



New South Wales

Abortion Law Reform Act 2019 No 11

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New South Wales

Abortion Law Reform Act 2019 No 11

Act No 11, 2019

An Act about reforming the law relating to terminations of pregnancies and regulating the conduct of health practitioners in relation to terminations. [Assented to 2 October 2019]

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Abortion Law Reform Act 2019*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Purposes

The purposes of the Act are—

- (a) to reform the law relating to terminations of pregnancies, and

Note. Consequent on the enactment of this Act amendments were made to the *Crimes Act 1900* to repeal the provisions of that Act relating to abortions and to abolish the common law offences relating to abortion.

- (b) to regulate the conduct of registered health practitioners in relation to terminations.

4 Definitions

The Dictionary in Schedule 1 defines particular words used in this Act.

Part 2 Performance of terminations by registered health practitioners

5 Termination by medical practitioners at not more than 22 weeks

- (1) A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.
- (2) The medical practitioner may perform the termination on the person only if the medical practitioner has obtained informed consent to the termination from—
 - (a) the person, or
 - (b) if the person lacks the capacity to give informed consent to the termination, a person lawfully authorised to give consent on the person's behalf.
- (3) However, subsection (2) does not apply if, in an emergency, it is not practicable to obtain the person's informed consent.

6 Termination by medical practitioner after 22 weeks

- (1) A specialist medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if—
 - (a) the specialist medical practitioner, after considering the matters mentioned in subsection (3) and any advice received under subsection (4), considers that, in all the circumstances, there are sufficient grounds for the termination to be performed, and
 - (b) the specialist medical practitioner has consulted with another specialist medical practitioner who, after considering the matters mentioned in subsection (3), also considers that, in all the circumstances, there are sufficient grounds for the termination to be performed, and
 - (c) the specialist medical practitioner has obtained informed consent to the termination from—
 - (i) the person, or
 - (ii) if the person lacks the capacity to give informed consent to the termination, a person lawfully authorised to give consent on the person's behalf, and
 - (d) the termination is performed at—
 - (i) a hospital controlled by a statutory health organisation, within the meaning of the *Health Services Act 1997*, or
 - (ii) an approved health facility.
- (2) To remove any doubt, subsection (1)(d) does not require that any ancillary services necessary to support the performance of a termination be carried out only at the hospital or approved health facility at which the termination is, or is to be, performed.
- (3) In considering whether a termination should be performed on a person under this section, a specialist medical practitioner must consider—
 - (a) all relevant medical circumstances, and
 - (b) the person's current and future physical, psychological and social circumstances, and
 - (c) the professional standards and guidelines that apply to the specialist medical practitioner in relation to the performance of the termination.
- (4) Without limiting subsection (3), the specialist medical practitioner may ask for advice about the proposed termination from a multi-disciplinary team or hospital advisory committee.

- (5) In an emergency, a medical practitioner, whether or not a specialist medical practitioner, may perform a termination on a person who is more than 22 weeks pregnant, without acting under subsections (1) and (3), if the medical practitioner considers it necessary to perform the termination to—
 - (a) save the person’s life, or
 - (b) save another foetus.
- (6) In this section—

ancillary services means—

 - (a) tests or other medical procedures, or
 - (b) the administration, prescription or supply of medication, or
 - (c) another treatment or service prescribed by the regulations.

Note. This section is intended to reflect the common law position on terminations at the time this Act was enacted, subject to the purposes and requirements of this Act.

7 Requirement for information about counselling

- (1) Before performing a termination on a person under section 5, a medical practitioner must—
 - (a) assess whether or not it would be beneficial to discuss with the person accessing counselling about the proposed termination, and
 - (b) if, in the medical practitioner’s assessment, it would be beneficial and the person is interested in accessing counselling, provide all necessary information to the person about access to counselling, including publicly-funded counselling.
- (2) Before performing a termination on a person under section 6, a specialist medical practitioner must provide all necessary information to the person about access to counselling, including publicly-funded counselling.
- (3) A medical practitioner may, in an emergency, perform a termination on a person without complying with subsection (1) or (2).

8 Registered health practitioners who may assist

- (1) A person who is a medical practitioner, nurse, midwife, pharmacist or Aboriginal and Torres Strait Islander health practitioner, or another registered health practitioner prescribed by the regulations, may, in the practice of the person’s health profession, assist in the performance of a termination on a person by a medical practitioner.
- (2) However, subsection (1) does not apply in relation to a termination that the assisting registered health practitioner knows, or ought reasonably to know, is being performed other than as authorised under section 5 or 6.
- (3) A reference in this section to assisting in the performance of a termination includes dispensing, supplying or administering a termination drug on the instruction of the medical practitioner.

9 Registered health practitioner with conscientious objection

- (1) This section applies if—
 - (a) a person (the ***first person***) asks a registered health practitioner to—
 - (i) perform a termination on another person, or
 - (ii) assist in the performance of a termination on another person, or
 - (iii) make a decision under section 6 whether a termination on another person should be performed, or

- (iv) advise the first person about the performance of a termination on another person, and
 - (b) the practitioner has a conscientious objection to the performance of the termination.
 - (2) The registered health practitioner must, as soon as practicable after the first person makes the request, disclose the practitioner's conscientious objection to the first person.
 - (3) If the request by a person is for the registered health practitioner (the ***first practitioner***) to perform a termination on the person, or to advise the person about the performance of a termination on the person, the practitioner must, without delay—
 - (a) give information to the person on how to locate or contact a medical practitioner who, in the first practitioner's reasonable belief, does not have a conscientious objection to the performance of the termination, or
 - (b) transfer the person's care to—
 - (i) another registered health practitioner who, in the first practitioner's reasonable belief, can provide the requested service and does not have a conscientious objection to the performance of the termination, or
 - (ii) a health service provider at which, in the first practitioner's reasonable belief, the requested service can be provided by another registered health practitioner who does not have a conscientious objection to the performance of the termination.
 - (4) For the purposes of subsection (3)(a), the first practitioner is taken to have complied with the practitioner's obligations under that paragraph if the practitioner gives the person information approved by the Secretary of the Ministry of Health for the purposes of that paragraph.

Note. The information to be approved by the Secretary is to consist of contact details for a NSW Government service that provides information about a range of health services and resources, including information about medical practitioners who do not have a conscientious objection to the performance of terminations.
 - (5) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

10 Professional conduct or performance

- (1) In considering a matter under an Act about a registered health practitioner's professional conduct or performance, regard may be had to whether the practitioner—
 - (a) performs a termination on a person other than as authorised under section 5 or 6, or
 - (b) assists in the termination on a person other than as authorised under section 8, or
 - (c) contravenes section 9.
- (2) The matters to which subsection (1) applies include matters arising in—
 - (a) a notification under the *Health Practitioner Regulation National Law (NSW)*, or
 - (b) a complaint under the *Health Care Complaints Act 1993*.
- (3) This Act does not limit any duty a registered health practitioner has to comply with professional standards or guidelines that apply to health practitioners.

11 Care of person born after termination

- (1) This section applies if a termination results in a person being born.
- (2) Nothing in this Act prevents the medical practitioner who performed the termination, or any other registered health practitioner present at the time the person is born, from exercising any duty to provide the person with medical care and treatment that is—
 - (a) clinically safe, and
 - (b) appropriate to the person's medical condition.

Note. See section 10(3), which provides that this Act does not limit a duty a registered health practitioner has to comply with professional standards or guidelines. See also section 14, which provides that the Secretary of the Ministry of Health may issue guidelines about the performance of terminations at approved health facilities and requires registered health practitioners performing terminations, or assisting in the performance of terminations, to act in accordance with the guidelines.

- (3) To avoid doubt, the duty owed by a registered health practitioner to provide medical care and treatment to a person born as a result of a termination is no different than the duty owed to provide medical care and treatment to a person born other than as a result of a termination.

Part 3 Protection from criminal responsibility

12 Person does not commit offence for termination on themselves

Despite any other Act, a person who consents to, assists in, or performs a termination on themselves does not commit an offence.

Part 4 Miscellaneous

13 Approval of health facilities for terminations after 22 weeks

The Secretary of the Ministry of Health may approve a hospital, or other facility the Secretary considers appropriate, as a facility at which terminations may be performed on persons who are more than 22 weeks pregnant.

14 Guidelines about performance of terminations

- (1) The Secretary of the Ministry of Health may issue guidelines about the performance of terminations.
- (2) Without limiting subsection (1), the guidelines may include information about matters relevant to the role of multi-disciplinary teams and hospital advisory committees in relation to the performance of terminations, including the following—
 - (a) the operation of multi-disciplinary teams or hospital advisory committees,
 - (b) the assistance a multi-disciplinary team or hospital advisory committee may provide about a termination to a medical practitioner.
- (3) If the Secretary issues guidelines under subsection (1), a registered health practitioner performing a termination, or assisting in the performance of a termination, must perform the termination in accordance with the guidelines.

15 Medical practitioners to provide information about terminations

- (1) A medical practitioner who performs a termination must, within 28 days after performing the termination, give the Secretary of the Ministry of Health the information about the termination decided by the Secretary.
- (2) The information must be given in the way decided by the Secretary including, for example, by using a form approved by the Secretary for the purposes of subsection (1).
- (3) Information provided by a medical practitioner to the Secretary under this section must not include any particulars which would allow a person on whom a termination was performed to be identified.

16 Terminations for sex selection

- (1) This Parliament opposes the performance of terminations for the purpose of sex selection.
- (2) The Secretary of the Ministry of Health must, within 12 months after the commencement of this section—
 - (a) conduct a review of the issue of whether or not terminations are being performed for the purpose of sex selection, and
 - (b) prepare, and give to the Minister, a report about the review.
- (3) The report must include recommendations about how to prevent terminations being performed for the purpose of sex selection.
- (4) The Minister must provide the report to the Presiding Officer of each House of Parliament.
- (5) A copy of a report provided to the Presiding Officer of a House of Parliament under subsection (4) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.

- (6) To avoid any doubt, the guidelines that may be issued under section 14 may include guidelines, about the performance of terminations, that prevent terminations being performed for the purpose of sex selection.

17 Review of Act

- (1) The Minister must, within 5 years after the commencement of this section—
- (a) conduct a review of the operation of this Act, and
 - (b) provide the report to the Presiding Officer of each House of Parliament.
- (2) A copy of a report provided to the Presiding Officer of a House of Parliament under subsection (1) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.

18 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Dictionary

section 4

Aboriginal and Torres Strait Islander health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the Aboriginal and Torres Strait Islander health practice profession, other than as a student.

approved health facility means a hospital or other facility approved under section 13.

hospital advisory committee means a committee established by—

- (a) a statutory health organisation, within the meaning of the *Health Services Act 1997*, or
- (b) an approved health facility.

informed consent, in relation to a termination performed by a medical practitioner, means consent to the termination given—

- (a) freely and voluntarily, and
- (b) in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination.

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.

midwife means a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student.

multi-disciplinary team means a group of registered health practitioners and other health professionals, from diverse fields of practice, who work together in a coordinated way to deliver comprehensive care to a patient in a way that addresses as many of the patient's needs as practicable.

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student.

pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

specialist medical practitioner, in relation to the performance of a termination, means—

- (a) a medical practitioner who, under the Health Practitioner Regulation National Law, holds specialist registration in obstetrics and gynaecology, or
- (b) a medical practitioner who has other expertise that is relevant to the performance of the termination, including, for example, a general practitioner who has additional experience or qualifications in obstetrics.

termination means an intentional termination of a pregnancy in any way, including, for example, by—

- (a) administering a drug, or
- (b) using an instrument or other thing.

termination drug means a drug of a kind used to cause a termination.

Schedule 2 Amendment of Acts

2.1 Crimes Act 1900 No 40

[1] Section 4 Definitions

Insert 'or a termination of a pregnancy in accordance with the *Abortion Law Reform Act 2019*' after 'medical procedure' in paragraph (a) of the definition of *grievous bodily harm* in section 4(1).

[2] Part 3, Division 12

Omit the Division. Insert instead—

Division 12 Termination of pregnancies by unqualified persons

82 Termination of pregnancy performed by unqualified person

- (1) An unqualified person who performs a termination on another person commits an offence.
Maximum penalty—7 years imprisonment.
- (2) An unqualified person who assists in the performance of a termination on another person commits an offence.
Maximum penalty—7 years imprisonment.
- (3) A reference in subsection (2) to assisting in the performance of a termination includes—
 - (a) supplying, or procuring the supply of, a termination drug for use in a termination, and
 - (b) administering a termination drug.

Note. Section 12 of the *Abortion Law Reform Act 2019* provides that a person who consents to, assists in, or performs a termination on themselves does not commit an offence.

- (4) Proceedings for an offence under this section may only be instituted by, or with the approval of, the Director of Public Prosecutions.
- (5) In this section—

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.

perform includes attempt to perform.

termination means an intentional termination of a pregnancy in any way, including, for example, by—

- (a) administering a drug, or
- (b) using an instrument or other thing.

unqualified person means—

- (a) in relation to performing a termination on another person—a person who is not a medical practitioner, or
- (b) in relation to assisting in the performance of a termination on another person—a person who is not authorised under section 8 of the *Abortion Law Reform Act 2019* to assist in the performance of the termination.

[3] Section 428B Offences of specific intent to which Part applies

Omit the entries relating to sections 82 and 83 in the Table.

[4] Section 545B Intimidation or annoyance by violence or otherwise

Insert after section 545B(1)—

(1A) To avoid any doubt, for the purposes of subsection (1)—

- (a) a person who uses intimidation to coerce a person to have a termination performed, including for the purposes of sex selection, is taken to have used intimidation to compel the person to have the termination, and
- (b) a person who uses intimidation to coerce a person to not have a termination performed is taken to have used intimidation to prevent the person having the termination.

[5] Schedule 3 Abolished common law offences and rules

Insert after clause 7—

8 Abortion

Any rule of common law that creates an offence in relation to procuring a person's miscarriage is abolished.

2.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Omit '82, 83, 84,' from clause 2 of Table 1.

[Second reading speech made in—

Legislative Assembly on 1 August 2019

Legislative Council on 20 August 2019]