



**Queensland Parliament**

**Health, Communities, Disability Services and Domestic and  
Family Violence Prevention Committee**

# **Inquiry into Abortion Law Reform**

## **Information Paper**

### ***Current law in Queensland and other Australian jurisdictions***

#### **Call for submissions**

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the Queensland Legislative Assembly invites submissions to its inquiry into aspects of the law governing termination of pregnancy in Queensland.

#### **How to make a submission**

A submission should be in writing. It will assist the committee if you address issues in the terms of reference.

While there is no specified format for a submission, the committee will only accept submissions that include the submitter's name (first and family name), a physical or email address (or both) and a daytime phone number. Personal addresses and phone numbers will not be published.

Submissions may be sent by:

email: [abortionlawreform@parliament.qld.gov.au](mailto:abortionlawreform@parliament.qld.gov.au)

post: Inquiry Secretary, HCDSDFVP Committee

Parliament House,

Brisbane 4000.

Fax: 07 3553 6639

**Deadline for submissions - 30 June 2016**

The Health, Communities, Disability Services, Domestic and Family Violence Committee is a portfolio committee of the Queensland Parliament. Information about the committee is available on its webpage at <http://www.parliament.qld.gov.au/HCDSDFVPC>

### **Publication and confidentiality**

If the committee accepts a submission, it is usually published on the committee's website as soon as possible to encourage public consideration. Contact details of individuals are removed before submissions are published.

A committee may decide that a submission (or part of it) should be kept confidential. If you want all or part of your submission to be kept confidential, you should state this clearly and explain the reasons.

#### **Terms of reference**

The Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 was referred to the committee on 10 May 2016 for detailed consideration.

On 26 May 2016 the Parliament agreed that concurrent with its consideration of the Bill, the committee is to consider, report and make recommendations on aspects of the law governing termination of pregnancy in Queensland to the House on options regarding:

- existing practices in Queensland concerning termination of pregnancy by medical practitioners
- existing legal principles that govern termination practices in Queensland
- the need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations
- legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods, and
- provision of counselling and support services for women.

The committee is required to report to the Legislative Assembly by **26 August 2016**.

### **Inquiry process – submissions, briefings and hearings**

The committee's inquiry process, submissions and transcripts of briefings and hearings will be published on the committee's [website](#). The committee will consider submissions and will hold a series of briefings and public hearings. Witnesses may apply to the committee to give evidence in a private hearing.

Updates on the inquiry will be sent to inquiry subscribers; if you would like to subscribe to updates, please email [abortionlawreform@parliament.qld.gov.au](mailto:abortionlawreform@parliament.qld.gov.au) with 'subscribe' in the subject line.

### **Purpose of this paper**

This paper sets out the current law in Queensland that governs termination of pregnancy, and the laws in other Australian jurisdictions, and raises some questions relevant to the terms of reference. The committee intends this paper to inform submitters about the current law.

## Current law regulating the termination of pregnancy

### Summary

Currently, three Australian jurisdictions have decriminalised abortion, the Australian Capital Territory, Victoria and Tasmania (although restrictions continue for later term abortions in Tasmania and Victoria). In all other jurisdictions, there are exemptions from criminal liability in certain circumstances.

#### Queensland

- Abortion is a crime for women and for doctors procuring it.
- It is legal if the doctor believes a woman's physical and/or mental health is in serious danger.

#### New South Wales

- Abortion is a crime for women and for doctors procuring it.
- It is legal if the doctor believes that the woman's life or physical and/or mental health is in serious danger. Social, economic and medical factors may be considered.

#### Victoria

- Abortion is no longer a crime under the *Crimes Act 1958* (Vic) as a result of the [\*Abortion Law Reform Act 2008\*](#) (Vic):
  - Up to 24 weeks gestation: a registered medical practitioner may perform an abortion on a woman upon request
  - After 24 weeks gestation: a registered medical practitioner may only perform an abortion where the practitioner and at least one other registered medical practitioner reasonably believes that the abortion is appropriate in all the circumstances.

#### South Australia

- Under the [\*Criminal Law Consolidation Act 1935\*](#) (SA):
  - Up to 28 weeks: abortion is lawful if two qualified medical practitioners agree the woman's physical and/or mental health is at greater risk by continuing the pregnancy than from termination, or that the child is at risk of being seriously handicapped. A two-month residency requirement applies
  - After 28 weeks: the termination must be necessary to save the woman's life or prevent grave injury to her physical or mental health.

### **Western Australia**

- Abortion is illegal under the Western Australia Criminal Code unless performed by a medical practitioner in good faith, with reasonable care and skill and it is justified under the [Health Act 1911 \(WA\)](#):
  - Up to 20 weeks: justified with the informed consent of the woman.
  - After 20 weeks: not justified unless two appointed medical practitioners agree the woman or unborn child has a severe medical condition and the procedure is performed in an approved facility.

### **Tasmania**

- Abortion is no longer a crime under the Tasmanian *Criminal Code Act 1924*.
- Under the [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#):
  - Up to 16 weeks: abortion is allowed, provided the woman consents
  - After 16 weeks: two medical practitioners must agree that the woman's physical and/or mental health is at greater risk by continuing the pregnancy.

### **Australian Capital Territory**

- Abortion is no longer a crime under the *Crimes Act 1900 (ACT)*.
- Under the [Medical Practitioners \(Maternal Health\) Amendment Act 2002 \(ACT\)](#), abortion is available on request.

### **Northern Territory**

- Abortion is illegal under the *Criminal Code Act* but is lawful in certain circumstances provided under the [Medical Services Act \(NT\)](#):
  - Up to 14 weeks: if two medical practitioners agree the woman's physical and/or mental health is at greater risk by continuing the pregnancy, there is substantial risk of the child being seriously handicapped. Must be performed in a hospital.
  - After 14 weeks and up to 23 weeks: abortion is lawful if immediately necessary to prevent serious harm to the woman's physical or mental health.

### **Menhennitt ruling**

The Menhennitt ruling comes from *R v Davidson 1969*, where Justice Menhennitt ruled that in Victoria (at that time), an abortion may be lawful if it is necessary to protect the physical or mental health of the woman, provided that the danger involved in the abortion did not outweigh the danger which the abortion was designed to prevent.

### **Veivers v Connolly**

The Queensland Supreme Court case of *Veivers v Connolly* allowed a claim for negligence against a medical practitioner who had negligently failed to diagnose a pregnant woman who had contracted rubella. It was held that had the rubella been correctly diagnosed, the woman would have been able to access a lawful termination.

## Queensland

### Legislation

Sections 224-226 of the [Criminal Code Act 1899 \(Qld\)](#) create three offences relating to procuring an abortion.

#### **224 Attempts to procure abortion**

*Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment for 14 years.*

#### **225 The like by women with child**

*Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime, and is liable to imprisonment for 7 years.*

#### **226 Supplying drugs or instruments to procure abortion**

*Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.<sup>1</sup>*

Those sections of the *Criminal Code* refer to unlawful procurement, but do not define the circumstances in which an abortion would be considered lawful. However, under section 282(1) of the [Criminal Code Act 1899 \(Qld\)](#):

*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) a person or an unborn child for the patient's benefit; or*
- (b) a person or an unborn child to preserve the mother's life;*

*if performing the operation or providing the medical treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.<sup>2</sup>*

Within section 282(4) of the Queensland Criminal Code, *medical treatment* does not include medical treatment intended to adversely affect an unborn child and *surgical operation* does not include a surgical operation intended to adversely affect an unborn child.

### Cases

In 1986, in the case of [R v Bayliss and Cullen](#), McGuire DCJ defined the circumstances in which an abortion would be 'lawful' under the terms of the *Criminal Code*.<sup>3</sup> Judge McGuire relied on an earlier version of section 282 of the *Criminal Code* to hold that abortion is lawful where it is carried out to prevent serious danger to the woman's physical and mental health from the

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<sup>1</sup> [Criminal Code Act 1899 \(Qld\)](#), ss 224-226.

<sup>2</sup> [Criminal Code Act 1899 \(Qld\)](#), s 282(1).

<sup>3</sup> (1986) 6 QLR 8.

continuance of the pregnancy. A single Judge of the Supreme Court of Queensland affirmed this decision in the 1994 case of *Veivers v Connolly*.<sup>4</sup>

The decision in *R v Bayliss and Cullen* remains the current legal basis for an exemption from criminal liability for procuring an abortion in Queensland. It must be noted that the decision was based on the previous version of s 282, which referred only to 'surgical procedures' and not to 'medical treatment' and did not contain the provisions currently in s 282(4).

The case extensively examined the legislation and precedents of other jurisdictions, and relied on the 1969 watershed Victorian case of *R v Davidson* (the Menhennitt ruling) to interpret the meaning of s 282.<sup>5</sup>

In 2009, in the Cairns District Court case of *R v Brennan & Leach*, a woman was charged under section 225 with procuring her own miscarriage by using imported drugs. Her partner was charged under section 226 with supplying the drugs. They were acquitted as the jury found that the drug used was not a substance noxious to the mother as required by legislation.<sup>6</sup>

As a result of those charges, doctors argued that Queensland law was too uncertain where medication was used.<sup>7</sup> Section 282 of the *Criminal Code* was later amended to relieve a person from criminal responsibility for performing a surgical operation or a medical treatment on a patient for their benefit or on an unborn child for the preservation of the mother's life.<sup>8</sup>

## Victoria

### Background

Until 2008, abortion in Victoria was prohibited under sections 65 and 66 of the *Crimes Act 1958 (Vic)*, which were virtually identical to sections 224-225 of the Queensland *Criminal Code*.<sup>9</sup> Abortion was only an offence if performed 'unlawfully'. There were no specific exemptions from criminal liability similar to section 282 of the Queensland *Criminal Code* and the circumstances in which an abortion was considered lawful were not defined.

### Cases

In the 1969 Supreme Court case of *R v Davidson*,<sup>10</sup> Justice Menhennitt ruled that an abortion is 'lawful' if the accused honestly believed on reasonable grounds that the act done was:

- necessary to preserve the woman from a serious danger to her life or physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of pregnancy would entail
- in the circumstances not out of proportion to the danger to be averted.

### Legislation

In October 2008, the *Abortion Law Reform Act 2008 (Vic)* was passed by Parliament. It repealed the provisions relating to abortion from the *Crimes Act* and removed all common

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<sup>4</sup> [1995] 2 Qd R 326; N Cica, *Abortion Law in Australia*, Parliament of Australia Library, 31 August 1998.

<sup>5</sup> [1969] VR 667.

<sup>6</sup> W Carlisle, 'Crown kicks own goal in Qld abortion trial', *Drum*, 15 October 2010.

<sup>7</sup> *Explanatory Notes*, Criminal Code (Medical Treatment) Amendment Bill, p 2.

<sup>8</sup> *Explanatory Notes*, Criminal Code (Medical Treatment) Amendment Bill 2009, p 1.

<sup>9</sup> N Dixon, *Abortion Law Reform: An Overview of Current Issues*, Queensland Parliamentary Library, 2003, p 21.

<sup>10</sup> *R v Davidson* [1969] VR 667.

law offences, effectively decriminalising abortion.

Under the Act, a registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant upon request.<sup>11</sup> The legislation specifically includes abortion by administration of a drug.<sup>12</sup> After 24 weeks, a registered medical practitioner may only perform an abortion where the practitioner:

- reasonably believes that the abortion is appropriate in all the circumstances
- has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.<sup>13</sup>

In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to:

- all relevant medical circumstances
- the woman's current and future physical, psychological and social circumstances.<sup>14</sup>

### **Conscientious objection**

The [Abortion Law Reform Act 2008 \(Vic\)](#) provides that medical practitioners who have a conscientious objection to performing or advising on abortions must:

- advise the patient that they have a conscientious objection to abortions, and
- refer the patient to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.<sup>15</sup>

Despite any conscientious objection to abortion, a registered medical practitioner has a duty to perform an abortion in an emergency where it is necessary to preserve the life of the pregnant woman.<sup>16</sup>

### **Penalties**

While there are no longer criminal penalties for procuring an abortion in the *Crimes Act*, according to the [Explanatory Memoranda](#) for the Abortion Law Reform Bill 2008:

*A registered medical practitioner who performed an abortion on a woman who was more than 24 weeks pregnant without considering the relevant circumstances, or without seeking the opinion of a second registered medical practitioner will be liable to be found to have engaged in professional misconduct under the Health Professions Registration Act 2005.*

### **Access zones around abortion clinics**

The [Public Health and Wellbeing Act 2008 \(Vic\)](#) was amended in 2015 to provide for safe access zones around premises at which abortions are provided, and to prohibit publication and distribution of certain recordings. Those amendments have not yet come into force.<sup>17</sup>

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<sup>11</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), s 4.

<sup>12</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), ss 6, 7.

<sup>13</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), s 5(1).

<sup>14</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), s 5(2).

<sup>15</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), s 8(1).

<sup>16</sup> [Abortion Law Reform Act 2008 \(Vic\)](#), s 8(3).

<sup>17</sup> [Public Health and Wellbeing Amendment \(Safe Access Zones\) Act 2015 \(Vic\)](#), s 2.

## New South Wales

### Legislation

Sections 82-84 of the [Crimes Act 1900 \(NSW\)](#) creates similar offences relating to procuring an abortion to those in the Queensland *Criminal Code*. Abortion is only an offence if performed 'unlawfully' and those circumstances are not specified. Under the *Crimes Act*, if a woman or other person procures an abortion the maximum penalty is ten years imprisonment. Supplying or procuring drugs or instruments has a maximum penalty of five years.

### Cases

The 1972 NSW District Court decision of *R v Wald* by Judge Levine established the grounds on which an abortion may be performed lawfully in New South Wales:<sup>18</sup>

*[a]n abortion should be considered to be lawful if the doctor honestly believed on reasonable grounds that "the operation was necessary to preserve the woman involved from serious danger to her life or physical or mental health which the continuance of the pregnancy would entail" and that in regard to mental health the doctor may take into account "the effects of economic or social stress that may be pertaining to the time".*

*Levine also specified that two doctors' opinions are not necessary and that the abortion does not have to be performed in a public hospital.*<sup>19</sup>

The 1995 New South Wales Supreme Court case, [CES and Anor v Superclinics](#), affirmed this decision and held that a threat to the woman's mental health which may occur after the birth can be taken into account, including social and economic considerations.<sup>20</sup>

## South Australia

### Legislation

The [Criminal Law Consolidation Act 1935 \(SA\)](#) creates offences similar to those in Queensland.<sup>21</sup> The Act was amended in 1969 to include section 82A which sets out circumstances where the procurement of an abortion will be lawful.<sup>22</sup>

The effect of s 82A is as follows:

*In essence, s 82A permits an abortion in two types of situations.*

*The **first** situation applies in the period before the foetus has become 'a child capable of being born alive' (which s 82A(8) sets at **28 weeks**). That is, if a qualified medical practitioner and one other qualified medical practitioner are of the opinion, formed in good faith after both have personally examined the woman, that –*

- the continuation of the pregnancy involves greater risk to the woman's life or of injury to physical or mental health than if the pregnancy were terminated; or*
- there is a substantial risk that, if the pregnancy were not terminated, the child would suffer from such physical or mental abnormalities as to be seriously handicapped.*

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<sup>18</sup> (1971) 3 DCR (NSW) 25.

<sup>19</sup> Children by Choice, [Australian Abortion Law and Practice](#), 26 November 2015.

<sup>20</sup> (1995) 38 NSWLR 47.

<sup>21</sup> [Criminal Law Consolidation Act 1935 \(SA\)](#) ss 81 and 82.

<sup>22</sup> N Dixon, [Abortion Law Reform: An Overview of Current Issues](#), Queensland Parliamentary Library, 2003, p 22.

The **second** situation is where, at any stage of the pregnancy (including **over 28 weeks**), the termination is immediately necessary to save the woman's life, or prevent grave injury to her physical or mental health. The abovementioned procedural requirements do not apply in these circumstances.

The provision also makes it clear that no person is under a duty to participate in any such termination operation to which he or she has a conscientious objection.<sup>23</sup>

Under the [Criminal Law Consolidation Act 1935 \(SA\)](#), procuring an abortion has a maximum penalty of life imprisonment. Supplying or procuring drugs or instruments has a maximum penalty of three years.

## Western Australia

### Legislation

Under s 199(1) of the Western Australian [Criminal Code](#), the procurement of an abortion is unlawful unless:

- (a) the abortion is performed by a medical practitioner in good faith and with reasonable care and skill; and*
- (b) the performance of the abortion is justified under section 334 of the Health Act 1911.*

Section 334 of the [Health Act 1911 \(WA\)](#), provides that the performance of an abortion is justified under the *Criminal Code* only if:

- (a) the woman concerned has given informed consent; or*
- (b) the woman concerned will suffer serious personal, family or social consequences if the abortion is not performed; or*
- (c) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or*
- (d) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.*

Informed consent is also required under section 334(b)-(d) of the *Health Act* where practicable. The availability of abortion after giving informed consent means that abortion is effectively available on request up to 20 weeks of pregnancy.

Under section 334(7), if 20 weeks of the pregnancy have been completed, the performance of the abortion is not justified unless:

- (a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure; and*
- (b) the abortion is performed in a facility approved by the Minister for the purposes of this section.*

Provisions regarding the nature of informed consent apply where the woman is a dependant minor.<sup>24</sup> No person, hospital, health institution, other institution or service is under a duty,

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<sup>23</sup> N Dixon, [Abortion Law Reform: An Overview of Current Issues](#), Queensland Parliamentary Library, 2003, p 23.

<sup>24</sup> [Health Act 1911 \(WA\)](#), s 334(8).

whether by contract or by statutory or other legal requirement, to participate in the performance of any abortion.<sup>25</sup>

A person who unlawfully performs an abortion is guilty of an offence with a penalty of \$50,000. A person who performs an abortion who is not a medical practitioner is guilty of a crime and is liable to imprisonment for five years.

## **Tasmania**

### **Legislation**

In November 2013 the [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#) removed the crime of abortion from the [Criminal Code Act 1924 \(Tas\)](#). The legislation provides that a pregnancy of not more than 16 weeks may be terminated by a medical practitioner with the woman's consent.<sup>26</sup>

Under section 5(1), a pregnancy after 16 weeks may be terminated by a medical practitioner with the woman's consent if the medical practitioner:

*(a) reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated; and*

*(b) has consulted with another medical practitioner who reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated.*

In assessing the risk, the medical practitioners must have regard to the woman's physical, psychological, economic and social circumstances and at least one of the medical practitioners is to be a medical practitioner who specialises in obstetrics or gynaecology.<sup>27</sup>

The legislation specifically provides that a woman who consents to, assists in or performs a termination on herself is not guilty of a crime or any other offence.<sup>28</sup>

It remains a criminal offence under the Tasmanian *Criminal Code* for a termination that is performed other than by a medical practitioner or without a woman's consent.

### **Conscientious objection**

Under section 6 of the *Reproductive Health (Access to Terminations) Act 2013 (Tas)*, an individual who has a conscientious objection to abortion does not have a duty to participate in an abortion. However, a medical practitioner has a duty to perform a termination in an emergency if it is necessary to save a pregnant woman's life or to prevent her serious physical injury. A nurse or midwife has a duty to assist a medical practitioner with an abortion in an

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<sup>25</sup> [Health Act 1911 \(WA\)](#), s 334(2).

<sup>26</sup> [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#), s 4. See also, the [Reproductive Health \(Access to Terminations\) Regulations 2014 \(Tas\)](#) which prescribe various health services which a medical practitioner must provide to a woman if the practitioner is aware that the woman is seeking a termination or advice regarding a full range of pregnancy options.

<sup>27</sup> [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#), s 5(2)(3).

<sup>28</sup> [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#), s 8.

emergency, if it is necessary to save the life of a pregnant woman or prevent her serious physical injury.<sup>29</sup>

### **Access zones**

The [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\)](#) also provides that a person must not engage in prohibited behaviour within an access zone, that is within 150 metres of a premises providing abortion. Prohibited behaviour includes: threatening or harassing behaviour; protesting; footpath interference; and the recording of persons entering an abortion facility.<sup>30</sup>

## **Australian Capital Territory**

### **Legislation**

Prior to 2002, it was an offence under sections 42-44 of the *Crimes Act 1900* (ACT) for a doctor or woman to procure an abortion. Abortion was decriminalised in 2002 when the [Crimes \(Abolition of Offence of Abortion\) Act 2002 \(ACT\)](#) was passed, removing the offence of abortion from the *Crimes Act*. Abortion is therefore available upon request.

The [Medical Practitioners \(Maternal Health\) Amendment Act 2002 \(ACT\)](#) also amended the [Health Act 1993 \(ACT\)](#) to require abortions to be performed by a registered medical practitioner in a medical facility approved by the Minister.

### **Privacy zones**

The [Health \(Patient Privacy\) Amendment Act 2015 \(ACT\)](#) amended the [Health Act 1993 \(ACT\)](#) to insert provisions that allow the creation of 'privacy zones' around approved medical facilities. It is an offence to:

- conduct protests or other public displays about abortion
- to harass, hinder, intimidate, interfere with, threaten, obstruct or film a person, with the intention of preventing a person from entering the facility or accessing its services.

## **Northern Territory**

### **Legislation**

Sections 208B and 208C of the [Criminal Code Act \(NT\)](#) make the procurement of an abortion a criminal offence. No specific exemptions from criminal responsibility are provided for under *Criminal Code*.

Section 11 of the [Medical Services Act \(NT\)](#) sets out circumstances where the procurement of an abortion is lawful. It is lawful where:

- a medical practitioner reasonably believes a woman has been pregnant for not more than 14 weeks
- two medical practitioners (where possible, one practitioner must be an obstetrician or gynaecologist) are of the opinion that:

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<sup>29</sup> [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\), s 6.](#)

<sup>30</sup> [Reproductive Health \(Access to Terminations\) Act 2013 \(Tas\), s 9.](#)

- the continuance of the pregnancy would involve greater risk to her life or greater risk of harm to her physical or mental health than if the pregnancy were terminated, or
- there is a substantial risk that, if the pregnancy were not terminated and the child were born, the child would be seriously handicapped because of physical or mental abnormalities
- the treatment is given in hospital
- at the time the treatment is given the practitioner reasonably believes the woman has been pregnant for not more than 14 weeks, and
- the appropriate person consents to the treatment.

Women under 16 years of age or who lack capacity cannot give consent.<sup>31</sup>

An abortion is also lawful where:

- a medical practitioner reasonably believes that a woman has been pregnant for not more than 23 weeks
- is of the opinion termination of the pregnancy is immediately necessary to prevent serious harm to her physical or mental health, and
- the appropriate person consents to the giving of the treatment.<sup>32</sup>

An abortion is also lawful where:

- the treatment is given or carried out in good faith for the sole purpose of preserving her life, and
- the appropriate person consents to the giving of the treatment.<sup>33</sup>

A person is not under any duty to terminate or assist in terminating a woman's pregnancy, or to dispose of or assist in disposing of an aborted foetus, if the person has a conscientious objection to doing so.<sup>34</sup>

The penalties for procuring an abortion on another are a maximum seven years imprisonment. Procuring a substance or instrument also has a maximum penalty of seven years imprisonment.

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<sup>31</sup> [Medical Services Act \(NT\)](#), s 11(1)(c).

<sup>32</sup> [Medical Services Act \(NT\)](#), s 11(3).

<sup>33</sup> [Medical Services Act \(NT\)](#), s 11(4).

<sup>34</sup> [Medical Services Act \(NT\)](#), s 11(6).

## **Questions for consideration**

The questions below are optional, and are intended to assist in preparation of a submission.

1. What policy objectives should inform the law governing termination of pregnancy in Queensland?
2. What legal principles should inform the law governing termination of pregnancy?
3. What factors should be taken into account in deciding if a termination of pregnancy is lawful? (e.g. consent of the woman, serious danger to the woman's life, the woman's physical and mental health, other factors?)
4. Should termination of pregnancy be regulated according to the period of gestation? If so, how should the law apply to particular gestational periods?
5. Should the law in Queensland provide for conscientious objection by health providers?
6. What counselling and support services should be provided for women before and after a termination of pregnancy
7. Please inform the committee about your views on any other aspects of the Bill and the terms of reference.