




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 22 August 2018

TERMINATION OF PREGNANCY BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.29 am): I present a bill for an act about the termination of pregnancies, and to amend this act, the Criminal Code, the Evidence Act 1977, the Guardianship and Administration Act 2000, the Penalties and Sentences Act 1992, the Police Powers and Responsibilities Act 2000 and the Transport Operations (Road Use Management) Act 1995 for particular purposes. I table the bill and explanatory notes. I nominate the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee to consider the bill.

Tabled paper: Termination of Pregnancy Bill 2018 [[1160](#)].

Tabled paper: Termination of Pregnancy Bill 2018, explanatory notes [[1161](#)].

Today I am proud to introduce the Termination of Pregnancy Bill 2018. The bill implements the Palaszczuk government's commitment to modernise and clarify the law governing the termination of pregnancy based on the recommendations of the Queensland Law Reform Commission. This is a significant and historic reform for Queensland. Decriminalising safe termination practices and enabling reasonable and safe access by women to terminations will bring Queensland's laws into the 21st century. At its core, this bill makes significant reform to Queensland's Criminal Code, establishes a new framework for lawful terminations with strict requirements and, in doing so, importantly transfers this issue from being one based on criminality to one based on health provision.

For over a century Queensland's current laws in this area have remained virtually unchanged. They have remained stagnant, despite the development of newer and safer medical procedures for terminations and despite moves around the world, including around Australia, to recognise women's autonomy. As a result, our laws do not align with international human rights obligations, which recognise and support women's rights to reproductive health. Queensland is also now out of step with all other Australian jurisdictions, except New South Wales, that have recognised that termination of pregnancy is not a criminal matter. It is an important health choice to be made privately, in consultation with a health practitioner.

Queensland's current laws create uncertainty among doctors about their obligations and liabilities. The possibility of criminal prosecution of both health professionals and women impedes the provision of a full range of safe, accessible and timely reproductive services for Queensland women. This in turn leads to fear and stigma at a time when an incredibly difficult choice is being made. It also disproportionately impacts women who are already disadvantaged, including women in low socioeconomic groups; victims of domestic violence; victims of sexual assault; women in rural, regional and remote areas; and Aboriginal and Torres Strait Islander women.

These issues need to be resolved in a careful, considered and consultative manner. The bill introduced today, which provides certainty for women, health professionals and the community about the circumstances in which a termination is lawfully permitted, is the product of such endeavours.

In June 2017, terms of reference were issued to the Queensland Law Reform Commission for a review into modernising Queensland's termination of pregnancy laws. The QLRC is an independent body that makes recommendations on areas of law in need of reform and submits its report to me in my role as Attorney-General, which must then be tabled in parliament. The QLRC plays an important role in making sure that Queensland's laws are up to date and meet the changing needs of our community.

The QLRC's review specifically focused on how the Criminal Code should be reformed to remove terminations performed by duly registered medical practitioners and to provide clarity relating to terminations of pregnancy in Queensland. The QLRC was asked to provide its report by 30 June 2018 and to prepare draft legislation based on its recommendations. On 16 July 2018 I tabled the QLRC report No. 76, *Review of termination of pregnancy laws*, in the Legislative Assembly. I take this opportunity to thank the QLRC members and secretariat for undertaking this significant review and delivering such a comprehensive and objective report.

The QLRC report is the culmination of a year-long extensive inquiry in which it consulted widely, receiving almost 1,200 submissions from a diverse range of stakeholders on its consultation paper. The QLRC also considered the former parliamentary committee's inquiry, reports and public hearings into the two private members' bills introduced in 2016, which initially sought to reform the law in this area, including over 2,700 submissions made at that time. The QLRC report contains 28 recommendations for legislative change to decriminalise safe termination practices and provide a new legislative framework that clearly sets out the circumstances in which a termination is lawfully permitted.

The QLRC was guided by a set of general principles, which it acknowledged involve significantly different legal and policy approaches from the current law. These principles included that, generally, terminations should be treated as a health matter and not a criminal matter. In addition, 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 safer for the woman; while, at later stages of pregnancy, the interests of the foetus have increasing weight and termination involves higher risk for the woman and complex issues. The QLRC's guiding principles also included that the law should align with international human rights obligations; that 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.

This bill fulfils our government's pledge to bring forward legislation based on recommendations of the QLRC review into this matter. I acknowledge the Premier's leadership on this issue. She is the first premier to bring a government bill to decriminalise the termination of pregnancy to the Labor caucus and into the Queensland parliament. I thank her for her commitment to this significant reform.

In line with our election commitment, the bill introduced today implements the draft legislation prepared by the QLRC, giving full effect to its considered review, underlying policy principles and subsequent recommendations. To align with modern views about women's health care, the bill creates a new legislative scheme regulating the conduct of terminations by registered health practitioners. The bill properly distinguishes between when a termination is performed by a medical practitioner acting in accordance with requirements for a lawful termination for the woman and criminal conduct performed by an unqualified person. The bill also includes measures to enable reasonable and safe access by women to terminations, such as provisions establishing safe access zones around termination services.

I will now outline the key features of the new framework for lawful terminations. The QLRC recommended the adoption of a combined approach for the lawful performance of terminations similar to the Victorian model, but with some variations. The QLRC framework provides an on-request approach up to a gestational limit of 22 weeks. This means that up to 22 weeks a woman is entitled to access a termination without needing to provide an explanation of her private and personal reasons for making such a choice. After 22 weeks a single broad criteria applies requiring the medical practitioner, in consultation with a second concurring practitioner, to consider whether in all the circumstances a termination should be performed.

The QLRC settled on 22 weeks as the gestational limit for on-request terminations 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. It also recognises that terminations after 22 weeks involve greater complexity and higher risk to the woman, requiring additional oversight.

In considering all of the circumstances, regard must be had to certain matters that are intended to capture the full range of individual circumstances, namely, all relevant medical circumstances; the woman's current and future physical, psychological and social circumstances; and relevant professional standards and guidelines. A requirement for consultation with another medical practitioner who concurs with the decision is also included. This provision is intended to reflect the minimum consultation that is required, leaving flexibility for service providers to adopt further measures if deemed appropriate. An exception to compliance with these additional requirements for a termination after 22 weeks applies in an emergency if the medical practitioner considers it is necessary to save the woman's life or the life of another unborn child.

The bill 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. Similarly, the bill does not affect the laws that govern consent to medical treatment and the usual requirements under the general law about consent for surgical or medical treatment continues to operate. The bill also clarifies the role of registered health practitioners who may assist in the lawful performance of a surgical or medical termination. It provides that a registered medical practitioner may assist another medical practitioner to perform a termination.

The bill also provides that a nurse, midwife, pharmacist or Aboriginal and Torres Strait Islander health practitioner may, in the practice of their health profession, assist a medical practitioner to perform a lawful termination. These terms are each defined to mean a person registered under the Health Practitioner Regulation National Law to practise in their respective profession other than as a student. However, health practitioners are not authorised to assist a medical practitioner with a termination they know, or ought reasonably to know, is not being performed in accordance with the requirements of the scheme.

The inclusion of Aboriginal and Torres Strait Islander health practitioners as a category of professionals who can assist in a termination is a variation from the QLRC recommendations. However, this has been done to ensure culturally safe and appropriate advice and support to women in rural and remote areas and to contribute to better health outcomes for Aboriginal and Torres Strait Islander people. This addition is consistent with the Northern Territory legislation.

The type and extent of assistance that may be provided by an assisting health practitioner will depend on the type of termination involved, the practitioner's qualifications and scope of practice. 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 it is not within a pharmacist's practice.

Another variation from the QLRC recommendations is that the bill allows for expansion by regulation of the list of health practitioners who may assist in the performance of terminations. This is a practical measure which ensures flexibility to keep pace with future changes in clinical practice so assistance in terminations can be provided by appropriate health professionals.

The bill protects the right of a health practitioner to hold a conscientious objection in relation to terminations. The bill's conscientious objection provisions recognise that health practitioners have and may exercise the right to freedom of thought, conscience and religion, but balances this against the rights of women, particularly the right to health, including reproductive health and autonomy. 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 the assistance.

If a woman requests a termination, there are additional obligations on the health practitioner. The registered health practitioner must inform the woman of their conscientious objection and must refer or transfer her care to either another registered health practitioner who can provide the requested service and does not have a conscientious objection or another health service provider at which the requested service can be provided by a registered health practitioner who does not have a conscientious objection.

The conscientious objection 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 conscientious objection also does not extend to administrative, managerial or other tasks ancillary to the provision of termination services. Also, while the bill recognises the conscientious objection of a registered health practitioner, it does not exempt a practitioner from taking the necessary steps that might be required in an emergency.

The bill does not create any specific criminal offence or penalty for a health practitioner who contravenes the conscientious objection provisions or who fails to comply with the requirements for a lawful termination. This is consistent with the overarching principle that termination of pregnancy should, in general, be treated as a health issue.

Health practitioners in Australia must be registered under the Health Practitioner Regulation 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. 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.

However the bill does provide 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. Noncompliance with the bill may result in a finding that a practitioner's conduct is in some way unsatisfactory or unprofessional and possible disciplinary action.

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. For example, a medical or other health practitioner who does not obtain the required consent of the patient for a termination may be criminally responsible for assault.

The bill establishes safe access zones around termination premises to protect the safety and wellbeing and respect the privacy and dignity of persons accessing termination services, including its employees. The QLRC considered that such measures are necessary given the bill's effect in broadening the lawful authority for performing terminations in Queensland. The bill makes it clear, consistent with the QLRC's intent, that safe access zone provisions override the Peaceful Assembly Act 1992. It would undermine the purpose of the 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 provides that a place is in the safe access zone if it is in the termination service's premises or not more than 150 metres from the entrance to the premises. The 150 metres may be varied under a regulation by the relevant minister if necessary to ensure the objectives of the safe access zone provisions are maintained. The bill makes it an offence to engage in prohibited conduct at any time in the safe access zone and to make, publish or distribute a restricted recording of persons in or near termination services. The maximum penalty for these new offences is a fine of 20 penalty units or one year imprisonment.

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, 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 any other person saw or heard or was actually deterred by the conduct. The bill clearly provides that the prohibited conduct offence does not apply to a person employed to provide a service at the termination service's premises.

A restricted recording means an audio or visual recording of a person while the person is in, entering or leaving a termination service's 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 offences do not apply to a police officer doing something in the course of performing their official duty.

The bill also makes significant complementary amendments to the Criminal Code. The bill repeals sections 224, 225 and 226 of the Criminal Code which currently criminalises the terminations. The effect of the repeal of these sections in combination with other provisions in the bill is to decriminalise terminations by registered health practitioners in particular circumstances. The current offences reflect concerns of a different century and are at odds with a woman's right to medical autonomy and reproductive health. In 2018 there are now safer termination procedures available.

The bill introduces two new offences in section 319A of the Criminal Code relating to an unqualified person performing or assisting in a termination. The new offences both carry a maximum penalty of seven years imprisonment. The purpose of the new Criminal Code provision is to protect the health, safety and wellbeing of women by criminalising the practice of unregulated or backyard terminations. An unqualified person is defined in relation to performing a termination to mean a person

who is not a registered medical practitioner and in relation to assisting in a termination to mean a person who is not a registered medical practitioner or a nurse, midwife, pharmacist, Aboriginal or Torres Strait Islander health practitioner or other health profession practitioner so prescribed in the practice of their respective professions and registered under the national law.

It is relevant here to mention that the bill expressly removes any criminal responsibility for a woman who consents to, assists in or performs a termination on herself. This provides certainty for the woman and removes the implicit stigma associated with the criminalisation of terminations. An early medical termination may involve the self-administration of a termination drug by the woman. The new provision will ensure that the woman is not criminally responsible for this self-administration. This protection from criminal liability, together with other provisions in the bill as to the circumstances in which a woman's pregnancy may be terminated, are consistent with the bill's overall objectives to ensure women's access to safe and lawful termination is treated as a health issue.

Consistent with the QLRC recommendations, the bill also makes necessary consequential amendments to section 282 of the Criminal Code, which provides a general excuse for performing or providing in good faith and with reasonable care and skill surgical operations and medical treatment, if it is reasonable in the circumstances; and to section 313(1) of the Criminal Code, which provides the offence of killing an unborn child.

Before I conclude, I would like to make a brief comment about where we, as a parliament and as a community, go from here. I have no doubt that in the coming weeks, as the bill progresses through the parliamentary committee process and through debate in this parliament, there will be strongly held views and robust discussion. I acknowledge that, for many, personal values and principles are at the very heart of the issue—in fact, it should be for all of us—but we must, as elected representatives of the Queensland community, do all we can to ensure the rhetoric and the debate of this bill remains calm, civilised and considerate of all views.

The Minister for Health and I were pleased to meet with and brief the Leader of the Opposition on the afternoon of the release of the QLRC report. It was reassuring to hear the member for Nanango agree that this important issue deserves nothing less than a respectful and courteous discussion. The Minister for Health and I have also briefed many stakeholders on both sides of the debate to ensure that everyone has the details and, importantly, the facts and findings of the QLRC that led to the drafting of the bill. We must engage in a dialogue that is reasonable, balanced and informed and that, above all else, is respectful. I am confident that all members of this House are committed to this and I, more broadly, urge all Queenslanders to keep this in mind.

The Palaszczuk government is committed to informed, effective, evidence based policy along with a consultative approach to inform policy development. This bill, based on the QLRC's recommendations, is a prime example of this process. This government has made a promise to Queenslanders to provide a strong, stable, majority government to drive a policy agenda which prioritises jobs, health and education, and we are delivering on this.

I am proud as the Attorney-General of this state, and, importantly, as a woman and as a mother, to introduce this significant reform which provides long needed clarity on the law governing termination of pregnancy in Queensland. I do this for our mothers, our sisters, our daughters, our friends. I do this for women who have fought long and hard for the right to autonomy over their own bodies including the Deputy Premier, who sits next to me today, who has fought for, I think, her entire political life since joining the Labor Party and I am sure before then and was part of the reason she joined the Labor Party. I thank her for her strong advocacy over the years on this.

I do this in the full knowledge that this is never an easy option for any woman—that no-one ever makes this decision lightly—but that all women across Queensland have the right to make the decision for themselves and without fear of criminal prosecution. I do this in the full knowledge that Queensland is long overdue for this change—that the laws pertaining to such an important health issue will finally be brought into the 21st century.

In addition to the members and secretariat of the QLRC, I want to thank the officials of the Department of Justice and Attorney-General and Queensland Health who have got us to this position today. I particularly want to thank my colleague the Minister for Health, who is sitting here today, for the cooperative and constructive way that we and our departments have worked together on this important issue and historic reform.

Indeed, the management of this legislative reform reflects the central tenet of the QLRC's approach—that termination of pregnancy is a health issue and not a criminal matter. Moving forward, termination of pregnancy will not sit as a matter of criminality within the Department of Justice and Attorney-General. It will be managed as an issue primarily of health care within the Health portfolio.

That is why, upon what I truly hope is the passing of this bill, the statute, through administrative orders, will be the responsibility of health ministers into the future. It is also why the Minister for Health will manage the future stages of this bill through the House.

This bill contributes to the government's record of significant social reforms to build a modern state and delivers on yet another election commitment made to Queenslanders. Again, I thank the Premier for her courage and all of those members now and those who have come before us in the Labor Party for their perseverance and commitment to make this day a reality. I am very proud to commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.54 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Mr DEPUTY SPEAKER (Mr Stewart): In accordance with standing order 131, the bill is now referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.