

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

Inquiry into the status of the human right to freedom of religion or belief

Thank you for the opportunity to make this submission to the Inquiry.

I wish to highlight to you that under the guise of protecting patient privacy in relation to abortion the ACT Government has gone to extraordinary lengths to make it a criminal offence to engage in peaceful public prayer. It has criminalised peaceful expressions of religious belief which are patently not of a criminal nature.

I submit that the actions of the ACT Government contravene Article 18 of the International Covenant on Civil and Political Rights and other generally accepted norms for the protection of human rights to peaceful religious belief and practice.

Background

I am one of a number of individuals who, in the past, regularly assembled between 8.00am and 9.00am on Fridays (one hour a week) for a peaceful public rosary prayer Vigil outside the ACT Department of Health building, 1 Moore Street, Canberra City. That is, prior to the legislation being enacted by the ACT Government creating the offence of *prohibited behaviour* in relation to a *protected area* around the building which houses a Marie Stopes abortion facility on the first floor.

The prayer Vigil was held for about 20 years and its purpose was to pray for those hurt by abortion. Being close to the site, where the abortions were taking place, was an important part of our religious observance as well as in terms of our visibility and peaceful witness.

The prayer Vigil took place over the years without any significant incidents. We displayed some signage as well as a crucifix and religious pictures to identify our activity. However, approximately 3 years ago a group of pro-abortion activists started a campaign with a series of organised 'sit ins' under the pretext of establishing an 'harassment free zone' adjacent to and often in front of our prayer meeting. Most of the time any interaction between the groups was cordial but on a least two occasions our prayer group was surrounded and we were pressed in on all sides by the pro-abortionists.

We were not intimidated by the pro-abortionists and their activities ceased. Unfortunately, the Legislative Assembly for the Australian Capital Territory subsequently enacted the *Health (Patient Privacy) Amendment Act 2015* which amended the ACT Health Act 1993. The

amendments made it a criminal offence to engage in *prohibited behaviour* (see below) with penalties including heavy fines, imprisonment or both.

I submit that the action of the ACT Government was a deliberate concoction to satisfy the pro-abortionists but, more significantly, to remove public prayer from the streets.

Prohibited behaviour

The Act defines *prohibited behaviour* in the so-called *protected area* around *the approved medical facility* (the Marie Stopes abortion facility on the first floor), as meaning any of the following:

“ (a) the harassment, hindering, intimidation, interference with, threatening or obstruction of a person, including by the capturing of visual data of the person, in the protected period that is intended to stop the person from—

(i) entering the approved medical facility; or

(ii) having or providing an abortion in the approved medical facility;

(b) an act that—

(i) can be seen or heard by anyone in the protected period; and

(ii) is intended to stop a person from—

(A) entering the approved medical facility; or

(B) having or providing an abortion in the approved medical facility;

(c) a protest, by any means, in the protected period in relation to the provision of abortions in the approved medical facility.”

Whilst it is obvious that the legislation is directed at our prayer Vigil, I believe that the definition of *prohibited behaviour* above creates a deliberate smokescreen by first referring to activities such as harassment, hindering, intimidation, interference with, threatening or obstruction and other physical actions which we have never engaged in.

To the casual observer, it may seem reasonable to prohibit such behaviour, however, I believe that the vague catchall provision (c) above referring to *protest by any means* and the reference to *seen or heard* in (b) are directly aimed at preventing the exercise of our right to engage in peaceful public prayer. I would add that the only times we have *captured visual data* was to protect ourselves in relation to the intimidation by the pro-abortion groups.

The legislation fails to define *protest* but the obvious intention is to label our peaceful prayers as a form of protest without being seen to directly ban public prayer. Prayer is not a *protest* but communication with God.

Protected Area

The Act provides for the Minister to declare the *protected area* of not less than 50 metres from the abortion facility and only as large as necessary to ensure privacy and access to that place on the first floor of the building.

The reality is that the declared area is ridiculously large and has been extended at least once on spurious grounds. I have attached copies of the two declarations by the Minister. (Attachments 1A and 1B).

I would emphasise that our once a week peaceful prayer Vigil took place outside a very busy public building which houses various tenants and so there was no way that the privacy of those attending the abortion facility could have been compromised.

If you wish, I would be happy to enlarge on issues relating to the so-called *protected area*.

Protected period

The Act defines the *protected period* (in relation to the *protected area* around the abortion facility) as between 7.00am and 6.00pm on each day the abortion facility is open or any other period declared by the Minister.

The times above are meaningless as we have no idea when the abortion facility is actually open and even if we did we would still be in breach if the facility opened subsequent to our attendance on the same day. The times indicated above are not even consistent with the normal opening times of the building.

Concerns about possible intimidation/harassment by the ACT/Federal Police

In the main, the Police have been extremely courteous and I accept that they are dealing with difficult and vague legislation with significant political overtones.

However, one of the participants at the Vigil has been issued with two Criminal Infringement Notices by the Police on bases which defy common sense and in circumstances which can only be construed as harassment or attempted intimidation.

The first Notice was for being in the *protected area* when it was clear that he was not. In fact, prior to this our group had been correctly advised by the Police that the particular area was not in the *protected area* and we had set up our signs and crucifix accordingly.

That Notice was subsequently withdrawn but the Minister then extended the *protected area* to include that area and stated publicly that it was necessary to remove "ambiguity". A complete fabrication!

The same person was issued with a second Criminal Notice for standing in the same area holding his rosary beads and bowing his head. There were no signs or crucifix to identify the reason for his presence. That Notice appeared to conveniently lapse during the period of the recent ACT election.

Since that time some former participants in the Vigil have been walking, standing and sitting around the building which houses the abortion facility during 8.00am and 9.00am on Fridays

and praying silently. Some have their rosary beads visible and some do not. This appears to infuriate the security guard and others working in the building who regularly call the Police.

For example, recently, while carrying my rosary beads and walking around the building I was asked by the Police to leave the area with the clear implication that I could be arrested if I did not comply. The previous week it had been suggested to me by the Police that I could be charged with trespass if I entered the building even though it is a public place with a number of different tenants such as the ACT Asbestos Response Taskforce. The only times I have entered the building recently was to ascertain whether or not the abortion facility was open and to inform the guard that others (apparently female workers in the building) were taking pictures and acting aggressively towards me.

Addressing the Terms of Reference

Superficially, Article 18 of the International Covenant on Civil and Political Rights appears to be a fair and reasonable document but paragraph 3 below leaves opportunities for authorities to wriggle out of their obligations:

'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.'

I expect that the ACT authorities would have been aware of this when they drafted the *Health (Patient Privacy) Amendment Act 2015* but I submit that the unsubstantiated and deliberately excessive nature of the legislation goes well beyond the need to *protect public safety, order, health, or morals or the fundamental rights and freedoms of others*.

I therefore submit that my rights to express my religious beliefs in public have been deliberately violated by the ACT Government.

Further, I believe that the application of human rights legislation across jurisdictions has been done very narrowly; largely around protecting ethnic groups from racial vilification et cetera, but has failed miserably in the broader responsibility of protecting basic human rights and freedoms; such as the right to participate in public prayer.

To my mind, the most obvious manifestation of lack of breadth in protecting basic human rights is the denial of an unborn child's right to live- mostly under the banner of the woman's right to choose above any other consideration. The fact that around one quarter of all pregnancies in Australia each year (100,000 approx.) end in abortion is a chilling testament to how far such emotive manipulations, callousness and loss of consciousness have infected/misled the community.

Instead of the woman's natural and proper responsibility to protect her unborn child she now assumes an almost sacred right to destroy her unborn child. This denial of the truth has prevailed on my conscience which requires me to continue to pray privately and publicly for those hurt by abortion.

It seems to me that, given the lack of respect for life, there appears to be no common ground or moral compass to effectively address the moral failure of our society. Prayer is

the avenue for people of faith but the ACT Government has taken it away in relation to my peaceful public prayer!

The Australian Constitution

I would like to raise with the Inquiry the capacity of the ACT Government to adopt such legislation as it appears to be inconsistent with Section 116 of the Australian Constitution which prevents laws prohibiting the free exercise of any religion.

The ACT is not a State and does not have a constitution in the generally accepted sense. As a 'child' of the Commonwealth one would reasonably expect that as a Territory the ACT should not assume powers to legislate outside the boundaries of the Constitution. That is, I fail to see how the ACT legislature can take for itself powers beyond those of the body that created it.

Residents of the ACT desperately need the protection of the Australian Constitution from the 'progressive' extremes of the ACT Government.

Summary

- Without any provocation, the ACT Government has gone to outrageous lengths to criminalise participate in a peaceful public prayer Vigil which only takes place for one hour a week.
- The legislation referred to above is in breach of Article 18 of the International Covenant on Civil and Political Rights
- Prayer is not a protest but is communication with God!
- The political and social engineering agendas of some groups have been allowed to discriminate against and to criminalise expressions of the genuinely held religious beliefs of others!
- There is no evidence to support a case that our peaceful prayer Vigil has impacted on the privacy of those attending the abortion facility.
- The sensitivities of some when confronted with payers being offered for those hurt by abortion does not justify banning and criminalising that prayer.
- Such actions violate the rights of Australian citizens who reside in the Territory of ACT and should be protected by the Australian Constitution.

John Popplewell

Attachments 1A and 1B