

South Australia

# Termination of Pregnancy Act 2021

An Act to reform the law relating to pregnancy terminations, to regulate the conduct of health practitioners in relation to pregnancy terminations and to make related amendments to the *Criminal Law Consolidation Act 1935* and the *Intervention Orders (Prevention of Abuse) Act 2009*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Termination of Pregnancy Act 2021*.

#### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

*assist* in a termination includes—

- (a) obtaining on behalf of, or supplying to, another person a drug or other substance for use in a termination; and
- (b) any other act that directly and materially aids in the performance of a termination,

but does not include acts of a kind prescribed by the regulations;

*Department* means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Health Care Act 2008*;

*hospital* has the same meaning as in the *Health Care Act 2008*;

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession, other than as a student;

*prescribed hospital* means a hospital, or hospital of a class, prescribed by the regulations;

*private day procedure centre* has the same meaning as in the *Health Care Act 2008*;

*private hospital* has the same meaning as in the *Health Care Act 2008*;

*registered health practitioner* means—

- (a) a medical practitioner; or

- (b) any other person registered under the *Health Practitioner Regulation National Law* to practise in a health profession, other than as a student;

**termination** means an intentional termination of a pregnancy in any way, including, for example, by—

- (a) administering or prescribing a drug or other substance; or
- (b) using a medical instrument or other thing,

and **perform a termination** and to **terminate** have corresponding meanings.

#### **4—Interaction with other Acts**

This Act is in addition to and does not limit or derogate from the provisions of the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Controlled Substances Act 1984* or any other Act.

## **Part 2—Termination of pregnancies**

### **Division 1—Lawful termination of pregnancies**

#### **5—Terminations may be lawfully performed in South Australia**

- (1) A termination may be performed on a person if—
  - (a) in the case of a termination performed by a medical practitioner acting in the ordinary course of the practitioner's profession—the termination is performed on a person who is not more than 22 weeks and 6 days pregnant; or
  - (b) in the case of a termination performed by any other registered health practitioner acting in the ordinary course of the practitioner's profession—
    - (i) the termination is performed by administering a prescription drug or by prescribing a drug; and
    - (ii) the registered health practitioner is authorised to prescribe the drug under section 18 of the *Controlled Substances Act 1984*.
- (2) A medical practitioner may perform a termination on a person who is more than 22 weeks and 6 days pregnant if—
  - (a) the medical practitioner is acting in the ordinary course of the practitioner's profession; and
  - (b) the termination is performed in accordance with section 6.

#### **6—Terminations by medical practitioner after 22 weeks and 6 days**

- (1) A medical practitioner may perform a termination on a person who is more than 22 weeks and 6 days pregnant if—
  - (a) the medical practitioner considers that, in all the circumstances—
    - (i) the termination is necessary to save the life of the pregnant person or save another foetus; or
    - (ii) the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the pregnant person; or

- (iii) there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy; and
  - (b) a second medical practitioner is consulted and that practitioner considers that, in all the circumstances—
    - (i) the termination is necessary to save the life of the pregnant person or save another foetus; or
    - (ii) the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the pregnant person; or
    - (iii) there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy; and
  - (c) the termination is performed at a prescribed hospital.
- (2) In considering whether a termination is medically appropriate, a medical practitioner must consider—
  - (a) all relevant medical circumstances; and
  - (b) the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.
- (3) Without limiting section 13 of the *Consent to Medical Treatment and Palliative Care Act 1995*, a medical practitioner may, in an emergency, perform a termination on a person who is more than 22 weeks and 6 days pregnant, without complying with paragraphs (b) and (c) of subsection (1).

## **7—Care of person born after termination**

- (1) This section applies if a termination results in a person being born.
- (2) Nothing in this Act prevents the medical practitioner who performed the termination, or any other registered health practitioner present at the time the person is born, from exercising any duty to provide the person with medical care and treatment that is—
  - (a) clinically safe, and
  - (b) appropriate to the person's medical condition.
- (3) To avoid doubt, the duty owed by a registered health practitioner to provide medical care and treatment to a person born as a result of a termination is no different than the duty owed to provide medical care and treatment to a person born other than as a result of a termination.

## **8—Requirement for information about counselling**

- (1) Before performing a termination on a person, a registered health practitioner must provide all necessary information to the person about access to counselling, including publicly-funded counselling.
- (2) A registered health practitioner may, in an emergency, perform a termination on a person without complying with subsection (1).

## **9—Mandatory considerations for medical practitioners performing terminations after 22 weeks and 6 days**

In assessing matters for the purposes of section 6(1), a medical practitioner must, when determining whether to perform a termination, have regard to the following:

- (a) whether it is essential to perform a termination of an affected foetus in a multiple pregnancy at a gestation that does not risk severe prematurity and its attendant consequences for the surviving foetus;
- (b) whether there are serious foetal abnormalities that were not identifiable, diagnosed or fully evaluated before the pregnancy reached 22 weeks and 6 days, including but not limited to abnormalities involving the brain, heart, renal and skeletal systems, or whether the foetus has been exposed to infective agents which may damage or limit the gestation and development of the foetus;
- (c) whether the patient has had difficulty accessing timely and necessary specialist services before the pregnancy reached 22 weeks and 6 days, including but not limited to patients experiencing significant socio-economic disadvantage, cultural or language barriers and those who reside in remote locations;
- (d) whether a patient has been denied agency over the decision to continue a pregnancy or not, including (but not limited to) the abuse of minors and vulnerable adults to sexual and physical violence including rape, incest and sexual slavery;
- (e) whether the abuse outlined in paragraph (d) includes circumstances in which such abuse is not apparent, or the pregnancy is not diagnosed until an advanced gestational age;
- (f) whether medical or psychiatric conditions may become apparent or deteriorate during the pregnancy to the point where they are a threat to the patient's life;
- (g) whether the patient has a deteriorating maternal medical condition, or late diagnosis of a disease requiring treatment incompatible with an ongoing pregnancy (such as malignancies).

## **10—Registered health practitioners who may assist**

A registered health practitioner who performs a termination that is authorised by this Act may be assisted by a registered health practitioner acting in the ordinary course of the practitioner's profession.

## **11—Registered health practitioner with conscientious objection**

- (1) This section applies if—
  - (a) a person (the first person) asks a registered health practitioner to—
    - (i) perform a termination on another person; or
    - (ii) assist in the performance of a termination on another person; or
    - (iii) make a decision under this Act whether a termination on another person should be performed; or

- (iv) advise the first person about the performance of a termination on another person; and
  - (b) the practitioner has a conscientious objection to the performance of the termination.
- (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) 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—
  - (a) give information to the person on how to locate or contact a medical practitioner who, in the first practitioner's reasonable belief, does not have a conscientious objection to the performance of the termination; or
  - (b) transfer the person's care to—
    - (i) another registered health practitioner who, in the first practitioner's reasonable belief, can provide the requested service and does not have a conscientious objection to the performance of the termination; or
    - (ii) a health service provider at which, in the first practitioner's reasonable 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.
- (4) For the purposes of subsection (3)(a), the first practitioner is taken to have complied with the practitioner's obligations under that paragraph if the practitioner gives the person information approved by the Minister for the purposes of that paragraph.

**Note—**

The information to be approved by the Minister is to consist of contact details for a SA Government service that provides information about a range of health services and resources, including information about medical practitioners who do not have a conscientious objection to the performance of terminations.

- (5) This section does not limit any duty owed by a registered health practitioner to provide a service in an emergency.

## **12—Health practitioner must not terminate pregnancy for sex selection**

- (1) Subject to subsection (2), a registered health practitioner must not perform a termination of a pregnancy for the purposes of sex-selection.
- (2) Subsection (1) does not apply to the performance of a termination if the registered health practitioner is satisfied that there is a substantial risk that the person born after the pregnancy (but for the termination) would suffer a sex-linked medical condition that would result in serious disability to that person.

### **13—Protection from liability**

- (1) A registered health practitioner who performs a termination in accordance with this Act, or a registered health practitioner who assists or is otherwise involved in such a termination—
  - (a) incurs no criminal liability for an act or omission in so doing; and
  - (b) incurs no civil liability for an act or omission in so doing, provided that the act or omission was done or made in good faith and without negligence.
- (2) A registered health practitioner who, in accordance with section 11, refuses to—
  - (a) perform a termination on a person; or
  - (b) assist in the performance of a termination on a person; or
  - (c) provide advice to a person about the performance of a termination,incurs no civil liability for an act or omission in so doing.
- (3) For the purposes of this section, a reference to the civil liability of a person includes a reference to liability arising under disciplinary proceedings or similar proceedings.

## **Division 2—Offences relating to unlawful termination of pregnancies**

### **14—Termination of pregnancy by unqualified person**

- (1) An unqualified person who performs a termination on another person commits an offence.  
Maximum penalty: 7 years imprisonment.
- (2) An unqualified person who assists in the performance of a termination on another person commits an offence.  
Maximum penalty: 5 years imprisonment.
- (3) In this section—

***unqualified person*** means—

  - (a) in relation to the performance of a termination under subsection (1)—a person who is not a registered health practitioner authorised under this Act to perform a termination; or
  - (b) in relation to assisting in the performance of a termination under subsection (2)—a person who is not a registered health practitioner acting in the ordinary course of the practitioner's profession.

### **15—DPP's consent required for prosecution under Part**

A prosecution for an offence against this Part cannot be commenced without the Director of Public Prosecution's written consent.

## **Division 3—Protection from criminal liability**

### **16—Person does not commit offence for termination on themselves**

Despite any other Act or law, a person who consents to, assists in or performs, or attempts to perform, a termination on themselves does not commit an offence.

## Part 3—Miscellaneous

### 17—Conduct and performance of registered health practitioners

- (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—
  - (a) terminates a pregnancy other than as authorised under section 5, 6 or 9; or
  - (b) assists another registered health practitioner to terminate a pregnancy other than as authorised under section 10; or
  - (c) contravenes section 8; or
  - (d) contravenes section 11; or
  - (e) contravenes section 12.
- (2) For the purposes of subsection (1)(b), a person assists another registered health practitioner to terminate a pregnancy if the person—
  - (a) obtains on behalf of, or supplies to, another person a drug or other substance for the purposes of the termination; or
  - (b) takes any other step to organise or facilitate, or otherwise takes part in, the termination.
- (3) The matters to which subsection (1) applies include the following:
  - (a) a notification under the *Health Practitioner Regulation National Law (South Australia) Act 2010*;
  - (b) a complaint under the *Health and Community Services Complaints Act 2004*.
- (4) This Act does not limit any duty a registered health practitioner has to comply with professional standards or guidelines that apply to health practitioners.

### 18—Restrictions on publication of certain information

Subject to this or any other Act or law, a person engaged or formerly engaged in connection with the operation of this Act must not publish information or data (however described) that identifies, or contains information tending to identify the name or address of a person who has sought or received a termination.

Maximum penalty:

- (a) in the case of a natural person—\$50 000;
- (b) in the case of a body corporate—\$120 000.

### 19—Confidentiality

- (1) A person engaged or formerly engaged in connection with the operation of this Act must not disclose personal information relating to a person obtained while so engaged except to the extent that they may be authorised or required to disclose that information—
  - (a) by the Chief Executive or their employer; or

- (b) in the case of information obtained while working at an incorporated hospital or SAAS—by the hospital or SAAS (as the case requires).

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent a person from—
  - (a) disclosing information as required or authorised by or under law; or
  - (b) disclosing information at the request, or with the consent, of—
    - (i) the person to whom the information relates; or
    - (ii) a guardian of the person to whom the information relates; or
    - (iii) a medical agent of the person to whom the information relates; or
    - (iv) a substitute decision-maker for the person to whom the information relates (within the meaning of the *Advance Care Directives Act 2013*); or
  - (c) subject to the regulations (if any)—
    - (i) disclosing information to a health or other service provider if the disclosure is reasonably required for the treatment, care or rehabilitation of the person to whom the information relates; or
    - (ii) disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information between persons or bodies involved in the provision of health services; or
    - (iii) disclosing information to such extent as is reasonably required in connection with the management or administration of a hospital or SAAS (including for the purposes of charging for a service); or
  - (d) disclosing information for medical or social research purposes if the research methodology had been approved by an ethics committee and there is no reason to believe that the disclosure would be contrary to the person's best interests; or
  - (e) disclosing information in accordance with the regulations.
- (3) Information that has been disclosed under subsection (2) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.
  - (5) For the purposes of this section, a reference to a person ***engaged in connection with the operation of this Act*** includes a reference to a person engaged in connection with the operation of the *Health Care Act 2008* under section 93(1) of that Act.
  - (6) In this section—  
***Chief Executive*** has the same meaning as in the *Health Care Act 2008*;
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*personal information* means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

*SAAS* has the same meaning as in the *Health Care Act 2008*.

## 20—Annual report

- (1) The Minister must, on or before 30 April in each year, ensure that a report relating to services provided in connection with the performance of terminations for the last calendar year is prepared and provided to the Minister.
- (2) The report must contain—
  - (a) information in relation to each termination performed in the calendar year which must include the age of the pregnant person and the gestational age of the foetus at the time of the termination; and
  - (b) other information (including data and statistics) of a kind prescribed by regulation or determined by the Minister.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

## 21—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require any registered health practitioner, hospital or private day procedure centre to collect and provide the Minister, the Department, or an attached office attached to the Department with data and statistics in relation to services connected with the performance of terminations; and
  - (b) require reports or information of any other kind to be provided to the Minister, the Department, or an attached office attached to the Department.
- (3) The regulations may—
  - (a) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (b) be of general or limited application; and
  - (c) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed authority; and
  - (d) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act.

## **Schedule 1—Related amendments**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Criminal Law Consolidation Act 1935***

#### **2—Amendment of section 12A—Causing death by an intentional act of violence**

Section 12A—delete "(other than abortion!)"

#### **3—Repeal of Part 3 Division 17**

Part 3 Division 17—delete Division 17

#### **4—Amendment of Schedule 11—Abolition of certain offences**

Schedule 11, clause 1—after (29) insert:

; and

(30) abortion.

### **Part 3—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009***

#### **5—Amendment of section 8—Meaning of abuse—domestic and non-domestic**

Section 8(4)—after paragraph (oc) insert:

(od) coercing a person to terminate a pregnancy;

(oe) coercing a person to not terminate a pregnancy;