

TERMINATION OF PREGNANCY LAW REFORM BILL 2017

SERIAL NO. 15

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR HEALTH

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Termination of Pregnancy Law Reform Bill, if passed, will repeal and replace current legislation in section 11 of the *Medical Services Act* dealing with the same subject matter. Consequential amendments will also be made to the *Criminal Code Act* to decriminalise terminations of pregnancies performed by health practitioners with relevant qualifications.

The Bill is intended to increase access by women to safe terminations of pregnancy in either of out-of-hospital or within hospital settings, with health practitioners applying evidence-based practice within a framework of professional standards and guidelines relevant to assessment and treatment. Health practitioners will be able to maintain a conscientious objection to providing termination of pregnancy services but will be required to refer a woman to another practitioner to access the services sought. The Bill includes the concept of safe access zones to provide protected access to health facilities where termination of pregnancy services are provided.

Part 1 of the Bill outlines preliminary matters. Comprehensive definitions are provided for important terms that are used throughout the Bill. The Bill defines the qualifications and credentials of the suitably qualified medical practitioner who may perform a termination of pregnancy, health practitioners who may assist the termination and the scope of professional standards and guidelines to which the medical practitioner must have regard in assessing the woman.

Part 2 of the Bill outlines the roles of health practitioners and matters relating to termination of pregnancy at not more than 14 weeks, termination of pregnancy at not

more than 23 weeks, termination of pregnancy where life is at risk, and the requirements placed on health practitioners who are conscientious objectors.

Part 3 of the Bill creates offences of engagement in prohibited conduct and publication of recording in a safe access zone, defined as an area including the premises where terminations are performed and extending 150 metres from the boundary of the premises. The Part defines the prohibited behaviours and sets out the penalties and defences.

Part 4 of the Bill provides for reporting of information to the Chief Health Officer as prescribed by regulations.

Part 5 of the Bill contains the power of the Administrator to make regulations about such matters as offences, penalties, collection of information or data, or the setting of standards or requirements.

Part 6 of the Bill notes consequential and related amendments to other legislation including the *Criminal Code Act* and the *Medical Services Act*.

NOTES ON CLAUSES

Part 1 Preliminary Matters

Clause 1 Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Termination of Pregnancy Law Reform Act 2017*.

Clause 2 Commencement

This is a formal clause that provides that the Act commences on the date fixed by the Administrator by *Gazette* notice.

Clause 3 Objects of the Act

This is a formal clause which provides for the objects, or purposes, of the Act.

Clause 4 Definitions

This is a formal clause which provides for the clear definition of terms used in the body of this Bill. The definitions are numerous and listed in alphabetical order.

Clause 5 Application of Criminal Code

This is a formal clause that provides for the application of Part IIAA of the Criminal Code to an offence against this Act, incorporating the general principles of criminal responsibility, establishes general defences, and deals with burden of proof.

Part 2 Role of health practitioners

Clause 6 Meaning of perform a termination

This clause provides a definition of the phrase ***performs a termination*** as it relates to a medical practitioner, and the assistance provided by an ATSI health practitioner, midwife, nurse or pharmacist.

Clause 7 Termination of pregnancy by a suitably qualified medical practitioner at not more than 14 weeks

This clause allows a suitably qualified medical practitioner to perform a termination of a woman's pregnancy of not more than 14 weeks gestation if after assessing woman the medical practitioner considers the termination is appropriate in all the circumstances, having regard to the woman's medical circumstances, current, future physical or psychological and social circumstances and to the prevailing professional standards and guidelines.

Clause 8 Termination of pregnancy by authorised health practitioners at not more than 14 weeks.

This clause provides for a suitably qualified medical practitioner to direct an authorised ATSI health practitioner, midwife, nurse or pharmacist to assist in the performance of a termination. An authorised pharmacist may supply the termination drug to the woman in accordance with the direction of the medical practitioner. An authorised nurse, midwife or ATSI health practitioner may supply or administer the termination drug, or provide assistance in surgical procedures in accordance with the direction of the medical practitioner. These clauses ensure the authorised nurse, midwife, ATSI health practitioner or pharmacist act in accordance with the *Medicines, Poisons and Therapeutic Goods Act*, and will be exempt from prosecution under the *Criminal Code* when acting in accordance with such direction. This clause does not include the ability for the suitably qualified medical practitioner to direct a medical practitioner who is not suitably qualified. This is to ensure the suitably qualified medical practitioner retains responsibility for the performance of each aspect of the termination of pregnancy by the authorised health practitioners in accordance with the direction issued.

Clause 9 Termination of pregnancy by a suitably qualified medical practitioner at not more than 23 weeks

This clause allows a suitably qualified medical practitioner to perform a termination of a woman's pregnancy of more than 14 weeks but not more than 23 weeks gestation, provided the medical practitioner has consulted with at least one other suitably qualified medical practitioner and each practitioner considers the termination is appropriate in all the circumstances. Each of the medical practitioners must have regard to the woman's medical circumstances, current, future physical or psychological and social circumstances and to the prevailing professional standards and guidelines.

Clause 10 Termination of pregnancy where life at risk

This clause allows a medical practitioner, who may or may not be suitably qualified to perform a termination of any gestation in an emergency if the termination is necessary to preserve the life of the woman.

Clause 11 Medical practitioner who has conscientious objection

This clause provides for a medical practitioner to inform a woman seeking advice about, or the performance of, a termination of a pregnancy that the medical practitioner has a conscientious objection, and for the referral of the woman, within a clinically reasonable time, to another suitably qualified medical practitioner who does not hold a conscientious objection.

Clause 12 Other health practitioners who have conscientious objection

This clause provides for a health practitioner who has been directed by a medical practitioner to assist with a termination of pregnancy to inform the medical practitioner that the health practitioner holds a conscientious objection to terminations of pregnancy, and requires the medical practitioner to direct another health practitioner who the medical practitioner knows does not have a conscientious objection.

Clause 13 Duty to perform or assist when necessary to save life

This clause provides a duty for health practitioners to perform or assist with a termination of pregnancy, despite holding a conscientious objection to terminations of pregnancy, where a termination is necessary to preserve the life of the pregnant woman.

Part 3 Safe access zones

Clause 14 Prohibited conduct in a safe access zone

This clause provides for offences where a person intentionally engages in prohibited conduct within a safe access zone and that person is reckless in relation to that circumstance. Prohibited conduct means harassing, hindering, interfering with, threatening or obstructing a person, including by recording the person without the person's consent and without a reasonable excuse, which may result in deterring a person from entering premises for termination services or performing or receiving a termination of pregnancy. Prohibited conduct also means an act which can be seen or heard by anyone accessing the premises which may result in deterring a person from entering premises for terminations or performing or receiving a termination of pregnancy.

A safe access zone is defined (in clause 4) as including the premises for performing terminations and an area of 150 metres from the boundary of those premises.

The clause does not apply if the person is a police officer acting in the duties of law enforcement or the person is employed at the premises for termination services and the conduct was reasonable in the circumstances.

The maximum penalty for the offence is 100 penalty units or imprisonment for 12 months.

Clause 15 Publication of recording

This clause provides for offences where a person intentionally and recklessly publishes a recording of another person who is in a safe access zone, without that other person's consent, and the recording shows that the other person was accessing or attempting to access or leaving premises for termination of pregnancy services.

The defence to this offence is if the defendant has a reasonable excuse.

The maximum penalty for the offence is 100 penalty units or imprisonment for 12 months.

Clause 16 Seizure of material used in offence

This clause provides for a police officer who believes on reasonable grounds that a person is committing, or is likely to commit, an offence under clauses 16 and 17, to seize and remove any item, recording or information that was used, or is in use, in relation to the offence.

Part 4 Reporting

Clause 17 Reporting requirements

Part 5 of the Bill requires a medical practitioner who performs a termination of pregnancy to provide to the Chief Health Officer information prescribed by regulation within the time prescribed.

Part 5 Miscellaneous

Clause 18 Regulations

This clause provides the Administrator with the power to make regulations under this Bill.

Part 8 Consequential and related amendments

Division 1 Criminal Code

Clause 19 Code amended

This clause provides for amendment of the *Criminal Code* upon commencement of this Bill.

Clause 20 Sections 208A to 208C replaced

This clause repeals sections 208A to 208C and inserts a new provision, section 208A into the *Criminal Code*. Section 208A provides that a person commits an offence if that person is not a qualified person and intentionally performs a termination on another person. Strict liability applies to the fact that the person is not qualified, but does not apply to a woman who consents to, or assists with, the performance of a termination on herself.

The maximum penalty for this offence is imprisonment for 7 years.

This clause provides definitions for the terms 'qualified person', 'authorised', 'nurse', 'midwife', 'Aboriginal and Torres Strait (ATSI) health practitioner', 'pharmacist', 'suitably qualified medical practitioner' and 'woman' for the purpose of Part 6, Division 1 of this Bill.

Division 2 Medical Services Act amended

Clause 21 Act amended

This clause provides for amendment of the *Medical Services Act* upon commencement of this Bill.

Clause 22 Section 11 repealed

This clause repeals Section 11 of the *Medical Services Act* upon commencement of this Bill.

Clause 23 Expiry of Part

This clause provides that Part 6 of this Bill will expire on the day after it commences.