Summary  This Policy Directive provides a framework to guide the development of appropriate local protocols for terminations of pregnancy undertaken in public health organisations (PHO). It clarifies the mandatory requirements of the Abortion Law Reform Act 2019 (NSW).

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Functional group  Clinical/Patient Services - Information and Data, Medical Treatment, Nursing and Midwifery, Pharmaceutical

Applies to  Ministry of Health, Local Health Districts, Specialty Network Governed Statutory Health Corporations, Government Medical Officers, Public Hospitals, Private Hospitals and day Procedure Centres

Distributed to  Ministry of Health, Public Health System, Divisions of General Practice, Government Medical Officers, NSW Ambulance Service, Environmental Health Officers of Local Councils, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

Audience  All Clinical and Administration Staff; Approved Health Facilities
FRAMEWORK FOR TERMINATION OF PREGNANCY IN NEW SOUTH WALES

PURPOSE

This Policy Directive provides a framework to support termination of pregnancy services in accordance with the Abortion Law Reform Act 2019.

All facilities in which termination of pregnancy services occur are to ensure they have in place protocols that are consistent with and address the content referred to in this Policy Directive.

For the purpose of section 14 of the Abortion Law Reform Act, the Health Secretary has approved this framework as a guideline that applies to hospitals controlled by local health districts or statutory health corporations and approved health facilities when providing termination of pregnancy services after 22 weeks gestation in approved health facilities.

MANDATORY REQUIREMENTS

All NSW Public Health Organisations are to ensure they have in place protocols that are consistent with and address the content referred to in this Policy Directive.

IMPLEMENTATION

The Chief Executives of NSW local health districts or delegated officers must ensure the following actions are undertaken to implement the revised Policy:

- All staff are made aware of the Policy.
- Key personnel are made aware of their responsibilities according to the Policy.
- Mandatory requirements are implemented.
- A lead is designated to develop local policies/ guidelines/ procedures (as required) to support the implementation of the Policy.

REVISION HISTORY

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1 BACKGROUND

1.1 About this document

This Policy Directive provides a framework to support termination of pregnancy services in accordance with the Abortion Law Reform Act 2019.

All facilities in which termination of pregnancy services occur are to ensure they have in place protocols that are consistent with and address all the content referred to in this policy directive.

For the purpose of section 14 of the Abortion Law Reform Act, the Health Secretary has approved this framework as a guideline that applies to hospitals controlled by local health districts or statutory health corporations and approved health facilities when providing termination of pregnancy services after 22 weeks gestation in approved health facilities.

1.2 Key definitions

In this document the term:

**Must** – indicates a mandatory action required by a NSW Health policy directive, law or industrial instrument.

**Should** – indicates an action that should be followed unless there are justifiable reasons for taking a different course of action.

**Woman** – for the purpose of this Policy, refers to a pregnant person, regardless of age.

**Termination of pregnancy**- means an intentional termination of pregnancy in any way, such as by administering a drug or using an instrument or other thing.

**Specialist medical practitioner** – a medical practitioner who, under the Health Practitioner Regulation National Law, holds specialist registration in obstetrics and gynaecology, or a medical practitioner who has other expertise that is relevant to the performance of termination of pregnancy, for example a general practitioner who has additional experience or qualifications in obstetrics. This would include a medical practitioner who has qualifications from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) and has obstetrics in their scope of practice.

**Approved health facility** – means a hospital or other facility approved by the Health Secretary under the Abortion Law Reform Act.

Please note that the definitions used for the purposes of public health data collections such as the NSW Perinatal Data Collection, may differ from reporting requirements under the Births, Deaths and Marriages Registration Act 1995.
1.3 Related documents

This Policy Directive should be read in conjunction with the following policy directives:

- PD2005_406 Consent to Medical Treatment - Patient Information
- PD2007_066 Genetic Testing
- PD2007_094 Client Registration Policy
- PD2010_054 Coroners Cases and the Coroners Act 2009
- PD2011_076 Deaths - Review and Reporting of Perinatal Deaths
- PD2012_069 Health Care Records – Documentation and Management
- PD2015_025 NSW Perinatal Data Collection (PDC) Reporting and Submission Requirements from 1 January 2016
- PD2015_040 Death – Verification of Death and Medical Certificate of Cause of Death
- PD2016_001 Donation, Use and Retention of Tissue from Living Persons
- PD2017_013 Infection Prevention and Control Policy
- PD2017_044 Interpreters – Standard Procedures for Working with Health Care Interpreters
- PD2018_006 NSW Register of Congenital Conditions - Reporting Requirements

2 LEGAL CONTEXT

The legal framework in relation to termination of pregnancy in NSW is set out below.

2.1 Abortion Law Reform Act 2019\(^1\)

In New South Wales, the law on termination is governed by the Abortion Law Reform Act 2019. The Abortion Law Reform Act amended the Crimes Act 1900 to repeal the provisions of that Act relating to termination of pregnancy and to abolish the common law offences relating to termination of pregnancy.

The Abortion Law Reform Act establishes a health regime that allows:

- medical practitioners to perform a termination of pregnancy
- certain registered health practitioners (nurses, midwives, pharmacists and Aboriginal and Torres Strait Islander health practitioners) to assist in performing a termination. Assisting a termination includes a pharmacist dispensing medication on prescription of a medical practitioner subject to the requirements of the Act.

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\(^1\) Abortion Law Reform Act 2019
It is an offence under the Crimes Act 1900 for an unqualified person to perform, or assist in performing a termination of pregnancy.

**Termination at not more than 22 weeks**

The Abortion Law Reform Act allows a medical practitioner to undertake a termination on a woman who is not more than 22 weeks pregnant provided that (except in emergencies) informed consent has been obtained. The medical practitioner must also assess whether it would be beneficial to discuss counselling with the woman.

**Termination at more than 22 weeks**

A termination of pregnancy for a woman who is more than 22 weeks pregnant must only be performed:

- by a specialist medical practitioner
- at a hospital controlled by a local health district, statutory health corporation or approved health facility (ancillary services, being tests or other medical procedures or the administration, prescription or supply of medication, can be carried out in other places).

The specialist medical practitioner may request that the hospital or approved health facility make available a hospital advisory committee or multi-disciplinary team to provide advice about the proposed termination.

The specialist medical practitioner may perform a termination of pregnancy if:

- the practitioner has obtained informed consent for the procedure
- the practitioner has provided all necessary information to the woman about access to counselling, including publicly-funded counselling
- the practitioner considers that in all the circumstances there are sufficient grounds for the termination to be performed. This assessment is to be made after considering:
  - all relevant medical circumstances
  - the woman’s current and future physical, psychological and social circumstances, and the professional standards and guidelines that apply to the practitioner in relation to termination of pregnancy
  - any advice received from the hospital advisory committee or multi-disciplinary team.
- the practitioner has consulted with another specialist medical practitioner who also considers that in all the circumstances there are sufficient grounds for the termination to be performed. The second practitioner must also consider:
  - all relevant medical circumstances
  - the woman’s current and future physical, psychological and social circumstances
the professional standards and guidelines that apply to the practitioner in relation to termination of pregnancy.

In an emergency, to save the patient's life or the life of another fetus, any medical practitioner can perform a termination without meeting the above requirements.

2.2 Births, Deaths and Marriages Registration Act

Under the Births, Deaths and Marriages Registration Act 1995 ("the Registration Act") there is a requirement to register all births.

2.2.1 Stillbirth

"Birth" includes "stillbirth", which means the birth of a "stillborn child" (a fetus of at least 20 weeks gestation or, if the gestational age is not known, having a body mass of at least 400 grams at birth). If the gestational age of the fetus is not accurately known, the weight of the fetus becomes relevant. When notice of a stillbirth is given, the responsible person must also give a doctor's certificate certifying the cause of fetal death. No registration of "death" is required in respect of stillborn children.

2.2.2 Birth and neonatal death

A child born alive, irrespective of gestational age, must be registered as a birth - see section 12 of the Registration Act. If the child subsequently dies it must be registered and notified to the Registrar together with the cause of death in accordance with the Registration Act or alternatively reported to the Coroner.

2.3 Duty of care

This section outlines the legal responsibilities in relation to both adult and child patients in the context of termination of pregnancy.

2.3.1 Adult patient

The law imposes on a medical practitioner a duty to their patient to exercise reasonable care and skill in the provision of professional advice and treatment. Appropriate and adequate information must be provided to patients in order for the patient to make an informed choice about treatment.

In relation to the actual performance of the termination, a duty of care is owed to the patient and the standard of reasonable care and skill required is that of a medical practitioner experienced in that area of practice. Negligence may be established where the standard of care falls below that which could be reasonably expected in the circumstances.

2.3.2 Child

For the purposes of this section "child" refers to a child who has been expelled or removed from the mother's uterus alive. It should be noted that a fetus in utero is not recognised as a separate legal entity. However, once a fetus has been expelled or removed from the mother's uterus, and is born alive, the child has the legal status of a person whose rights exist independently of the rights of the parents.
Where a child is born alive, healthcare professionals have an obligation to work together with families to make medically appropriate and compassionate decisions. Where a responsible body of medical opinion considers that the burden of medical treatment is such that it would not benefit the child, because of pre-viability of the child, prematurity, or the effect of a disease or condition - then a medical practitioner is under no duty to render overburdensome treatment. Conversely, where the likelihood of treatment will be of benefit, there is an obligation to render life-saving medical treatment.

2.4 Coroners Act

"Death" in the Coroners Act 2009 should be construed in the same way as "death" in the Registration Act. The delivery of a fetus that "exhibits no sign of respiration or heartbeat, or other sign of life" which does not include a stillbirth after expulsion from the uterus is not a "death" for the purposes of the Coroners Act. A fetus becomes a person if after expulsion or extraction from the mother and before being determined to be dead, signs of life are exhibited.

The reporting obligations are set out in the Coroners Act and Policy Directive Coroners Cases and the Coroners Act 2009 (PD2010_054).

3 LOCAL CLINICAL PROTOCOLS

Local clinical protocols are to be in place for all forms of termination of pregnancy procedures and should include pathways to access counselling for both women and their families and staff. These protocols should incorporate the roles and responsibilities of the relevant professional groups, the variety of medical and surgical procedures available and relevant product information including prescribing, administration, indication of use, contraindications, precautions, adverse reactions and drug interactions for those therapeutic agents used for such procedures.

Local protocols and information must align with the Abortion Law Reform Act 2019 and should be consistent with any information and guidelines approved by the Secretary, NSW Health.

4 CONSCIENTIOUS OBJECTION

Any registered health practitioner who is asked to perform, assist in or advise on a termination of pregnancy, and who has a conscientious objection to termination of pregnancy must inform the person who made the request that they have a conscientious objection to the performance of a termination of pregnancy and in a timely fashion.

In addition, if a registered health practitioner is asked to perform a termination, or advise about the performance of a termination, the practitioner must, without delay:

1. give information to the woman on how to locate or contact a medical practitioner whom they believe does not have a conscientious objection to the performance of the termination; or
2. transfer the woman’s care to another registered health practitioner, or health service provider, who can provide the requested service and does not have a conscientious objection to the performance of the termination.

A registered health practitioner who has a conscientious objection may meet this requirement by providing the woman with the details of a NSW Health supported information service. This service is able to provide information about medical practitioners who do not have a conscientious objection to the performance of termination; as well as general information and support services for reproductive and sexual health (up-to-date information for these services is available at www.health.nsw.gov.au/pregnancyoptions).

Public health organisations and approved health facilities have a duty of care to ensure that women seeking a termination receive timely, accurate information from a professional who does not hold an objection to the health service she seeks.

Any health practitioner having a conscientious objection to termination of pregnancy should notify their manager in a timely manner of their conscientious objection. Public health organisations must ensure that no person, either patient or staff member is disadvantaged because of a conscientious objection to termination of pregnancy.

The exception to this is termination of pregnancy in emergency situations. Medical practitioners, midwives, nurses and other staff must perform a termination of pregnancy, or assist in the termination, in those rare emergency cases where it is necessary to preserve the life of the pregnant woman, regardless of their objection to termination of pregnancy.

5 PRE-PROCEDURE ISSUES

5.1 Counselling

All women seeking a termination of pregnancy should be offered counselling. This counselling does not replace but is additional to any genetic counselling that may be indicated.

For women at more advanced gestations, before consenting to the termination, consideration needs to be given to the immediate and future implications of the range of genetic tests available to pregnant women. Testing may benefit women and their families in a number of ways but it may also create dilemmas for the woman being tested and other members of their families that need sensitive management. Pre-test and post-test counselling is an essential element of genetic testing.

Certain results must be reported to the NSW Register of Congenital conditions as set out in PD2018_006 NSW Register of Congenital Conditions - Reporting Requirements. Where there is prenatal diagnosis using amniocentesis, chorionic villus sampling or fetal blood sampling it is recommended that where possible women are counselled face-to-face at least one day before the procedure. Counselling should address a clear and simple explanation of the probability of an affected fetus, explanation of the process of the procedure, options to be considered if the result is abnormal, acknowledgment of the individual nature of decisions about continuing or terminating the pregnancy and methods of termination of pregnancy.
If pre-termination counselling from an appropriately qualified health care professional occurs, documentation of the counselling should be included in the woman’s medical record.

5.2 Assessment of request

The termination of a pregnancy equal to or less than 22 weeks gestation is a decision for the pregnant woman. The decision for termination of pregnancy after 22 weeks is one between an individual woman and her treating specialist medical practitioner.

For all proposed termination of pregnancies the following criteria should be considered and documented:

- the woman’s physical and psychological condition if more than 22 weeks pregnant
- accurate assessment of gestational age
- whether the termination is being requested solely for the purpose of sex selection
- in cases of congenital condition, the diagnostic probability
- in cases of congenital condition, the prognosis for the fetus.

Except where there is an imminent threat to the life or physical health of a woman necessitating a termination as a matter of urgency, the following process is to be followed:

5.2.1 < or equal to 14 weeks gestation

An appropriate health assessment is to be undertaken by the treating medical practitioner in consultation with the woman after appropriate counselling has been offered.

5.2.2 at 14 weeks (+1 day) – 22 weeks (+0 days) gestation

The assessment of request is to be undertaken by the treating medical practitioner in consultation with the woman after appropriate testing and counselling has been offered and the results / reports provided to the treating practitioner. The treating practitioner may need to consult further with other relevant specialists as part of the assessment. If the request is made to a clinician working in a local health district or statutory health corporation and a clinical decision is made by the treating medical practitioner that a termination is to occur up to 22 weeks gestation, this service should be provided within the facility.

5.2.3 > 22 weeks gestation

A termination on a woman who is more than 22 weeks pregnant must be performed by a specialist medical practitioner in an appropriate role delineated hospital controlled by a local health district or statutory health corporation that has the appropriate support services available for the procedure proposed, or an approved health facility.

Before performing the termination, the specialist medical practitioner must consider that there are sufficient grounds for the termination, after considering all the circumstances.
(including the medical circumstances and the woman's current and future physical, psychological and social circumstances and, if requested, any advice of a multi-disciplinary team or hospital advisory committee).

The specialist medical practitioner must consult with another specialist medical practitioner who also, after considering all the circumstances, considers that there are sufficient grounds for the termination.

The decision of the treating specialist medical practitioner and the advice of the second specialist medical practitioner must be documented in the patient’s file.

The specialist medical practitioner may request that the local health district or statutory health corporation hospital or approved health facility provide opportunity for a case conference or with a multidisciplinary team or hospital advisory committee with a mix of skills and experience to provide advice to the treating medical practitioner so that they are able to undertake an informed assessment of request for termination of pregnancy. The provision of a case conference or multidisciplinary team is not a mandatory component of the assessment of request but serves to assist the treating practitioner in complex clinical situations. The multidisciplinary team may include experts in the areas of psychiatry or specialist mental health, fetal medicine, neonatology and the other specialty or specialties relevant to the woman’s and fetus’ condition.

Such a multidisciplinary team or hospital advisory committee is neither a constituted ethics committee nor does it have clinical decision making ability. Its sole purpose is to provide the treating specialist medical practitioner with advice of a clinical or technical nature. Consultation and advice should be documented by the treating practitioner.

If the clinical decision is made between a woman and a treating specialist medical practitioner that a termination is required at more than 22 weeks gestation and the facility is not in a position to offer a termination as outlined in this Policy, the treating practitioner must provide appropriate information and refer the woman to another facility within their tiered perinatal networks which has the expertise and capacity to undertake this procedure.

A termination of pregnancy at more than 22 weeks must (except in an emergency) be performed in a local health district or statutory health corporation hospital or approved health facility. However, ancillary services to the termination of pregnancy (being tests or other medical procedures and the administration, prescription or supply of medication) are not required to be carried out only at the hospital or approved health facility.

5.3 Patient information/informed consent

Written consent is to be obtained by the treating medical practitioner before a pregnancy termination is performed. Hospital protocols should give guidance to clinicians on providing appropriate patient information. Women must be provided with sufficient information about the treatment options, benefits, possible adverse effects or complications, and the likely result if the treatment is not undertaken, in order to be able to make their own decision about undergoing the termination.

A medical practitioner has a legal duty to warn a woman of any material risks to her physical or mental health from the proposed termination. Where applicable, the woman is
to be informed of the potential for the baby to be born exhibiting signs of life and the ramifications should this eventuate.

Informed consent to the proposed procedure must be obtained from the woman. Only the consent of the pregnant woman is required before a termination may be performed (not the consent of other family members, even though on many occasions the woman may choose to discuss the matter with other family members). If the woman lacks capacity, informed consent can be obtained from the relevant substituted decision maker. If the woman is over the age of 16 and lacks capacity, the substituted decision maker would normally be the Civil and Administrative Tribunal of NSW. Health Practitioners should assume that adult patients have capacity to consent to or refuse treatment unless there is evidence to contradict this assumption.

Consent to the termination must be given freely and voluntarily and in accordance with any applicable professional guidelines. Informed consent also requires that the woman is given information about material risks of the proposed procedure. Further information about consent is available at PD2005_406 Consent to Medical Treatment - Patient Information.

5.3.1 Consent form

The Policy Directive Consent to Medical Treatment - Patient Information (PD2005_406) Section 34: Consent for procedures that a medical practitioner does not “recommend”, provides an alternatively worded consent form for some procedures, such as termination of pregnancy. This is in recognition that some medical procedures, such as termination of pregnancy are performed which may not be recommended by a medical practitioner, or whereby a medical practitioner may feel uncomfortable about recommending the procedure. Public health organisations may adopt the alternatively worded consent form as in PD2005_406 - Section 34.

While requiring written consent via the standard consent forms, it should be recognised that they are not a sufficient substitute for actual medical advice provided in a consultation between a woman and treating medical practitioner.

6 POST-PROCEDURE ISSUES

6.1 Care of the woman

Clinical guidelines should be in place regarding immediate post procedure care. These should include clinical observations and frequency required, and management of clinical emergencies.

The medical practitioner responsible for the care of the woman should be informed of the completion of the procedure, the condition of the woman and, where relevant, the fetus/baby.

The woman should also receive appropriate post procedure information.

The woman's wishes regarding the fetus/baby should be respected and arrangements for viewing and handling of the baby should accord with her wishes. If an autopsy is considered appropriate, the woman’s consent should be sought.
The woman must be informed of any further requirements that may be necessary, and provided with assistance in fulfilling these, for example, funeral arrangements and birth registration.

Counselling is to be offered to the woman, and as appropriate to the family, after the procedure. Information should also be provided regarding support services available. A discharge plan should be developed.

6.2 Care of the fetus/baby

6.2.1 Post-procedure examination and care

Health practitioners have a responsibility to deliver all aspects of healthcare in a compassionate, reasoned and ethical manner. Such responsibility applies to every interaction between a health practitioner and their patient, and their duty of care to any life that is under their care, including post-procedure examination and care following a termination of pregnancy procedure.

Examination of the fetus/baby should occur immediately upon delivery. Where a medical termination of pregnancy results in a baby showing signs of life it is important that staff involved are aware of their responsibilities and duty of care toward the child. This includes assessment of the condition of the child at birth and any abnormalities present. If upon examination the condition of the child warrants further specialist examination, staff should immediately consult a neonatologist.

Where a baby is born alive but medical consensus is that treatment (other than palliative treatment) would be over burdensome and of negligible benefit to the baby (futile), whether due to pre-viability, prematurity, the effect of a disease or condition or some other reason, the medical practitioner has no legal obligation to provide that treatment. Healthcare professionals have an obligation to work together with families to make compassionate decisions.

Any baby born with signs of life as a result of a termination of pregnancy, irrespective of gestation or condition, must be afforded the right of dignity, maintenance of privacy and physical comfort whilst signs of life exist. Parents should be encouraged to be part of this care.

6.2.2 Registration requirements

The requirements of the Registration Act are to be fulfilled. Refer to Section 2.2 of this document.

In the case of a stillbirth, where it is unclear whether the gestational age is less than 20 weeks at the time of delivery, the fetus is to be weighed. If the weight is 400 grams or greater the fetus must be registered as a stillbirth. If the gestational age is less than 20 weeks or the weight is less than 400 grams then no birth or death registration is required.

All live births, and all deaths following a live birth must be registered.
7 NOTIFICATION TO NSW MINISTRY OF HEALTH

In accordance with section 15 of the Abortion Law Reform Act, termination of pregnancy must be notified to the Ministry of Health within 28 days. Information provided to the Ministry of Health must not include any particulars that would allow a woman to be identified. For further information on notification requirements, including how to obtain the notification form, refer to www.health.nsw.gov.au/pregnancyoptions.

Births, perinatal deaths and certain congenital conditions are category 1 conditions under the Public Health Act 2010 requiring separate notification to the Ministry of Health (see section 1.3).

8 RECORDS MANAGEMENT

Health professionals are required to keep accurate health care records of patients. In addition to routine clinical notes concerning the care and treatment of the woman the following information should also be documented:

1. Gestational age/weight - Gestational age is to be recorded where known. The method used to calculate the gestational age should be documented. If appropriate, weight should be recorded.

2. Signs of life following a medical termination - where a medical termination is performed the extent and duration of any signs of life should be recorded and what actions were taken.

3. The named specialist medical practitioner who organised the procedure (primary specialist) and the specialist medical practitioner who agreed with the decision to proceed to termination of pregnancy (secondary specialist).