

# House of Representatives

# Supplementary Order Paper

Tuesday, 10 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) any disability or possible disability of the unborn child (except as provided for in **subsection (2)**);
  - (b) 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)(a)** 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 abortion on the grounds of disability discrimination. These sections introduce penalties associated with contravening the premise of non-discrimination.

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.

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 of the unborn child, restrictions must be included to ensure that discrimination of this kind is not allowed.