

Terms of Reference

Queensland's laws relating to the termination of pregnancy

Background

In Queensland, an unlawful abortion is a crime. The relevant sections are found in Queensland's Criminal Code and are as follows:

Section 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.

Section 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.

Section 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.

Section 282 (Surgical operations and medical treatment)

- (1) 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.
- (2) If the administration by a health professional of a substance to a patient would be lawful under this section, the health professional may lawfully direct or advise another person, whether the patient or another person, to administer the substance to the patient or procure or supply the substance for that purpose.
- (3) It is lawful for a person acting under the lawful direction or advice, or in the reasonable belief that the advice or direction was lawful, to administer the substance, or supply or procure the substance, in accordance with the direction or advice.

(4) In this section—

health professional see the *Hospital and Health Boards Act 2011*, schedule 2.

medical treatment, for subsection (1)(a), does not include medical treatment intended to adversely affect an unborn child.

patient means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided.

surgical operation, for subsection (1)(a), does not include a surgical operation intended to adversely affect an unborn child.

In 2016, two Bills that sought to reform the law relating to termination of pregnancy were introduced into the Queensland Legislative Assembly by the Member for Cairns, Mr Robert Pyne MP, namely:

- the Abortion Law Reform (Woman’s Right to Choose) Amendment Bill 2016 (the first Bill); and
- the Health (Abortion Law Reform) Amendment Bill 2016 (the second Bill).

The first Bill was introduced on 10 May 2016 and referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee (the Parliamentary Committee) for detailed consideration.

On 26 May 2016, the Legislative Assembly expanded the Parliamentary Committee’s referral to require it to also conduct a wide-ranging enquiry into the law and clinical practice of terminations in Queensland (the general enquiry).

The Parliamentary Committee held public hearings and received over 1,400 submissions in relation to the first Bill.

On 26 August 2016, the Parliamentary Committee tabled its report on the first Bill and its general enquiry (Report on the first Bill). The Parliamentary Committee was of the view that the first Bill failed to address a number of important policy issues and to achieve a number of its own stated objectives. It did not recommend that the Bill be passed.

On 17 August 2016, the second Bill was introduced to the Queensland Legislative Assembly and was also referred to the Parliamentary Committee for detailed consideration. Over 1,200 submissions were received on the second Bill.

On 17 February 2017, the Parliamentary Committee tabled its report on the second Bill (the Report on the second Bill). The Committee was unable to reach agreement on whether or not the second Bill should be passed.

On 28 February 2017:

- both Bills were withdrawn from the Legislative Assembly by the Member for Cairns; and
- the Queensland Government announced that Queensland’s laws in relation to the termination of pregnancy would be referred to the Queensland Law Reform Commission for its advice, with a view to a Bill being introduced in the next term

of Government so as to modernise Queensland's laws relating to the termination of pregnancy.

Terms of Reference

I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for Training and Skills, refer to the Queensland Law Reform Commission, for review and investigation, the issue of modernising Queensland's laws relating to the termination of pregnancy pursuant to section 10 of the *Law Reform Commission Act 1968*.

Scope

The Queensland Law Reform Commission is asked to recommend how Queensland should amend its laws relating to the termination of pregnancy to:

1. Remove terminations of pregnancy that are performed by a duly registered medical practitioner(s) from the Criminal Code sections 224 (Attempts to procure abortion), 225 (The like by women with child), and 226 (Supplying drugs or instruments to procure abortion).
2. Provide clarity in the law in relation to terminations of pregnancy in Queensland.

The Queensland Law Reform Commission is asked to prepare draft legislation based on its recommendations.

In providing advice and preparing draft legislation, the Queensland Law Reform Commission should have regard to the following:

- A. Existing practices and services in Queensland concerning termination of pregnancy including those provided by medical practitioners, counsellors and support services.
- B. Existing legal principles relating to termination practices in Queensland.
- C. The Queensland Government's commitment to modernise and clarify the law in relation to terminations of pregnancy.
- D. The consultation with stakeholders that occurred during the Parliamentary Committee's consideration of the first and second Bills.
- E. The views of experienced clinical practitioners.
- F. The views of the Queensland community.
- G. Legislative and regulatory arrangements in other Australian and international jurisdictions.

Consultation

The Queensland Law Reform Commission shall consult with any group or individual, in or outside of Queensland, to the extent that it considers necessary.

Timeframe

The Queensland Law Reform Commission is to provide a report on the outcomes of the review to the Attorney-General and Minister for Justice and Minister for Training and Skills by 30 June 2018.

Dated the 13th day of JUNE 2017



YVETTE D'ATH MP

Attorney-General and Minister for Justice
Minister for Training and Skills