

House of Representatives

Supplementary Order Paper

Tuesday, 3 March 2020

Abortion Legislation Bill

Proposed amendment

Joanne Hayes, in Committee, to move the following amendment:

Clause 7

In *clause 7*, after *new section 11* (page 6, after line 1), insert:

- 11A Provision of abortion services to woman who is not competent to make an informed choice and give informed consent**
- (1) Prior to providing abortion services to a woman, the qualified health practitioner must determine whether the woman has capacity to—
 - (a) make an informed choice; and
 - (b) provide informed consent to abortion services.
 - (2) In the event that the qualified health practitioner considers under **subsection (1)** that the woman does not have capacity to make an informed choice and to provide informed consent, consent may be given—
 - (a) by a legal guardian of the woman; or
 - (b) by the court or an agent of the court following an application for the exercise of the court’s jurisdiction under the relevant provisions of—
 - (i) the Care of Children Act 2004;
 - (ii) the Protection of Personal and Property Rights Act 1988;
 - (iii) any other relevant statute.
 - (3) In the event that the qualified health practitioner accepts consent that is given under **subsection (2)**,—

- (a) the promotion and protection of the welfare and best interests of the woman must be the first and paramount consideration; and
- (b) any person considering the welfare and best interests of the woman must—
 - (i) consider and facilitate the woman’s past and present views to the greatest extent possible; and
 - (ii) consult with a medical practitioner who has the relevant expertise to assess—
 - (A) the woman’s condition; and
 - (B) the likely effect on the woman of both the continuance of the pregnancy and the provision of abortion services.

Explanatory note

This Supplementary Order Paper amends *clause 7* in the Abortion Legislation Bill by inserting *new section 11A*, outlining the process to be followed when providing abortion services to a woman who is not competent to make an informed choice and give informed consent. This amendment ensures that women lacking capacity to consent (whether due to their very young age or their intellectual disability) have the appropriate safeguards in place to ensure that their best interests and welfare are upheld.

The vulnerability of women who lack capacity to consent is highlighted by a recent decision in the English courts that found that it was in the best interests of a 24-year-old woman with a learning disability to compel her to have an abortion that she did not want. While this decision was overturned on appeal, it highlights the necessity for robust safeguards to protect vulnerable women.

There is currently danger of women being coerced and abused by virtue of their age or intellectual capacity. The Human Rights Commission’s submission to the select committee states that “The Code of Rights presumes every person to be competent to give informed consent unless reasonable grounds for believing otherwise. Where a person is not competent to give informed consent, a legal guardian or person holding an enduring power of attorney may consent on their behalf. Where there is no one available to consent on the consumer’s behalf, a health practitioner is guided to consult a suitably experienced colleague before proceeding.” While the Code of Rights may stipulate this, the Bill contains no guidelines related to the process to be followed in cases of an inability to consent, and this amendment ensures that the woman’s past and present views are fully taken into account and are facilitated as much as possible.