you are really doing is giving every woman the easy and free right to terminate her child at any time up to birth.

The safeguards at s. 5 are pointless and redundant.

3. Infanticide has the same moral consequence as the abortions you are proposing

You will be aware that in the peer reviewed *Journal of Medical Ethics* in February 2012² Alberto Giubilini and Francesca Minerva argued for what they called "post birth abortions."

In their view, in spite of the fact that "it is hard to exactly determine when a subject starts or ceases to be a 'person'", the fetus and the newborn share identical moral equivalence.

Consequently, they

argue that, when circumstances occur *after birth* such that they would have justified abortion, what we call *after-birth abortion* should be permissible.

² Alberto Giubilini and Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?," *Journal of Medical Ethics*, February 23, 2012.

For a helpful summary of Giubilini and Minerva's article see William Saletan's "After-Birth Abortion – the pro-choice case for infanticide", in Slate, March 12, 2012.
http://www.slate.com/articles/health_and_science/human_nature/2012/03/after_birth_abortio_n_the_pro_choice_case_for_infanticide_.html

... we propose to call this practice 'after-birth abortion', rather than 'infanticide', to emphasise that the moral status of the individual killed is comparable with that of a fetus (on which 'abortions' in the traditional sense are performed) rather than to that of a child.

Therefore, we claim that killing a newborn could be ethically permissible in all the circumstances where abortion would be.

Such circumstances include cases where the newborn has the potential to have an (at least) acceptable life, but the well-being of the family is at risk.

They also say that an infant, like a fetus, does not have an inherent right to life, unless the mother projects such a right upon them.³ If a mother does not do that, then a child can be killed after it has been born.

Now you and I will find the thought of killing a newborn repugnant. We would call it what our Criminal Code calls it: Infanticide.

But it needs to be seen that Giubilini and Minerva are simply taking the argument you are using in your Bill to its logical conclusion.

According to your argument, whether there has been a legal termination or the commission a crime depends *only* on the environment in which the baby finds itself.

If it is in its mother's uterus it can be terminated.

If, a few minutes later, it is outside its mother's uterus, it must not be terminated.

But the only objective change insofar as the baby is concerned is its environment.

³ "the moral status of an infant is equivalent to that of a fetus in the sense that both lack the properties that justify the attribution of a right to life to an individual."

The conclusion to Giubilini and Minerva's article is particularly chilling. And yet they are using words very similar to those used by you in your draft Bill.

Abortions at an early stage are the best option, for both psychological and physical reasons.

However, if a disease has not been detected during the pregnancy, if something went wrong during the delivery, or if economical, social or psychological circumstances change such that taking care of the offspring becomes an unbearable burden on someone, then people should be given the chance of not being forced to do something they cannot afford.

In other words, if a baby is born and it is discovered it has a disease or a disability, it can be killed.

4. Please do not rush this Bill through Parliament

I would like to conclude by saying that this Bill is too serious to rush through Parliament. There is a lot at stake. And feelings are running very high in the community. However I am hearing that you may introduce it as early as next week.

That would, with all due respect, be a big mistake and would reflect poorly on you. In my submission the people of Tasmania deserve better than that. It would be disingenuous on your part to rush ahead.

Please at least give us the impression you are taking our submissions seriously so we can all feel as though we have been heard by our elected representatives.

Thank you for taking the time to consider my letter.

Yours faithfully

Alistair Bain