

House of Representatives

Supplementary Order Paper

Tuesday, 10 March 2020

Abortion Legislation Bill

Proposed amendment

Hon Alfred Ngaro, in Committee, to move the following amendment:

New clauses 16A and 16B

After *clause 16* (page 15, after line 12), insert:

16A Section 40 amended (Commissioner may investigate breaches)

After section 40(1), insert:

- (1A) The Commissioner may decide to investigate any action of a health practitioner in relation to the provision of abortion services if the action is, or appears to the Commissioner to be, in breach of the provisions of—
- (a) the Contraception, Sterilisation, and Abortion Act 1977:
 - (b) the Crimes Act 1961.

16B Section 45 amended (Procedure after investigation)

After section 45(1)(a), insert:

- (aa) was, in relation to the provision of abortion services, in breach of the provisions of—
- (i) the Contraception, Sterilisation, and Abortion Act 1977:
 - (ii) the Crimes Act 1961; or

Explanatory note

This Supplementary Order Paper amends the Abortion Legislation Bill by inserting *new clauses 16A and 16B*, which give the Health and Disability Commissioner a

**Proposed amendments to
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SOP No 470

mandate to investigate contraventions of the regulations that govern the provision of abortion services under the Contraception, Sterilisation, and Abortion Act 1977 and the Crimes Act 1961.

Simply put, this ensures that health practitioners are held to account in relation to their duties under this Bill. Without a means by which infractions of regulations related to abortions can be investigated, the regulations have no power to protect women and ensure that abortion is administered in a safe and appropriate way. This may, for example, mean that medical practitioners do not adhere to the restrictions imposed by the “test” for post-20 week abortions. As noted by the Law Commission, “Without an enforcement mechanism, there may be less incentive for health practitioners to give proper consideration to the test”. For the Bill to be meaningful in practice, it must include a specific power of enforcement. This must include the power to review a health practitioner’s actions in the administration of abortion. The explanatory note of this Bill highlights that the changes to the status quo “will mean that abortion is, in general, provided like other health services”, and that would mean there would exist “avenues for health consumers to make complaints about their care and for complaints to be independently assessed by the Health and Disability Commissioner”.

The Health and Disability Commissioner is already well equipped to review the actions of a health practitioner for breaches of the Code of Health and Disability Services Consumers’ Rights. However, without this amendment, the Commissioner does not have the jurisdiction to enforce the provisions of the Contraception, Sterilisation, and Abortion Act 1977. The Health and Disability Commissioner Act 1994 is drafted in such a way that the Health and Disability Commissioner “may” investigate, but is at no stage required to pursue an investigation. Such a distinction ensures that the Commissioner is not required to investigate spurious claims.