

Abortion Legislation Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Andrew Little

Abortion Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Abortion Legislation Act **2019**.
- 2 Commencement**
This Act comes into force on the day after the date of Royal assent. 5

Part 1

Amendments to Contraception, Sterilisation, and Abortion Act 1977

- 3 Principal Act**
This Part amends the Contraception, Sterilisation, and Abortion Act 1977 (the **principal Act**). 10
- 4 Long Title repealed**
Repeal the Long Title.
- 5 Section 2 replaced (Interpretation)**
Replace section 2 with:
- 2 Interpretation** 15
In this Act, unless the context otherwise requires,—
abortion—
- (a) means intentionally causing the termination of a woman’s pregnancy by any means, including—
- (i) by using a drug or combination of drugs; or 20
- (ii) by using an instrument; but
- (b) does not include—
- (i) any procedure intended to induce the birth of a live fetus believed to be viable; or
- (ii) any procedure to remove a dead fetus; or 25

(iii) any contraceptive

abortion service provider means an entity that provides abortion services

abortion services means services provided by a qualified health practitioner to facilitate an abortion

conscientious objection means an objection on the ground of conscience to the provision of contraception, sterilisation, or abortion services 5

contraceptive means a substance, device, or technique intended to prevent conception or implantation

Director-General means the Director-General of Health

employer includes any person acting or purporting to act on behalf of an employer 10

entity means—

(a) a body corporate:

(b) a corporation sole:

(c) an unincorporated body: 15

(d) a sole trader

health practitioner has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003

hospital means a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001 20

medical emergency includes a surgical emergency

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine 25

qualified health practitioner, in relation to the provision of abortion services, means a health practitioner who is acting in accordance with the Health Practitioners Competence Assurance Act 2003

safe area means any premises at which abortion services are provided, and any area around those premises, prescribed in regulations made under **section 17(1)** as a safe area. 30

6 New sections 2A and 2B inserted

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 35

2B	Act binds the Crown This Act binds the Crown.	
6A	Section 5 amended (Supply of contraceptives to sexual violation complainants)	
(1)	In section 5(1)(b), replace “another medical practitioner or a family planning clinic” with “an alternative person who is a provider of contraceptive services and how to access the contact details of such a person”.	5
(2)	After section 5(3), insert:	
(3A)	If a medical practitioner referred to in subsection (1) or (2) has a conscientious objection to supplying or authorising the supply to the complainant of any contraceptive, the medical practitioner must tell the complainant—	10
	(a) of their conscientious objection at the earliest opportunity; and	
	(b) how to access the contact details of another person who is a provider of contraceptive services.	
7	Sections 10 to 46 replaced Replace sections 10 to 46 with:	15
10	Provision of abortion services to women not more than 20 weeks pregnant A qualified health practitioner may provide abortion services to a woman who is not more than 20 weeks pregnant.	
11	Provision of abortion services to women more than 20 weeks pregnant	20
(1)	A qualified health practitioner may only provide abortion services to a woman who is more than 20 weeks pregnant if the health practitioner reasonably believes that the abortion is clinically appropriate in the circumstances.	
(2)	In considering whether the abortion is clinically appropriate in the circumstances, the qualified health practitioner must—	25
	(a) consult at least 1 other qualified health practitioner; and	
	(b) have regard to—	
	(i) all relevant legal, professional, and ethical standards to which the qualified health practitioner is subject; and	
	(ii) the woman’s—	30
	(A) physical health; and	
	(B) mental health; and	
	(C) overall well-being; and	
	(iii) the gestational age of the fetus.	
(3)	Subsection (2) does not apply in a medical emergency.	35

13	Counselling	
(1)	A health practitioner must advise a woman of the availability of counselling services if the woman—	
	(a) seeks advice or information about whether to continue or terminate a pregnancy; or	5
	(b) advises the health practitioner of the wish to terminate a pregnancy; or	
	(c) has terminated a pregnancy.	
(2)	A qualified health practitioner may not, as a condition of providing abortion services to a woman, require the woman to attend counselling before or after the provision of those services.	10
14	Self-referral to abortion services	
	A qualified health practitioner may not, as a condition of providing abortion services to a woman, require the woman to be referred from a health practitioner.	
15	Certain behaviour prohibited in safe areas	15
(1)	A person must not engage in any prohibited behaviour in a safe area.	
(2)	A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$1,000.	
(3)	In this section,—	
	prohibited behaviour means—	20
	(a) intimidating, interfering with, or obstructing a protected person—	
	(i) with the intention of frustrating the purpose for which the protected person is in the safe area; or	
	(ii) in a manner that an ordinary reasonable person would know would cause emotional distress to a protected person:	25
	(b) communicating with, or visually recording, a person in a manner that an ordinary reasonable person would know would cause emotional distress to a protected person	
	protected person means a person who is in a safe area for the purpose of—	
	(a) accessing abortion services; or	30
	(b) providing, or assisting with providing, abortion services; or	
	(c) seeking advice or information about abortion services; or	
	(d) providing, or assisting with providing, advice or information about abortion services.	
16	Power of constable to arrest without warrant	35
	If a constable reasonably believes that a person is engaging in prohibited behaviour in a safe area, the constable may—	

- (a) require the person to stop engaging in the prohibited behaviour; and
- (b) if the person fails to stop engaging in the prohibited behaviour, arrest the person and take the person into custody without a warrant.

17 Regulations: safe areas

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Health after consultation with the Minister of Justice, make regulations for the purposes of **section 15** prescribing as a safe area—
 - (a) any specified premises at which abortion services are provided; and
 - (b) an area around those premises that is an area having a boundary of not more than 150 metres from any part of the premises.
- (2) The Minister of Health may recommend the making of regulations under **subsection (1)** if the Minister is satisfied that prescribing a safe area—
 - (a) is necessary to protect the safety and well-being, and respect the privacy and dignity, of persons—
 - (i) accessing abortion services;
 - (ii) providing, or assisting with providing, abortion services;
 - (iii) seeking advice or information about abortion services;
 - (iv) providing, or assisting with providing, advice or information about abortion services; and
 - (b) can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms.
- (3) Not later than 5 years after making any regulations under **subsection (1)** prescribing a particular safe area, and then at subsequent intervals of not more than 5 years, the Director-General, in consultation with the Secretary for Justice, must—
 - (a) review the regulations (if they are still in force) to determine whether that prescribed safe area is still—
 - (i) necessary for the purpose specified in **subsection (2)(a)**; and
 - (ii) demonstrably justified as specified in **subsection (2)(b)**; and
 - (b) report to the Minister of Health and the Minister of Justice on whether the regulations should be—
 - (i) continued without amendment; or
 - (ii) continued with amendment; or
 - (iii) revoked.

*Miscellaneous provisions***19 Conscientious objection**

- (1) This section applies to a person (A) who is requested by another person (B) to provide, or assist with providing, any of the following services:
- (a) contraception services: 5
 - (b) sterilisation services:
 - (c) abortion services:
 - (d) information or advisory services about whether to continue or terminate a pregnancy.
- (2) If A has a conscientious objection to providing, or to assisting with providing, to B the service requested, A must tell B at the earliest opportunity— 10
- (a) of their conscientious objection; and
 - (b) how to access the contact details of another person ~~who is a provider~~ who is the closest provider of the service requested.
- (2A) In **subsection (2)(b)**, the **closest provider** is to be determined taking into account— 15
- (a) the physical distance between the providers; and
 - (b) the date and time that B makes the request under **subsection (1)**; and
 - (c) the operating hours of the provider of the service requested.
- (3) This section does not override a health practitioner’s professional and legal duty to provide prompt and appropriate medical assistance to any person in a medical emergency. 20

20 Employer providing certain services must accommodate conscientious objection of applicant or employee unless it would cause unreasonable disruption 25

- (1) An employer that provides any of the services specified in **section 19(1)** may not take any of the following actions on the basis that an applicant for employment, or an employee, who is qualified for work in connection with the provision of those services, has a conscientious objection: 30
- (a) refuse or omit to employ the applicant for work that is available; or
 - (b) offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar work; 35
- or

- (c) terminate the employment of the employee in circumstances in which the employment of other employees employed in the same or substantially similar work would not be terminated; or
- (d) subject the employee to any detriment in circumstances in which other employees employed in the same or substantially similar work would not be subjected to such detriment; or 5
- (e) retire the employee, or to require or cause the employee to retire or resign.
- (2) However, if accommodating an applicant's or employee's conscientious objection would unreasonably disrupt the employer's provision of health services, the employer may take any of the actions described in **subsection (1)**. 10
- (2A) Accommodating an applicant's or employee's conscientious objection may include arranging for the duties in respect of which the applicant or employee has an objection to be carried out by an existing employee.
- (3) An applicant or employee who alleges that an employer has contravened this section may make a complaint under the Human Rights Act 1993 as if the complaint were a complaint of unlawful discrimination under section 22 of that Act. 15
- (4) If an applicant or employee who alleges that an employer has contravened this section is entitled to pursue a personal grievance under the Employment Relations Act 2000, the applicant or employee may take either, but not both, of the following steps: 20
- (a) apply to the Employment Relations Authority for the resolution of the grievance under that Act; or
- (b) make a complaint under the Human Rights Act 1993. 25
- (5) In this section, **employer** has the meaning given in **section 2** and also includes—
- (a) the person for whom work is done by an independent contractor; and
- (b) the person for whom work is done by contract workers under a contract between that person and the person who supplies the contract workers; 30
and
- (c) the person for whom work is done by an unpaid worker.
- 20A Minister of Health to ensure availability of certain services**
- (1) The Minister of Health must, when entering into Crown funding agreements under the New Zealand Public Health and Disability Act 2000, take reasonable steps to ensure that— 35
- (a) the following services are available throughout New Zealand:
- (i) the services specified in **section 19(1)**; and

(ii)	counselling services in relation to, or in connection with, the provision of abortion services; and	
(b)	the following services are provided in accordance with the standards published by the Director-General under section 20D(1)(b) :	
(i)	abortion services:	5
(ii)	counselling services in relation to, or in connection with, the provision of abortion services.	
(2)	<u>To meet the obligation under subsection (1)(a)(i), the Minister of Health must ensure that access to emergency contraception is available throughout New Zealand within 48 hours of it being requested by any person.</u>	10
(3)	<u>In this section, emergency contraception means a contraceptive precaution to avoid the risk of pregnancy to be taken after a sexual connection has occurred.</u>	
20B	Duty of Director-General to undertake periodic reviews of certain matters	
(1)	Not later than 5 years after the commencement of this section, and then at subsequent intervals of not more than 5 years, the Director-General must—	15
(a)	review whether there is timely and equitable access to—	
(i)	the services specified in section 19(1) ; and	
(ii)	counselling services in relation to, or in connection with, the provision of abortion services; and	
(b)	report to the Minister of Health on—	20
(i)	the outcomes of the review; and	
(ii)	the recommendations that the Director-General considers appropriate (if any) for improving the timely and equitable access to those services.	
(2)	The review and report under subsection (1) must include consideration of the relative costs throughout New Zealand for women accessing those services.	25
20C	Duty of Director-General to compile, maintain, and make available list of abortion service providers	
(1)	The Director-General must compile and maintain a list of the names and contact details of abortion service providers in New Zealand.	30
(2)	The Director-General may not include in the list the name and contact details of any abortion service provider who advises the Director-General that they do not want their name and contact details included in the list.	
(3)	The Director-General must ensure that the list, or the information on the list, is accessible to any person on request.	35

20D	Duty of Director-General to collect, collate, analyse, and publish information	
(1)	The Director-General must—	
(a)	collect, collate, analyse, and publish information about the provision of—	5
(i)	abortion services in New Zealand; and	
(ii)	counselling services in relation to, or in connection with, the provision of abortion services; and	
(b)	develop and publish standards for the services described in paragraph (a) .	10
(2)	However, the Director-General must not publish, under subsection (1)(a) , any information in a form that could reasonably be expected to identify a woman who has been, or is being, provided with abortion services or counselling services.	
20E	Abortion service provider to notify Director-General about abortion services provided	15
(1)	An abortion service provider must notify the Director-General after the following services are provided by or through the provider:	
(a)	a surgical abortion; or	
(b)	a medicine is prescribed or administered for the purpose of inducing an abortion.	20
(2)	A notification must include, in relation to the provision of the services referred to in subsection (1) ,—	
(a)	the information specified in Schedule 2 ; and	
(b)	such other information the Director-General may require.	25
(3)	However, in no case may the information provided under this section include the name of the woman to whom the abortion service was provided.	
(4)	A notification must be given—	
(a)	not later than 1 month after the provision of the abortion service; and	
(b)	in the form or manner required by the Director-General.	30
(5)	This section is repealed on the expiry of 18 months after the date on which it comes into force.	
20F	Abortion for sole purpose of sex selection	
(1)	This Parliament opposes the performance of abortions being sought solely because of a preference for the fetus to be of a particular sex.	35
(2)	Not later than 5 years after the commencement of this section, and then at subsequent intervals of not more than 5 years, the Director-General must—	

- (a) review whether there is any evidence of abortions being sought solely because of a preference for the fetus to be of a particular sex; and
- (b) report to the Minister of Health on—
- (i) the outcome of the review; and
 - (ii) if there is such evidence, any recommendations that the Director-General considers appropriate for preventing abortions being sought solely because of a preference for the fetus to be of a particular sex.
- Compare: Abortion Law Reform Act 2019 s 16 (NSW)
- 20G Reports to be presented to House of Representatives** 10
- As soon as practicable after receiving a report under **section 20B(1) or 20F(2)**, the Minister of Health must present a copy of the report to the House of Representatives.
- 21 General regulation-making power**
- The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 15
- (a) enabling the Director-General of Health to collect information that may be required to enable the Director-General to discharge the Director-General's duties specified in **section 20B, 20C, 20D, or 20F**;
 - (b) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 20
- 8 New Schedules 1 and 2 inserted**
- After **section 21** (as inserted by this Act), insert the **Schedules 1 and 2** set out in **Schedule 1** of this Act.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Crimes Act 1961

- 9 Amendments to Crimes Act 1961**
- This subpart amends the Crimes Act 1961.
- 10 Cross-heading above section 182 replaced** 30
- Replace the cross-heading above section 182 with:
- Killing unborn child*
- 11 Section 182 amended (Killing unborn child)**
- Replace section 182(2) with:

- (2) Nothing in subsection (1) applies to any person who before or during the birth of any child causes its death by—
- (a) a means employed in good faith to preserve the life of the child’s mother; or
 - (b) providing abortion services in accordance with **section 10 or 11** of the Contraception, Sterilisation, and Abortion Act 1977. 5

12 Sections 182A to 187A replaced

Replace sections 182A to 187A with:

Abortion services

183 Abortion procured by person other than health practitioner 10

- (1) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years if the person is not a health practitioner and—
- (a) procures, or attempts to procure, an abortion for a woman; or
 - (b) performs, or attempts to perform, an abortion on a woman.

(2) The woman is not guilty of an offence under this section. 15

(3) In this section,—

abortion has the meaning given to it by **section 2** of the Contraception, Sterilisation, and Abortion Act 1977

health practitioner has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003. 20

Subpart 2—Amendments to Health Practitioners Competence Assurance Act 2003

13 Amendments to Health Practitioners Competence Assurance Act 2003

This subpart amends the Health Practitioners Competence Assurance Act 2003.

14 Section 174 amended (Duty of health practitioners in respect of reproductive health services) 25

(1) In section 174(1)(a), after “sterilisation,”, insert “abortion,”.

(2) Replace section 174(1)(b) with:

(b) the health practitioner has an objection on the ground of conscience to providing the service (a **conscientious objection**). 30

(3) Replace section 174(2) with:

(2) When this section applies, the health practitioner must tell the person requesting the service at the earliest opportunity—

- (a) of their conscientious objection; and

- (b) how to access the contact details of another person ~~who is a provider~~ who is the closest provider of the service requested.
- (3) In **subsection (2)(b)**, the **closest provider** is to be determined taking into account—
- (a) the physical distance between the providers; and
- (b) the date and time that the person has requested the service; and
- (c) the operating hours of the provider of the service requested.

5

Subpart 3—Amendment to Health and Disability Commissioner Act 1994

15 Amendment to Health and Disability Commissioner Act 1994 10

This subpart amends the Health and Disability Commissioner Act 1994.

16 Section 2 amended (Interpretation)

In section 2(1), definition of **health services**, replace paragraph (b)(ii) to (iv) with:

- (ii) reproductive health services, including—
- (A) contraception services and advice:
- (B) fertility services:
- (C) sterilisation services:
- (D) abortion services

15

Subpart 4—Consequential amendments and revocation 20

17 Consequential amendments and revocation

- (1) The Act specified in **Part 1 of Schedule 2** is consequentially amended as indicated in that schedule.
- (2) The legislative instrument specified in **Part 2 of Schedule 2** is consequentially amended as indicated in that schedule.
- (3) The legislative instrument specified in **Part 3 of Schedule 2** is revoked.

25

Schedule 1
New Schedules 1 and 2 inserted into Contraception, Sterilisation,
and Abortion Act 1977

s 8

Schedule 1
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Abortion Legislation Act 2019

- | | | |
|----------|---|----|
| 1 | Interpretation | 10 |
| | In this Part,— | |
| | Act means the Abortion Legislation Act 2019 | |
| | commencement date means the date on which the Act comes into force | |
| | Ministry means the Ministry of Health. | |
| 2 | Abortion Supervisory Committee disestablished | 15 |
| (1) | On the commencement date, the Abortion Supervisory Committee is disestablished and the term of office of every member of the committee ends. | |
| (2) | No member of the committee is entitled to any compensation in respect of the termination of the member's office. | |
| 3 | Advisory, technical, and other committees dissolved | 20 |
| (1) | On the commencement date, all advisory, technical, and other committees appointed by the Abortion Supervisory Committee are dissolved and the term of office of every member of a committee ends. | |
| (2) | No member of a committee is entitled to any compensation in respect of the termination of the member's office. | 25 |
| 4 | Assets, liabilities, and information of Abortion Supervisory Committee | |
| (1) | On the commencement date, all assets and liabilities of the Abortion Supervisory Committee in existence immediately before the commencement date are vested in the Crown as assets and liabilities of the Ministry. | |
| (2) | All information held by the Committee immediately before the commencement date is transferred to the Ministry. | 30 |

5	Final report of Abortion Supervisory Committee	
(1)	As soon as is reasonably practicable after the commencement date, the Abortion Supervisory Committee must arrange for the final annual report of the Committee to be submitted to Parliament.	
(2)	The final annual report must be in respect of the Committee's activities for the period—	5
	(a) commencing on 1 July immediately preceding the commencement date; and	
	(b) ending with the close of the day immediately preceding the commencement date.	10
(3)	Despite clause 2 , the Abortion Supervisory Committee continues in existence for the purpose only of submitting a report to Parliament in accordance with this clause.	
6	Certifying consultants to submit reports to Director-General of Health	
(1)	This clause applies to a person who immediately before the commencement date was a certifying consultant.	15
(2)	A person to whom this clause applies must, as soon as is reasonably practicable after the commencement date, send to the Director-General of Health any information that the Director-General of Health may require relating to—	
	(a) the cases considered by the person during the pre-commencement reporting period; and	20
	(b) the performance of the person's functions in relation to those cases during the pre-commencement reporting period.	
(3)	In this clause, pre-commencement reporting period means the period—	
	(a) commencing on the day after the date on which the person last submitted a report to the Abortion Supervisory Committee under section 36 of the Contraception, Sterilisation, and Abortion Act 1977 (as it read immediately before its repeal by section 7 of the Act); and	25
	(b) ending with the close of the day immediately preceding the commencement date.	30

Schedule 2
Information to be included in notification of provision of abortion service

s 20E

1	The address of the abortion service provider.	5
2	The following details in respect of the woman to whom abortion services were provided:	
	(a) the woman's date of birth; and	
	(b) the woman's ethnicity; and	
	(c) whether the woman is a New Zealand resident; and	10
	(d) the number of previous pregnancies the woman has had; and	
	(e) the estimated duration of the woman's pregnancy; and	
	(f) the woman's residential area (represented by the domicile code for that area).	
3	The type of contraception used (if any) at the time of conception.	15
4	The type of abortion procedure used.	
5	Detail of any complications occurring before discharge.	
6	The type of contraception provided at the time of the abortion.	
7	The date that—	
	(a) the surgical abortion was performed; or	20
	(b) the medicine was prescribed or administered for purpose of inducing the abortion.	

Schedule 2

Consequential amendments and revocation

s 17

Part 1

Consequential amendment to Act 5

Official Information Act 1982 (1982 No 156)

In Schedule 1, repeal the item relating to the Abortion Supervisory Committee.

Part 2

Consequential amendment to legislative instrument

Medicines Regulations 1984 (SR 1984/143) 10

After regulation 58B, insert:

58C Substances used to terminate pregnancy are medicines

Substances used to terminate a pregnancy are medicines for the purposes of the Act.

Part 3 15

Revocation of legislative instrument

Abortion Regulations 1978 (SR 1978/50)

Legislative history

5 August 2019
8 August 2019
14 February 2020
3 March 2020
17 March 2020

Introduction (Bill 164–1)
First reading and referral to Abortion Legislation Committee
Reported from Abortion Legislation Committee (Bill 164–2)
Second reading
Committee of the whole House (Bill 164–3)