



Queensland

Termination of Pregnancy Bill 2018

Contents

| | | Page |
|-------------------|---|------|
| Part 1 | Preliminary | |
| 1 | Short title | 4 |
| 2 | Definitions | 4 |
| 3 | Purposes | 4 |
| Part 2 | Performance of terminations by registered health practitioners | |
| 4 | Termination by medical practitioner at not more than 22 weeks . | 4 |
| 5 | Termination by medical practitioner after 22 weeks | 5 |
| 6 | Registered health practitioners who may assist | 5 |
| 7 | Registered health practitioner with conscientious objection | 6 |
| 8 | Compliance with this part relevant to professional conduct | 7 |
| Part 3 | Protection from criminal responsibility | |
| 9 | Woman does not commit an offence | 7 |
| Part 4 | Safe access zones | |
| Division 1 | Preliminary | |
| 10 | Purpose | 8 |
| 11 | Meaning of termination services premises | 8 |
| 12 | Meaning of safe access zone | 8 |
| Division 2 | Offences | |
| 13 | Prohibited conduct in safe access zones | 9 |
| 14 | Recording persons in or near termination services premises . . . | 10 |
| Part 5 | Amendment of Acts | |
| Division 1 | Amendment of this Act | |
| 15 | Act amended | 11 |
| 16 | Amendment of long title | 11 |
| Division 2 | Amendment of Criminal Code | |
| 17 | Code amended | 11 |
| 18 | Omission of ss 224–226 | 11 |

DRAFT

Termination of Pregnancy Bill 2018

Contents

| | | |
|-------------------|---|-----------|
| 19 | Amendment of s 282 (Surgical operations and medical treatment) | 11 |
| 20 | Amendment of s 313 (Killing unborn child) | 12 |
| 21 | Insertion of new s 319A | 13 |
| | 319A Termination of pregnancy performed by unqualified person | 13 |
| Division 3 | Amendment of Guardianship and Administration Act 2000 | |
| 22 | Act amended | 14 |
| 23 | Amendment of s 71 (Termination of pregnancy) | 14 |
| Division 4 | Amendment of Police Powers and Responsibilities Act 2000 | |
| 24 | Act amended | 15 |
| 25 | Amendment of s 30 (Prescribed circumstances for searching persons without warrant) | 15 |
| Schedule 1 | Dictionary | 16 |

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2018

A Bill

for

An Act about the termination of pregnancies, and to amend this Act, the Criminal Code, the *Guardianship and Administration Act 2000* and the *Police Powers and Responsibilities Act 2000* for particular purposes

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[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Termination of Pregnancy Act 2018*.

2 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

3 Purposes

The purposes of this Act are—

- (a) to enable reasonable and safe access by women to terminations; and
- (b) to regulate the conduct of registered health practitioners in relation to terminations.

Part 2 Performance of terminations by registered health practitioners

4 Termination by medical practitioner at not more than 22 weeks

A medical practitioner may perform a termination on a woman who is not more than 22 weeks pregnant.

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5 Termination by medical practitioner after 22 weeks

- (1) A medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant if—
 - (a) the medical practitioner considers that, in all the circumstances, the termination should be performed; and
 - (b) the medical practitioner has consulted with another medical practitioner who also considers that, in all the circumstances, the termination should be performed.
- (2) In considering whether a termination should be performed on a woman, a medical practitioner must consider—
 - (a) all relevant medical circumstances; and
 - (b) the woman's current and future physical, psychological and social circumstances; and
 - (c) the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.
- (3) Also, a medical practitioner may, in an emergency, perform a termination on a woman who is more than 22 weeks pregnant if the medical practitioner considers it is necessary to perform the termination to save the woman's life or the life of another unborn child.

6 Registered health practitioners who may assist

- (1) A medical practitioner may assist in the performance of a termination on a woman by another medical practitioner.
- (2) A nurse, midwife or pharmacist may, in the practice of his or her health profession, assist in the performance of a termination on a woman by a medical practitioner.
- (3) However, subsections (1) and (2) do not apply in relation to a termination that the assisting medical practitioner, nurse, midwife or pharmacist knows, or ought reasonably to know, is being performed by the medical practitioner other than under section 4 or 5.

[s 7]

- (4) A reference in this section to assisting in the performance of a termination by a medical practitioner includes dispensing, supplying or administering a termination drug on the medical practitioner's instruction.

7 Registered health practitioner with conscientious objection

- (1) This section applies if—
 - (a) a person asks a registered health practitioner to—
 - (i) perform a termination on a woman; or
 - (ii) assist in the performance of a termination on a woman; or
 - (iii) make a decision under section 5 whether a termination on a woman should be performed; or
 - (iv) advise the person about the performance of a termination on a woman; and
 - (b) the practitioner has a conscientious objection to the performance of the termination.
- (2) The registered health practitioner must disclose the practitioner's conscientious objection to the person.
- (3) If the request is by a woman for the registered health practitioner to perform a termination on the woman, or to advise the woman about the performance of a termination on the woman, the practitioner must refer the woman, or transfer her care, to—
 - (a) another registered health practitioner who, in the first practitioner's belief, can provide the requested service and does not have a conscientious objection to the performance of the termination; or
 - (b) a health service provider at which, in the practitioner's belief, the requested service can be provided by another registered health practitioner who does not have a conscientious objection to the performance of the termination.

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- (4) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

8 Compliance with this part relevant to professional conduct

In deciding an issue under an Act about a registered health practitioner's professional conduct, regard may be had to whether the practitioner—

- (a) performs a termination on a woman other than as authorised under section 4 or 5; or
- (b) assists in the performance of a termination on a woman other than as authorised under section 6; or
- (c) contravenes section 7.

Note—

The Health Practitioner Regulation National Law (Queensland) and the *Health Ombudsman Act 2013* include provisions about the conduct and performance of health practitioners.

Part 3 Protection from criminal responsibility

9 Woman does not commit an offence

Despite any other Act, a woman who consents to, assists in, or performs a termination on herself does not commit an offence.

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Part 4 Safe access zones

Division 1 Preliminary

10 Purpose

The purpose of this part is to protect the safety and well-being, and respect the privacy and dignity, of—

- (a) persons accessing services provided at termination services premises; and
- (b) persons who are employed to provide services at termination services premises or otherwise need to access the premises in the course of their duties or responsibilities.

11 Meaning of *termination services premises*

In this part—

termination services premises—

- (a) means premises at which a service of performing terminations on women is ordinarily provided; but
- (b) does not include a pharmacy.

12 Meaning of *safe access zone*

- (1) A place is in the *safe access zone* for termination services premises if the place is—
 - (a) in the premises; or
 - (b) not more than the prescribed distance from an entrance to the premises.
- (2) Unless a distance is prescribed under subsection (3), the prescribed distance for subsection (1)(b) is 150m.
- (3) A regulation may prescribe a distance for subsection (1)(b) for stated termination services premises.

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- (4) The Minister may recommend to the Governor in Council the making of a regulation under subsection (3) only if satisfied that, having regard to the location of the premises, a prescribed distance of 150m is insufficient, or greater than is necessary, to achieve the purpose of this part in relation to the premises.

Division 2 Offences

13 Prohibited conduct in safe access zones

- (1) A person's conduct in the safe access zone for termination services premises is *prohibited conduct* if the conduct—
- (a) relates to terminations or could reasonably be perceived as relating to terminations; and
 - (b) would be visible or audible to another person in, or entering or leaving, the premises; and
 - (c) would be reasonably likely to deter a person mentioned in paragraph (b) from—
 - (i) entering or leaving the premises; or
 - (ii) requesting or undergoing a termination; or
 - (iii) performing, or assisting in the performance of, a termination.
- (2) A person's conduct may be prohibited conduct whether or not another person sees or hears the conduct or is deterred from taking an action mentioned in subsection (1)(c)(i) to (iii).
- (3) A person must not engage in prohibited conduct in the safe access zone for termination services premises.
- Maximum penalty—20 penalty units or 1 year's imprisonment.
- (4) Subsection (3) does not apply to a person employed to provide a service at the termination services premises.

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[s 14]

14 Recording persons in or near termination services premises

- (1) This section applies in relation to a recording (a *restricted recording*) that—
- (a) is an audio or visual recording of a person while the person is in, or entering or leaving, termination services premises; and
 - (b) contains information that identifies, or is likely to lead to the identification of, the person.

- (2) A person must not, without reasonable excuse, make a restricted recording of another person without the other person's consent.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (3) A person must not, without reasonable excuse, publish or distribute a restricted recording of another person without the other person's consent.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (4) In this section—

distribute includes—

- (a) communicate, exhibit, send, supply or transmit (including by live streaming), whether or not to a particular person; and
- (b) make available for access, whether or not to a particular person; and
- (c) enter into an agreement or arrangement to do a thing mentioned in paragraph (a) or (b); and
- (d) attempt to distribute.

publish means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

visual recording includes a photograph.

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Part 5 Amendment of Acts

Division 1 Amendment of this Act

15 Act amended

This division amends this Act.

16 Amendment of long title

Long title, from ‘, and to amend’—
omit.

Division 2 Amendment of Criminal Code

17 Code amended

This division amends the Criminal Code.

18 Omission of ss 224–226

Sections 224 to 226—
omit.

19 Amendment of s 282 (Surgical operations and medical treatment)

(1) Section 282(1)—

omit, insert—

- (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 person or unborn child if performing the operation or providing the

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[s 20]

treatment is reasonable, having regard to all the circumstances of the case.

(1A) 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 person or unborn child in an emergency if it is necessary to perform the operation or provide the treatment to save the mother's life or the life of another unborn child.

(2) Section 282(4), definitions *medical treatment*, *patient* and *surgical operation*—

omit.

(3) Section 282(4)—

insert—

medical treatment, for subsection (1), does not include medical treatment provided by an unqualified person that is intended to adversely affect an unborn child.

surgical operation, for subsection (1), does not include a surgical operation performed by an unqualified person that is intended to adversely affect an unborn child.

unqualified person has the same meaning as in section 319A.

20 Amendment of s 313 (Killing unborn child)

Section 313—

insert—

(1A) A person does not commit an offence against subsection (1) by performing a termination, or assisting in the performance of a termination, under the *Termination of Pregnancy Act 2018*.

21 Insertion of new s 319A

After section 319—

insert—

319A Termination of pregnancy performed by unqualified person

- (1) An unqualified person who performs a termination on a woman commits a crime.

Maximum penalty—7 years imprisonment.

- (2) An unqualified person who assists in the performance of a termination on a woman commits a crime.

Maximum penalty—7 years imprisonment.

- (3) A reference in subsection (2) to assisting in the performance of a termination includes—

(a) supplying, or procuring the supply of, a termination drug for use in a termination; and

(b) administering a termination drug.

- (4) In this section—

midwife means a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student.

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student.

pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

termination means an intentional termination of a pregnancy in any way, including, for example, by—

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[s 22]

- (a) administering a drug; or
- (b) using an instrument or other thing.

termination drug means a drug of a kind used to cause a termination.

unqualified person means—

- (a) in relation to performing a termination on a woman—a person who is not a medical practitioner; or
- (b) in relation to assisting in the performance of a termination on a woman—a person who is not—
 - (i) a medical practitioner; or
 - (ii) a nurse, midwife or pharmacist providing the assistance in the practice of his or her health profession.

woman means a female person of any age.

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Division 3 Amendment of Guardianship and Administration Act 2000

22 Act amended

This division amends the *Guardianship and Administration Act 2000*.

23 Amendment of s 71 (Termination of pregnancy)

Section 71(1), from ‘is necessary’—
omit, insert—

may be performed by a medical practitioner under the *Termination of Pregnancy Act 2018*.

**Division 4 Amendment of Police Powers and
Responsibilities Act 2000**

24 Act amended

This division amends the *Police Powers and Responsibilities Act 2000*.

**25 Amendment of s 30 (Prescribed circumstances for
searching persons without warrant)**

Section 30—

insert—

- (j) the person has committed, is committing, or is about to commit, an offence against the *Termination of Pregnancy Act 2018*, section 13 or 14.

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Schedule 1 Dictionary

section 2

employ includes engage, whether or not for payment.

entering includes attempting to enter.

leaving includes attempting to leave.

midwife means a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student.

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student.

pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

pharmacy means premises in which a pharmacy business within the meaning of the *Pharmacy Business Ownership Act 2001* is carried on.

premises means a building or part of a building.

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

safe access zone see section 12.

termination means an intentional termination of a pregnancy in any way, including, for example, by—

- (a) administering a drug; or
- (b) using an instrument or other thing.

termination drug means a drug of a kind used to cause a termination.

termination services premises see section 11.

woman means a female person of any age.

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