



New South Wales

Reproductive Health Care Reform Bill 2019

Contents

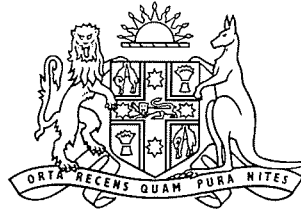
	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Purposes	2
4 Definitions	2
Part 2 Performance of terminations by registered health practitioners	
5 Termination by medical practitioners at not more than 22 weeks	3
6 Termination by medical practitioner after 22 weeks	3
7 Requirement for information about counselling	4
8 Registered health practitioners who may assist	4
9 Registered health practitioner with conscientious objection	4
10 Professional conduct or performance	5
Part 3 Protection from criminal responsibility	
11 Person does not commit offence for termination on themselves	6
Part 4 Miscellaneous	
12 Approval of health facilities for terminations after 22 weeks	7
13 Guidelines about performance of terminations at approved health facilities	7

	Page	
14	Review in relation to gender selection	7
15		7
16	Review of Act	7
17	Regulations	7
Schedule 1	Dictionary	8
Schedule 2	Amendment of Acts	9

This public bill which originated in the Legislative Assembly, has passed and is now ready for presentation to the Legislative Council for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2019



New South Wales

Reproductive Health Care Reform Bill 2019

Act No , 2019

A Bill for

An Act about reforming the law relating to terminations of pregnancies and regulating the conduct of health practitioners in relation to terminations.

EXAMINED

Speaker

The Legislature of New South Wales enacts—	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Reproductive Health Care Reform Act 2019</i> .	4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Purposes	7
The purposes of the Act are—	8
(a) to reform the law relating to terminations of pregnancies, and	9
Note. Consequent on the enactment of this Act amendments were made to the <i>Crimes Act 1900</i> to repeal the provisions of that Act relating to abortions and to abolish the common law offences relating to abortion.	10 11 12
(b) to regulate the conduct of registered health practitioners in relation to terminations.	13 14
4 Definitions	15
The Dictionary in Schedule 1 defines particular words used in this Act.	16

Part 2	Performance of terminations by registered health practitioners	1
		2
5	Termination by medical practitioners at not more than 22 weeks	3
(1)	A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.	4
		5
(2)	The medical practitioner may perform the termination only if the person has given informed consent to the termination.	6
		7
(3)	However, subsection (2) does not apply if, in an emergency, it is not practicable to obtain the person's informed consent.	8
		9
6	Termination by medical practitioner after 22 weeks	10
(1)	A specialist medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if—	11
		12
(a)	the specialist medical practitioner considers that, in all the circumstances, the termination should be performed, and	13
		14
(b)	the specialist medical practitioner has consulted with another specialist medical practitioner who also considers that, in all the circumstances, the termination should be performed, and	15
		16
		17
(c)	the medical practitioner has obtained the person's informed consent to the termination, and	18
		19
(d)	the termination is performed at—	20
(i)	a hospital controlled by a statutory health organisation, within the meaning of the <i>Health Services Act 1997</i> , or	21
		22
(ii)	an approved health facility.	23
(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.	24
		25
		26
(3)	In considering whether a termination should be performed on a person under this section, a specialist medical practitioner must consider—	27
		28
(a)	all relevant medical circumstances, and	29
(b)	the person's current and future physical, psychological and social circumstances, and	30
		31
(c)	the professional standards and guidelines that apply to the specialist medical practitioner in relation to the performance of the termination.	32
		33
(4)	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—	34
		35
		36
		37
(a)	save the person's life, or	38
(b)	save another foetus.	39
(5)	In this section—	40
	ancillary services means—	41
(a)	tests or other medical procedures, or	42
(b)	the administration, prescription or supply of medication, or	43
(c)	another treatment or service prescribed by the regulations.	44

7 Requirement for information about counselling	1
(1) Before performing a termination on a person under section 5 or 6, a medical practitioner must—	2 3
(a) assess whether or not it would be beneficial to discuss with the person accessing counselling about the proposed termination, and	4 5
(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.	6 7 8 9
(2) A medical practitioner may, in an emergency, perform a termination on a person without complying with subsection (1).	10 11
8 Registered health practitioners who may assist	12
(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.	13 14 15 16
(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.	17 18 19
(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.	20 21 22
9 Registered health practitioner with conscientious objection	23
(1) This section applies if—	24
(a) a person (the <i>first person</i>) asks a registered health practitioner to—	25
(i) perform a termination on another person, or	26
(ii) assist in the performance of a termination on another person, or	27
(iii) make a decision under section 6 whether a termination on another person should be performed, or	28 29
(iv) advise the first person about the performance of a termination on another person, and	30 31
(b) the practitioner has a conscientious objection to the performance of the termination.	32 33
(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.	34 35 36
(3) If the request by a person is for the registered health practitioner (the <i>first practitioner</i>) 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—	37 38 39 40
(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	41 42 43
(b) transfer the person’s care to—	44
(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	45 46 47

- (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. 1
2
3
4
- (4) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency. 5
6
- 10 Professional conduct or performance** 7
- (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— 8
9
10
 - (a) performs a termination on a person other than as authorised under section 5 or 6, or 11
12
 - (b) assists in the termination on a person other than as authorised under section 8, or 13
14
 - (c) contravenes section 9. 15
- (2) The matters to which subsection (1) applies include matters arising in— 16
 - (a) a notification under the *Health Practitioner Regulation National Law (NSW)*, or 17
18
 - (b) a complaint under the *Health Care Complaints Act 1993*. 19
- (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. 20
21

Part 3 Protection from criminal responsibility

1

11 Person does not commit offence for termination on themselves

2

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

3

4

Part 4	Miscellaneous	1
12	Approval of health facilities for terminations after 22 weeks	2
	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.	3 4 5
13	Guidelines about performance of terminations at approved health facilities	6
(1)	The Secretary of the Ministry of Health may issue guidelines about the performance of terminations at approved health facilities.	7 8
(2)	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.	9 10 11
14	Review in relation to gender selection	12
(1)	The Secretary of the Ministry of Health must, within 12 months after the commencement of this section—	13 14
(a)	conduct a review of the issue of whether or not terminations are being performed for the purposes of gender selection, and	15 16
(b)	prepare, and give to the Minister, a report about the review.	17
(2)	The Minister must provide the report to the Presiding Officer of each House of Parliament.	18 19
(3)	A copy of a report provided to the Presiding Officer of a House of Parliament under subsection (2) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.	20 21 22
15		23
(1)	Notes that this House opposes terminations being performed for the sole purpose of gender selection.	24 25
16	Review of Act	26
(1)	The Minister must, within 5 years after the commencement of this section—	27
(a)	conduct a review of the operation of this Act, and	28
(b)	provide the report to the Presiding Officer of each House of Parliament.	29
(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.	30 31 32
17	Regulations	33
	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.	34 35 36 37

Schedule 1 Dictionary

	section 4	2
<i>Aboriginal and Torres Strait Islander health practitioner</i>	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.	3 4 5
<i>approved health facility</i>	means a hospital or other facility approved under section 12.	6
<i>informed consent</i>	in relation to a termination performed by a medical practitioner, means consent to the termination given—	7 8
(a)	freely and voluntarily, and	9
(b)	in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination.	10 11
<i>medical practitioner</i>	means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.	12 13
<i>midwife</i>	means a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student.	14 15
<i>nurse</i>	means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student.	16 17
<i>pharmacist</i>	means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.	18 19
<i>registered health practitioner</i>	means a person registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.	20 21
<i>specialist medical practitioner</i>	in relation to the performance of a termination, means—	22
(a)	a medical practitioner who, under the Health Practitioner Regulation National Law, holds specialist registration in obstetrics and gynaecology, or	23 24
(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.	25 26 27
<i>termination</i>	means an intentional termination of a pregnancy in any way, including, for example, by—	28 29
(a)	administering a drug, or	30
(b)	using an instrument or other thing.	31
<i>termination drug</i>	means a drug of a kind used to cause a termination.	32

Schedule 2	Amendment of Acts	1	
2.1	Crimes Act 1900 No 40	2	
[1]	Section 4 Definitions	3	
	Insert ‘or a termination of a pregnancy in accordance with the <i>Reproductive Health Care Reform Act 2019</i> ’ after ‘medical procedure’ in paragraph (a) of the definition of <i>grievous bodily harm</i> in section 4(1).	4 5 6	
[2]	Part 3, Division 12	7	
	Omit the Division. Insert instead—	8	
	Division 12	Termination of pregnancies by unqualified persons	9
82	Termination of pregnancy performed by unqualified person	10	
(1)	An unqualified person who performs a termination on another person commits an offence. Maximum penalty—7 years imprisonment.	11 12 13	
(2)	An unqualified person who assists in the performance of a termination on another person commits an offence. Maximum penalty—7 years imprisonment.	14 15 16	
(3)	A reference in subsection (2) to assisting in the performance of a termination includes—	17 18	
(a)	supplying, or procuring the supply of, a termination drug for use in a termination, and	19 20	
(b)	administering a termination drug.	21	
	Note. Section 11 of the <i>Reproductive Health Care Reform Act 2019</i> provides that a person who consents to, assists in, or performs a termination on themselves does not commit an offence.	22 23 24	
(4)	Proceedings for an offence under this section may only be instituted by, or with the approval of, the Director of Public Prosecutions.	25 26	
(5)	In this section—	27	
	<i>medical practitioner</i> means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.	28 29 30	
	<i>perform</i> includes attempt to perform.	31	
	<i>termination</i> means an intentional termination of a pregnancy in any way, including, for example, by—	32 33	
(a)	administering a drug, or	34	
(b)	using an instrument or other thing.	35	
	<i>unqualified person</i> means—	36	
(a)	in relation to performing a termination on another person—a person who is not a medical practitioner, or	37 38	
(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 <i>Reproductive Health Care Reform Act 2019</i> to assist in the performance of the termination.	39 40 41 42	

[3] Section 428B Offences of specific intent to which Part applies	1
Omit the entries relating to sections 82 and 83 in the Table.	2
[4] Schedule 3 Abolished common law offences and rules	3
Insert after clause 7—	4
8 Abortion	5
Any rule of common law that creates an offence in relation to procuring a person's miscarriage is abolished.	6
	7
2.2 Criminal Procedure Act 1986 No 209	8
Schedule 1 Indictable offences triable summarily	9
Omit '82, 83, 84,' from clause 2 of Table 1.	10