Abortion Law Reform Bill 2008

Introduction Print

EXPLANATORY MEMORANDUM

General
This Bill reforms the law relating to abortion; regulates health practitioners performing abortions; and amends the Crimes Act 1958 to repeal the provisions relating to abortion, abolish the common law offences relating to abortion, and to create new offences relating abortion.

PART 1—PRELIMINARY

Clause 1 sets out the main purposes of the Act.

Clause 2 provides for the commencement of the Act and states that the Bill commences on the day after the day on which it receives Royal Assent.

Clause 3 sets out certain defined terms—

*abortion* is defined as intentionally causing the termination of a woman's pregnancy by using an instrument, by using a drug or combination of drugs, by any other means. This definition broadly follows the elements of the offence presently contained in section 65 of the Crimes Act 1958, with the inclusion of express reference to drugs and combination of drugs as these are now conventional means of causing an abortion;

terms relating to health practitioners are defined by reference to the Health Professions Registration Act 2005. *Registered health practitioner* is a collective term which refers to persons who are registered as health practitioners under that Act. *Registered medical practitioner, registered nurse*, and *registered pharmacist* are all *regulated health professions*. A *regulated health profession* means a health profession that is regulated by a responsible Board under the Health Professions Registration Act 2005.
woman is defined as a female person of any age so that the protection afforded by the Act is extended to both adult and young women of child-bearing age equally.

PART 2—ROLE OF REGISTERED HEALTH PRACTITIONERS

Clause 4 provides that a registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant. The definition of abortion includes both surgical and drug induced abortion, and both may be performed by a registered medical practitioner.

Clause 5 sets out the circumstances in which a registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant. The registered medical practitioner may only perform such an abortion if the medical practitioner reasonably believes that the abortion is appropriate in all the circumstances, and the medical practitioner's belief is supported by at least one other registered medical practitioner. In considering whether abortion is appropriate in all the circumstances, the registered medical practitioners must have regard to all the relevant medical circumstances, and the woman's current and future physical, psychological and social circumstances. These last factors have been included as they presently form part of the common law criteria for lawful abortion. The reference to all the relevant medical circumstances is intended to ensure that the medical condition of the foetus and the woman are to be taken into account. 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.

Clause 6 confirms that a registered pharmacist or a registered nurse who is authorised under the Drugs Poisons and Controlled Substances Act 1981 to supply a drug or drugs may administer or supply such drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant. Certain drugs, such as the so-called "morning after pill" which are intended to cause abortion in the very early stages of pregnancy are already authorised for over the counter sale by pharmacists, or supply by nurse practitioners. Approval and regulation of these drugs is through the Commonwealth Therapeutic Goods Administration. This provision is included to ensure that pharmacists and nurses
operating lawfully within the **Drugs Poisons and Controlled Substances Act 1981** are also authorised under this Act. A pharmacist or nurse who supplied or administered drugs when not authorised to do so or in a manner inconsistent with their authorisation will be liable to be found to have engaged in professional misconduct under the **Health Professions Registration Act 2005**.

**Clause 7** deals with the supply and administration of drugs by registered pharmacists and registered nurses to cause an abortion in a woman who is more than 24 weeks pregnant. The clause provides that such supply or administration may only occur where the pharmacist or nurse is employed or engaged in a hospital or day procedure centre and has been directed in writing by registered medical practitioner to do so. As in clause 5, the registered medical practitioner may only give such a direction if he or she reasonably believes that abortion is appropriate in all the circumstances, and the medical practitioner's belief is supported by at least one other registered medical practitioner. A pharmacist or nurse who administered or supplied drugs to cause an abortion in a woman who is more than 24 weeks pregnant, other than in accordance with this clause, will not come within the protection of this Act.

**Clause 8** imposes obligations on registered health practitioners who have a conscientious objection to abortion. The clause requires such practitioners, if requested by a woman to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, to inform her of their conscientious objection, and to make an effective referral to another health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion. This obligation will require the registered health practitioner to make enquiries or take other steps to inform himself or herself of the views of the health practitioner to whom the referral is to be made. The term **regulated health profession** means a health profession regulated by a responsible board under the **Health Professions Registration Act 2005**. The effect of this is that a registered medical practitioner must make a referral to another registered medical practitioner, and may not, for example, make a referral to a member of a different health profession, such as a psychologist. The intention is that if a woman seeks advice or service from a health practitioner who has a conscientious objection to abortion, she will be referred promptly to another equivalent health practitioner who is able to assist her.
The clause also provides that, notwithstanding a conscientious objection, a registered medical practitioner is under a duty to perform an abortion, and a registered nurse is under a duty to assist in the performance of an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

**PART 3—AMENDMENTS TO THE CRIMES ACT 1958**

Clause 9 repeals section 10 of the *Crimes Act 1958*, which is contained in subdivision (2) of Division 1 of Part I of that Act. Section 10 of the *Crimes Act 1958* contains the offence of child destruction, which the Victorian Law Reform Commission has recommended be repealed.

Clause 10 amends section 15 of the *Crimes Act 1958* to extend the concept of *serious injury* to include the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm. The definition of *serious injury* is relevant to the crimes of intentionally causing serious injury set out in section 16 of the *Crimes Act 1958* and of recklessly causing serious injury set out in section 17 of the *Crimes Act 1958*. The clause includes definitions of terms used in the expanded definition of *serious injury*. The defined terms are *abortion*, *medical procedure*, *registered nurse*, *registered pharmacist* and *woman*. The definitions of *abortion*, *registered nurse*, *registered pharmacist* and *woman* are identical to the definitions in Part 1 of the Bill. Section 15 of the *Crimes Act 1958* already includes a definition of *registered medical practitioner*. The definition of *medical procedure* is limited to surgical and drug induced abortion performed in accordance with Part 2 of the Bill. A broader definition of *medical procedure* is not required, as the substantive offences in sections 16 and 17 of the *Crimes Act 1958* both include the element of "lawful excuse" such that other forms of medical procedure in which termination of pregnancy is not the primary intention are not caught by the offences.

Clause 11 substitutes new sections 65 and 66 into the *Crimes Act 1958*. New section 65 makes it an offence for a person who is not a qualified person to perform an abortion on another person. The new section clarifies that a woman who consents to an abortion on herself is not guilty of an offence against this section. The new section specifies that registered medical practitioners are qualified persons for the purposes of this new offence. Registered pharmacists, and registered nurses who perform an abortion by administering or supplying a drug or drugs in
accordance with Parts 1 and 2 of the Bill are also qualified persons for the purposes of the new offence. The clause defines the terms abortion, perform an abortion, registered medical practitioner, registered nurse, registered pharmacist and woman. All these definitions are consistent with the definitions in Part 1 of the Bill. The term "perform an abortion" includes the supply or procuring the supply of any drug or other substance knowing that it is intended to be used to cause an abortion. This reference to drug or other substance links to paragraphs (b) and (c) of the definition of abortion in Part 1 of the Bill.

New section 66 formally abolishes any common law rule creating an offence in relation to procuring a woman's miscarriage.

Clause 12 repeals Part 3 of the Bill on the first anniversary of the day on which the Act receives the Royal Assent. The repeal of Part 3 does not affect in any way the operation of the amendments made by Part 3 (see section 15(1) of the Interpretation of Legislation Act 1984).