

Abortion Law Reform Act 2008

No. 58 of 2008

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Victoria

Abortion Law Reform Act 2008[†]

No. 58 of 2008

[Assented to 22 October 2008]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to reform the law relating to abortion; and
- (b) to regulate health practitioners performing abortions; and
- (c) to amend the **Crimes Act 1958**—
 - (i) to repeal the provisions relating to abortion; and

-
- (ii) to abolish the common law offences relating to abortion; and
 - (iii) to make it an offence for an unqualified person to perform an abortion; and
 - (iv) to amend the definition of *serious injury* to include the destruction of a foetus other than in the course of a medical procedure.

2 Commencement

This Act commences on the day after the day on which it receives the Royal Assent.

3 Definitions

In this Act—

abortion means intentionally causing the termination of a woman's pregnancy by—

- (a) using an instrument; or
- (b) using a drug or a combination of drugs; or
- (c) any other means;

registered health practitioner has the meaning given in the **Health Professions Registration Act 2005**;

registered medical practitioner means a medical practitioner registered under the **Health Professions Registration Act 2005**;

registered nurse means a nurse registered under the **Health Professions Registration Act 2005**;

registered pharmacist means a pharmacist registered under the **Health Professions Registration Act 2005**;

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Part 1—Preliminary

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regulated health profession has the meaning
given in the **Health Professions
Registration Act 2005**;

woman means a female person of any age.

**PART 2—ROLE OF REGISTERED HEALTH
PRACTITIONERS**

4 Termination of pregnancy by registered medical practitioner at not more than 24 weeks

A registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant.

5 Termination of pregnancy by registered medical practitioner after 24 weeks

- (1) A registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if the medical practitioner—
 - (a) reasonably believes that the abortion is appropriate in all the circumstances; and
 - (b) has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.
- (2) In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—
 - (a) all relevant medical circumstances; and
 - (b) the woman's current and future physical, psychological and social circumstances.

6 Supply or administration of drugs by registered pharmacist or registered nurse—at not more than 24 weeks

A registered pharmacist or registered nurse who is authorised under the **Drugs, Poisons and Controlled Substances Act 1981** to supply a drug or drugs may administer or supply the drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant.

7 Supply or administration of drugs by registered pharmacist or registered nurse—more than 24 weeks

- (1) A registered medical practitioner may, in writing, direct a registered pharmacist or registered nurse, who is employed or engaged by a hospital, to administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the medical practitioner—
 - (a) reasonably believes that the abortion is appropriate in all the circumstances; and
 - (b) has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.
- (2) In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—
 - (a) all relevant medical circumstances; and
 - (b) the woman's current and future physical, psychological and social circumstances.
- (3) A registered pharmacist may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the pharmacist is employed or engaged by a hospital and only at the written direction of a registered medical practitioner.
- (4) A registered nurse may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the nurse is employed or engaged by a hospital and only at the written direction of a registered medical practitioner.

- (5) In this section *hospital* means a public hospital, private hospital or day procedure centre within the meaning of the **Health Services Act 1988**.

8 Obligations of registered health practitioner who has conscientious objection

- (1) If a woman requests a registered health practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must—
- (a) inform the woman that the practitioner has a conscientious objection to abortion; and
 - (b) refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.
- (2) Subsection (1) does not apply to a practitioner who is under a duty set out in subsection (3) or (4).
- (3) Despite any conscientious objection to abortion, a registered medical practitioner is under a duty to perform an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.
- (4) Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

PART 3—AMENDMENTS TO THE CRIMES ACT 1958

9 Repeal of Subdivision (2) of Division 1 of Part I

Subdivision (2) of Division 1 of Part I of the
Crimes Act 1958 is repealed.

See:
Act No.
6231.
Reprint No. 20
as at
1 July 2008.
LawToday:
www.
legislation.
vic.gov.au

10 Offences against the person

- (1) In section 15 of the **Crimes Act 1958** insert the following definitions—

"abortion has the meaning given in the **Abortion Law Reform Act 2008**;

medical procedure, in relation to paragraph (b) of the definition of *serious injury*, means—

- (a) an abortion performed by a registered medical practitioner in accordance with the **Abortion Law Reform Act 2008**;
- or
- (b) the administration or supply of a drug or drugs by a registered pharmacist or registered nurse in accordance with the **Abortion Law Reform Act 2008** to cause an abortion;

registered nurse means a nurse registered under the **Health Professions Registration Act 2005**;

registered pharmacist means a pharmacist registered under the **Health Professions Registration Act 2005**;

woman means a female person of any age."

- (2) In section 15 of the **Crimes Act 1958**, for the definition of *serious injury substitute*—

"serious injury includes—

- (a) a combination of injuries; and
- (b) the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm;"

11 New sections 65 and 66 substituted

For sections 65 and 66 of the **Crimes Act 1958** substitute—

"65 Abortion performed by unqualified person

- (1) A person who is not a qualified person must not perform an abortion on another person.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) A woman who consents to, or assists in, the performance of an abortion on herself is not guilty of an offence against this section.

- (3) For the purposes of this section—

- (a) a registered medical practitioner is a qualified person; and
- (b) a registered pharmacist or registered nurse is a qualified person only for the purpose of performing an abortion by administering or supplying a drug or drugs in accordance with the **Abortion Law Reform Act 2008**.

(4) In this section—

abortion has the same meaning as in the
Abortion Law Reform Act 2008;

perform an abortion includes supply or
procure the supply of any drug or other
substance knowing that it is intended to
be used to cause an abortion;

registered medical practitioner means a
medical practitioner registered under
the **Health Professions Registration
Act 2005**;

registered nurse means a nurse registered
under the **Health Professions
Registration Act 2005**;

registered pharmacist means a pharmacist
registered under the **Health
Professions Registration Act 2005**;

woman means a female person of any age.

66 Abortion—Abolition of common law offences

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

12 Repeal of amending provisions

This Part is **repealed** on the first anniversary of
the day on which this Act receives the Royal
Assent.

Note

The repeal of this Part does not affect the continuing operation of
the amendments made by it (see section 15(1) of the
Interpretation of Legislation Act 1984).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 19 August 2008

Legislative Council: 12 September 2008

The long title for the Bill for this Act was "A Bill for an Act to reform the law relating to abortion, to amend the **Crimes Act 1958** and for other purposes."