

## CLAUSE NOTES

### *Reproductive Health (Access to Terminations) Bill 2013*

Clause	Notes
<b>PART 1 – PRELIMINARY</b>	
<b>Clause 1</b>	Short title
<b>Clause 2</b>	Commencement date
<b>Clause 3</b>	<p><b>Interpretation</b></p> <p>Clause 3 introduces definitions for ‘nurse’, ‘terminate’ and ‘woman’.</p> <p>The definition of ‘terminate’ covers both surgical terminations and terminations brought about by the use of medications. The definition makes it clear that a person procuring or providing another person with any item for use in a termination is not, by that action alone, terminating a pregnancy. The supply of the item may still be an offence under other legislation (for example, the supply of medication for which a person is not lawfully permitted to supply would be an offence under the <i>Poisons Act 1971</i>).</p>
<b>PART 2 – ACCESS TO TERMINATIONS</b>	
<b>Clause 4</b>	<p><b>Terminations by medical practitioner at not more than 16 weeks</b></p> <p>Clause 4 provides that a medical practitioner may terminate a pregnancy at or before 16 weeks upon the woman’s consent.</p> <p>Consent takes its usual meaning within the medical context. That is, voluntary consent by a patient, after receiving proper and adequate information about the proposed treatment, including potential risks and benefits and alternative options. These requirements exist for all medical procedures and are imposed by professional medical standards (see: <i>Good Medical Practice: A Code of Conduct for Doctors in Australia</i> issued by the Medical Board of Australia; and <i>General Guidelines for Medical Practitioners on Providing Information to Patients</i> issued by the National Health and Medical Research Council).</p>

Clause 5	Terminations by medical practitioner after 16 weeks
	<p>Clause 5 sets out a different framework for terminations after 16 weeks.</p> <p>It provides that a medical practitioner may terminate a pregnancy on the woman's consent if two medical practitioners reasonably believe that continuing the pregnancy would involve a greater risk of injury to the woman's physical or mental health than terminating it. In reaching this view the medical practitioners are to have regard to the woman's current and future physical, psychological, economic and social circumstances. One of the medical practitioners is to specialise in obstetrics or gynaecology.</p> <p>The requirement to obtain the approval of two medical practitioners (one a specialist) is a requirement that currently exists for terminations at any gestation (under the <i>Criminal Code</i>).</p> <p>Consent will have the same meaning as above.</p> <p>A medical practitioner failing to comply with the above framework will face professional, not criminal, sanctions – unless the failure relates to a lack of consent. In that case, the risk of criminal sanctions for medical practitioners will be the same as that for all other medical procedures.</p>
Clause 6	Conscientious objection and duty to treat
	<p>Clause 6 retains the existing legislated right of individual health practitioners to refuse to participate in treatment on the basis of a conscientious objection. This clause applies to individuals, not organisations, and to treatment, not to others within an organisation who are not part of the clinical treatment team.</p> <p>The concept of conscientious objection is recognised in various codes of conduct applying to the medical profession. It is not a mere opinion or transitory view, but is a fixed or firm belief.</p> <p>Clause 6 provides that nurses are under a duty to assist in, and medical practitioners are under a duty to perform, a termination in an emergency situation where it is necessary to save the life of the pregnant woman or prevent her serious injury. Medical practitioners and nurses are not excused from this duty on the basis of holding a conscientious objection to the treatment.</p> <p>A medical practitioner or nurse relying on a conscientious objection to refuse to treat or assist in a termination during an emergency risks professional sanctions.</p>

<b>Clause 7</b>	<b>Obligations on medical practitioners and counsellors</b>
	<p>Clause 7 requires medical practitioners and counsellors who hold a conscientious objection to refer a woman to another practitioner or counsellor who does not hold such an objection.</p> <p>Failure to do so may result in professional sanctions for medical practitioners, while counsellors face a maximum fine of 250 penalty units. The different consequences for non-compliance reflect that, unlike medical practitioners, counsellors are not regulated by professional boards established under national laws for regulating health practitioners.</p> <p>It will be up to the medical practitioner and counsellor to decide how to refer – neither will be obliged by this clause to write a written referral detailing the patient’s medical history as one might do with a referral to a specialist – instead it will be sufficient if the woman is provided with the name and contact details of an alternative provider who does not have a conscientious objection.</p> <p>This legislatively imposed obligation to refer balances the legislatively imposed right to refuse to treat on the basis of a conscientious objection. This will ensure the personal beliefs of health care providers do not act as a barrier to women seeking access to legal health services in a timely manner. A referral obligation has been held by the European Court of Human Rights not to infringe freedom of conscience in Article 18 of the <i>International Covenant on Civil and Political Rights</i>.</p>
<b>Clause 8</b>	<b>Woman not guilty of crime or offence</b>
	<p>This clause ensures it is clear that a woman will not face criminal or other legal sanctions for having or participating in a termination. This is the case notwithstanding any other Act or law.</p>

<p><b>Clause 9</b></p>	<p><b>Access zones</b></p> <p>Clause 9 establishes 150 metre access zones around premises at which termination services are provided.</p> <p>It is an offence for a person to engage in ‘prohibited behaviour’ in an access zone. ‘Prohibited behaviour’ is defined and includes protesting in relation to terminations, harassing, intimidating or interfering with a person, or recording a person entering premises where terminations are provided without that person’s consent. It is also an offence for a person to distribute or publish any such recordings.</p> <p>A police officer will have the power to search a person and seize a recording and any equipment used to produce, distribute or publish it.</p> <p>A police officer who reasonably believes a person is committing an offence can require a person provide their name and address. The police officer may arrest a person who refuses to comply or who provides details that are false.</p> <p>A person engaging in prohibited behaviour or distributing / publishing a recording faces a maximum fine of 500 penalty units and/or a maximum 12 month prison term.</p> <p>Prohibiting protests in relation to terminations is distinguishable from protests in relation to other matters as protestors outside termination services interfere with a person’s right to privacy and access to legal medical services.</p>
<p><b>Clause 10</b></p>	<p><b>Proceedings</b></p> <p>Clause 10 provides that a police officer, the Secretary of the Department of Health and Human Services, or a person authorised by the Secretary, are able to commence proceedings for offences against the Act. Any such proceedings must be instituted within 12 months of the date of the alleged offence.</p>
<p><b>Clause 11</b></p>	<p><b>Infringement notices</b></p> <p>Clause 11 sets out standard infringement notice provisions that enable the making of regulations setting out which offences under the Act may be enforced via an infringement notice (ie an ‘on-the-spot’ fine).</p>

<b>Clause 12</b>	<p><b>Regulations</b></p> <p>Clause 12 sets out standard provisions for the making of regulations under the Act.</p>
<b>Part 3</b>	<b><i>Criminal Code Act 1924</i> amended</b>
<b>Clause 13</b>	This Part 3 contains amendments to the <i>Criminal Code Act 1924</i> .
<b>Clause 14</b>	<p><b>Interpretation</b></p> <p>Clause 14(a) inserts the word ‘<i>terminate</i>’ into the interpretation and provides the same definition as set out in the proposed <i>Reproductive Health (Access to Terminations) Act</i>.</p>
	<p>Section 51 of the <i>Criminal Code</i> deals with the criminal responsibility of persons performing surgical operations.</p> <p>Clause 14(b) amends section 51 of the <i>Criminal Code</i> so it is clear that a medical practitioner performing a surgical termination with the woman’s consent, in good faith and with reasonable care and skill is not acting unlawfully.</p>
	Clause 14(c) removes the crimes of ‘abortion’ and ‘aiding in intended abortion’.
	<p>Clause 14 (d) removes the current criteria for a ‘legally justified’ termination, and the crime of ‘child destruction’. That crime appears to regulate two distinct activities – terminations at a later gestation and assaults upon a pregnant woman which results in the termination of her pregnancy. This could be interpreted as applying to scenarios previously covered by the crime of ‘abortion’. As such it is appropriate and provides clarity to repeal this provision and regulate these activities under distinct provisions as set out in this Bill.</p>
	Clause 14(e) introduces section 178D which provides that it is a crime for a person other than a medical practitioner or the pregnant woman to terminate a pregnancy.
	<p>Clause 14(e) also introduces section 178E which provides it is a crime for a person to terminate a pregnancy without the consent of the pregnant woman.</p> <p>This captures, for example, where an assault on a pregnant woman results in the termination of her pregnancy.</p>

	It does not capture a medical practitioner who terminates a pregnancy where the woman is incapable of consenting and the termination is performed in good faith, with reasonable care and skill, and is for the woman's benefit and reasonable in all the circumstances (for example, during an emergency situation).
<b>Part 4</b>	<b>Guardianship and Administration Act 1995</b>
<b>Clause 15</b>	This Part 4 contains an amendment to the <i>Guardianship and Administration Act 1995</i> .
<b>Clause 16</b>	<p>The amendment in Clause 16 will ensure the substituted consent / decision-making framework in the <i>Guardianship and Administration Act 1995</i> is not affected by the Bill.</p> <p>The <i>Guardianship and Administration Act 1995</i> provides that the Guardianship and Administration Board is the only person who can decide whether a termination should be performed on a person with a disability who is incapable of giving consent because he or she is incapable of understanding the nature and effect of the treatment (or communicating this). An exception to this is where the treatment is needed urgently to save the person's life or prevent serious damage to the person's health.</p>
<b>Part 5</b>	<b>Miscellaneous</b>
<b>Clause 17</b>	Clause 17 assigns the administration of the Act to the Minister for Health.