

Abortion Law Reform in New Zealand 2019

This resource has been prepared to inform people about what the proposed changes to laws on abortion in New Zealand entail,¹ and how those changes compare to the current legal situation. The resource also presents comments for consideration.

A statistics section, based on the most current reports from the Abortion Supervisory Committee and Statistics NZ, follows the table of comparisons. **Questions for discussion** complete this resource.

Summary

The Abortion Legislation 2019 Bill (AL2019) passed its first reading on 8th August. Submissions to a specially convened Health Select Committee are now open.² Submissions close on 19th September 2019.

Currently, abortion services may be obtained in New Zealand in licenced premises within a defined set of criteria.

Two medical consultants are needed to certify that an abortion is warranted.

Three Acts of Law govern the abortion process. These are:

- The Contraception, Sterilisation and Abortion Act (1977), (CSA).³
- The Crimes Act (1961, amended December 1977 and July 1978).⁴
- The Care of Children Act (2004).⁵

The Abortion Legislation 2019 Bill does not require any defined set of criteria for abortion up to 20 weeks of gestation, and amends the criteria for an abortion from 20 weeks of gestation onwards.

¹ <http://legislation.govt.nz/bill/government/2019/0164/latest/LMS237550.html>

² <https://www.parliament.nz/en/pb/sc/scl/abortion-legislation/tab/mp> lists the members of the specially convened Select Committee.

³ <http://www.legislation.govt.nz/act/public/1977/0112/latest/DLM17680.html>

⁴ <http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html>

⁵ <http://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html>

The proposed law changes state that a woman of any age may self-refer to an abortion service provider up to 20 weeks of gestation. After 20 weeks, the woman may still self-refer to the provider. However, the provider must “reasonably” believe “that abortion is appropriate in the circumstances”. In reaching this belief, the provider must have regard to the pregnant woman’s “physical health”, “mental health”, and “well-being”. (CSA Act, proposed s.11.)

Currently, an abortion service provider must be a medical practitioner. AL2019 changes this to a **health practitioner**.

While the grounds that make abortion permissible are in the Crimes Act under section 187A, which is titled *Meaning of unlawfully*, **the current law does not criminalise women for having an abortion**. To the contrary, section 183(2) of the Crimes Act 1961 specifically excludes the woman from criminal liability. The Ministry of Justice has no record of anyone being prosecuted under this section of the law, other than those who have been prosecuted under section 182, for assaulting a pregnant woman. Section 182 is headed up ‘killing unborn child’.

Under the proposed legislative changes, the offence of *Killing Unborn Child* is retained in the Crimes Act, although it is made clear that **this offence does not apply to abortion**.

The definition of abortion changes within the proposed legislation from “the destruction or death of an embryo or fetus after implantation”, to “the intentional termination of a woman’s pregnancy”.

The long title of the Contraception Sterilisation and Abortion Act states: “An Act to specify the circumstances in which contraceptives and information relating to contraception may be supplied and given to young persons, to define the circumstances under which sterilisations may be undertaken, and to provide for the circumstances and procedures under which abortions may be authorised after having full regard to the rights of the unborn child.”

Clause 4 of AL2019 repeals the long title of the Contraception Sterilisation and Abortion Act.

Criminal offences remain under the proposed legislation. These apply to persons other than a qualified Health Practitioner who perform or attempt to perform an abortion. There is a maximum penalty of 5 years of imprisonment for this.

Currently we have the Abortion Supervisory Committee that reports to Parliament annually. This committee collects statistics on the numbers of - and reasons for - abortions performed each year. They also maintain the list of certifying consultants who may approve abortions, and oversee the availability and quality of abortion services, including counselling services, that are available. The committee also issues the licences for clinics and hospitals who carry out abortions. **The Abortion Supervisory Committee is dissolved under the new legislation**, and abortion services will come under the auspices of the Ministry of Health.

Current legal situation	Proposed legal situation	Comment
<p>Definitions</p> <p>The Contraception, Sterilisation and Abortion Act (1977) defines abortion as meaning a: <i>medical or surgical procedure carried out or to be carried out for the purpose of procuring</i></p> <ol style="list-style-type: none"> 1. <i>a. the destruction or death of an embryo or fetus after implantation; or</i> 2. <i>b. the premature expulsion or removal of an embryo or fetus after implantation, otherwise than for the purpose of inducing the birth of a fetus believed to be viable or removing a fetus that has died.</i>⁶ 	<p>Definitions</p> <p>The Abortion Legislation 2019 Bill amends the definition of abortion in the Contraception, Sterilisation and Abortion Act such that: <i>abortion</i></p> <p>(a) <i>means intentionally causing the termination of a woman’s pregnancy by any means, including –</i></p> <ol style="list-style-type: none"> (i) <i>by using a drug or combination of drugs: or</i> (ii) <i>by using an instrument; but</i> <p>(b) <i>does not include –</i></p> <ol style="list-style-type: none"> (i) <i>any procedure intended to induce the birth of a live fetus believed to be viable; or</i> (ii) <i>any procedure to remove a dead fetus; or</i> (iii) <i>any contraceptive</i> 	<p>The definition of abortion changes from:</p> <p>“the destruction or death of an embryo or fetus after implantation”,</p> <p>to:</p> <p>“intentionally causing the termination of a woman’s pregnancy”.</p>

⁶ www.legislation.govt.nz/aqct/public/1977/0112/latest/096be8ed8127ddc0.pdf

Current legal situation	Proposed legal situation	Comment
<p>Definitions continued</p> <p>The Crimes Act does not define ‘abortion’, but takes the terminology of the Contraception, Sterilisation and Abortion Act.</p> <p>Under the heading ‘Abortion’ the Crimes Act reads:</p> <p>Abortion</p> <p>182 Killing the unborn child</p> <p>(1) Every one is liable to imprisonment for a term not exceeding 14 years who causes the death of any child that has not become a human being in such a manner that he or she would be guilty of murder if the child had become a human being.</p> <p>(2) No one is guilty of any offence who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother.</p>	<p>Definitions continued</p> <p>While the Abortion Legislation 2019 Bill removes the phrase “Abortion” as a heading above section 182 of the Crimes Act, the offence of ‘Killing the unborn child’ and the wording of section 182 (1) including liability to imprisonment of up to 14 years for causing the death of an unborn child, remain.</p> <p>Section 182(2) of the new legislation now states that “nothing in subsection (1) applies to any person who before or during the birth of any child causes its death by</p> <p>(a) a means employed in good faith to preserve the life of the child’s mother; or</p> <p>(b) providing abortion services in accordance with [new] section 10 or 11 of the CSA Act.</p>	<p>The Crimes Act differentiates a ‘child’ and a ‘human being’, so that the ‘unborn child’ does not become a ‘human being’ until after it has been fully born from the woman. Section 159 (1) reads: “A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.”</p> <p>The wording of AL2019 as drafted, permits abortion up to the point that it is fully delivered from the mother.</p> <p>There are inconsistencies in the use of words in AL2109, as it accepts the word ‘child’ in the Crimes Act, but changes other instances of ‘child’ to the word ‘fetus’. In some situations no reference is made to the child/fetus at all, talking in terms of ‘pregnancy’ and ‘the woman’.</p>
<p>Rights of the Unborn Child</p> <p>The long title of the Contraception Sterilisation and Abortion Act includes: “... and to provide for the circumstances and procedures under which abortions may be authorised after having full regard to the rights of the unborn child.”</p>	<p>Rights of the Unborn Child</p> <p>Clause 4 of AL2019 repeals the long title of the Contraception Sterilisation and Abortion Act.</p>	<p>The proposed law changes no longer recognises the ‘unborn child’ and any ‘rights’ that it is currently accorded.</p>

Current legal situation	Proposed changes	Comment
<p>Procedure to procure abortion</p> <p>The Contraception, Sterilisation and Abortion Act (1977) outlines the procedure to be adopted by a woman seeking an abortion. First a woman must consult her own doctor, or a family planning doctor, to obtain a referral to a licensed clinic (for a pregnancy under 12 weeks) or to a specialist operating in a licensed hospital (for a pregnancy over 12 weeks). The woman must then obtain the approval of two certifying consultants, one of whom must have experience in obstetrics. A certificate is then issued for the abortion to proceed.</p>	<p>Procedure to procure abortion</p> <p>The Abortion Legislation 2019 Bill repeals the requirement for certifying consultants.</p> <p>A woman can self-refer directly to an abortion service provider.</p>	
<p>Counselling</p> <p>“Reasonable & practical steps must be taken to ensure sufficient and adequate facilities are available for counselling”.</p> <p>Some District Health Boards (eg Capital Coast Health) make counselling mandatory.</p>	<p>Counselling</p> <p>The new legislation requires that “a health practitioner “must advise a woman of availability of counselling services” (proposed CSA Section 13 (1)).</p> <p>It also explicitly states that counselling is not to be a condition of providing abortion services. (proposed CSA Section 13 (2)).</p>	<p>The current legislation has an inbuilt time-frame within the process, which can provide an opportunity for a woman to seek advice and counselling and to carefully consider all the options available to her.</p>

Current legal situation	Proposed changes	Comment
<p>Criteria for obtaining abortion up to 20 weeks gestation</p> <p>Currently the grounds/criteria for an abortion are:</p> <ul style="list-style-type: none"> • <i>serious danger to the life of the woman.</i> • <i>serious danger to physical health of the woman.</i> • <i>serious danger to mental health of the woman.</i> • <i>any form of incest or sexual relations with a guardian.</i> • <i>mental subnormality of the mother.</i> • <i>fetal abnormality where “there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped” (Crimes Act Section 187A(aa) added in the July 1978 amendment).</i> <p>Factors that are not grounds in themselves, but which may be taken into account include extremes of age and sexual violation.</p>	<p>Criteria for obtaining abortion up to 20 weeks gestation</p> <p>Under the Abortion Legislation 2019 Bill no criteria need to be satisfied for an abortion to be undertaken up to 20 weeks gestation (CSA Act, proposed s.10.).</p>	<p>There are no safeguards within the proposed legislation against abortion based on the sex of the fetus.</p>

Current legal situation	Proposed changes	Comment
<p>Criteria for obtaining abortion after 20 weeks gestation</p> <p>For an abortion to be certified after 20 weeks gestation it must be “necessary to save the life of the woman or prevent serious <i>permanent</i> injury to her physical or mental health.” (Crimes Act 1961, s 187A)</p>	<p>Criteria for obtaining abortion after 20 weeks gestation</p> <p>For a woman who is more than 20 weeks pregnant, a statutory test would require a health practitioner to “reasonably” believe “that abortion is appropriate in the circumstances”. In reaching this belief, the health practitioner must have regard to the pregnant woman’s “physical health”, “mental health”, and “well-being”. (CSA Act, proposed s.11.)</p>	<p>Despite statements to the contrary,⁷ the wording of Part 2, section 11, (2)(b) of the AL2019 Bill as it is drafted, legally permits the abortion of a fetus up to the point that it has “become a human”, which is the point at which it is fully born from the mother⁸ – that is, the infant has left the woman’s body.</p>

⁷ Minister of Justice, Hon. Andrew Little, (2019), TVNZ Q&A, 5 August, called suggestions from opponents to the Abortion Legislation Bill 2019 that it allows abortion right up to birth, as “absurd” and the sort of statement that gets made by “fanatic anti-abortion people”. However, as drafted the legislation would allow for abortion up until the ‘fetus’ is fully delivered from the mother.

⁸ “A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother. It does not matter whether it has breathed or not, whether it has an independent circulation or not, or whether the navel string is severed or not.”

Section 159 (1) of the Crimes Act <http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html#DLM329352>

Current legal situation	Proposed changes	Comment
<p>Who can perform an abortion?</p> <p>A consultant (medical doctor) who has been certified by the Abortion Supervisory Committee, and who is practicing in an institution licensed by the Abortion Supervisory Committee.</p>	<p>Who can perform an abortion?</p> <p>The new legislation permits a ‘qualified health practitioner’ to perform an abortion.</p> <p>There is no requirement that premises where an abortion is performed be licensed.</p>	<p>The AL2019 Bill uses the term “Health Practitioner” instead of “Medical Practitioner”. This means that health-related practitioners that are not doctors can provide abortion services at any point in a woman’s pregnancy, including certifying an abortion post 20 weeks.</p> <p>The Bill defines a ‘Qualified Health Practitioner’ as someone who acts in accordance with the Health Practitioners Competence Assurance Act 2003 (HPCA Act). It will be up to the various Authorities included under the HPCA Act to determine whether their scope of practice is to include abortion services. Therefore, midwives and nurses (and perhaps other health practitioners) may be able to provide abortions, and to certify abortions, after 20 weeks.</p> <p>With the dissolution of the Abortion Supervisory Committee by the AL2019 Bill, determination of the level of expertise required to provide abortion services will be at the discretion of the Ministry of Health and its various Authorities.</p>
<p>Conscientious objection</p> <p>Currently health practitioners who conscientiously object to assisting a woman with abortion services must state this and inform her that these services can be obtained elsewhere (The Health Practitioners Competence Assurance Act 2003, section 174).</p>	<p>Conscientious objection</p> <p>The AL2019 Bill requires a health practitioner who conscientiously objects to abortion to tell the woman of their objection immediately and inform her how to access the list of abortion service providers.</p> <p>The Bill requires the list of abortion service providers to be maintained by the Director General of Health.</p>	<p>The proposed law change undermines the idea of ‘conscientious objection’ and the non-involvement of health practitioners who object to abortion.</p>

Current legal situation	Proposed changes	Comment
<p>Oversight of abortion services</p> <p>This is currently via the Abortion Supervisory Committee who:</p> <ul style="list-style-type: none"> • collect statistics on the numbers of, and reasons for, abortions performed each year. • maintain the list of certifying consultants who may approve abortions. • oversee the availability and quality of services, including counselling services. • issue the licences for clinics and hospitals who carry out abortions. • report to Parliament annually. 	<p>Oversight of abortion services</p> <p>Under the AL2019 Bill oversight will be done by the Ministry of Health.</p>	<p>It is not clear from the proposed Bill what regulation of services will be put in place, nor what information will be collected and reported on under the Ministry of Health.</p>
<p>Provision of safe areas</p> <p>There is no legislation restricting what may happen in the area around licenced abortion facilities.</p>	<p>Provision of safe areas</p> <p>The AL2019 Bill provides for the creation of safe areas up to 150 metres around premises where abortion services are provided. The safe areas would ban communication with, or recording of, people accessing or providing abortion services deemed to cause emotional distress to any reasonable person. The safe areas would prevent any intimidation, interference or obstruction of a person accessing or providing abortion services.</p>	

Statistics

Nineteen percent of known pregnancies (live births, stillbirths, and abortions) ended in an abortion in 2018. This figure does not include spontaneous miscarriages. The legal definition of abortion included in the legislation refers to the medical/surgical procedure causing the death of the fetus, or the premature expulsion of the fetus. It excludes the induction of labour for a viable fetus, or the management of a spontaneous miscarriage.

If a miscarriage process has naturally begun and medical or surgical intervention is required to manage/complete the process, this is not included in the abortion statistics. The statistics for spontaneous miscarriages are reported separately from induced abortions. This is one of the duties of the Abortion Supervisory Committee.

However, if it is determined that "there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped" (section 187A (aa) of the Crimes Act) and a termination of the pregnancy is then intentionally induced, causing the death of the fetus, this is included in the 'Abortion Statistics'. There were 208 such cases in the latest report of the Abortion Supervisory Committee,⁹ as per the table below. This represents 1.6% of the induced abortions recorded in 2017.¹⁰

Induced Abortion by Grounds for Abortion
Calendar Year 2017

Grounds for Abortion	Number	Percent
Total	13,285	100.0
Danger to Life	24	0.2
Danger to Physical Health	16	0.1
Danger to Mental Health	12,925	97.3
Danger to Life and Physical Health	9	0.1
Danger to Life and Mental Health	3	0.0
Mental and Physical Health Danger	94	0.7
Handicapped Child and Other Grounds *	6	0.0
Other Physical/Mental/Health Combination	3	0.0
Handicapped Child and Mental Danger	102	0.8
Handicapped Child, Physical and Mental Danger	3	0.0
Seriously Handicapped Child	97	0.7
Criminal Offence and Danger to Mental Health and Other	3	0.0

Stats NZ recommends that counts less than three are not released. Some categories have been combined where necessary to protect confidentiality.

*Other covers any combination of the grounds above it that have not already been grouped.

⁹ Report of the Abortion Supervisory Committee to the House of Representatives pursuant to Section 39 of the Contraception, Sterilisation, and Abortion Act 1977 (2018). Available at <https://www.justice.govt.nz/assets/Documents/Publications/ASC-Annual-Report-2018.pdf> Last accessed 15 August 2019.

¹⁰ Note that the latest report of the ASC is the 2018 report, which uses 2017 figures.

An overview of the most recently published abortion statistics for New Zealand

(compiled from <https://www.stats.govt.nz/information-releases/abortion-statistics-year-ended-december-2018>)

In the year ended December 2018:

- 13,282 induced abortions were performed in New Zealand. This was three fewer than in 2017 [13,285].
- The general abortion rate was 13.5 abortions per 1,000 women aged 15–44 years. This was down slightly from 13.7 per 1,000 in 2017.
- Women aged 15–19 years had 8.4 abortions per 1,000 women. This is down from 26.2 abortions per 1,000 women aged 15–19 years in 2008.
- Women aged 20–24 and 25–29 had the highest abortion rates, both 19 abortions per 1,000 women respectively.
- 52% of all abortions were for women aged in their 20's.
- 38% of all abortions were for women aged 30 years and over. This compares with 27% in 2008.
- 64 % of abortions were a woman's first abortion; 36% a second or subsequent abortion. (23 % of women reported having had one previous abortion, and 13% reported two or more.)
- The median age of women having an abortion in 2018 was 27.7 years. This was up from 24.3 years in 2008.
- 60 percent of abortions were performed before the 10th week of the pregnancy. This was up from 46 percent in 2008.
- 19 percent of known pregnancies (live births, stillbirths, and abortions) ended in an abortion.

From the Abortion Supervisory Committee latest report ¹¹

Induced Abortions by Age – Under 16 Years
Calendar Year 2017

Age (Years)	Number
11	-
12	-
13	5
14	25
15	69
Total	99

Induced Abortions by Parent or Legal Guardian Notification ³
Calendar Year 2017

Parent or Legal Guardian	Number
Yes	67
No	32
Total	99

This information should be interpreted with care. The information does not capture those women who have support of a trusted adult who is not specifically a parent or legal guardian.

³ Under 16 years of age

Questions for discussion

- Why is New Zealand's abortion rate so high?
- What would contribute to reducing the number of abortions performed in New Zealand?
- How does the language we use influence how we think about ending a new life? For example, the use of the words, 'fetus', 'unborn child', 'termination', 'abortion'.

¹¹ <https://www.justice.govt.nz/assets/Documents/Publications/ASC-Annual-Report-2018.pdf>

- The current legislation embeds a timeframe under which certain procedural things must happen in order to procure an abortion. Is the loss of this timeframe problematic? Why/Why not?
- Do we value and respect motherhood in New Zealand? Why/Why not?
- Does the fetus/unborn child deserve the same respect as any other life? Why/Why not?
- What factors might influence a woman to have an abortion? Could any of these factors be changed in a way that could affect her decision?
- Should doctors be able to refuse to perform procedures based on their personal values?
- Scientists are developing technology that can keep alive and sustain the development of a child who is born extremely premature. The 'Biobag' is an example of this. How can an unborn child/ fetus be simultaneously dispensable via abortion, whilst at the same time be so precious that technology must be developed to save it at increasingly early times of premature delivery?
- With *in vitro fertilisation* (IVF) we now have the ability to create life outside of the human body. How does this affect our view of the fetus?
- With IVF we now have the ability to create life outside of the human body. Does this influence what is at stake in abortion?
- How might the ability to fully develop a human outside of the human womb - from conception to full-term - affect our view on abortion?
- The select committee that is hearing public submissions on the AL2019 Bill is a specially convened cross-party, all-female committee, with David Seymour (ACT Party) being kept informed. What are the benefits/problems with an all-female committee? Why?
- Under the proposed law changes, the wording "the rights of the unborn child" as recognised in the Long Title of the current Contraception Sterilisation and Abortion Act are removed. Is this problematic? Why?/Why not?