

Extract from Legislative Council Hansard

Thursday 20 December 2001

Mr PARKINSON (Wellington - Deputy Leader of the Government in the Council) - Mr President and honourable members, the task before us is not presented as an easy one, although in ordinary circumstances perhaps it should have been. On the surface the circumstances are uncomplicated. An underlying problem of statutory interpretation has suddenly arisen. This requires clarification and ordinarily the Parliament would have no problem dealing with such a matter. Unfortunately or fortunately, depending on one's point of view, the issue requiring clarification is the question of the circumstances in which the termination of a pregnancy can be legally justified in this State.

The past fortnight has seen the most intense period of lobbying that this Parliament has experienced, certainly since I have been a member. The lobbyists are falling into two broad camps: those who support the bill and those who oppose it. Those who oppose it offer no compromise save for one opponent who has taken the unusual approach of suggesting a series of amendments which, if carried in their entirety, would have made the resulting law unworkable and certainly much worse than the law which most of us assumed was operating effectively prior to the interpretation problem arising.

The opponents have certainly been the most vocal in this debate. The lobbyists who support the bill on the other hand have pushed for no more than the pre-dispute status quo and we must ask ourselves what has been the pre-dispute status quo - that is, the law as it operated in practice up until approximately two weeks ago.

That question has been answered by the representatives of the Australian Medical Association who have briefed members of this House. It is quite apparent on the clear advice of the AMA, the association representing the qualified and respected medical practitioners in this State, that the bill, as drawn, represents the current practice and a practice on this issue that has been current in Tasmania since legalised pregnancy termination became widely accepted in this State.

The AMA briefing was again strengthened by the prior briefing of the Solicitor-General. Legalised pregnancy termination has been accepted in this State since the Menhennitt rules were determined and accepted by the courts of this nation. Indeed those provisions in our Criminal Code intended to cover the field on this issue were based on the Menhennitt rules.

Again the legal issue of informed consent also dealt with in the bill has itself been developed and refined by the common law in this country. Mention has been made in briefings of the landmark case of *Rogers v. Whitaker* 1992 cited at 175 Commonwealth Law Reports at page 479 which overturned the pre-existing common law on informed consent which came out of England in the case commonly referred to as *Bolam's Case*.

Rogers v. Whitaker has been further explained in subsequent High Court decisions as recent as *Rosenberg and Percival* decided by the Australian High Court on 5 April 2001. Suffice it to say that the High Court definition of informed consent means that there is a heavy onus on the medical profession in order to avoid civil litigation to explain to any patient the risks associated

with any medical procedure and this includes the procedure for termination of pregnancy. I am pleased to note that the bill codifies the issue of informed consent.

Those who opposed the bill before us are in the main of the same mind on the general issue of abortion. They oppose it as being immoral. Mind you, judging by my emails, there are still those who assert that abortion is murder. I recently reminded one such advocate that the penalty for murder in this State is life imprisonment. I asked that advocate whether therefore every woman in this State who has an abortion should be sentenced to life in gaol along with other murderers.

The purpose of my question was, of course, to expose the folly of that argument. The advocate then suggested, 'But there would be mitigating circumstances'. I reminded the advocate that with murder there are no mitigating circumstances. After a short period of silence, that advocate then said, 'I know you can only do your best in accordance with your conscience' and, Mr President, that is what I am here to do.

I note that there is major division among the Christian denominations on this issue. I have regular contact with a large number of my fellow church members, who as I do, view this matter as a matter of great importance. Like myself they are opposed to abortion per se but like myself they are of the view that as far as their religion is concerned in an individual case the issue of abortion is a matter for the conscience of the individual - that is, a matter between the individual and his or her God.

I have been at pains to express those sentiments, Mr President, because I have formed the view that it is not my role as a legislator to put myself in the position where I am called upon to make judgments upon the conscience decisions of others. I fear that the opponents of abortion do very much desire to impose their judgments upon the consciences of others and I regard that position as wrong because of its potential to cause both physical and mental harm to large numbers of people - and by large numbers I mean upward of about 80 000 women each year in this country and their partners or families.

Mr President, in my 14 years of legal practice and in my years before and since I have never met a woman who I would describe as an advocate for abortion. I have however met large numbers of women who advocate the right of women to choose whether or not to have that procedure in the particular circumstance of the individual. I have never met a woman who treats this subject lightly. I believe that our society's cautiously liberal attitude on abortion is a direct consequence of the breakdown over time of cooperative attitudes within society itself. One only has to compare practices in tribal societies and in modern cooperative societies such as the Jewish kibbutz, where societal structures exist that care for children born outside marriage. In today's non-cooperative individualistic society, women are often left alone, though pregnant, and scorned or rejected because of their so-called indiscretion. Depending on individual circumstances, they are a burden or at best an embarrassment. Without appropriate support, what do they do and where do they go?

The basic difficulty, Mr President, that I have with those opposed to the bill is that they do not propose any solution. They have no realistic compromise position. They in effect want to wind the time clock back 30 years in the vague supposition that somehow the resultant problems would be solved. Notwithstanding the laws in every other State and Territory of this nation, they want Tasmania to outlaw abortion. With what result? I suggest the result would be the return to black market, backyard, illegal abortions; the return to unprofessional, dangerous pregnancy

termination and nobody really wants that position. So we are left with a position, in my view, that the provisions of this bill are both factually and morally sound. They are responsible. They accept the realities of life, as sad as some of those realities are.

We do have an honourable medical profession, Mr President, which for 30 years already has practised legalised abortion in this State where the practice has been that two registered doctors certify that the continuation of the pregnancy to full term would involve greater risk of injury to the physical and mental health of the woman than if termination occurred. Doctors have acted professionally by facilitating informed consent by the female. There is anecdotal evidence of isolated cases where a doctor may have deviated from that currently accepted practice, but under the bill that will be even less likely to occur because the widely accepted practice is codified in the bill.

I want to briefly comment on one other aspect, namely the suggestion of widespread post-abortion trauma. I note that such suggestion is not common. I have been provided with two identical copies of a recent book titled, *Giving Sorrow Words, Women's Stories of Grief after Abortion* by Melinda Tankard Reist. I was provided with one copy by a friend and the other copy came under covering letter from the author. The book carefully documents the traumatic post-abortion experiences of 18 women. The book is well written and I found the reading of it an emotional experience. I do not for one moment discount any of the experiences described in the book but I believe that the work must be viewed in context. The author admits to the statistical bias of her own sample. She describes how she advertised for people who had suffered post-abortion trauma. She says that she received 250 responses. Two hundred and fifty responses out of 80 000 approximate legal terminations per annum, though extremely small, does not detract from the seriousness of the fact that some women who opt for an abortion do suffer subsequent trauma. Whereas I accept we should all be aware of the incidence of such trauma and be conscious of the need for services to cope with it, I cannot accept that this problem in itself amounts to a sufficient reason to oppose the bill.

Indeed the author herself suggests in her letter to me that the problem could be remedied by informed consent legislation which would give women information on the procedure, possible risks, alternatives to abortion and helping agencies. I was happy to be able to inform the author that our bill achieves those aims.

She also suggested legislating for a cooling-off period but I believe that such matters are better left to the medical profession in the individual circumstance of each case. A legislative cooling-off period would, in my view, be overly prescriptive and could cause undue trauma in cases where it was not appropriate. I also have been informed of the existence of a booklet produced by the West Australian Health Department for General Practitioners: 'Medical Risk of Induced Abortion and of Carrying a Pregnancy to Term 1998'. I quote from the referral:

'There is general consensus in the medical literature that the vast majority of women do not experience deleterious psychological effects from an induced abortion.'

The booklet agrees that some women will experience generally mild and self-limiting short-term problems and identifies that the minority of women who will experience more severe psychological consequences are more likely to be those whose wanted pregnancy is terminated due to foetal abnormality and those who are pressured into the abortion by family, friends or others. It is this latter category to which Melinda Tankard Reist refers in her work.

I also take note of the suggestion from some opponents of the bill that women who have an abortion are exponentially more susceptible to cancer than those who do not. However on that point I note the recent comments of local cancer specialist, Dr Ray Lowenthal, who incidentally is a director of the Cancer Council of Tasmania, indicating that there is no credible medical evidence of that proposition. I therefore discount that theory as merely another plank in the argument of those who oppose this bill on moral, religious-based grounds.

The bill also seeks to protect from prosecution those persons associated with pregnancy terminations that were regarded as otherwise legal before the commencement of the proposed act. The AMA has indicated that it regards this provision as essential, and I accept that proposition. I note that this provision will not impact on the civil liability of any individual practitioner or associated person, Mr President. We must have faith in the ability of our medical profession to act honourably on this important issue. On the general issue of abortion I am conscious of the rights of others associated with an unwanted pregnancy. I believe that the bill caters as far as it should for those various rights. I believe that all associated rights need to be given due consideration but I have said some days ago that the decision of the woman concerned must ultimately have the paramount position after all other rights have been considered. In my view, the bill achieves that position.

Finally I want to say to those who will be disappointed should the bill become law, you cannot expect us as legislators to solve all of society's moral problems. There will always be, in my view, some moral issues that must remain as matters to be resolved between the conscience of the individual concerned and their God. I support the bill.