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The Legal Status of Abortion in Australia

Abortion appears to be the only widely practiced medical procedure in Australia that is criminalised. Termination of pregnancy is contained under the Criminal Act in every state and territory except the ACT. The laws vary regarding what constitutes an ‘unlawful’ abortion with WA having the most liberal regime¹.

The following items are common to all criminal statutory provisions, except in the ACT and WA:

It is an offence to unlawfully administer any poison or noxious thing, use any instrument or other means, with intent to procure a miscarriage

It is an offence for a woman to procure or attempt to procure her own miscarriage

It is an offence to supply the means to procure a miscarriage (eg a drug or instrument)

Queensland

Technically the QLD abortion code specifically makes abortion a criminal offence unless they are to preserve the life of the mother. However, the 1969 Menhennit ruling (*R v Davidson*) is applied in QLD. That is, termination is allowed where the medical practitioner honestly and reasonably believes it is necessary to preserve the woman from a serious danger to her life or her physical or mental health (beyond the normal dangers of pregnancy and childbirth).

Victoria

The Menhennit ruling forms the basis of Victorian law on termination. The private sector provides terminations up to 18 weeks gestation. Public sector services are available up to 20 weeks gestation or 22 weeks for foetal abnormality².

New South Wales/Tasmania

In NSW an abortion is not ‘unlawful’ if the accused has an honest and reasonable belief that an abortion would avoid serious risk of danger to the woman’s life or physical or mental health based on ‘economic, social or medical grounds or reasons’. A serious risk of danger may apply at any stage of pregnancy. Tasmanian laws are similar to those of NSW.

South Australia

In South Australia abortion is a criminal offence except where the continuation of pregnancy involves greater risk to the woman's life or of injury to physical or mental health than if the pregnancy were terminated, or if there is a substantial risk that, if the pregnancy were not terminated, the child would suffer from such physical or mental abnormalities as to be seriously handicapped. This applies to pregnancies up to 28 weeks.

Northern Territory

Legislation in the Northern Territory is similar to that of South Australia for pregnancies up to 14 weeks. If the pregnancy is between 14-23 weeks, the abortion may be performed if a qualified medical practitioner is of the opinion that the procedure is necessary to prevent grave injury to the woman's physical or mental health. After 23 weeks, a termination may only be carried out for the purpose of preserving the woman's life.

Western Australia

In Western Australia women are able to access legal abortion on the basis of 'informed consent' up to 20 weeks of pregnancy. 'Informed consent' means consent freely given after a medical practitioner has given the woman appropriate counselling about medical risks, offered her the opportunity for referral to counselling, informed her that counselling will be available following the termination or after the birth. Women under 16 years can no give 'informed consent'.

Australian Capital Territory

Since August 2002 there are no criminal provisions in the ACT for abortion. Women can access termination services up to 12 weeks at public and private clinics. After 12 weeks an ethics panel of doctors must review the case.

(Footnotes)

¹All information in the fact sheet has been obtained from Dixon, Nicolee 2003 Abortion Law Reform: An Overview of Current Issues *Queensland Parliamentary Library, Brisbane* <http://www.parliament.qld.gov.au/parlib/publications/publications.htm>



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