

**ABORTION LEGISLATION REFORM BILL 2023**

*Consideration in Detail*

Resumed from 16 August.

**Clause 25: Act amended —**

Debate was adjourned after the clause had been partly considered.

**Clause put and passed.**

**Clauses 26 to 41 put and passed.**

**Clause 42: Section 110U replaced —**

**Ms L. METTAM:** I have only a couple of questions left. New subdivision 3, “Performance of abortion”, provides that the performance of an abortion without an advance health directive or State Administrative Tribunal consent is an offence. It is in proposed section 110ZLB. I wonder whether the minister can explain the purpose of the inclusion of this proposed section.

**The DEPUTY SPEAKER:** Sorry, member, are you after proposed section 110ZLB?

**Ms L. METTAM:** I thought it was in clause 50—sorry.

**The DEPUTY SPEAKER:** Proposed section 110ZLB is in clause 50.

**Ms L. METTAM:** Sorry; I have the explanatory memorandum open as well. It is proposed section 110U, “Priority of treatment decision in advance health directive”, in clause 42 on page 39 of the bill. Could the minister explain the purpose of the inclusion of this proposed section?

**Ms A. SANDERSON:** The clause is essentially confirming that if someone is unable to give consent at the time and they have explicitly stated in an advance health directive that if they require an abortion, they are to receive an abortion, that needs to be followed by medical practitioners.

**Ms L. METTAM:** The reason I ask is that in terms of an advance health directive, this would be extremely rare, would it not?

**Ms A. SANDERSON:** I think it would be extremely unlikely. Given that advance health directives are in place for people with terminal illness, this is a closing off of that, if you like, in case that circumstance were to arise. This will give primacy to the individual’s wishes as stated in the advance health directive.

**Clause put and passed.**

**Clauses 43 to 52 put and passed.**

**Clause 53: Part 9D Division 3 Subdivision 2 inserted —**

**Ms L. METTAM:** I refer specifically to proposed section 110ZND, which deals with the State Administrative Tribunal’s consent for the performance of an abortion. I just want some clarity on the proposed section. I understand that it is in relation to the determination of an abortion by SAT. Can the minister explain the reason for the inclusion of this proposed section?

**Ms A. SANDERSON:** Under the current legislation, which is being repealed, there is no capacity at all for people without decision-making capacity to access an abortion, whether it is via a guardian or so forth. Proposed subsection (1) provides that SAT may consent to the performance of an abortion by order in writing if it is satisfied that the person has reached 18 years of age, is unable to make reasonable judgements about whether the abortion should be performed on them and has not made an advance health directive containing a treatment decision that is inconsistent with the performance of the abortion on the person. The performance of the abortion on the person must be in the best interests of the person. Proposed subsection (2) makes it clear that in deciding whether the performance of the abortion is in the best interests of the person, the tribunal must take into account whether the person is likely within the foreseeable future to regain the ability to make reasonable judgements about whether the abortion should be performed on them, as well as any wishes of the person so far as they can be ascertained. Proposed subsection (3) provides that the consent of SAT may be given subject to compliance with any conditions that the tribunal considers appropriate.

**Ms L. METTAM:** Will this clause create any tangible difference to the right to and accessibility of abortion or is it just the way the legislation has been written to create some consistency? Is it a tangible change or an administrative change to the legislation?

**Ms A. SANDERSON:** This is a tangible change to the current circumstances and the current legislation. Currently, the only way that someone who is unable to give informed consent can access abortion is if there are tangible,

serious dangers to their physical and mental health—essentially, if it is a life or death situation. Under the current legislation, even if a guardian discovers that their charge is pregnant and that abortion is the best course of action, they are not able to make that determination. That will no longer be the case. This clause will provide an avenue for access, and it is an extra layer of protection, if you like. Rather than a guardian being the person who provides informed consent, it goes to the State Administrative Tribunal. The SAT is able to convene very quickly in these sorts of circumstances, and that is consistent with the situation in other jurisdictions. That will add another layer of protection but will, of course, take into consideration the guardian's view.

**Ms L. METTAM:** The minister has answered my question in part, but just to confirm: do all other jurisdictions have this provision, or something similar?

**Ms A. SANDERSON:** In all other states and territories there is provision, within their legislative equivalents of Western Australia's Guardianship and Administration Act, for their administrative tribunals to consent to abortion for a person without decision-making capacity. In all states and territories except the ACT, this is not limited to persons on a guardianship order, but rather is extended to all people who lack the capacity to make a decision about whether they should have an abortion.

**Clause put and passed.**

**Clauses 54 to 59 put and passed.**

**Title put and passed.**

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

**MS A. SANDERSON (Morley — Minister for Health)** [11.03 am]: I move —

That the bill be now read a third time.

**MS L. METTAM (Vasse — Leader of the Liberal Party)** [11.03 am]: I will start by thanking the minister and her advisers and all the individuals and agencies who have put forward advice and information on the Abortion Legislation Reform Bill 2023. I appreciate that for some—actually, for many—people, this is an emotive topic, but I think the way in which the debate has been conducted between members with a range of views has so far been commendable. Again, I would like to thank those who have provided feedback to me, particularly Professor Jan Dickinson. She provided feedback not only as an expert in maternal and fetal medicine, but also on behalf of her colleagues in her area of clinical expertise. As she has stated, she does not believe that the amendments proposed in this legislation will necessarily lead to an increased number of abortions in this state, but rather would remove some of the unnecessary challenges for women who face a very challenging prospect.

The decision to pursue an abortion in the situation of a severe maternal or fetal medical condition for which other reasonable healthcare options are not available can be very distressing for individuals. We know that decisions in relation to abortion impact most significantly on women who are socially or physically disadvantaged. It is a significant challenge for people in regional areas as opposed to metropolitan areas. We need greater support for women in regional and rural areas who need to access healthcare and support options, as well as for women for whom English is a second language or who are experiencing the threat of domestic violence, which continues to be a very real concern.

It is vitally important to ensure that women have supports in place and the best possible information regarding their own health care, and that there are options and education available for women right across the state. Training and support for healthcare professionals in the performance of abortions, as well as parenting support for those who are particularly challenged by that prospect, are vitally important. That issue has certainly been raised by both individuals and clinicians.

The opposition supports the provision for medical practitioners to make a conscientious objection. We also support information being provided to patients to ensure they can access an abortion from practitioners who do not have such conscientious objections. The decriminalisation of abortion in Western Australia will bring the practice in line with other states; WA currently remains the only state in which abortion is part of the Criminal Code. The feedback from clinicians with regard to the ministerial termination panel was consistent in that it was seen as being, in the words of one clinician, an archaic concept, and that it does not take into account women's individual circumstances or allow them to deal with their own medical practitioners in making a very difficult decision involving, in the overwhelming majority of cases, a fetus with an abnormality.

The mandatory notification of abortion is vitally important. I look forward to seeing what information will be made available about that. Statistics indicate that abortion rates in Western Australia are trending downwards, but information is important for accessing trends in health care, and it is important that it is subject to mandatory notification through the Western Australian midwives notification system as well as the Department of Health.

I will conclude my comments there. I thank the minister again and thank her advisers for providing information and support throughout the consideration in detail process as well as advice to members of the opposition.

**MRS M. MARSHALL (Rockingham)** [11.10 am]: I rise today to support the Abortion Legislation Reform Bill 2023. I have not prepared a long speech but I want to put on the record that I am pro-choice and believe that women must have control over their own bodies. I strongly believe that abortion is health care and that every person should have access to free and safe abortion services when needed. I thank Minister Sanderson for her strong leadership in bringing this important legislation to this place and for the thorough consultative process that her office and the Department of Health facilitated with members in this place and stakeholders across the state.

I acknowledge and thank former member Cheryl Davenport for her work in this place in 1998 to decriminalise abortion. Western Australia was the first state in Australia to decriminalise abortion and I thank Cheryl and the people she worked with for their courage at that time. However, those abortion laws have remained unchanged for more than 25 years and the reform of abortion laws in Western Australia is long overdue.

Although I have never been in the position to require an abortion, there are people whom I know and love who have had to make this challenging personal choice. As someone who very much wants to have a family and become a mother, I cannot imagine myself in the position of requiring an abortion. However, if I required an abortion due to concerns for my or the baby's health, I would want to be able to access health care with dignity and in my home state of Western Australia. The current legislation places unnecessary trauma, shame and grief on women in what is already a tough time. Accessibility remains an issue, with some women needing to travel interstate for the treatment required. Abortion in this state is still regulated by the Criminal Code. History shows that banning abortions only bans safe abortions.

I commend this government and the Minister for Health for taking steps to improve access and fully decriminalise abortion in Western Australia, especially given women's rights are going backwards in other parts of the world.

**The ACTING SPEAKER (Mrs L.A. Munday)**: Excuse me, member for Rockingham. Sorry, ministers, I am struggling to hear the member. Can we please either move it outside or dial it down a little? Thank you.

**Mrs M. MARSHALL**: Like most in my community, I was distressed by the Roe v Wade decision in the United States last year, and I am proud that this government is taking action to strengthen women's rights in Western Australia. This legislation will bring choice and safety for women by removing barriers to improve access and to protect the privacy of those accessing abortion services. I stand here proudly to support the reforms contained in this bill in their entirety. I commend this bill to the house.

**MS A. SANDERSON (Morley — Minister for Health)** [11.13 am] — in reply: The Abortion Legislation Reform Bill 2023 builds on the work begun by Hon Cheryl Davenport and Diana Warnock, who spearheaded abortion care reform in 1998 from opposition. The Acts Amendment (Abortion) Bill 1998 was groundbreaking at that time. But, as several members noted in their contributions, concessions were made at that time which, importantly, ensured the legislation's passage but now mean Western Australia is out of step with other Australian jurisdictions regarding abortion care.

The public as well as health professionals provided clear feedback that our abortion laws are restrictive in the national context and prohibitive to the provision of the best healthcare service in Western Australia. Consequently, there have been cases in which patients have chosen to travel interstate to access care that is either not lawful in WA or is immensely challenging to access locally. The bill seeks to remedy many of those issues. This is something that I am extremely proud of, and that this government should be exceptionally proud of. It is my view that this bill reflects something that the majority of our community has wanted for a very long time. The bill introduces a framework relating to abortion under the Public Health Act 2016 and repeals all provisions related to abortion within the Health (Miscellaneous Provisions) Act 1911. This is to better reflect that abortion is a public health matter, and because the Health (Miscellaneous Provisions) Act 1911 is essentially a repository of residual provisions.

The new framework will better align with clinical practice and contemporise the practice of abortion care by practitioners through aligning disciplinary action to conduct requirements set out in their national registration. The bill directly addresses clinical barriers to abortion, including the time frames for patients accessing abortion, the use of multiple medical practitioners and a ministerial panel for late-term abortions, and mandatory counselling requirements. The bill will remove the requirement for a referral for most abortions, increase the gestational limit at which additional requirements apply from 20 to 23 weeks, provide a clear framework outlining the rights and obligations of health practitioners who are unable to assist in abortion care, and abolish the ministerial panel process, instead providing for two medical practitioners to determine whether an abortion after 23 weeks is appropriate.

The new framework takes into consideration the model of care for adults and minors without capacity to provide informed consent, including a substitute decision-making process. The new framework will improve the information collection and management model for abortion by affording more protection to the patient and registered health practitioner while still allowing the Chief Health Officer to collect information that will enable the provision,

monitoring, planning and evaluation of health services amongst other matters. Amendments will also be made to the Freedom of Information Act to protect the privacy of individuals and health practitioners accessing and providing abortion services.

The bill will repeal the current offence in the Criminal Code, leaving an offence for when an unqualified person performs an abortion in the Public Health Act only. This will complete the decriminalisation of abortion in WA while ensuring that dangerous backyard abortions remain illegal. The new framework recognises that the care and wellbeing of the patient should be placed first and foremost in the abortion process. Mandatory reporting to the coroner of live births following an abortion will be removed, as it obliges the coroner to investigate, including contacting the patient who underwent a lawful medical procedure. This can be unsettling and traumatic for the patients and their family. Clinicians involved in this process similarly report that the experience is distressing and unnecessary.

I want to thank members again for their respectful and professional contributions to the bill. I note many contributions shared deeply personal stories from members or their constituents. I thank them for their courage in doing so. It is important to share these experiences. Women now make up over 50 per cent of this chamber, and this debate reminds us that our experiences of reproductive care and abortion care are far from unique; they are universal and deserve to be treated as what they are—health care. I am genuinely touched by the overwhelming support we have had in this chamber. I thank the public servants who worked incredibly hard to develop this bill. I extend particular thanks to officers, almost all of whom are women, at the Department of Health, Department of Justice, Parliamentary Counsel’s Office and the State Solicitor’s Office. The bill addresses a genuine and often incredibly difficult and personal choice. I hope consideration of this bill remains respectful and based in fact in the other place. I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.