

Explanatory notes for the Health (Abortion Law Reform) Amendment Bill 2016

The Bill's short title: The short title of the Bill is the *Health (Abortion Law Reform) Amendment Bill 2016*.

Policy objectives of the Bill and the reasons for them: The Bill will improve clarity for health professionals and patients in the area of medical termination of pregnancy. There currently exists a lack of clarity around what point during gestation and for what reasons a termination of pregnancy may be performed in Queensland. The Bill seeks to clarify when care can be imparted and to avoid prolonged approval and ethics processes (not conducted for the benefit of patients' wellbeing but to substantiate lawfulness).

Brief statement of the way the policy objectives will be achieved by the Bill and why this way of achieving the objectives is reasonable and appropriate: Currently, Queensland hospitals use the "Queensland Clinical Guideline for Therapeutic Termination of Pregnancy" as a tool to manage requests for termination of pregnancy, which includes assessment of lawful termination of pregnancy. Conscientious objection is respected. However, it is evident that practices in Queensland around medical termination of pregnancy are inconsistent and confusing. This Bill seeks to ensure that processes followed are clear and uniform.

Alternative way of achieving the policy objectives: There is no alternative way of achieving the policy objectives of this Bill.

Administrative cost to government of implementing the Bill: The passage of this Bill would not result in an administrative cost to government.

Consistency of the Bill with fundamental legislative principles: The Bill is consistent with Fundamental Legal Principles.

Consultation was carried out in relation to the Bill: This issue has been debated for many years and never more widely than in 2016. Passionate individuals and organisations have had their say and while further consultation will take place while the Bill is in Committee, the main task will be consolidating and organising the results of existing consultation, which has been wide and extensive.

Explanation of the purpose and intended operation of each clause of the Bill:

Section 20 provides that only qualified health practitioners may perform an abortion. It also provides that a doctor and a registered nurse are a qualified health practitioner for performing an abortion by administering a drug at the written direction of a doctor. It also says a woman does not commit an offence against this section for performing an abortion on herself; or consenting to, or assisting, in the performance of an abortion on herself by administering a drug prescribed by a doctor.

Section 21 addresses abortion on a woman more than 24 weeks pregnant. It states a doctor may perform an abortion, or direct a registered nurse to perform an abortion by administering a drug, on a woman who is more than 24 weeks pregnant only if the doctor reasonably believes the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated; and has consulted at least 1 other doctor who also believes the continuation of the woman's

pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated.

Section 22 concerns the duty to perform or assist in abortion. It says no-one is under a duty to perform or assist in performing an abortion. A person is entitled to refuse to assist in performing an abortion. However, a doctor has a duty to perform, and a registered nurse has a duty to assist a doctor in the performance of, an abortion on a woman in an emergency if the abortion is necessary to save the life of, or to prevent a serious physical injury to, the woman.

Division 3 concerns patient protection. Section 23 concerns Declarations for an abortion facility. It provides that the Minister must, by written notice, declare an area around an abortion facility to be a protected area for the facility. An area declared to be protected area must be, at least 50m at any point from the abortion facility; and sufficient to ensure the privacy and unimpeded access for anyone entering, trying to enter or leaving the abortion facility; and no bigger than necessary.

Section 24 deals with Prohibited behaviour in relation to abortion facility. It says “A person in a protected area for an abortion facility must not engage in prohibited behaviour.” Prohibited behaviour, in relation to an abortion facility, means harassment, hindering, intimidation, interference with, threatening or obstruction of a person, including by capturing images of the person, intended to stop the person from entering the facility; or having or performing an abortion in the facility; or an act that can be seen or heard by a person in the protected period for the facility, and intended to stop a person from entering the facility. The *protected period*, for an abortion facility, means is when the Minister has declared a period to be the protected period for the facility or otherwise the period between 7am and 6pm on each day the facility is open.

Section 25 says “A person must not publish images of another person entering or leaving, or trying to enter or leave, an abortion facility, without the other person’s consent; and with the intention of stopping a person from having or performing an abortion. Publish, in relation to images of a person entering or leaving, or trying to enter or leave, an abortion facility means publish or communicate the images in a way that makes the images likely to come to the notice of, the public or a part of the public.

Elements of this Bill are consistent with legislation in Victoria and the ACT: The Bill draws on existing legislation in Victoria and the ACT:

- Section 21 regarding performing an abortion on a woman more than 24 weeks pregnant draws on the Victorian legislation.
- Sections 24 regarding prohibited behaviour is based on the definition in section 85 of the ACT *Health Act 1993*.
- Section 23 regarding Declarations for abortion facility whereby the Minister must, by written notice, declare an area around an abortion facility to be a protected area for the facility draws on the ACT *Health Act 1993*.
- Section 25 regarding publishing images of person entering or leaving abortion facility is based on section 87(2) of the ACT *Health Act 1993*.