

NORTHERN TERRITORY OF AUSTRALIA

TERMINATION OF PREGNANCY LAW REFORM ACT 2017

Act No. 7 of 2017

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1
3	Objects of Act	1
4	Definitions	2
5	Application of Criminal Code	4

Part 2 Role of health practitioners

6	Performing a termination	4
7	Termination of pregnancy by a suitably qualified medical practitioner at not more than 14 weeks.....	5
8	Termination of pregnancy by an authorised health practitioner at not more than 14 weeks	5
9	Termination of pregnancy by a suitably qualified medical practitioner at not more than 23 weeks.....	6
10	Termination of pregnancy where life at risk	6
11	Medical practitioner who has conscientious objection	6
12	Authorised health practitioner who has conscientious objection.....	6
13	Duty to perform or assist when necessary to save life.....	7

Part 3 Safe access zones

14	Prohibited conduct in a safe access zone	7
15	Publication of recording	8
16	Seizure of material used in offence	9

Part 4 Reporting requirements

17	Reports to CHO	9
----	----------------------	---

Part 5 Miscellaneous matters

18	Regulations.....	9
----	------------------	---

Part 6 Consequential and related amendments

Division 1 Criminal Code

19	Criminal Code amended	10
20	Division 8 replaced	10
	Division 8 Termination of pregnancy	
	208A Termination of pregnancy performed by unqualified person	

Division 2 Medical Services Act amended

21	Act amended	12
22	Section 11 repealed.....	12

Division 3 Expiry of Part

23	Expiry of Part.....	12
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NORTHERN TERRITORY OF AUSTRALIA

Act No. 7 of 2017

An Act to reform the law relating to the termination of pregnancy, and for related purposes

[Assented to 24 April 2017]
[Second reading 15 February 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Termination of Pregnancy Law Reform Act 2017*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

- (a) to reform the law relating to terminations of pregnancy; and
- (b) to enable reasonable and safe access by women to terminations; and
- (c) to regulate health practitioners performing terminations.

4 Definitions

In this Act:

ATSI health practitioner 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).

authorised, in relation to an ATSI health practitioner, midwife, nurse or pharmacist, means authorised under the *Medicines, Poisons and Therapeutic Goods Act* to supply or administer a termination drug.

CHO means the person appointed under section 67 of the *Public and Environmental Health Act* to be the Chief Health Officer.

credentialed means having the verified qualifications, training, experience, professional standing and other relevant professional attributes of a medical practitioner used for the purpose of forming a view about the competence, performance and professional suitability of the medical practitioner.

directing a health practitioner, in the performance of a termination, includes supervising the health practitioner in the performance of the termination.

health practitioner means a person registered under one of the following health professions within the meaning of the *Health Practitioner Regulation National Law* (other than as a student):

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) medical;
- (c) nursing or midwifery;
- (d) pharmacy.

midwife means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a midwife (other than as a student).

nurse means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student).

perform a termination, see section 6.

pharmacist means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student).

premises for performing terminations:

- (a) means premises where either or both of the following take place:
 - (i) terminations are performed by medical practitioners;
 - (ii) health practitioners assist in the performance of terminations; but
- (b) does not include a pharmacy.

professional standards and guidelines means professional standards and guidelines applicable to medical practitioners in the performance of terminations, including standards and guidelines for the following matters:

- (a) the assessment of a woman for a termination;
- (b) the availability of suitable facilities and equipment for the performance of a termination;
- (c) access to emergency services, if required, during or following a termination;
- (d) procedures relating to the performance of a termination;
- (e) the availability of support services, including counselling.

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else.

safe access zone means the area:

- (a) within the boundary of premises for performing terminations; and
- (b) within 150 metres outside the boundary.

suitably qualified medical practitioner means a medical practitioner who:

- (a) is an obstetrician or gynaecologist; or
- (b) is credentialed in the provision of advice, performance of procedures and giving treatment in the area of fertility control.

termination means intentionally terminating a woman's pregnancy.

termination drug means a substance or combination of substances, to which the current Poisons Standard applies under the *Therapeutic Goods Act 1989* (Cth), used for terminations.

woman means a female person of any age.

Note for section 4

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

5 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Role of health practitioners

6 Performing a termination

- (1) A medical practitioner who does any of the following, intending to induce an abortion, **performs a termination**:
 - (a) performs a surgical procedure;
 - (b) prescribes, supplies or administers a termination drug;
 - (c) any other action.
- (2) An ATSI health practitioner, a midwife or a nurse assists in the performance of a termination by supplying or administering, under the direction of a medical practitioner, a termination drug, knowing it is intended to induce an abortion.
- (3) A pharmacist assists in the performance of a termination by supplying, under the direction of a medical practitioner, a termination drug, knowing it is intended to induce an abortion.

7 Termination of pregnancy by a suitably qualified medical practitioner at not more than 14 weeks

A suitably qualified medical practitioner may perform a termination on a woman who is not more than 14 weeks pregnant, if the medical practitioner considers the termination is appropriate in all the circumstances, having regard to:

- (a) all relevant medical circumstances; and
- (b) the woman's current and future physical, psychological and social circumstances; and
- (c) professional standards and guidelines.

8 Termination of pregnancy by an authorised health practitioner at not more than 14 weeks

- (1) A suitably qualified medical practitioner may direct an authorised ATSI health practitioner, authorised midwife, authorised nurse or authorised pharmacist to assist in the performance of a termination on a woman who is not more than 14 weeks pregnant, if the medical practitioner considers the termination is appropriate.
- (2) In considering whether the termination is appropriate, as mentioned in subsection (1), the medical practitioner must have regard to each of the matters mentioned in section 7.
- (3) An authorised ATSI health practitioner, authorised midwife or authorised nurse may supply or administer a termination drug:
 - (a) if directed to do so by a suitably qualified medical practitioner; and
 - (b) in accordance with that direction.
- (4) An authorised pharmacist may supply a termination drug:
 - (a) if directed to do so by a suitably qualified medical practitioner; and
 - (b) in accordance with that direction.

9 Termination of pregnancy by a suitably qualified medical practitioner at not more than 23 weeks

A suitably qualified medical practitioner may perform a termination on a woman who is more than 14 weeks pregnant, but not more than 23 weeks pregnant, if:

- (a) the medical practitioner has consulted with at least one other suitably qualified medical practitioner who has assessed the woman; and
- (b) each medical practitioner considers the termination is appropriate in all the circumstances having regard to each of the matters mentioned in section 7.

10 Termination of pregnancy where life at risk

A medical practitioner may perform a termination on a woman in an emergency if the medical practitioner considers the termination is necessary to preserve the life of the woman.

11 Medical practitioner who has conscientious objection

- (1) This section applies if a woman requests a medical practitioner to advise on a proposed termination or perform a termination on the woman, and the medical practitioner has a conscientious objection in relation to terminations.
- (2) The medical practitioner must:
 - (a) inform the woman that the medical practitioner has a conscientious objection in relation to the termination contemplated by the woman; and
 - (b) refer the woman, within a clinically reasonable time, to another medical practitioner known by the medical practitioner not to have a conscientious objection in relation to terminations.

12 Authorised health practitioner who has conscientious objection

- (1) This section applies if a suitably qualified medical practitioner directs an authorised ATSI health practitioner, authorised midwife, authorised nurse or authorised pharmacist to assist in the performance of a termination and the ATSI health practitioner, midwife, nurse or pharmacist has a conscientious objection in relation to terminations.

- (2) The medical practitioner must instead direct another authorised ATSI health practitioner, authorised midwife, authorised nurse or authorised pharmacist, known by the medical practitioner not to have a conscientious objection in relation to terminations, to assist.

13 Duty to perform or assist when necessary to save life

- (1) Despite any conscientious objection in relation to terminations, a medical practitioner (including a medical practitioner who is not a suitably qualified medical practitioner) is under a duty to perform a termination in an emergency where the termination is necessary to preserve the life of the pregnant woman.
- (2) Despite any conscientious objection in relation to terminations, an ATSI health practitioner, a midwife or a nurse is under a duty to assist a medical practitioner in an emergency where a termination is necessary to preserve the life of the pregnant woman.

Part 3 Safe access zones

14 Prohibited conduct in a safe access zone

- (1) A person commits an offence if:
- (a) the person intentionally engages in prohibited conduct; and
 - (b) the prohibited conduct occurs in a safe access zone and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply if:
- (a) the person is a police officer acting in the duties of law enforcement and the conduct of the police officer is reasonable in the circumstances for the performance of those duties; or
 - (b) the person is employed at premises for performing terminations and the conduct of the employee is reasonable in the circumstances.
- (3) For conduct mentioned in subsection (4), definition **prohibited conduct**, paragraph (b), it is immaterial whether a person was entering or leaving, or attempting to enter or leave, premises for performing terminations for an offence to be committed.

(4) In this section:

prohibited conduct means:

- (a) harassing, hindering, intimidating, interfering with, threatening or obstructing a person, including by recording the person by any means without the person's consent and without a reasonable excuse, that may result in deterring the person from:
 - (i) entering or leaving premises for performing terminations; or
 - (ii) performing, or receiving, a termination at premises for performing terminations; and
- (b) an act that could be seen or heard by a person in the vicinity of premises for performing terminations, that may result in deterring the person or another person from:
 - (i) entering or leaving the premises; or
 - (ii) performing a termination, or receiving a termination at the premises.

15 Publication of recording

(1) A person commits an offence if:

- (a) the person intentionally publishes a recording of another person who is in a safe access zone; and
- (b) the recording was made without the other person's consent; and
- (c) the recording shows that the other person was entering or leaving, or attempting to enter or leave, premises for performing terminations; and
- (d) the person is reckless in relation to the circumstances mentioned in paragraphs (b) and (c).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not apply if the recording is published to a person who is authorised under a law in force in the Territory to receive the information in the recording.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

16 Seizure of material used in offence

- (1) This section applies if a police officer believes on reasonable grounds that a person:
- (a) is committing an offence under section 14 or 15; or
 - (b) is likely to commit an offence under section 14 or 15.
- (2) The police officer may seize and remove any object, material, information, document, poster, picture or recording that was used, or is about to be used, in relation to an offence as mentioned in subsection (1).

Part 4 Reporting requirements

17 Reports to CHO

A medical practitioner who performs or directs the performance of a termination under this Act must provide to the CHO the information prescribed by regulation within the time prescribed by regulation.

Part 5 Miscellaneous matters

18 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The Regulations may:
- (a) provide for an offence against a regulation to be an offence of strict or absolute liability; and
 - (b) for an offence against a regulation, prescribe a fine not exceeding 100 penalty units; and
 - (c) provide for the creation and maintenance of, by the CHO, a register relating to terminations or the health practitioners performing terminations; and
 - (d) provide for the setting of, by the CHO, record keeping and reporting standards or requirements for health practitioners performing terminations; and
 - (e) provide for the collection of, by the CHO, statistical data on matters relating to terminations; and

- (f) provide for the setting and verification of, by the CHO, the credentials for suitably qualified medical practitioners; and
- (g) provide for the setting of, by the CHO, standards, guidelines or requirements about the manner of doing or performing anything required or permitted to be done or performed under this Act; and
- (h) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

Part 6 Consequential and related amendments

Division 1 Criminal Code

19 Criminal Code amended

This Division amends the Criminal Code.

20 Division 8 replaced

Division 8

repeal, insert

Division 8 Termination of pregnancy

208A Termination of pregnancy performed by unqualified person

- (1) A person commits an offence if:
 - (a) the person intentionally:
 - (i) administers a drug to a woman or causes a drug to be taken by a woman; or
 - (ii) uses an instrument or other thing on a woman; and
 - (b) the person intends by that conduct to cause the termination of the woman's pregnancy; and
 - (c) the person is not a qualified person.

Maximum penalty: Imprisonment for 7 years.

- (2) A person commits an offence if:
- (a) the person intentionally procures for, or supplies to, a woman a drug, instrument or other thing; and
 - (b) the drug, instrument or other thing is intended to be used for the purpose of causing the termination of the woman's pregnancy and the person has knowledge of that circumstance; and
 - (c) the person is not a qualified person.

Maximum penalty: Imprisonment for 7 years.

- (3) Strict liability applies to subsections (1)(c) and (2)(c).
- (4) This section does not apply to a woman who consents to, or assists in, the performance of a termination on herself.
- (5) For this section, each of the following, when acting in accordance with the *Termination of Pregnancy Law Reform Act*, is a **qualified person**:
- (a) a suitably qualified medical practitioner;
 - (b) an authorised ATSI health practitioner;
 - (c) an authorised midwife;
 - (d) an authorised nurse;
 - (e) an authorised pharmacist.

- (6) In this section:

ATSI health practitioner 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).

authorised, see section 4 of the *Termination of Pregnancy Law Reform Act*.

midwife means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a midwife (other than as a student).

nurse means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student).

pharmacist means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student).

suitably qualified medical practitioner, see section 4 of the *Termination of Pregnancy Law Reform Act*.

woman, see section 4 of the *Termination of Pregnancy Law Reform Act*.

Division 2 Medical Services Act amended

21 Act amended

This Division amends the *Medical Services Act*.

22 Section 11 repealed

Section 11

repealed

Division 3 Expiry of Part

23 Expiry of Part

This Part expires on the day after it commences.