

Summary of Abortion Law Reform Act 2019

The Abortion Law Reform Act 2019 (Act) commenced on 2 October 2019. The Act amends the Crimes Act 1900 to repeal the provisions of that Act relating to termination of pregnancy and to abolish the common law offences relating to termination of pregnancy. The Act:

- establishes a health centered approach for termination of pregnancy
- supports a woman's right to health, including reproductive health and autonomy
- provides clarity and safety for registered health practitioners providing terminations of pregnancy.

A summary of the Abortion Law Reform Act 2019 (Act) is set out below.

Removal of termination from the Crimes Act

The Act removes the offences relating to termination, being sections 82, 83 and 84, from the Crimes Act 1900. There is a new offence relating to an unqualified person performing a termination.

Termination at less than 22 weeks

Under the Act, a medical practitioner may perform a termination on a woman who is not more than 22 weeks pregnant provided that informed consent has been given (unless, in an emergency, it is not practicable to obtain the patient's informed consent).

Before performing a termination, a medical practitioner must assess whether it would be beneficial to discuss accessing counselling with the patient and if the practitioner assesses that it would be beneficial and the patient is interested in accessing counselling, provide all necessary information to the patient about access to counselling, including publicly-funded counselling.

Other medical practitioners, nurses, midwives, pharmacists or Aboriginal and Torres Strait Islander health practitioners can assist in the performance of the termination.

Termination at more than 22 weeks

Different provisions apply in relation to terminations at more than 22 weeks. Except in emergencies (being to save the patient's life or the life of another foetus), such terminations can only be performed:

- By a specialist medical practitioner, and
- At a hospital controlled by a local health district or statutory health corporation or another facility approved by the Health Secretary (noting that ancillary services, being tests or other medical procedures or the administration, prescription or supply of medication, can be carried out in other places).

The specialist medical practitioner may request that the hospital or approved facility make available a hospital advisory committee or multi-disciplinary team to provide advice about the proposed termination.

The hospital or approved facility must comply with any guidelines issued by the Health Secretary in relation to terminations.

In addition, under the Act, except in emergencies, a specialist medical practitioner may perform a termination on a woman who is more than 22 weeks pregnant if:

- The practitioner has obtained informed consent for the procedure;
- The practitioner has provided all necessary information to the patient about access to counselling, including publicly-funded counselling;

- The practitioner considers that in all the circumstances there are sufficient grounds for the termination to be performed. This assessment is to be made after considering:
 - o all relevant medical circumstances,
 - o the patient's current and future physical, psychological and social circumstances, and the professional standards and guidelines that apply to the practitioner in relation to terminations, and
 - o any advice received from the hospital advisory committee or multi-disciplinary team.
- The practitioner has consulted with another specialist medical practitioner who also considers that in all the circumstances there are sufficient grounds for the termination to be performed. The second practitioner must also consider
 - o all relevant medical circumstances,
 - o the patient's current and future physical, psychological and social circumstances, and
 - o the professional standards and guidelines that apply to the practitioner in relation to terminations.

A specialist medical practitioner under the Act is:

- A medical practitioner who hold specialist registration in obstetrics and gynecology, or
- 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.

Other medical practitioners, nurses, midwives, pharmacists or Aboriginal and Torres Strait Islander health practitioners can assist in the performance of the termination.

In an emergency, any medical practitioner can perform a termination on a woman without complying with the above requirements.

Informed consent

Under the Act, informed consent means consent that is given freely and voluntarily and in accordance with any guidelines applicable to the medical practitioner in relation to the performance of termination.

Under the Act, informed consent must be given by the woman or, if the woman lacks capacity, a person lawfully authorised to give consent on the woman's behalf. It is noted that, unless it is an emergency, if a woman over 16 lacks capacity consent must be obtained from the Civil and

Administrative Tribunal under the Guardianship Act for the performance of a termination.

Conscientious objection

The Act has specific provisions relating to practitioners who have a conscientious objection to termination. Under the Act, if a registered health practitioner has a conscientious objection to termination and is asked to perform, or assist in performing, a termination, the practitioner with a conscientious objection must advise the person who made the request of the practitioner's conscientious objection to termination and, if requested to perform or provide advice about the performance of termination:

- Give information (which could be information approved by the Health Secretary) to the person about how to locate or contact a medical practitioner who does not have a conscientious objection, or
- Transfer the person's care to another registered health practitioner or to another health service who can provide the termination and does not have a conscientious objection.

The conscientious objection provisions do not limit any duty owed by the registered health practitioner to provide a service in an emergency.

Care of person born after a termination

The Act codifies existing law in relation to a child born alive following a termination. The Act makes clear that there is a duty on a registered practitioners to provide any child born alive with medical care and treatment that is clinically safe and appropriate to the child's medical condition.

Provision of information to the Secretary

The Act requires a medical practitioner who performs a termination to provide the Secretary with approved information about the termination. The information approved cannot include identifying information. The information will need to be provided to the Secretary within 28 days of the termination.

Guidelines

The Secretary will be able to issue guidelines about the performance of terminations which practitioners performing terminations must have regard to.