## ABORTION LEGISLATION REFORM BILL 2023

*Second Reading*

Resumed from 10 August 2023.

**MR Y. MUBARAKAI (Jandakot — Parliamentary Secretary)** [1.24 pm]: I rise today to make a contribution on three historic events. The first is to welcome the new member for Rockingham, Magenta Marshall. I believe she is the first female representative for Rockingham and the youngest member in the forty-first Parliament. I welcome her to the chamber and look forward to her maiden speech this afternoon. The second reason to be proud is that the forty-first Parliament has more women representatives and it is a momentous occasion to celebrate and acknowledge. The third reason is the historic Abortion Legislation Reform Bill 2023, on which I make this brief contribution.

It staggers me that only 25 years ago, two doctors were charged under the Criminal Code for conducting an abortion in Western Australia. In response to the outdated law, Hon Cheryl Davenport, a then Labor member for South Metropolitan Region, introduced a private member's bill in the Legislative Council—the Criminal Code Amendment (Abortion) Bill 1998. I thank Cheryl Davenport, who continues to champion for abortion care across the state. Although I am about to reiterate statements of fact, it is important to remember why these changes will improve the future of health care for all Western Australians. The Criminal Code Amendment (Abortion) Bill 1998 repealed sections of the Criminal Code that made it a criminal offence to procure an abortion. That bill then became the Acts Amendment (Abortion) Act 1998, introducing amendments to the Health Act 1911 on the performance of abortions. Those major reforms form the basis of WA's abortion provisions currently in the Health (Miscellaneous Provisions) Act 1911.

In the 25 years since that reform, other Australian jurisdictions have caught up with Western Australia and, in many cases, provide more compassionate access to abortion that better reflects contemporary clinical practices. Current abortion care is complex, adding pressure to mental, physical and emotional wellbeing for individuals. I am a strong believer in "Your body, your choice". I reflect on the many contributions and speakers who have stood before me on this bill and talked about their personal experiences and those of close friends and family, and who provided clear evidence of why this bill will reshape health care around abortion in Western Australia. I will express my experience and knowledge about the importance of this bill. I thought for a moment of exchanging those experiences and memories of having family or friends go through these emotional experiences.

This bill meets expectations of how well we can provide new provisions and bring about relevant changes that help address anomalies. I am proud to say that a year ago the cabinet approved the drafting of this bill and commenced community consultation. The Department of Health commenced this consultation about both medical and surgical procedures. More than 17 500 individuals made contributions; over 81 per cent of those respondents were women. They included people who have had abortions and, importantly, health practitioners who provide abortion care. Following those community consultations, six key provisions were identified. I will go through those provisions that identify relevant changes to current practices that this bill in Parliament will bring about.

I start on the first provision concerning the performance of an abortion by health practitioners at no more than 23 weeks' gestation. This bill will remove the requirement for an abortion to be considered by two medical practitioners—the practitioner performing the abortion and another. Proposed section 202MC will authorise one medical practitioner to perform an abortion on a patient who is no more than 23 weeks pregnant. This change was supported by several key health stakeholders and will address a key barrier to access faced by Western Australians living in regional, rural and remote communities.

This bill will introduce proposed section 202MD into the Public Health Act to allow other health practitioners to perform a medical abortion on a fetus of no more than 23 weeks by prescribing, supplying or administrating an abortion drug to the patient. This is consistent with recent changes at the commonwealth level that allow nurse practitioners and endorses midwives to prescribe medication. It is important to note that a prescribing practitioner must be of a class prescribed by regulations and authorised under the Medicines and Poisons Act 2014. The prescribing practitioner will be bound by the regular restrictions attached to prescribing abortion medication; for example, the medication may be taken at home at no more than nine weeks of pregnancy, and a hospital setting will be required at more than nine weeks of pregnancy.

I turn now to the provisions relating to a medical practitioner performing an abortion at more than 23 weeks. Seeking a late-term abortion is extremely rare, with abortions after 20 weeks accounting for less than one per cent of all procedures. Most often, they occur due to the discovery of a serious fetal anomaly or risk to the person's health. It is almost always a very difficult decision to make and a challenging process for families to endure. Families in this situation need compassionate care and appropriate support, not judgement.

The Abortion Legislation Reform Bill 2023 will remove the constraints that currently exist under the Health (Miscellaneous Provisions) Act on patients seeking late-term abortions. Currently, a patient must seek approval from their original medical practitioner and then obtain joint authorisation from another two medical practitioners who are members of a statutory panel appointed by the Minister for Health. Proposed section 202ME will enable a patient to access an abortion when a primary medical practitioner has consulted another medical practitioner and they both agree that performing the abortion is appropriate under all the circumstances, including the person's relevant medical circumstances and their current and future physical, psychological and social circumstances.

The current legislation framework does not provide guidance to or place obligations on medical or prescribing practitioners who refuse to participate in abortion care, whether their opinion is of conscientious objection or otherwise. A patient whose general practitioner refuses to participate in their abortion care may find themselves required to see several medical practitioners before they find one who is willing and able to participate in their abortion care. This bill clarifies that both medical practitioners and students may refuse to participate in an abortion. In the event that a medical practitioner refuses to participate in an abortion, whether due to a conscientious objection or otherwise, they must immediately disclose their objection to the patient.

Madam Acting Speaker, I smile only because I could not pronounce the word conscientious whilst reading my speech; I apologise if anybody was offended by my smile.

Proposed section 202MI will place an obligation on certain practitioners to transfer the care of the patient to a registered health practitioner or health service facility that the refusing practitioner reasonably believes can provide abortion services or information approved by the Chief Health Officer to enable the patient to access treatment elsewhere. In any case, this bill makes clear that a refusal does not negate the duty to provide abortion care in an emergency.

This bill will remove the provisions in the Health (Miscellaneous Provisions) Act requiring patients to receive mandatory counselling in order to provide informed consent to an abortion. Currently, an assessing medical practitioner must provide the patient with counselling about the medical risks of a termination, continuing a pregnancy to term and the availability of ongoing counselling. This requirement does not reflect contemporary practice. Removing it will align Western Australia with other Australian jurisdictions and reduce barriers to accessing abortion in WA. Instead, medical practitioners will be able to obtain informed consent in line with existing standards of care and professional obligations.

Under the current Health (Miscellaneous Provisions) Act, an adult who is unable to give informed consent to an abortion due to a lack of decision-making capacity is unable to access an abortion, except in emergency situations. This bill will enable relevant parties to apply to the State Administrative Tribunal to make a decision on behalf of a patient who is unable to make reasonable judgements about an abortion proposed to be performed on that patient. In situations in which the patient has a guardian, an application to the SAT will still be required. This model is consistent with other Australian jurisdictions in which the consent of the guardian is replaced with that of the tribunal for certain medical procedures.

In respect of abortion care for minors, the High Court of Australia has adopted the test as set out in the English case of Gillick v West Norfolk Area Health Authority to establish a child's decision-making competence to make decisions for themselves. Generally, a child under the age of 18 years is assessed as being a mature minor if they fully comprehend the nature, consequences and risks of the proposed action, irrespective of the presence or absence of parental consent. Under common law, the mature minor is deemed to be sufficiently mature and intelligent to make healthcare decisions on his or her own behalf, including consenting to medical treatment. Currently, the only pathway for a dependent minor under 16 years of age seeking an abortion who is unable or unwilling to obtain parental consent is through the approval of the Children's Court of Western Australia. Western Australia is the only jurisdiction in which minors, regardless of their maturity, are required to meet a higher standard of informed consent for abortions compared with that for other medical care.

This bill recognises the concept of the mature minor, also referred to as Gillick competence, in which a young person has sufficient understanding and intelligence to consent to their own medical treatment. This will remove the requirement to obtain approval for abortion care through the Children's Court. It also recognises that there are a range of circumstances in which parental notification poses a safety risk to the child or is inappropriate or impractical. In the event that there is doubt about a child's competence to make a decision regarding abortion, the child will be able to choose to include their parent or guardian in the decision-making. If the child does not wish for parental involvement, or the practitioner is of the view that the parent or guardian is not acting in the best interests of the child, the registered health practitioner can make an application to the Supreme Court or Family Court to establish the course of action. This is consistent, again, with other jurisdictions.

I want to wholeheartedly thank and congratulate the Minister for Health, Hon Amber-Jade Sanderson, the Minister for Women's Interests, Hon Sue Ellery, and all who have worked tirelessly on this bill to contemporise the legislative framework surrounding abortion. Restricting access to safe and legal abortions can and will lead to

serious consequences for women's health and wellbeing. Unintended pregnancy rates are highest in countries that restrict abortion access and reproductive autonomy and lowest in countries where abortion is broadly legal.

Although abortion has been completely decriminalised here in Australia, there are still many barriers to safe and timely abortion care, such as financial limitations; lack of local services, including trained and/or willing staff; and geographical remoteness. These barriers are amplified for our most vulnerable people in our state.

The Public Health Amendment (Safe Access Zones) Act 2021 was introduced to create safe access zones around premises where abortion care is provided, which includes public and private hospitals, GP clinics and abortion clinics. This legislation came as a direct result of constant harassment and intimidation by picketers outside clinics, which eroded the sense of safety and security for both people seeking abortion care and healthcare workers attending work, as well as hindering access to health care and reproductive autonomy. These safe access zones now ensure that all who seek abortion care can do so safely. The Abortion Legislation Reform Bill 2023 will reflect the assertion that abortion care is simply a part of health care.

[Member's time extended.]

**Mr Y. MUBARAKAI**: Reproductive autonomy is a human right that all should be able to access. I am grateful to be a member of the WA Cook Labor government that supports these rights for a modern Australia.

In summary, this bill will provide that if abortion care is needed, counselling services will no longer be mandated for the patient to give informed consent. If abortion care is required, the number of medical practitioners needed to receive informed consent from the patient will be one, rather than two; and if a healthcare practitioner conscientiously objects to providing abortion care, they will have to refer a patient to another healthcare practitioner who is willing and able to provide it. Further, the gestational limit for abortions will increase from 20 to 23 weeks; if a late-term pregnancy needs abortion care, the pregnant person's primary medical practitioner will be able to consult with another medical practitioner to approve, rather than require the ministerial panel to approve accessing abortion care; and the requirement for ministerial approval for a health service to perform late abortions will be removed. Once an abortion has been performed, detailed patient data will not be required to be recorded or published; and if a child under the age of 18 years is assessed as being a "mature minor", they will be able to access abortion care without requiring a higher standard of informed consent.

As parents of two teenagers, my wife and I agree that it is most important for our children to be able to consent to their own medical treatment. Removing the requirements to meet a higher standard of informed consent for abortions compared with other medical care is the clear way to do this. I commend this bill to the house and hope for a swift passage through both houses for the betterment of a modern Western Australia.

**MRS L.M. O'MALLEY (Bicton)** [1.44 pm]: In 1998, Western Australia became the first state in Australia to decriminalise abortion. However, medical practice and community needs have advanced over the past 25 years, and the abortion laws as they currently stand in WA are outdated and fail to meet the needs of Western Australians. Sadly, this has resulted in women having to travel interstate to access abortion care because of the immense challenge to access local care here in WA. This is, quite frankly, unacceptable. That is why it is important that I begin my contribution to the Abortion Reform Legislation Bill 2023 by extending my profound thanks to the Minister for Health for bringing this bill to Parliament.

This significant legislation is about compassionate access to abortion, which better reflects contemporary clinical practice. Western Australian women should not face any barriers in accessing this critical component of women's health care. The criminalisation of abortion fuels stigma, humiliation and shame. This is not acceptable. Individuals seeking abortions should have the dignity and respect they deserve when making decisions that shape their future. The Criminal Code has no role in regulating access to abortion services, which is why it will be fully decriminalised with the only offence being in the Public Health Act for an unqualified person who performs or assists with an abortion.

This bill will directly address clinical barriers by increasing the gestational limit from 20 to 23 weeks at which additional requirements apply; removing the requirement for a referral for most abortions; creating a clear framework, outlining the rights and obligations for health practitioners who are unable to assist in abortion care; and abolishing the antiquated ministerial panel process and instead providing for two medical practitioners to determine whether an abortion after 23 weeks is appropriate. These are among other much-needed reforms. Over 17 500 survey responses were recorded throughout the public and key stakeholder consultation period, over 81 per cent of whom where women. There was an overwhelming endorsement to the proposed changes to WA's abortion legislation.

The Cook Labor government is listening to community and stakeholder respondents in that a key component of this bill will remove the requirement for an abortion to be considered by two medical practitioners. The proposed reform will authorise one medical practitioner to perform an abortion on a patient who is not more than 23 weeks pregnant. This bill will bring WA in line with other states and territories and remove unnecessary barriers for women accessing abortion. It is particularly important that those living outside of metropolitan areas have access to this vital health care.

The following is from the World Health Organization and speaks further to the issue of access. Here are some key facts. Abortion is a common health intervention. It is safe when carried out using a method recommended by World Health Organization, appropriate to the pregnancy duration and by somebody with the necessary skills. Six out of 10 unintended pregnancies end in an induced abortion. Around 45 per cent of all abortions are unsafe, of which 97 per cent take place in developing countries. Unsafe abortion is a leading but preventable cause of maternal deaths and morbidities. It can lead to physical and mental health complications and social and financial burdens for women, communities and health systems. Lack of access to safe, timely, affordable and respectful abortion care is a critical public health and human rights issue.

Restrictive abortion regulation can cause distress and stigma, and risk constituting a violation of human rights of women and girls, including the right to privacy, non-discrimination and equality, while also imposing financial burdens on women and girls. Regulations that force women to travel to attain legal care, or require mandatory counselling or waiting periods, lead to loss of income and other financial costs, and can make abortion inaccessible to women with low resources.

A set of scoping reviews from 2021 indicate that abortion regulations, by being linked to fertility, affect women's education, participation in the labour market and positive contribution to GDP growth. The legal status of abortion can also affect children's educational outcomes and their earnings in the labour market later in life; for example, the legalisation of abortion, by reducing the number of unwanted pregnancies thus increasing the likelihood that children are born wanted, can be linked to greater parental investments in children, including in girls' schooling.

Evidence shows that restricting access to abortion does not reduce the number of abortions. However, it does affect whether the abortions that women and girls attain are safe and dignified. Barriers to accessing safe and respectful abortion include high costs, stigma for those seeking abortions and healthcare workers, and the refusal of health workers to provide an abortion based on personal conscience or religious belief. Access is further impeded by restrictive laws and requirements that are not medically justified, including the criminalisation of abortion, mandatory waiting periods, the provision of biased information or counselling, third-party authorisation, and restrictions on the type of healthcare providers or facilities that can provide abortion services.

Multiple actions are needed at the legal, health system and community levels so that everyone who needs abortion care has access to it. The three cornerstones of an enabling environment for quality, comprehensive abortion care are respect for human rights, including a supportive framework of law and policy; the availability and accessibility of information; and a supportive, universally accessible, affordable and well-functioning health system. A well-functioning health system implies many factors, including evidence-based policies; universal health coverage; the reliable supply of quality, affordable medical products and equipment; an adequate number of health workers of different types providing abortion care at a reachable distance to patients; the delivery of abortion through a variety of approaches, such as care in health facilities, digital interventions and self-care approaches, that allow for choices depending on the values and preferences of the pregnant person, available resources and the national and local contexts; health workers who are trained to provide safe and respectful abortion care, to support informed decision-making and to interpret laws and policies regulating abortion; health workers who are supported and protected from stigma; and the provision of contraception to prevent unintended pregnancies. The availability and accessibility of information implies the provision of evidence-based, comprehensive sexuality education and accurate, non-biased and evidence-based information on abortion and contraceptive methods.

As one who was born and raised in country Victoria, I am personally mindful of the barriers to healthcare access faced by people living in regional, rural and remote communities, particularly those who cannot afford to travel or seek private care. I am proud to see this bill, which is a significant step towards ameliorating those barriers and ensuring that fewer Western Australian women will feel as though they have no option but to travel interstate for abortion-related care should they require it. This proposed reform is an important part of women's health, reproductive health and public health for not only those in the metropolitan area, but also those living in regional, rural and remote communities. Our goal should be nothing less than providing women seeking abortions the agency and right to control a fundamental aspect of their health care. Every woman should have the right to decide whether, when and by what means to have a child or children.

Abortions after 20 weeks are incredibly rare and account for fewer than one per cent of all procedures. They occur most often because of a serious risk to the patient's own health or the discovery of a serious fetal abnormality. However, patients seeking late-term abortions are restrained by the current legislation in having to seek approval from their original practitioner and also gain joint authorisation from two additional medical practitioners who are appointed to a statutory panel by the Minister for Health. These women and their families face a very difficult and challenging situation. They are then burdened by the current laws to navigate a labyrinth of administrative and legal procedures that do not reflect contemporary clinical practice. They should not have to endure this. Our laws can be better, and they will be better with this Parliament's support of this vital piece of legislation.

Western Australia is the only jurisdiction where, regardless of their maturity, a dependent minor must meet a higher standard of informed consent for abortions compared with that for other medical care. The current legislation prohibits a dependent minor from providing informed consent unless their parent or guardian has been informed of their intention to access abortion care and has been given the opportunity to participate in the decision-making process. At this stage, the only avenue to access abortion care for a dependent minor who is unable or unwilling to inform their parent or guardian is to make an application to the Children's Court. This poses a danger to the dependent minor in circumstances in which parental notification poses a safety risk to the child. The bill seeks to remove this dangerous limitation, while also recognising the rights of the child and their ability to understand and make their own life choices. This particular aspect of the bill is something that I greatly support, as both a woman and a mother to a 15-year-old girl.

In conclusion, I join all those who have already spoken in support of the Abortion Legislation Reform Bill 2023 in thanking the Minister for Health, the Minister for Women's Interests and all those involved in the consultative and administrative process for bringing such a long overdue reform to this house. I also acknowledge and thank all the campaigners and change makers across many decades, especially the groundbreaking work of Hon Cheryl Davenport, AM; Diana Warnock, OAM; Stephanie Mayman; Judy Straton; Dr Scott Blackwell; and my dear friend and social justice champion, Judyth Watson, OAM.

The community has spoken, the key healthcare stakeholders have spoken and the members of this Parliament have spoken. We have an obligation to the community to contemporise Western Australia's statutory framework, streamline care pathways and remove the unnecessary barriers that have remained unchanged for 25 years. I commend this bill to the house.

**MS M.J. HAMMAT (Mirrabooka — Parliamentary Secretary)** [1.56 pm]: I also rise to speak in support of the Abortion Legislation Reform Bill 2023, as many have done before me. This bill will remove unnecessary barriers for women who are seeking to access an abortion and will also align our laws more closely with those in other states in Australia. I want to acknowledge at the outset that all around the world and, in fact, throughout the ages and generations, women have sought to control their fertility and reproductive rights through whatever means are available to them. I think we understand that sometimes that results in some unsafe arrangements. When these laws were last debated in this Parliament 25 years ago, the then member for Perth said —

> The forces that oppose choice forget that making abortion illegal has never stopped it. It simply makes it unsafe for women.

I think that goes to the heart of the issue that abortion cannot be outlawed, as throughout the ages and generations, women have sought to do this. It is about making access to it safe for the women who choose to do so.

We understand the background to the bill now before us for debate. The last time this issue was discussed in this Parliament was 25 years ago. In 1998, two doctors were charged under the Criminal Code for conducting an abortion in WA. At that time, the Criminal Code in this state allowed for doctors to be jailed for up to 14 years for performing an abortion and patients to be jailed for up to seven years for having an abortion. When those two doctors were charged, it was the first of such charges under the Criminal Code for many years—for decades I understand. Although abortion was an offence in the Criminal Code, the laws had not been enforced for some time, but the arrest and charging of those two doctors at the time brought the question of access to legal and safe abortion sharply into the minds of the community and the legislators in this place at the time.

In response to that, Hon Cheryl Davenport, the then Labor member for South Metropolitan Region, introduced a private member's bill in the Legislative Council, the Criminal Code Amendment (Abortion) Bill 1998. The bill was to repeal those sections of the Criminal Code that made it an offence to procure an abortion. That bill then became the Acts Amendment (Abortion) Bill 1998 and introduced to the Health Act 1911 amendments on the performance of abortion. This major reform forms the basis of WA's abortion provisions, which are currently found in the Health (Miscellaneous Provisions) Act 1911. At the time, Western Australia was the first place in the country to remove most criminal penalties for pregnant patients who seek and doctors who provide the procedure. In my comments today, I particularly acknowledge Hon Cheryl Davenport, who introduced the bill into WA's upper house; indeed, her many colleagues in this place who worked with her to achieve changes to abortion laws 25 years ago; and the many people in the community who campaigned to secure those changes. I reflect that at times it must have been challenging for them to advocate for those changes and achieve that change. It was no doubt difficult to progress legislation through Parliament as an opposition member. I am quite certain that it also attracted fairly significant community attention and probably the attention of members of this place at a time when women were not as numerous in Parliament as they are today.

Debate interrupted, pursuant to standing orders.

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