

# Abortion Law Reform

## WE ARE ADVISING THE GOVERNMENT ON HOW THE LAW COULD TREAT ABORTION AS A HEALTH ISSUE

The Government is considering how best to ensure New Zealand's abortion laws are consistent with treating abortion as a health issue.

To do that, it has asked the Law Commission for advice on what alternative approaches could be taken in the law to align with a health approach.

Specifically, the Government has asked us to review the criminal aspects of abortion law, the grounds for abortion and the process for receiving abortion services.

This website explains the current law and the process for receiving abortion services.

We want to hear your views as we develop our advice to the Government. We will provide our advice to the Government in October 2018.

### CRIMINAL ASPECTS OF ABORTION LAW

New Zealand's abortion laws are mainly set out in two statutes. First, the Crimes Act 1961 makes abortion a crime unless an abortion is performed on certain grounds. Second, the Contraception, Sterilisation, and Abortion Act 1977 regulates how abortions are authorised and where they are performed.

#### Unlawfully performing an abortion is an offence

Under section 183 of the Crimes Act 1961 it is a criminal offence to perform an abortion unlawfully. The abortion will not be unlawful under section 183 if the person performing the abortion believes that one of the statutory grounds in section 187A of the Crimes Act applies.

The offence applies to any person who performs an abortion unlawfully, even if they are a doctor. If convicted, that person can go to prison for up to 14 years.

### HAVE YOUR SAY

You can tell us your views through this website:

[abortionlaw.lawcom.govt.nz](http://abortionlaw.lawcom.govt.nz)

Alternatively you can email us at [alr@lawcom.govt.nz](mailto:alr@lawcom.govt.nz) or write to us at:

#### Abortion Law Reform

Law Commission  
PO Box 2590  
Wellington 6140  
DX SP 23534

You do not have to provide your name or contact details.

You can provide input until 5pm on **18 May 2018**.



A woman who seeks or receives an unlawful abortion is not liable under section 183 of the Crimes Act 1961.

However, it is an offence under the Contraception, Sterilisation, and Abortion Act 1977 for a woman to unlawfully attempt to procure her own miscarriage, for example, by taking a drug. If convicted, the woman may be fined up to \$200.

A person who provides drugs or instruments to perform an abortion unlawfully commits an offence under section 186 of the Crimes Act. If convicted, they can go to prison for up to seven years.

### **Performing an abortion through an improper process is an offence**

The Contraception, Sterilisation and Abortion Act 1977 regulates the process for authorising abortions and provides for the licensing of institutions (clinics or hospitals) where abortions can be performed.

A key part of the process is that an abortion must be authorised by two doctors who are referred to in the legislation as “certifying consultants”. To authorise an abortion, the certifying consultants must be satisfied that the abortion is lawful based on the grounds in section 187A of the Crimes Act.

Abortions can only be performed at licensed institutions.

It is an offence under the Contraception, Sterilisation and Abortion Act to:

- perform an abortion without a certificate from two certifying consultants; or
- perform an abortion somewhere other than in a licensed institution.

A person who is convicted of these offences may go to prison for up to six months or be fined up to \$1,000.

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## **GROUNDS FOR LAWFUL ABORTIONS**

Section 187A of the Crimes Act 1961 explains when a person can perform an abortion without committing an offence under section 183 or section 186 of the Crimes Act.

If the abortion is performed during the first 20 weeks of pregnancy, the person performing the abortion must believe:

- continuing the pregnancy would result in serious danger to the physical or mental health of the woman; or
- there is a substantial risk that the child, if born, would be “so physically or mentally abnormal as to be seriously handicapped”; or
- the pregnancy is the result of incest or sexual intercourse with a dependent family member; or
- the woman is “severely subnormal”.

When determining whether continuing the pregnancy would result in serious danger to the woman’s physical or mental health, the person performing the abortion may take into account the age of the woman and whether the pregnancy is the result of sexual violation. However, these are factors to be considered. They are not grounds for abortion on their own.

If the abortion is performed after the first 20 weeks of pregnancy, the grounds are much narrower. The person performing the abortion must believe the abortion is necessary:

- to save the life of the woman; or
- to prevent “serious permanent injury to her physical or mental health”.

Before a doctor can perform an abortion, the Contraception, Sterilisation, and Abortion Act 1977 requires two certifying consultants to issue a certificate that they believe any of the grounds in section 187A apply.

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## PROCESS FOR GETTING AN ABORTION

A woman considering an abortion will usually consult a health practitioner. During that consultation, the practitioner may provide information and offer to arrange support, such as counselling, to help the woman decide whether to seek an abortion.

The health practitioner a woman first consults may not be a doctor. For example, they might be a nurse or midwife. However, only a doctor may refer a woman to abortion services. If the health practitioner the woman first consults is not a doctor, the practitioner must refer the woman to a doctor.

If the woman requests an abortion, the doctor must arrange for two certifying consultants to consider her case in accordance with the process explained below unless the doctor has a conscientious objection.

### Process for getting an abortion under the Contraception, Sterilisation, and Abortion Act

#### First Step

The doctor (referred to as “the woman’s own doctor”) considers whether any of the grounds for abortion under section 187A of the Crimes Act 1961 may apply.

#### Second Step

If the woman’s own doctor considers that any ground may apply, and that doctor is willing to perform the abortion, the doctor must refer the case to two certifying consultants. If the woman’s own doctor is a certifying consultant, they only need refer the case to one other certifying consultant.

If the woman’s own doctor does not propose to perform the abortion personally, they must refer the case to another doctor who may be willing to perform the abortion (referred to as the “operating surgeon”).

The operating surgeon then considers whether any of the grounds in section 187A of the Crimes Act 1961 apply. If the operating surgeon considers that any of the grounds apply, the operating surgeon arranges for two certifying consultants to consider the case (neither of whom can be

**PRE-ABORTION ASSESSMENT**

As a matter of clinical practice, a pre-abortion assessment is conducted before an abortion is performed. The assessment may include:

- determining the stage of the pregnancy;
- offering the woman the opportunity for counselling;
- routine screening and tests; and
- discussing the options of medical or surgical abortion.

the woman's own doctor). If the operating surgeon is a certifying consultant, they only need to refer the case to one other certifying consultant.

**Third Step**

The certifying consultants must then consider whether any of the grounds in section 187A of the Crimes Act 1961 apply. To do that, the consultants may interview and examine the woman if they or the woman request it. The woman's own doctor and the operating surgeon may, with the woman's consent, give comments or reports about the case to the certifying consultants. The certifying consultants may, with the woman's consent, consult any other person to assist their consideration of the case.

**Fourth Step**

If both certifying consultants decide that any of the grounds in section 187A of the Crimes Act 1961 apply, they will issue a certificate authorising the abortion. If they decide that none of the grounds apply, they will refuse to authorise the abortion.

If the certifying consultants disagree about whether to authorise the abortion, they must refer the case to a third certifying consultant. If the third consultant determines that a ground applies, the abortion is authorised.

The certifying consultants forward the certificate to the licensed institution where the abortion is to be performed.

When the certifying consultants have made a decision, they must advise the woman of her right to seek counselling.

**Fifth Step**

Once the certifying consultants have issued the certificate, the woman may have the abortion. The abortion must be performed at a licensed institution, such as a clinic or hospital, that is licensed under the Contraception, Sterilisation, and Abortion Act.

**Abortion procedure**

There are two methods of abortion available; medical abortion and surgical abortion.

Early medical abortion (EMA) is an option in the first nine weeks of pregnancy. It requires a woman to take two medications, often one to two days apart, which induce a miscarriage. Under the current law, the woman must take the medication at a licensed institution. This may require her to visit the institution on two separate occasions to take each dose.

**WHO ARE CERTIFYING CONSULTANTS?**

Certifying consultants are doctors who consider whether a woman's request for an abortion meets the grounds under section 187A of the Crimes Act 1961. They are appointed by the Abortion Supervisory Committee (ASC).

At least one of the certifying consultants who consider a case must be a practising obstetrician or gynaecologist.

When appointing certifying consultants, the Contraception, Sterilisation, and Abortion Act 1977 requires the ASC to have regard to the desirability of appointing people whose views are not incompatible with the tenor of the Act. The Act says that the following views are incompatible:

- that an abortion should not be performed under any circumstances;
- that the question of whether an abortion should be performed in any case is entirely a matter for the woman and a doctor to decide.

Medical abortion may be available after the first nine weeks of pregnancy, but it takes longer and may require a woman to stay in hospital overnight.

Surgical abortion requires a surgical procedure. Different surgical procedures are used depending on the stage of the pregnancy. For surgical abortions after 15 weeks, a woman may need to stay in hospital overnight.

In some areas, abortion providers are only licensed to perform abortions during the first 12 weeks of a pregnancy. For abortions after 12 weeks women may need to travel to an abortion provider licensed to perform abortions after that period.

Abortion providers will deliver follow-up services, including health assessments and offering post-abortion counselling.

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## **OTHER ASPECTS OF ABORTION LAW AND PROCESS**

### **The Abortion Supervisory Committee**

Under the Contraception, Sterilisation, and Abortion Act, the Abortion Supervisory Committee (ASC) is responsible for keeping abortion law and practice under review. The ASC must take steps to make sure the administration of abortion law is consistent throughout New Zealand.

The ASC licenses institutions to provide abortion services. It also appoints certifying consultants to authorise abortions. The ASC may set standards for the performance of abortions which licensed institutions must meet. It ensures that people considering an abortion have access to counselling services.

The ASC keeps records of abortions and reports annually to Parliament on the operation of abortion law.

### **Availability of abortion services**

Abortion services are not available in all areas, particularly after the first 12 weeks of pregnancy. If an appropriate service is not available in a woman's area, she may need to travel to see an abortion service provider in another location. Women may be able to get funding to assist with travel costs.

Abortion services are free for women who are eligible for publicly-funded health services. Women may have to pay for abortion services if, for example, they are not New Zealand residents.

ASC standards state that women seeking an abortion must not wait longer than two weeks from the time of referral to the time they receive an abortion, unless they need more time to make a decision.

### **Informed consent**

Health practitioners providing abortion services must make sure a person requesting an abortion gives informed consent.

The Care of Children Act 2004 provides that a child of any age can consent to an abortion or refuse consent for an abortion. Health practitioners must maintain the child's privacy. They will not release the child's personal information without her consent, including to the child's parents or guardians.

The Contraception, Sterilisation, and Abortion Act 1977 addresses the situation where a woman lacks the mental capacity to consent to an abortion. The certifying consultants who are considering whether to authorise the abortion must consult with appropriate people if the patient appears to lack capacity to consent. Appropriate people are a medical practitioner or another person the consultants believe is qualified and experienced and able to assess the patient's condition and the likely effect on the patient of continuing the pregnancy or receiving an abortion.

### Conscientious objection

If a woman goes to a doctor seeking an abortion, the doctor may decline to consider the case on the grounds of conscience. The doctor must, however, inform the woman that she can seek an abortion through another doctor.



The Law Commission is an Independent Crown Entity. Its function is to keep New Zealand's law under review, and to make recommendations for the reform and development of the law.

## Have your say

You can tell us your views through this website:

[abortionlaw.lawcom.govt.nz](http://abortionlaw.lawcom.govt.nz)

Alternatively you can email us at [alr@lawcom.govt.nz](mailto:alr@lawcom.govt.nz) or write to us at:

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