



New South Wales

Reproductive Health Care Reform Bill 2019

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is co-sponsored by the Hon Shelley Hancock MP, Trish Doyle MP, the Hon Brad Hazzard MP, Ryan Park MP, Jenny Leong MP, the Hon Leslie Williams MP, the Hon Penny Sharpe MLC, Alex Greenwich MP, the Hon Trevor Khan MLC, the Hon Abigail Boyd MLC, Jo Haylen MP, Jenny Aitchison MP, Felicity Wilson MP, Greg Piper MP and the Hon Emma Hurst MLC.

Overview of Bill

The objects of this Bill are as follows—

- (a) to enable a termination of a pregnancy to be performed by a medical practitioner on a person who is not more than 22 weeks pregnant,
- (b) to enable a termination of a pregnancy to be performed by a medical practitioner on a person who is more than 22 weeks pregnant in certain circumstances,
- (c) to identify certain registered health practitioners who may assist in the performance of a termination,
- (d) to require a registered health practitioner who has a conscientious objection to the performance of a termination on a person to disclose the objection and refer the person to another practitioner who does not have a conscientious objection,
- (e) to repeal offences relating to abortion in the *Crimes Act 1900* and abolish any common law rules relating to abortion,
- (f) to amend the *Crimes Act 1900* to make it an offence for a person who is not a medical practitioner otherwise authorised under the Act to terminate a pregnancy.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the purposes of the proposed Act.

Clause 4 provides that the Dictionary in Schedule 1 of the proposed Act defines certain words used in the proposed Act.

Part 2 Performance of terminations by registered health practitioners

Clause 5 provides that a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.

Clause 6 provides that a medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if the medical practitioner considers that, in all the circumstances, a termination should be performed and has consulted with another medical practitioner who agrees the termination should be performed. A medical practitioner may also perform a termination without consultation if it is necessary to save the person's life or save another foetus.

Clause 7 provides that certain registered health practitioners may assist in the performance of a termination that is authorised under the proposed Act.

Clause 8 requires a registered health practitioner to disclose a conscientious objection to termination in certain circumstances. A registered health practitioner who has a conscientious objection and who is requested to perform, or assist in the performance of, a termination on a person must refer the person to another registered health practitioner or health service provider that the practitioner believes does not have a conscientious objection.

Clause 9 provides that a registered health practitioner's compliance with the proposed Act is relevant to matters relating to the practitioner's professional conduct and performance.

Part 3 Protection from criminal responsibility

Clause 10 provides that a person who consents to, assists in, or performs a termination on themselves does not commit an offence, despite any other Act.

Part 4 Miscellaneous

Clause 11 provides for a review of the operation of the proposed Act within 5 years after the commencement of section 11.

Clause 12 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Dictionary

Schedule 1 contains a Dictionary that defines certain words and expressions used in the proposed Act. **Termination** means an intentional termination of pregnancy in any way, including, for example, by administering a drug or using an instrument or other thing. **Registered health practitioner** means a person registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

Schedule 2 Amendment of Acts

Crimes Act 1900 No 40

Schedule 2.1 [2] amends the *Crimes Act 1900* to repeal existing offences relating to abortion. It will be an offence for a person to perform, or assist in the performance of, a termination on another person, if the person is not a medical practitioner, or other registered health practitioner, authorised to do so under the proposed Act. The maximum penalty will be imprisonment for 7 years. **Schedule 2.1 [3]** is a consequential amendment.

Schedule 2.1 [4] abolishes any rule of common law that creates an offence in relation to procuring a person's miscarriage.

Schedule 2.1 [1] provides that a termination of a pregnancy under the proposed Act does not constitute grievous bodily harm.

Criminal Procedure Act 1986 No 209

Schedule 2.2 makes a consequential amendment to the *Criminal Procedure Act 1986*.



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New South Wales

Reproductive Health Care Reform Bill 2019

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.

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
	A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.	4
		5
6	Termination by medical practitioner after 22 weeks	6
(1)	A medical practitioner may perform a termination on a person who is more than 22 weeks pregnant if—	7
		8
(a)	the medical practitioner considers that, in all the circumstances, the termination should be performed, and	9
		10
(b)	the medical practitioner has consulted with another medical practitioner who also considers that, in all the circumstances, the termination should be performed.	11
		12
		13
(2)	In considering whether a termination should be performed on a person under this section, a medical practitioner must consider—	14
		15
(a)	all relevant medical circumstances, and	16
(b)	the person's current and future physical, psychological and social circumstances, and	17
		18
(c)	the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.	19
		20
(3)	In an emergency, a medical practitioner may perform a termination on a person who is more than 22 weeks pregnant, without acting under subsections (1) and (2), if the medical practitioner considers it necessary to perform the termination to—	21
		22
		23
(a)	save the person's life, or	24
(b)	save another foetus.	25
7	Registered health practitioners who may assist	26
(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.	27
		28
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(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.	31
		32
		33
(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.	34
		35
		36
8	Registered health practitioner with conscientious objection	37
(1)	This section applies if—	38
(a)	a person (the <i>first person</i>) asks a registered health practitioner to—	39
(i)	perform a termination on another person, or	40
(ii)	assist in the performance of a termination on another person, or	41
(iii)	make a decision under section 6 whether a termination on another person should be performed, or	42
		43

- (iv) advise the first person about the performance of a termination on another person, and 1
 - (b) the practitioner has a conscientious objection to the performance of the termination. 2
 - (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
 - (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, refer the person, or transfer the person's care, to— 4
 - (a) another registered health practitioner who, in the first practitioner's belief, can provide the requested service and does not have a conscientious objection to the performance of the termination, or 5
 - (b) a health service provider at which, in the first practitioner's 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. 6
 - (4) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency. 7
- 9 Compliance with this Part relevant to professional conduct or performance** 8
- (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— 9
- (a) performs a termination on a person other than as authorised under section 5 or 6, or 10
 - (b) assists in the termination on a person other than as authorised under section 7, or 11
 - (c) contravenes section 8. 12
- (2) The matters to which subsection (1) applies include matters arising in— 13
- (a) a notification under the *Health Practitioner Regulation National Law (NSW)*, or 14
 - (b) a complaint under the *Health Care Complaints Act 1993*. 15

Part 3 Protection from criminal responsibility

1

10 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
11	Review of Act	2
(1)	The Minister must, within 5 years after the commencement of this section—	3
(a)	conduct a review of the operation of this Act, and	4
(b)	provide the report to the Presiding Officer of each House of Parliament.	5
(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.	6 7 8
12	Regulations	9
	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.	10 11 12 13

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>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.	6 7
<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.	8 9
<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.	10 11
<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.	12 13
<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.	14 15
<i>termination</i>	means an intentional termination of a pregnancy in any way, including, for example, by—	16 17
(a)	administering a drug, or	18
(b)	using an instrument or other thing.	19
<i>termination drug</i>	means a drug of a kind used to cause a termination.	20

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 10 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	
	medical practitioner 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	
	perform includes attempt to perform.	31	
	termination 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	
	unqualified person 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 7 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