

# Abortion Law Reform Act 2008

No. 58 of 2008

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Victoria

# Abortion Law Reform Act 2008<sup>†</sup>

No. 58 of 2008

[Assented to 22 October 2008]

**The Parliament of Victoria enacts:**

## PART 1—PRELIMINARY

### 1 Purposes

The main purposes of this Act are—

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

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

## 2 Commencement

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

## 3 Definitions

In this Act—

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

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

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

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

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

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

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

*woman* means a female person of any age.

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

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

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

**5 Termination of pregnancy by registered medical  
practitioner after 24 weeks**

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

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

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

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

- (1) A registered medical practitioner may, in writing, direct a registered pharmacist or registered nurse, who is employed or engaged by a hospital, to administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the medical practitioner—
    - (a) reasonably believes that the abortion is appropriate in all the circumstances; and
    - (b) has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.
  - (2) In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—
    - (a) all relevant medical circumstances; and
    - (b) the woman's current and future physical, psychological and social circumstances.
  - (3) A registered pharmacist may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the pharmacist is employed or engaged by a hospital and only at the written direction of a registered medical practitioner.
  - (4) A registered nurse may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the nurse is employed or engaged by a hospital and only at the written direction of a registered medical practitioner.
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- (5) In this section *hospital* means a public hospital, private hospital or day procedure centre within the meaning of the **Health Services Act 1988**.

**8 Obligations of registered health practitioner who has conscientious objection**

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

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**PART 3—AMENDMENTS TO THE CRIMES ACT 1958**

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

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

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

**10 Offences against the person**

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

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

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

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

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

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

*woman* means a female person of any age."



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

*"serious injury* includes—

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

#### **11 New sections 65 and 66 substituted**

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

##### **"65 Abortion performed by unqualified person**

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

Penalty: Level 5 imprisonment (10 years maximum).

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

- (3) For the purposes of this section—

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

(4) In this section—

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

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

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

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

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

*woman* means a female person of any age.

#### **66 Abortion—Abolition of common law offences**

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

### **12 Repeal of amending provisions**

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

#### **Note**

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

## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 19 August 2008*

*Legislative Council: 12 September 2008*

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