

Termination of Pregnancy Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Termination of Pregnancy Bill 2018.

Policy objectives and the reasons for them

The objectives of the Termination of Pregnancy Bill 2018 (the Bill) are to enable reasonable and safe access by women to terminations of pregnancy and to regulate the conduct of registered health practitioners in relation to terminations.

The Bill modernises and clarifies the law for termination of pregnancy based on the recommendations of the Queensland Law Reform Commission's (QLRC's) report: "Review of termination of pregnancy laws" (No. 76) (the QLRC Report).

The phrase termination of pregnancy (termination) refers to a deliberately induced miscarriage by medical or surgical means (sometimes referred to as abortion). The choice of procedure depends on the gestation of the pregnancy, clinical indications including the risk of complications, the preferences of the woman and other relevant circumstances.

The Criminal Code currently makes it a crime to unlawfully terminate a woman's pregnancy. An unlawful termination of pregnancy may be committed by the person performing the termination (section 224) or the pregnant woman herself (section 225). It is also a crime for anyone to supply or procure anything which that person knows is intended to be used unlawfully to procure a miscarriage (section 226). These offences carry a maximum penalty of 14 years, seven years, and three years imprisonment, respectively.

The Criminal Code does not define unlawfully for these sections. However, section 282 of the Criminal Code provides an excuse from criminal responsibility for a person who performs a surgical or medical termination in certain circumstances. Current case law on section 282 provides that a termination will be lawful where it is necessary to prevent serious danger to the woman's life, physical or mental health and is not out of proportion to the danger intended to be averted.

The current state of the law has created uncertainty among doctors. The possibility of prosecution of health professionals and women also potentially impedes provision of a full range of safe, accessible and timely reproductive services.

The lack of certainty under the current provisions as to when a termination is lawful negatively impacts the accessibility and availability of termination services by causing fear and stigma for women, and reluctance by some health practitioners to provide such services. This may also disproportionately impact women who are already

disadvantaged, including Aboriginal and Torres Strait Islander women, women in rural, regional and remote areas and women in low socio-economic groups.

There has been an overall trend especially in industrialised countries toward the liberalisation of criminal termination laws, coinciding with an increased emphasis on patient autonomy and the recognition of reproductive rights, and consequently regard for termination as a health matter. Developments in international law have also influenced reform. United Nations treaty bodies have urged that laws criminalising termination of pregnancy be removed and have identified that denying access to termination can constitute discrimination and a violation of women's rights, including the right to health.

The reform of termination of pregnancy laws has been accompanied by a general trend toward greater community support for a woman's right to choose termination of pregnancy. All other Australian jurisdictions (except New South Wales) have amended their laws to decriminalise termination of pregnancy in particular circumstances.

On 28 February 2017, the Government announced that the current termination of pregnancy laws would be referred to the QLRC, with a view to a Bill being introduced in the next term of Government to modernise Queensland's termination laws. The QLRC is an independent statutory body that makes recommendations on areas of law in need of reform. The terms of reference issued to the QLRC specifically sought recommendations on how the Criminal Code should be amended to remove terminations performed by duly registered medical practitioners from the relevant Criminal Code sections, and asked the QLRC to prepare draft legislation based on its recommendations.

In the 2017 State Election, the Government restated its commitment to introduce a Bill based on the QLRC's recommendations.

Queensland Law Reform Commission Report

On 16 July 2018, the QLRC Report was tabled in the Legislative Assembly. The QLRC Report makes 28 recommendations for legislative changes to decriminalise safe termination practices and ensure that terminations are treated as a health matter, predominantly between a woman and her doctor. The accompanying QLRC draft legislation (in Appendix F of the Report) gives effect to its recommendations.

In formulating its recommendations, the QLRC were guided by a set of general principles that:

- generally terminations should be treated as a health issue rather than as a criminal matter;
- women's autonomy and health (including access to safe medical procedures) should be promoted, recognising that:
 - at the earlier stages of pregnancy, a woman's autonomy has greatest weight, and termination is lower risk and safe for the woman;
 - at the later stages of pregnancy, the interests of the fetus have increasing weight, and termination involves higher risk for the woman and creates more complex issues;

- the law should align with international human rights obligations relevant to termination of pregnancy laws, including enabling reasonable and safe access to termination services;
- the law should be consistent with contemporary clinical practice and health regulation; and
- the law should achieve reasonable consistency with the other Australian jurisdictions that have modernised their laws relating to termination.

The QLRC's central recommendations (recommendations 1-1, 1-2) are that sections 224, 225 and 226 of the Criminal Code should be repealed and replaced by new legislation (a stand-alone Bill) which modernises and clarifies the law in relation to terminations of pregnancy, particularly by clearly establishing the circumstances in which a termination is lawfully permitted. This accords with the QLRC finding that generally termination should be treated as a health matter, not a criminal matter.

The QLRC recommends (recommendations 3-1, 3-2) adoption of a 'combined approach', similar to the Victorian model but with some modifications, in establishing the new scheme for lawful performance of terminations by registered health practitioners. The scheme provides that a medical practitioner may perform a lawful termination 'on request' up to the gestational limit of 22 weeks, with additional requirements to be satisfied after this time. There is an exception to these requirements for emergencies.

Under the *Acts Interpretation Act 1954*, a *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* (the National Law) to practise in the medical profession, other than a student.

Consistent with the approach in Victoria and the Northern Territory, the recommended ground is that the medical practitioner considers that the termination should, in all the circumstances, be performed, having regard to the specified matters of: all of the relevant medical circumstances; the woman's circumstances; and applicable professional standards and guidelines. The QLRC notes this approach is generally consistent with current clinical practice.

The QLRC recommended that a single broadly expressed ground be adopted to ensure greater discretion to meet the range of individual circumstances that may arise in practice. The QLRC concluded it was preferable to provide one ground for all terminations after 22 weeks gestation, rather than having different grounds at different stages of pregnancy. As stated at paragraph 3.206 of the QLRC Report, "*This approach leaves assessment of the individual circumstances to the medical practitioner and the woman; the stage of pregnancy may be only one of several relevant factors.*"

At paragraph 3.183 of the QLRC Report, in relation to the setting of a gestational limit of 22 weeks, the QLRC states, "*This is a pragmatic approach that recognises community concern about terminations on request without any limits, particularly in later stages of pregnancy, by ensuring that later terminations are subject to additional oversight. It also recognises concerns that, without legislative provision, a medical practitioner may be left in uncertainty as to whether a later termination is lawful.*"

The adoption of a gestational limit is consistent with most other Australian jurisdictions who have engaged in similar reform. At paragraph 3.185, the QLRC considered there is *“a need to define a point of demarcation between terminations on request and later terminations where further oversight is justified. There is a need to find a workable balance in framing the provisions: although a gestational limit is arbitrary, it provides a greater degree of certainty.”*

As set out in paragraphs 3.186 to 3.192, the QLRC recommended the gestational limit be set at 22 weeks gestation for a number of reasons:

- First, 22 weeks gestation represents the stage immediately before the ‘threshold of viability’ under current clinical practice.
- Second, a limit of 22 weeks aligns with the Clinical Services Capability Framework for Public and Licensed Private Health Facilities.
- Third, a limit of 22 weeks aligns with the local facility level approval process adopted at the Royal Brisbane and Women’s Hospital, which imposes additional requirements for terminations after 22 weeks gestation.

The QLRC also considered that a gestational limit earlier than 22 weeks would be unduly restrictive and a potential barrier, particularly to vulnerable and disadvantaged women.

In paragraphs 3.181 to 3.182 of the QLRC Report it was noted the recommended gestational limit also recognises that: terminations after 22 weeks involve greater complexity and higher risk to the woman; and as the fetus develops, its interests are entitled to greater recognition and protection. The QLRC notes that *“It is also consistent with the view of the majority of Australians who support a woman’s right to choose, but not all of whom consider that this right should be absolute.”*

The QLRC also concluded that repeal of the existing Criminal Code sections is necessary for a range of reasons, including that since these sections were enacted more than 100 years ago newer and safer medical procedures for inducing terminations have been developed, such as early medical termination.

The removal of these sections of the Criminal Code in conjunction with other proposed measures, particularly the new lawful scheme for the conduct of terminations of pregnancy, will create certainty for women and health practitioners with respect to the threat of criminal prosecution and conviction. The QLRC also recommended (recommendation 3-7) that in order to ensure a fair and coherent approach to legislative reform in this area, a woman should be protected from criminal sanction in respect of the termination of her pregnancy.

The reform of termination of pregnancy laws raises related issues about enabling reasonable and safe access to termination services. In this regard, the QLRC recommended additional measures (recommendations 4-1 to 4-3 and 5-1 to 5-6) to help improve women’s access to terminations. For example, it deals with the consequences of a registered health practitioner’s conscientious objection to termination. A health practitioner who has a conscientious objection to performing or advising about a termination is required to inform the woman and refer the woman or transfer her care to another health practitioner or health service provider where the termination can be

provided by a health practitioner, without a conscientious objection. It also provides for the establishment of safe access zones in which particular conduct, at or near termination services premises, is prohibited.

The QLRC's recommendations are not intended to affect the laws that govern consent to medical treatment, substitute decision-making for adults with impaired capacity, consent to medical treatment for minors or the regulation of health practitioners, public hospitals and health services and licensed private health facilities.

In line with the Government's election commitment, the Bill incorporates the QLRC's draft legislation with additional provisions to support its effective implementation.

Achievement of policy objectives

The Bill will achieve its policy objectives by providing certainty and clarity for women, health practitioners and the community about the circumstances in which a termination is lawfully permitted.

The Bill gives effect to the QLRC recommendations and its underlying policy principle that termination of pregnancy should predominantly be treated as a health issue by amending the Criminal Code and creating a new legislative framework for the conduct of terminations by registered health practitioners, including measures to enable reasonable and safe access by women to terminations.

Amendments to the Criminal Code

The Bill achieves its policy objectives by repealing the current Criminal Code offence provisions relating to terminations in sections 224, 225 and 226 and instead creates new offences for an unqualified person to perform, or assist in, a termination. The new offences will each carry a maximum penalty of seven years imprisonment.

The purpose of the new Criminal Code offence is to protect the health, safety and well-being of women by deterring the practice of unregulated or 'backyard' terminations.

The offences will apply to a termination performed by a person who is not a medical practitioner (for example, someone who purports to be a medical practitioner but is not registered under the National Law) and to a termination in which a person who is not registered to practice in any of the specified health professions assists in the performance of a termination (for example, by unlawfully administering or supplying a termination drug).

To align with modern views about women's health care, the Bill distinguishes between lawful conduct (when a termination is performed by a medical practitioner acting in accordance with requirements for a lawful termination, or the woman) and criminal conduct (when a termination is performed by an unqualified person). The effect of these provisions in the Bill is to decriminalise terminations in particular circumstances.

Consistent with the QLRC recommendations (recommendations 6-1 to 6-4), the Bill also amends section 282 of the Criminal Code which is an excuse for surgical

operations and medical treatment and section 313(1) of the Criminal Code which is an offence relating to killing an unborn child.

New legislative scheme for the conduct of terminations

The Bill creates a new legislative scheme which regulates the conduct of registered health practitioners in relation to terminations and enables reasonable and safe access by women to terminations. The key features of the new framework contained in the Bill are outlined below:

Who may perform, and who may assist in performing, a termination

Health practitioners in Australia (including for example medical practitioners, nurses, and pharmacists) must be registered under the National Law. The National Law sets out a framework for the registration and discipline of registered health practitioners, and establishes National Boards that set standards, codes and guidelines that registered health practitioners must meet.

The Bill provides that a medical practitioner may perform a surgical or medical termination on a woman when acting in accordance with the requirements for performing a termination under the scheme. This is consistent with health regulation and current clinical practice and importantly, provides clarity and certainty for medical practitioners as to their authorisation to perform terminations.

The Bill does not expressly require a medical practitioner to be ‘suitably qualified’ to perform a termination. The QLRC Report at paragraph 3.35 states that *“the draft legislation does not affect the operation of other general requirements under health regulation and clinical practice which require medical practitioners to be suitably qualified and credentialed and to act within their scope of practice in relation to any health care (including a surgical or medical termination) which they may provide.”*

The Bill clarifies the role of other registered health practitioners who may assist a medical practitioner in the lawful performance of a surgical or medical termination. The Bill provides that a medical practitioner may assist another medical practitioner to perform a termination. It also provides that certain registered health practitioners (a nurse, midwife, pharmacist or Aboriginal and Torres Strait Islander health practitioner and not being a student) may, in the practice of their health profession, assist a medical practitioner to perform a lawful termination. The type and extent of assistance that may be provided by an assisting health practitioner will depend on the type of termination involved and the practitioner’s qualifications and scope of practice.

The Bill also allows for the expansion of the list of registered health practitioners who may assist in the performance of terminations by regulation. This ensures that other appropriately qualified health practitioners or emerging health professions may assist in a termination if it is within their scope of practice.

Combined approach – gestational limits and single broad ground and consultation

The Bill expressly provides that a registered medical practitioner may perform a lawful termination ‘on request’ up to a gestational limit of 22 weeks.

For a woman who is more than 22 weeks pregnant, a termination may be performed by a medical practitioner only where the specified ground is satisfied and there has been consultation with another medical practitioner who concurs.

The single broadly expressed ground is that the medical practitioner considers that the termination should, in all the circumstances, be performed, having regard to:

- all relevant medical circumstances; and
- the woman's current and future physical, psychological and social circumstances; and
- the professional standards and guidelines that apply to the medical practitioner in relation to the performance of terminations.

An exception to strict compliance with the requirements for a termination after 22 weeks is made in the case of an emergency (to save the woman or in the case of a multiple pregnancy another unborn child's life). This recognises that there may exist exceptional circumstances in which it is not practicable to comply with all aspects of the requirements because of the medical urgency of the situation. This will provide a greater degree of certainty for medical practitioners about when a termination may lawfully be performed.

Consistent with the QLRC Report at paragraphs 3.175 to 3.176 the Bill does not include any express requirements about obtaining consent and the usual requirements under the general law about consent for surgical or medical treatment continue to operate and apply to terminations performed under the Bill.

In summary, under the general law a surgical operation or medical treatment ordinarily requires the patient's consent. The law imposes requirements about the validity of an adult's consent and consent given by or for a minor. For an adult's (an individual who is 18 years or more) consent to be valid, the adult must be competent, that is have the capacity to understand in broad terms the nature of the procedure to be performed and the consent must be voluntary and specific to the proposed treatment (sometimes referred to as informed consent). In some circumstances, a child or young person under 18 years can give consent to surgical or medical treatment if they have the capacity to do so. A young person is capable of giving consent if they have sufficient intelligence and maturity to understand the nature and consequences of the proposed medical treatment. A child who does not have such capacity to consent is unable to validly consent to medical treatment. While in some circumstances the parent of a child who does not have the capacity to consent may consent to medical treatment on the child's behalf, current Queensland law considers consent to termination of pregnancy outside the scope of this parental decision making authority. This means an order by the Supreme Court in relation to a termination is required. In making such an order, the court must act in the best interests of the pregnant child. Treatment in the absence of consent may give rise to civil or criminal liability, for example an assault.

In Queensland, there is a statutory framework for the appointment of a substitute decision-maker for an adult who does not have the capacity to make their own decisions (including giving consent to medical treatment). Under this framework, termination

decisions are required to be consented to by the Queensland Civil and Administrative Tribunal (QCAT).

There is a limited common law exception to the requirement for the patient's consent that applies to emergency health care. Chapter 2 of the QLRC Report deals with the general law of consent to medical treatment in detail.

Consequences of non-compliance – health practitioners

Consistent with the QLRC Report at paragraphs 3.236 to 3.241, and 4.26, the Bill does not create any specific offences or penalties for a health practitioner's failure to comply with the requirements for a lawful termination, or a practitioner who contravenes the conscientious objection provision under the termination scheme. The QLRC considered that in this respect, medical and other health practitioners should be subject to the same professional and legal consequences as those that apply in relation to other medical procedures. This is consistent with the principle that termination of pregnancy should, in general, be treated as a health issue.

Registered health practitioners must comply with relevant registration and accreditation standards, professional standards (including codes of ethics, codes of conduct and competency standards), policies and guidelines. Non-compliance may result in a finding that a practitioner's conduct is in some way unsatisfactory or unprofessional. This finding may result in disciplinary action.

As recommended by the QLRC (recommendations 3-6 and 4-3) the Bill provides that in considering a matter under another Act about a registered health practitioner's professional conduct or performance, regard may be had to whether the practitioner performs a termination, or assists another practitioner to perform a termination, other than as authorised or contravenes the conscientious objection provisions.

Non-compliance by health practitioners in this context is therefore subject to the same professional and legal consequences that apply to health practitioners performing other medical procedures.

For example, if a medical practitioner does not comply with the conscientious objection provision, such as the obligation to transfer care, the affected patient or any other person, such as a family member, could make a complaint to the Office of the Health Ombudsman (OHO). The OHO would assess the complaint and decide if a matter requires further action including investigation or immediate action, referral to the Australian Health Practitioner Regulation Agency (AHPRA) for action, or referral to the QCAT.

The type of action considered necessary would be decided based on the usual statutory processes of the OHO or AHPRA and would vary depending on the facts and circumstances of each individual case including the nature and extent of the harm caused. Possible outcomes could include a caution or reprimand; accepting an undertaking from the practitioner, such as to comply with the law in future; conditions on registration such as completing training or supervision; or suspension or cancellation of registration.

The Bill does not alter the existing laws under which a medical or other health practitioner who administers surgical or medical treatment to a person has a duty to exercise reasonable skill and care, and may be civilly or criminally responsible for harm that results from a failure to do so.

Woman does not commit an offence for termination on herself

Consistent with the QLRC recommendation 3-7, the Bill includes a provision exempting a woman who consents to, assists in, or performs a termination on herself from any offence. This excludes such a woman from any criminal liability, whether as a principal offender or as a party. This includes liability under the new unqualified person offences in the new section 319A of the Criminal Code and would also extend to other provisions across the Criminal Code and other Queensland legislation.

The QLRC Report at paragraph 3.263 explains its rationale as “*generally, termination should be treated as a health issue, not a criminal matter. As a matter of principle, the [Bill] should not only protect a medical practitioner who performs a termination (and a health practitioner who assists in that performance) under the legislation from criminal responsibility for the termination of a woman’s pregnancy, but also the woman. This protection, together with the clarification under the [Bill] as to the circumstances in which a woman’s pregnancy may be terminated, are intended to increase women’s access to safe and lawful termination.*”

Conscientious objection to the performance of the termination

When a registered health practitioner refuses to provide, or participate in, a lawful treatment or procedure because it conflicts with his or her own personal beliefs, values or moral concerns, this constitutes a ‘conscientious objection’.

The conscientious objection provision in the Bill recognises that health practitioners have, and may exercise, the right to freedom of thought, conscience and religion, but seeks to balance this against the rights of women particularly the right to health, including reproductive health and autonomy.

However, the conscientious objection provision does not extend to administrative, managerial or other tasks ancillary to the provision of termination services. The provision does not extend to hospitals, institutions or services, as the right to freedom of thought, conscience and religion is a personal and individual right. However the provision does apply to registered health practitioners working in these settings.

The Bill deals with the consequences of a health practitioner’s conscientious objection. It will apply where a registered health practitioner is asked to perform, or assist in performing a termination, or to decide whether a termination should be performed on a woman who is more than 22 weeks pregnant. It will also apply to any registered health practitioner who is requested to advise about the performance of a termination, for example a general practitioner. At paragraph 4.146 the QLRC stated “*the inclusion of advice will ensure that a woman’s initial attempts to access lawful termination are not impeded.*”

Where a person asks a registered health practitioner to perform, assist, make a decision or advise about a termination, the Bill requires a registered health practitioner to

disclose their conscientious objection to the person. For example, a medical practitioner may ask for assistance from a nurse. If the nurse holds a conscientious objection, he or she would be required to disclose this to the medical practitioner seeking assistance in performing a termination.

If the request is by a woman for the registered health practitioner to perform a termination on the woman or advise the woman about a termination, the practitioner must refer or transfer her care to either:

- (i) another registered health practitioner who it is believed can provide the requested service and does not have a conscientious objection; or
- (ii) a health service provider at which the requested service can be provided by another registered health practitioner who does not have a conscientious objection.

The QLRC Report at paragraphs 4.141 to 4.142 considered this approach may reduce barriers to access to terminations, including for women who live in a rural, regional or remote area or are from culturally and linguistically diverse backgrounds. It is also generally consistent with the current clinical guideline in Queensland, and with the codes of conduct and guidelines applying to registered health practitioners.

While the Bill recognises the conscientious objection of a registered health practitioner, it does not exempt a practitioner from taking steps that might be required in emergency circumstances. The Bill specifies that the conscientious objection provision does not limit any duty of a registered health practitioner to provide a service (including performing or assisting in performing a termination on a woman) in an emergency.

Establishes 'safe access zones'

The Bill includes safe access zone provisions. The QLRC Report at paragraphs 5.123 to 5.124 states termination of pregnancy is an issue about which many people have strongly held views. There is a history of ongoing activities by people who are opposed to terminations at or near termination services premises in Queensland. The Bill broadens the lawful authority for performing terminations in Queensland, so the QLRC considers this opposition is likely to continue into the future and that women are entitled to access health services for terminations without interference and with privacy and dignity.

The QLRC Report at paragraphs 5.4 to 5.5 notes United Nations treaty bodies have observed that measures should be taken to prevent violence, harassment and obstruction of women seeking access to termination services and facilities. The United Nations Special Rapporteur on the right to health has also observed that measures should be taken to protect termination service providers from harassment and violence. Safe access zone legislation, which specifically deals with harassing, intimidating and other behaviour at or near termination services premises, has been introduced in the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria.

The QLRC Report at paragraph 5.125 to 5.127 acknowledges that:

“To the extent that safe access zones prohibit certain conduct (such as protest or communications in relation to terminations) at or near termination services premises, they restrict the implied freedom of political communication and the right to peaceful assembly. However, neither the freedom of political communication nor the right of peaceful assembly is absolute.

Legislation may place some restrictions on the free expression of political communication, including peaceful protest, provided they are reasonably appropriate and adapted to serve a legitimate purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. Similarly, the right of peaceful assembly may be subject to restrictions that are necessary and reasonable in a democratic society in the interests of public safety, public order, or the protection of the rights and freedoms of other persons.

The right to protest must be balanced with other rights and freedoms. They include a right to sexual and reproductive health and rights to privacy and personal autonomy.”

Consistent with QLRC recommendation 5-1, the Bill expressly states the purpose of the safe access zone provisions is to protect the safety and well-being and respect the privacy and dignity of persons accessing services provided at termination services premises and employees and others who need to access those premises in the course of their duties and responsibilities.

The Bill provides that a place is in the safe access zone if it is in the termination services premises or not more than 150 metres (or as varied under a Regulation by the relevant Minister) from an entrance to the premises. Variation of the distance will ensure the objectives of the safe access zones provisions are maintained.

Termination services premises are defined as premises at which a service of providing terminations is ordinarily provided. Pharmacies are excluded from this definition.

Consistent with the QLRC intention as expressed at paragraph 5.131, the safe access zone provisions override the operation of the *Peaceful Assembly Act 1992*. It would undermine the purpose of these provisions if, for example, an organiser of a protest in relation to terminations could hold an authorised public assembly in a safe access zone.

The Bill creates an offence to engage in prohibited conduct in the safe access zone. Prohibited conduct is conduct that relates to terminations, or could reasonably be perceived as relating to terminations, that would be visible or audible to another person in, or entering or leaving, termination services premises, and would be reasonably likely to deter that person from accessing the premises. For the purposes of the offence it is immaterial whether another person saw or heard, or was deterred by, the conduct. The Bill ensures that the offence does not apply to communications between a person employed to provide a service at the termination services premises and a woman attending the premises.

The Bill also creates offences for a person to make, publish or distribute, a restricted recording of another person without the other person’s consent and without reasonable excuse. The QLRC Report specifies at paragraph 5.144 that these offences are

“intended to address the use of recordings to intimidate or threaten individuals who are seeking to access termination services premises or employees at those premises, and to protect their privacy and dignity.”

A restricted recording means an audio or visual recording of a person while the person is in, or entering or leaving, a termination services premises, and that contains information that identifies, or is likely to lead to the identification of the person. It does not prohibit recordings of a person made, published or distributed with their consent.

The maximum penalty for these new offences in relation to safe access zones is 20 penalty units or one year’s imprisonment.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

Estimated cost for government implementation

It is anticipated that any costs arising from these legislative amendments will be met from existing agency resources.

Consistency with fundamental legislative principles

Potential breaches of fundamental legislative principles in the Bill are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – creation of new offences in clauses 15, 16 and 25.

The creation of new offences potentially breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals as they impose a penalty upon the person for a breach of the provision.

New Criminal Code offences for termination of pregnancy by an unqualified person

The Bill creates new Criminal Code offences in relation to an unqualified person who performs a termination on a woman, or who assists in the performance of a termination on a woman. The maximum penalty for each offence is seven years imprisonment.

The QLRC recommended (recommendation 3-8) the need for offences of this type as a necessary consequence of the repeal of current sections 224, 225 and 226 of the Criminal Code in order to ensure the health, safety and well-being of women is adequately protected by criminalising the practice of unregulated terminations. Any potential breach of fundamental legislative principles is justified on this basis.

The QLRC recommended (recommendation 3-10) the maximum penalty for the new offences should be seven years imprisonment. At paragraph 3.278 of the QLRC Report it states, *“this is an appropriate penalty, given that the mischief to which this offence is addressed is risk to the health of the woman posed by an unqualified person performing or assisting in the performance of a termination.”*

New criminal offence for prohibited behaviour in safe access zones

The Bill creates a new offence of engaging in ‘prohibited conduct’ in a safe access zone.

The QLRC recommended (recommendation 5-4) the creation of such an offence on the basis that termination is a sensitive and personal issue, and the presence of people engaging in activities such as protesting or holding prayer vigils near termination services premises may impact on the safety, privacy and well-being of women who are accessing those premises and of service providers (paragraph 5.1 and 5.130 of the QLRC Report).

The offence does not apply to communications between a person employed to provide a service at the termination services premises and a woman who is attending the premises. This ensures that communications relating to the treatment of the pregnant person do not give rise to an offence as recommended by the QLRC (paragraph 5.142 of the QLRC Report).

As outlined in paragraphs 5.129 – 5.130 of the Report, while there are a range of existing laws to address harassing, intimidating, obstructing and other behaviour, the QLRC considered these offences do not adequately address the full range of behaviours engaged in by people who oppose terminations at or near termination services premises. The QLRC considers “*safe access zone provisions are intended to promote public safety and public order and will provide a simple and effective mechanism for the protection of women and service providers. Similar provisions appear to have been effective in curtailing harassing and intimidating conduct at or near termination services premises in other jurisdictions.*” Any potential breach of fundamental legislative principles is justified on this basis.

New criminal offences for recording person in or near termination services premises

The Bill creates new offences for a person to make, publish or distribute a restricted recording of another person without the other person’s consent and without reasonable excuse. A restricted recording is defined to mean an audio or visual recording of a person while the person is in, or entering or leaving, a termination services premises, and that contains information that identifies, or is likely to lead to the identification of, the person. The QLRC recommended (recommendation 5-5) the creation of such offences to protect the privacy and dignity of those seeking to access termination services premises. Consequently, any potential breach of fundamental legislative principles is justified on this basis.

Penalties for new safe access zone offences

In accordance with recommendation 5-6 in the QLRC Report, the new safe access zone and related offences each carry a maximum penalty of 20 penalty units or one year’s imprisonment. In making its recommendation, the QLRC noted (paragraph 5.145 of the QLRC Report) that the penalty is approximately double the penalty for a public nuisance under the *Summary Offences Act 2005* but this is appropriate because of the targeted nature of the offences and the harm that may be caused. Consequently, any potential breach of fundamental legislative principles is justified on this basis.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – conscientious objection by health practitioners in clause 8.

The QLRC recommended (recommendations 4-1 and 4-2) specific provisions that deal with the consequences of a registered health practitioner's conscientious objection to termination. The Bill recognises that a health practitioner may have a conscientious objection to termination. Where a woman requests a registered health practitioner to perform a termination (on the woman) or advise about the performance of a termination (on the woman), the registered health practitioner must, in addition to disclosing their conscientious objection, refer the woman or transfer her care to another registered health practitioner or health service provider who does not have a conscientious objection.

These requirements may be considered to impact on the rights and liberties of registered health practitioners to practice according to their beliefs. The QLRC (paragraph 4.150 of the QLRC Report) states the recommended approach balances the right to freedom of conscience with other individual rights, achieves consistency with current codes of conduct and guidelines, and assists in enabling access to services. Any potential breach of fundamental legislative principles is justified on this basis.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – safe access zones and freedom of political communication and freedom of assembly in clauses 11 to 16.

In relation to the creation of safe access zones, the QLRC states that the right to political communication and peaceful assembly is not absolute and must be balanced with other rights and freedoms, including the right to sexual and reproductive health and the right to privacy and personal autonomy (see paragraphs 5.125 – 5.127 of the QLRC Report).

The purpose of the safe access zone provisions is to protect the safety and well-being and respect the privacy and dignity of persons, including employees and others accessing services provided at termination services premises. Paragraph 5.34 of the QLRC Report states these provisions are similar to reforms in other jurisdictions that have been considered reasonable and justified to serve a legitimate purpose. At paragraph 5.132, the QLRC states that "*the safe access zone provisions are tailored to prohibit conduct that infringes the rights of other individuals at the time and place they are seeking to access lawful health services.*"

The QLRC considers a distance of 150 metres from an entrance to a termination services premises is sufficient to ensure the privacy and unimpeded access of any person entering or leaving the premises, without imposing an undue burden on the implied freedom of political communication or the right of peaceful assembly. Consequently, any potential breach of fundamental legislative principles is justified for on this basis.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – police power to search without warrant in clauses 35 to 37.

The QLRC recommended (recommendation 5-7) an amendment to section 30 of the *Police Powers and Responsibilities Act 2000* (PPRA) in order to ensure that police have adequate enforcement powers in relation to safe access zones (paragraph 5.146 of the QLRC Report). Section 30 of the PPRA prescribes circumstances in which a police officer may stop, detain and search a person and seize anything that may be evidence without a warrant if satisfied there exists the requisite reasonable suspicion. A corresponding amendment is made to section 32 to enable searching of vehicles without warrant with reasonable suspicion. By supporting police enforcement powers in safe access zones these amendments are consistent with the overall purpose of protecting the safety and well-being of persons accessing services. Any potential breach of fundamental legislative principles is justified on this basis.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(3)(d) *Legislative Standards Act 1992*) – use of evidentiary aids in clause 17.

The Bill provides for the use of evidentiary certificates in relation to proceedings for the safe access zone related offences. In such a proceeding a signed certificate that the stated premises are termination services premises, or a place is in the safe access zone, may be taken to be evidence of the matter. Evidentiary aids benefit the administration of justice by potentially saving time and costs rather than requiring witnesses to appear and give evidence for non-contentious matters. Certificates are a means of facilitating the evidence and not conclusive proof of the matter. They may be challenged by the defence. Any potential fundamental legislative principles breach is considered justified on this basis.

Legislation has sufficient regard to the institution of Parliament (section 4(2)(b) *Legislative Standards Act 1992*) – ability to prescribe certain matters by regulation in clauses 7 and 14.

The QLRC recommended (recommendation 5-3) providing flexibility to vary the automatic safe access zone of 150 metres around termination services premises. This recognises there may be cases where, due to the particular location or features of the premises, it is necessary to alter the distance of 150 metres (for example, if the termination services premises is part of a multi-level, multi-complex building). The regulation making power is not limited to extending the distance, as there may be circumstances where it is appropriate to reduce it. The power can only be exercised if the Minister is satisfied a change is needed to ensure the privacy and unimpeded access of persons. The ability to vary the distance by regulation is a practical step in order to ensure the objectives of the safe access zone provisions are upheld (paragraphs 5.137 – 5.138 of the QLRC Report).

The Bill also incorporates a regulation making power to expand the list of health practitioners who may assist in the performance of a termination by a medical practitioner. This ensures flexibility to keep pace with future changes in clinical practice so that assistance in terminations can be provided by existing or emerging health professions as appropriate. Other registered health professions would only be prescribed if assisting a medical practitioner to perform a termination is within their

scope of practice. Any potential fundamental legislative principles breach is considered justified on this basis.

Consultation

The QLRC consulted widely in developing its recommendations, receiving almost 1,200 submissions on its consultation paper. It also considered the former relevant Parliamentary Committee's inquiry, reports and public hearings involving over 2,700 submissions into the two Private Member's Bills introduced in 2016 that sought reforms in relation to termination of pregnancy.

The Bill is based on the QLRC Report, which includes draft legislation to give effect to its recommendations. As a result, no specific consultation occurred in relation to the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with, or complementary to, legislation of the Commonwealth or another State.

In making its recommendations the QLRC considered, and sought to achieve reasonable consistency with, the reforms made in other Australian jurisdictions that have modernised laws relating to termination.

All other Australian jurisdictions (except New South Wales) have amended their laws to decriminalise termination of pregnancy in particular circumstances consistent with it being treated as any other health matter. However, the approach taken differs in each jurisdiction. The Australian Capital Territory has the least restrictive approach (there are no legislative gestational limits, grounds or consultation requirements) providing termination is lawful if carried out by a medical practitioner with consent in an approved medical facility ('on request'). Victoria has adopted a similar approach, but imposes additional requirements for termination of a pregnancy of more than 24 weeks gestation. Tasmania, South Australia, the Northern Territory and Western Australia have adopted various combinations of legal grounds, gestational limits and procedural requirements to define the circumstances in which a termination performed by a qualified person is lawful.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Termination of Pregnancy Act 2018*.

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

Clause 3 provides the purposes of the Bill are to enable reasonable and safe access by women to terminations and to regulate the conduct of registered health practitioners in relation to terminations. The Bill reforms the law relating to terminations of pregnancy in Queensland based on the QLRC's recommendations.

Clause 4 provides that the Dictionary in Schedule 1 defines particular words used in the Bill.

Part 2 Performance of terminations by registered health practitioners

Clause 5 provides that a medical practitioner may perform a termination on a woman who is not more than 22 weeks pregnant. This adopts an 'on request' approach up to the gestational limit of 22 weeks. Under this approach there are no legislative grounds or consultation with another medical practitioner requirements. The lawfulness of the termination is determined by the same principles as those that apply to health matters generally, for example consent. This aligns with principles of reproductive autonomy and privacy.

The term *medical practitioner* is defined in the *Acts Interpretation Act 1954* (the AIA) to mean a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than a student. The term *Health Practitioner Regulation National Law* (the National Law) is also defined in the AIA. *Woman* is defined in the dictionary in schedule 1 as a female person of any age. Section 32B of the AIA provides that words indicating a gender in an Act, include each other gender. These definitions apply throughout the Act.

The provision does not expressly require a medical practitioner to be 'suitably qualified' to perform a termination. This is achieved by existing health regulation and clinical practice which requires medical practitioners to be suitably qualified and credentialed and to act within their scope of practice in relation to any health care, including a surgical or medical termination which they may provide.

Termination is defined in the dictionary in schedule 1 to mean an intentional termination of pregnancy in any way, including by administering a drug or using an instrument or other thing. This makes it clear a termination can be a surgical or medical termination.

The Bill does not affect the laws that govern consent to medical treatment, including consent to medical treatment for minors. Accordingly, while the provision does not include any express requirements about obtaining consent, the usual requirements under the general law about consent for surgical or medical treatment continue to operate and apply to terminations performed under this scheme.

The provision also does not include any express provision about the way in which gestation is to be assessed, given this is a matter of clinical practice for determination in the individual circumstances.

Clause 6 provides that a medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers that, in all the circumstances, a termination should be performed and has consulted with another medical practitioner who concurs that, in all the circumstances, the termination should be performed.

New section 6(2) requires that in considering whether a termination should be performed after 22 weeks gestation, a medical practitioner must consider all relevant medical circumstances; and the woman's current and future physical, psychological and social circumstances; and the professional standards and guidelines that apply to the medical practitioners in relation to the performance of the termination.

The QLRC Report at paragraph 3.205 states that the specified ground is a single broadly expressed ground adopted to ensure greater discretion to meet the range of individual circumstances that may arise in practice. This approach leaves assessment of the individual circumstances to the medical practitioner and the woman.

Further the QLRC Report at paragraph 3.209 states that the formulation of the test in terms of whether the medical practitioner considers the termination 'should, in all the circumstances, be performed' deliberately avoids the use of the word 'appropriate', which might be considered unclear or uncertain. It also adopts the standard of 'consider', rather than the higher standard of 'reasonable belief'.

The reference to all relevant medical circumstances is intended to ensure that consideration is given to the woman's physical and mental health, the medical circumstances of and relating to the fetus and the pregnancy, and the range of medical options and their respective medical risks.

The reference to the woman's current and future physical, psychological and social circumstances is intended to capture a wide range of relevant considerations that might inform the woman's request, including for example, the impact of a pregnancy that is the result of rape, safety concerns arising in the context of domestic or family violence, or the combined impact of the woman's age, economic disadvantage and social isolation.

The reference to applicable professional standards and guidelines confirms and reinforces the basic requirement for all medical practitioners to act professionally and ethically.

A requirement for consultation is also included. Before performing a termination after 22 weeks gestation, the medical practitioner must consult with another medical practitioner. Both practitioners must consider that the termination should, in all the circumstances, be performed. This is intended to reflect the minimum consultation that is required, leaving flexibility for service providers to adopt further measures in practice if deemed appropriate.

The QLRC Report at paragraph 3.219 states that it is unnecessary to impose additional requirements about the qualifications, expertise or experience of the second medical practitioner. These are matters to be determined on a case by case basis in accordance with good medical practice.

The provision does not require that the second medical practitioner examine the woman, or that the consultation with another medical practitioner must occur in person. Such measures may be good medical practice, and would not be precluded. The QLRC Report at paragraph 3.220 states the provision reflects the minimum that is required, recognising that, in some areas of the State, such steps may be impractical and could significantly delay or restrict access to termination services. In some cases, for example, it might be appropriate for consultation with the other medical practitioner to occur by telephone or video-conference to facilitate access in regional areas. It would still be necessary for the second medical practitioner to consider all the circumstances in reaching their view on the termination.

New section 6(3) states that a medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant without compliance with the additional legislated requirements under subsections 6(1) and (2) (specified ground and consultation) in an emergency where the medical practitioner considers it is necessary to perform the termination to save the woman's life or the life of another unborn child. The latter takes into account the situation of multiple pregnancies.

Clause 7 clarifies the role of other registered health practitioners who may assist a medical practitioner in the performance of a surgical or medical termination. The type of assistance that may be provided will depend on the type of termination involved.

New section 7(1) provides that a medical practitioner may assist another medical practitioner to perform a termination.

New section 7(2) provides that a nurse, midwife, pharmacist, Aboriginal and Torres Strait Islander health practitioner or other registered health practitioner prescribed by regulation may in the practice of their health profession, assist a medical practitioner to perform a termination.

The terms *nurse, midwife, pharmacist* and *Aboriginal and Torres Strait Islander health practitioner* are defined in the dictionary in schedule 1 to mean a person registered under the National Law to practise in their respective profession, other than as a student. These specified health practitioners are authorised under this provision to assist to the extent that they may do so 'in the practice of their health profession'. For example, a pharmacist may be authorised to assist in the performance of a medical termination by dispensing or, in some circumstances, supplying, a termination drug to a woman but

will not be authorised to assist in a surgical termination as that would fall outside the practice of pharmacy.

New subsection 7(3) provides that the specified registered health practitioners are not authorised to assist a medical practitioner with a termination they know, or ought reasonably to know, is not being performed by the medical practitioner in accordance with sections 5 and 6.

New subsection 7(4) specifies that ‘assisting in the performance of a termination by a medical practitioner’ includes dispensing, supplying or administering a termination drug on the medical practitioner’s instruction. This will make clear the type of assistance that a registered health practitioner might provide for a medical termination.

Clause 8 deals with the situation where a registered health practitioner has a conscientious objection to the performance of the termination.

A registered health practitioner must disclose their conscientious objection to a person who asks them to perform, or assist in, a termination on a woman, or make a decision under section 6 (whether a termination should be performed), or advise the person about the performance of a termination and the practitioner has a conscientious objection to the performance of the termination.

New subsection 8(3) makes it clear that if the request is by a woman for the registered health practitioner to perform a termination, or advise them about the performance of the termination, the practitioner must refer the woman, or transfer her care to:

- (i) another registered health practitioner who it is believed can provide the requested service and does not have a conscientious objection to its performance; or
- (ii) a health service provider at which it is believed the requested service can be provided by another registered health practitioner who does not have a conscientious objection to its performance.

The QLRC Report at paragraph 4.153 states that pursuant to section 38(4) of the AIA, the referral or transfer would be required to be done as soon as possible.

The conscientious objection provision applies to registered health practitioners but does not extend to administrative, managerial staff or others engaged in tasks ancillary to the provision of termination services. It also does not apply to hospitals, institutions or services as the right to freedom of thought, conscience and religion is a personal and individual right. However, the provision does apply to registered health practitioners working in these settings.

The section only applies in relation to a registered health practitioner’s objection to performing the termination that is contemplated by a woman (as discussed in the QLRC Report at paragraph 4.148).

New subsection 8(4) makes clear the section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

Clause 9 provides that in considering a matter under another Act about a registered health practitioner's professional conduct or performance regard may be had to whether the practitioner complies with the requirements for a lawful termination, or conscientious objection.

This section provides a mechanism to address circumstances where a registered health practitioner does not comply with the requirements for a lawful termination, or conscientious objection. While not subject to a specific criminal offence, non-compliance by practitioners with the requirements of the Act may be dealt with under the regulatory framework for registered health practitioners as a matter of professional conduct or performance.

New subsection 9(2) sets out a non-exhaustive list of pathways for considering a matter about a health practitioner's professional conduct or performance.

Part 3 Protection from criminal responsibility

Clause 10 ensures that a woman who consents to, assists in or performs a termination on herself does not commit any offence. The section provides for the removal of criminal responsibility for a woman for a termination on herself despite offences in any other Act. The effect of this provision is that a woman could not be convicted of an offence under Queensland law in such circumstances, whether as a principal offender or as a party, including for example the new section 319A (Termination of pregnancy performed by unqualified person) or section 313(1) (Killing unborn child) of the Criminal Code. Notes are also inserted into these Criminal Code sections (as outlined below) to reference the operation of new section 10 (Woman does not commit an offence for a termination on herself).

An early medical termination may involve the self-administration of a termination drug by the woman. A practical aspect of this reform is that the new provision will ensure that the woman is not criminally responsible for this self-administration.

Part 4 Safe access zones

Division 1 Preliminary

Clause 11 provides the purpose of this part is to protect the safety and well-being, and respect the privacy and dignity, of persons accessing services provided at termination services premises; and persons who are employed to provide services at such premises, or who otherwise need to access the premises in the course of their duties or responsibilities.

Clause 12 states that this part applies despite the *Peaceful Assembly Act 1992*.

Clause 13 provides that in this part *termination services premises* means premises at which a service of performing terminations on women is ordinarily provided but does

not include a pharmacy. The term *premises* is defined in the dictionary in schedule 1 to mean a building or part of a building. The term *pharmacy* is also defined in the dictionary.

Clause 14 provides the meaning of the term *safe access zone*. A place is in the safe access zone if the place is in the termination services premises or not more than the prescribed distance from any entrance (pedestrian or vehicular) to the premises. Unless a prescribed distance is varied by regulation, pursuant to new section 14(2) the prescribed distance is automatically 150 metres from an entrance to the premises.

New sections 14 (3) and (4) enable a regulation to be made prescribing another distance for stated termination services premises (for example due to its particular location or features). The responsible Minister may recommend the making of such a regulation only if satisfied that, having regard to the location of the premises, a prescribed distance of 150 metres is insufficient, or is greater than is necessary, to achieve the purpose of this part. The QLRC Report at paragraph 5.137 states that the Minister's power under this provision is not limited to extending the distance, as there may be circumstances where it is appropriate to reduce it.

Division 2 Offences

Clause 15 creates the offence to engage in prohibited conduct in the safe access zone for termination services premises. The offence is a simple offence to be heard and decided in the Magistrates Court under the *Justices Act 1886*. The offence carries a maximum penalty of 20 penalty units or one year's imprisonment. The offence does not apply to communications between a person employed to provide a service at the termination services premises and a woman who is attending the premises. This is to ensure that communications relating to the treatment of the pregnant person do not give rise to a breach of the section.

The section specifies what prohibited conduct is for the purposes of the offence. A person's conduct in a safe access zone for termination services premises is *prohibited conduct* if the conduct:

- relates to terminations (or could reasonably be perceived to be) and would be visible or audible to another person in, or entering or leaving, the premises; and
- would be reasonably likely to deter a person from: entering or leaving the premises; requesting or undergoing a termination; or performing, or assisting in the performance of, a termination.

A person's conduct may be prohibited conduct under this section whether or not another person sees or hears the conduct or is actually deterred from taking the actions specified.

Clause 16 creates offences in relation to the making, publishing or distributing of a restricted recording without consent and without reasonable excuse. The offences are simple offences to be heard and decided in the Magistrates Court under the *Justices Act*. Each offence carries a maximum penalty of 20 penalty units or one year's imprisonment. The offences do not apply to a police officer doing a thing in the course of their duties, for example operating a body worn camera.

A *restricted recording* is an audio or visual recording of a person while the person is in, or entering or leaving, termination services premises; and contains information that identifies (or is likely to identify) that person. The section also contains definitions of the terms *distribute*, *publish* and *visual recording*. Footage taken by the occupier of a termination services premises for security purposes is provided as an example of what may be a reasonable excuse for these offences.

Part 5 Miscellaneous

Clause 17 is an evidentiary provision which applies in proceedings for offences being conducted under Part 4, Division 2 of the Termination of Pregnancy Act 2018. In such a proceeding a signed certificate by the responsible chief-executive that the stated premises are termination services premises, or a place is in the safe access zone, may be taken to be evidence of the matter.

Clause 18 provides that the Governor in Council may make regulations under the Termination of Pregnancy Act 2018.

Part 6 Amendment of Act

Clause 19 provides this clause amends the Termination of Pregnancy Act 2018.

Clause 20 provides for the amendment of the long title.

Division 2 Amendment of Criminal Code

Clause 21 provides this division amends the Criminal Code.

Clause 22 omits sections 224 to 226.

Clause 23 amends section 282 (Surgical operations and medical treatment) by omitting existing subsection (1) in its entirety and related definitions in (4) that are no longer required. New subsection (1) and (1A) are inserted along with relevant definitions in (4) as a consequence of the new provisions for lawful terminations.

New section 282(1) states a person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child if performing the operation or providing the treatment is reasonable, having regard to all the circumstances of the case.

The effect of the operation of new section 282(1) and the new definitions of *medical treatment*, *surgical operation* and *unqualified person* in section 282(4) is that in the context of terminations an excuse from criminal responsibility is available to a medical practitioner performing a termination or a health practitioner assisting (within the scope of their practice) under the new provisions for lawful terminations. The excuse under this subsection does not extend to an unqualified person (which is as defined in new section 319A) performing surgical operations or medical treatment intended to adversely affect an unborn child.

New section 282(1A) states a person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child in an emergency if it is necessary to perform the operation or provide the treatment to save the mother's life or the life of another unborn child. Unlike subsection (1), there is no limitation in the application of this limb of the excuse for an unqualified person providing an operation or treatment intended to adversely affect an unborn child.

Clause 24 amends section 313 (Killing unborn child) as a consequence of the new provisions for lawful terminations. New section 313 (1A) makes it clear that a person does not commit an offence against subsection (1) by performing a termination, or assisting in the performance of a termination, under the Termination of Pregnancy Act 2018. A note is also included referencing the operation of section 10 in relation to a woman's criminal liability for a termination on herself.

Clause 25 inserts new section 319A (Termination of pregnancy performed by unqualified person) into the Criminal Code.

New section 319A(1) provides that an unqualified person who performs a termination on a woman commits a crime which carries a maximum penalty of seven years imprisonment. The term *perform* includes attempt to perform. In relation to performing a termination on a woman, an *unqualified person* means a person who is not a medical practitioner.

New section 319A (2) provides that an unqualified person who assists in the performance of a termination on a woman commits a crime which carries a maximum penalty of seven years imprisonment. In relation to assisting in the performance of a termination on a woman, an *unqualified person* means a person who is not a medical practitioner or a prescribed practitioner providing the assistance in the practice of his or her profession. The term *prescribed practitioner* is defined to mean a person registered under the National Law to practise in any of the specified health professions, other than as a student, and includes a health profession of registered health practitioner prescribed under section 7(2) of the Act.

New section 319A(3) provides that a reference in section 319A(2) to assisting in the performance of a termination includes supplying, or procuring the supply of, a termination drug for use in a termination and administering a termination drug.

A note is included referencing the operation of section 10 in relation to a woman's criminal liability for a termination on herself.

New section 319A (4) contains the relevant definitions for the operation of new section 319A.

Division 3 Amendment of Evidence Act 1977

Clause 26 provides this division amends the *Evidence Act 1977*.

Clause 27 amends section 14B (Other definitions for division) as a consequence of the Termination of Pregnancy Act 2018.

Clause 28 amends section 21A (Evidence of special witnesses) as a consequence of the Termination of Pregnancy Act 2018.

Clause 29 amends section 21AC (Definitions for div 4A) as a consequence of the Termination of Pregnancy Act 2018.

Clause 30 amends section 21M (Meaning of *protected witness*) as a consequence of the Termination of Pregnancy Act 2018.

Division 4 Amendment of Guardianship and Administration Act 2000

Clause 31 provides this division amends the *Guardianship and Administration Act 2000*.

Clause 32 amends section 71 (Termination of pregnancy) as a consequence of the Termination of Pregnancy Act 2018.

The Guardianship and Administration Act (GAA) includes provisions dealing with terminations. Under the GAA, a termination is a ‘special health matter’ for which consent may be given, for an adult with impaired capacity, by the QCAT.

The matters in section 71(1) of which the QCAT must be satisfied before giving consent reflect the current circumstances in which a termination would be lawful under sections 224, 225 or 226 of the Criminal Code. The section requires consequential amendment to reflect the new provisions about lawful terminations. Section 71(1) is recast to state that the QCAT may consent, for an adult with impaired capacity for the special health matter concerned, to termination of the adult’s pregnancy only if the QCAT is satisfied that it may be performed by a medical practitioner under the Termination of Pregnancy Act 2018.

As with other special health care matters, the tribunal would also need to apply the ‘general principles’ and the ‘health care principle’ under the GAA.

Division 5 Amendment of Penalties and Sentences Act 1992

Clause 33 provides this division amends the *Penalties and Sentences Act 1992*.

Clause 34 amends section 151F (When treatment order can not be made) as a consequence of the Termination of Pregnancy Act 2018.

Division 6 Amendment of Police Powers and Responsibilities Act 2000

Clause 35 provides this division amends the *Police Powers and Responsibilities Act 2000*.

Clause 36 amends section 30 (Prescribed circumstances for searching persons without warrant) to insert a new prescribed circumstance as a result of the safe access zones provisions in the Termination of Pregnancy Act 2018. The new prescribed circumstance applies to searching a person without warrant if the person has committed, is committing, or is about to commit, an offence against sections 15 or 16 of the Termination of Pregnancy Act 2018.

Clause 37 amends section 32 (Prescribed circumstances for searching vehicle without warrant) to insert a new prescribed circumstance as a result of the safe access zones provisions in the Termination of Pregnancy Act 2018. The new prescribed circumstance applies to searching a vehicle without warrant that there is something in the vehicle that may be evidence of an offence against sections 15 or 16 of the Termination of Pregnancy Act 2018.

Division 7 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 38 provides this division amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 39 inserts a new part 22 in chapter 7 to provide a transitional provision. This new part contains new section 232 (Schedule 2 applies to repealed offence) as a consequence of amendments in section 40 to schedule 2 to ensure it includes a reference to section 226 (Supplying drugs or instruments to procure abortion) as in force any time before its repeal by the Termination of Pregnancy Act 2018.

Clause 40 amends schedule 2 (Disqualifying offences under the Criminal Code—crossing supervisors) as a consequence of the Termination of Pregnancy Act 2018.

Schedule 1 Dictionary

Schedule 1 provides a dictionary of terms used in the Termination of Pregnancy Act 2018.

© The State of Queensland 2018