

House of Representatives

Supplementary Order Paper

Tuesday, 3 March 2020

Abortion Legislation Bill

Proposed amendments

Melissa Lee, in Committee, to move the following amendments:

Clause 12

In *clause 12, new section 183(3)*, after “In this section” (page 14, line 8), insert “and **section 184**”.

In *clause 12*, after *new section 183* (page 14, after line 14), insert:

184 Abortion provided when sought on grounds of discrimination

- (1) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 7 years if the person provides abortion services to a woman, having a reasonable belief that the abortion services are being sought on the grounds of—
 - (a) the sex of the unborn child;
 - (b) any disability or possible disability of the unborn child (except as provided for in **subsection (2)**);
 - (c) any of the prohibited grounds of discrimination set out in section 21 of the Human Rights Act 1993 that would apply to the unborn child if they had become a human being.
- (2) A person does not commit the offence under **subsection (1)(b)** where, after examining the woman, a medical practitioner with relevant expertise provides a certificate confirming they are of the reasonable opinion, formed in good faith, that the unborn child is affected by a condition that is likely to lead to the death of the unborn child either before or within 28 days of birth.
- (3) A person who provides abortion services to a woman commits an offence and is liable on conviction to a fine not exceeding \$10,000

if the person does not inform the woman, both orally and in writing, that abortion services are not permitted on the basis of any of the grounds set out in **subsection (1)**.

- (4) **Subsection (3)** does not apply—
- (a) in a medical emergency; or
 - (b) in a situation in which **subsection (2)** applies.
- (5) The woman is not guilty of an offence under this section.
- (6) In this section,—

medical emergency means that a medical practitioner with relevant expertise has formed a reasonable opinion in good faith that—

- (a) there is an immediate risk to the life of the woman; and
- (b) it is immediately necessary to carry out the abortion to avert that risk

medical practitioner means a person—

- (a) who is, or is deemed to be, registered under the Health Practitioners Competence Assurance Act 2003 with the Medical Council of New Zealand; and
- (b) who is practising medicine in accordance with his or her scope of practice.

Explanatory note

This Supplementary Order Paper amends the Abortion Legislation Bill by inserting *new section 184* in *clause 12* to prohibit the provision of abortions on the grounds of sex or disability discrimination. These sections introduce penalties associated with contravening the premise of non-discrimination

For pregnancies of more than 20 weeks' gestation, the Bill makes abortions on the grounds of the disability or the sex of the unborn child significantly more accessible than under the current law. International examples of abortions conducted on the basis of discrimination of this kind are common, and present a considerable threat to particular groups in New Zealand, particularly females (who are much more likely to be aborted on the basis of gender than males) and the disabled community.

The New Zealand Independent Monitoring Mechanism under the United Nations Convention on the Rights of Persons with Disabilities, which is made up of the Human Rights Commission, the Office of the Ombudsman, and the Disabled People's Organisations' Coalition, recently raised issues around antenatal screening in its submission to the Committee on the Rights of Persons with Disabilities (**CRPD Committee**). The CRPD Committee noted that "Laws which explicitly allow for abortion on grounds of impairment violate the Convention on the Rights of Persons with Disabilities (Art. 4, 5, 8). Even if the condition is considered fatal, there is still a decision made on the basis of impairment. Often it cannot be said if an impairment is fatal.

Experience shows that assessments on impairment conditions are often false. Even if it is not false, the assessment perpetuates notions of stereotyping disability as incompatible with a good life.”

Currently, two certifying consultants must believe that the unborn child’s potential disability would cause serious permanent injury to the woman’s mental health. In contrast, the Bill requires only one health practitioner to reasonably believe that the abortion is in the interests of the woman’s mental health, physical health, and well-being. Given that the test is at the discretion of the health practitioner, and that there is very limited, if any, ability to review the health practitioner’s decision, it will be lawful to abort unborn children on the basis of their disability alone, right up until they are fully born. There does not currently exist a framework whereby an abortion can be performed solely on the basis of sex. Frankly, a far greater injustice occurs when an unborn child is aborted on the basis of what and who they are, rather than simply for the fact that they are.

The Bill contains no safeguards to prevent abortions of this kind occurring, and in concert with the greater accessibility to abortion post-20 weeks, and the potential for greater screening and knowledge concerning the disability or gender of the unborn child, restrictions must be included to ensure that discrimination of this kind is not allowed. To avoid the risk of discrimination on the basis of sex, this Supplementary Order Paper inserts explicit prohibition. Parliament has done this in other comparable situations, such as in the practice of in-vitro fertilisation or IVF, where sex selection of an embryo is expressly prohibited except “to prevent or treat a genetic disorder or disease”.