Framework for Termination of Pregnancy in New South Wales

Summary This Policy Directive provides a framework to support termination of pregnancy services to align with the Act and provide clarity and safety for registered health practitioners providing terminations of pregnancy.

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Secretary, NSW Health

FRAMEWORK FOR TERMINATION OF PREGNANCY IN NEW SOUTH WALES

POLICY STATEMENT

All NSW facilities in which termination of pregnancy services occur are to ensure they have in place protocols that are in accordance with the Abortion Law Reform Act 2019 (the Act).

SUMMARY OF POLICY REQUIREMENTS

The Policy Directive outlines the legal framework of the Act and associated legislation in relation to termination of pregnancy in NSW.

The Act allows a medical practitioner to undertake a termination of pregnancy on a woman who is not more than 22 weeks pregnant provided that (except in emergencies) informed consent has been obtained.

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, tests or other medical procedures, or the administration, prescription or supply of medication, can be carried out in other places).

If termination of pregnancy is not provided within the local health district, statutory health corporation hospital or approved health facility, then local referral pathways must be developed to support the woman, so she has timely access to termination services.

Procedures for registered health practitioners who have a conscientious objection to termination of pregnancy who are asked to perform or assist in a termination of pregnancy or advise about the performance of a termination are provided.

Before performing a termination of pregnancy, it may be disclosed to the medical practitioner that the reason for the request is for the sole purpose of sex selection. If this is the reason for the request, the practitioner **must not** perform the termination, unless not performing the termination will cause significant risk to the woman's health or safety.

When a termination for the sole purpose of sex selection is refused, the medical practitioner must offer additional support and referral to counselling or other relevant services.

Pre procedural considerations are defined and include counselling for a woman seeking a termination of pregnancy, assessment of the request related to pregnancy gestation and the requirement for informed consent. Post procedural considerations include examination and care of the woman and the fetus/baby.

In accordance with section 15 of the Act, termination of pregnancy must be notified to the Ministry of Health within 28 days. Refer to: www.health.nsw.gov.au/women/pregnancyoptions/Pages/for-health-professionals.aspx for further information.

In addition to routine clinical notes concerning the care and treatment of the woman, her gestational age and weight, signs of life following a termination and the specialist medical practitioners involved in the procedure must also be documented.

REVISION HISTORY

Version	Approved by	Amendment notes
June-2021 (PD2021_018)	Secretary, NSW Health	Section 5 Termination of Pregnancy for the sole purpose of sex selection – clarification to ensure consistency with the professional guidelines 'Prevention of termination of pregnancy for the sole purpose of sex selection. Minor formatting amendments included: - section 1.2 Key Definitions - reordered alphabetically - section 2.2 Births, Deaths and Marriages Act – revised to improve readability - section 6.3 Patient information/informed consent – reordered to improve readability section 7.2.2 Registration requirements – removed repetition about stillbirth.
January-2021 (PD2021_001)	Secretary, NSW Health	Additional information about termination of pregnancy for the sole purpose of sex selection Updated information about informed consent following the publication of the Consent Manual in March 2020.
October-2019 (PD2019_048)	Secretary, NSW Health	Guidance amended following commencement of the Abortion Law Reform Act 2019 (NSW)
July-2014 PD2014_022	Deputy Secretary Population and Public health	Clarification on the assessment of need process and conscientious objection
May-2005 PD2005_587	Director General	Initial Document

ATTACHMENTS

1. Framework for Termination of Pregnancy in New South Wales: Procedure.

CONTENTS

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* (the Act). The Framework aims to provide clarity and safety for registered health practitioners providing terminations of pregnancy.

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

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

1.2 Key definitions

Approved health facility
A hospital or other facility approved by the Health Secretary under the Abortion Law Reform Act 2019.

Gestational age
The number of weeks of pregnancy calculated either from the last menstrual period or using ultrasound dating.

Sex-linked condition
A medical condition that is substantially more common in one sex than another.

Specialist medical practitioner
A medical practitioner who, under the Health Practitioner Regulation National Law, holds specialist registration in obstetrics and gynaecology.

This also refers to 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 pregnancy care. This would include a medical practitioner who has qualifications from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) and has pregnancy care in their scope of practice.

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

Woman
A pregnant person, regardless of age or identified gender.

Note: 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.

2 LEGAL CONTEXT

2.1 Abortion Law Reform Act 2019

In New South Wales, the law on termination is governed by the *Abortion Law Reform Act 2019.* The 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 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.

The NSW Parliament has opposed the performance of termination of pregnancy for the sole purpose of sex selection. Refer to section 5 of this document.

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 termination of a pregnancy equal to or less than 22 weeks gestation is a decision for the pregnant woman. The Act allows a medical practitioner to undertake a termination of pregnancy 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

The decision for termination of pregnancy after 22 weeks is one between an individual woman and her treating specialist medical practitioner. 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 provision of advice from a multidisciplinary team is not a mandatory component of the assessment of request but serves to assist the treating practitioner in complex clinical situations.

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
    - 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 woman'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 section 12 of the *Births, Deaths and Marriages Registration Act 1995* ("the Registration Act"), a child born alive, irrespective of gestational age, must be registered as a birth. If the child subsequently dies, the death must also 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.

Under the Registration Act, the term "birth" includes a "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.

2.3 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 Duty of care to the woman

A medical practitioner must exercise reasonable care and skill in the provision of professional advice and treatment to a woman undergoing a termination of pregnancy, as with all patients.

Except in an emergency, appropriate and adequate information must be provided to a woman considering a termination of pregnancy in order for her to make an informed choice about treatment.

2.3.2 Duty of care to the child

For the purposes of this section "child" refers to a child who has been expelled or removed from the woman's uterus alive. A fetus in utero is not recognised as a separate legal entity. However, once a fetus has been expelled or removed from the woman'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, registered health practitioners have an obligation to work together with families to make medically appropriate and compassionate decisions. A medical practitioner is not obliged to provide medical treatment that is not in the child's best interest or treatment that is considered medically futile.

2.4 Coroners Act

"Death" in the *Coroners Act 2009* is to 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" (that is 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 woman and before being determined to be dead, signs of life are exhibited.

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

3 LOCAL CLINICAL PROTOCOLS

Local clinical protocols must be in place for all forms of termination of pregnancy procedures and will include pathways to access counselling for both women, their families and staff. These protocols must 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 Act and 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 must have capacity 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 must notify their manager in a timely manner of their conscientious objection. Public health organisations must ensure that no person, either a woman 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 TERMINATION OF PREGNANCY FOR THE SOLE PURPOSE OF SEX SELECTION

These procedures relate to when a termination of pregnancy is sought for the sole purpose of sex selection. These procedures to not apply to a termination due to the possibility of a sex-linked medical condition in the fetus.

Before performing a termination of pregnancy, it may be disclosed to the medical practitioner that the reason for the request is for the sole purpose of sex selection. If this is the reason for the request, the practitioner **must not** perform the termination, unless not performing the termination will cause significant risk to the woman's health or safety.

These will often be complex clinical and/or ethical scenarios. In all cases, the woman's physical and psychological wellbeing must be the medical practitioner's priority.

When a medical practitioner is uncertain about the degree of risk to the woman's health and safety arising from the refusal, further advice and support may be sought from either another medical practitioner, a multidisciplinary team, a hospital advisory committee or the local clinical ethics committee.

When a termination for the sole purpose of sex selection is refused, the medical practitioner must offer additional support and referral to counselling or other relevant services.

Women can be referred to www.health.nsw.gov.au/pregnancyoptions to find the most up-to-date information about the NSW pregnancy options helpline. The helpline provides unbiased, non-judgmental information on pregnancy options, including continuing a pregnancy, terminating a pregnancy and seeking pregnancy options counselling.

Further resources and guidance for women and health professionals can be found at: www.health.nsw.gov.au/pregnancyoptions

6 PRE-PROCEDURE ISSUES

6.1 Counselling

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

In the context of an anomalous fetus, consideration needs to be given to the immediate and future implications of the range of genetic tests available. 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 requires sensitive management. Pre-test and post-test counselling are an essential element of genetic testing.

Certain test results and fetal conditions must be reported to the NSW Register of Congenital conditions as set out in NSW Health Policy Directive *NSW Register of Congenital Conditions - Reporting Requirements* (PD2018_006). 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 must 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 must be included in the woman's healthcare record.

6.2 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 each proposed termination of pregnancy the following criteria must be considered and documented:

- the woman's physical and psychological condition
- accurate assessment of gestational age
- whether the termination is 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 (see 6.2.1 – 6.2.3) is to be followed.

6.2.1 Less than 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.

6.2.2 Between 14 weeks (+1 day) to 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 termination of pregnancy is not provided within the local health district, statutory health corporation hospital or approved health facility, then local referral pathways must be developed to support the woman, so she has timely access to termination services.

6.2.3 More than 22 weeks gestation

A termination of pregnancy 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 woman'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 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 condition of the woman and fetus.

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 are to be documented by the treating practitioner.

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.

If termination of pregnancy is not provided within the local health district, statutory health corporation hospital or approved health facility then local referral pathways must be developed and operationalised to ensure the woman has timely access to termination of pregnancy services.

6.3 Patient information/informed consent

Women must be provided with sufficient information to be able to make their own decision about undergoing the termination (informed consent). This information will include treatment options, benefits, possible adverse effects or complications, and the likely result if the treatment is not undertaken.

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 implications should this eventuate.

Informed written consent from the woman is to be obtained by the treating medical practitioner before a termination of pregnancy is performed using the NSW Health *Consent for Medical Procedure/Treatment (Adults and Mature Minors) Form* which can be found in Attachment A of the NSW Health *Consent to Medical and Healthcare Treatment Manual (2020).*

Unless the woman lacks capacity, only her consent 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 as outlined in section 7 of the NSW Health *Consent to Medical and Healthcare Treatment Manual (2020).* Health practitioners are to assume that women have capacity to consent to or refuse treatment unless there is evidence to contradict this assumption.

Further information about consent for pregnancy related procedures and refusal of recommended treatment is available in section 10.2 of the NSW Health *Consent to Medical and Healthcare Treatment Manual (2020).*

7 POST-PROCEDURE CARE

7.1 Care of the woman

Clinical guidelines must be in place regarding immediate post procedure care. This will include clinical observations and frequency required, and management of clinical emergencies in accordance with NSW Health Policy Directive *Recognition and management of patients who are deteriorating* (PD2020_018).

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

The woman must also receive appropriate post procedure information.

The woman's wishes regarding the fetus/baby must be respected and arrangements for viewing and handling of the baby are to accord with her wishes. If an autopsy is considered appropriate, the woman’s consent must 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 must also be provided regarding options for future contraception and support services available. A discharge plan is to be developed.

7.2 Care of the fetus/baby

7.2.1 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, including post-procedure examination and care following a termination of pregnancy procedure.

Examination of the fetus/baby must 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 are to 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 are to be encouraged to be part of this care.

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

8 NOTIFICATION TO NSW MINISTRY OF HEALTH

In accordance with section 15 of the *Abortion Law Reform Act 2019*, 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 how to notify the Ministry of Health of a termination of pregnancy, refer to:
www.health.nsw.gov.au/women/pregnancyoptions/Pages/for-health-professionals.aspx

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.

9 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 must also be documented:

1. Gestational age/weight - gestational age is to be recorded where known, including the method used to calculate the gestational age. 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 are to 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).

10 RELATED DOCUMENTS

This Policy Directive is intended to be read in conjunction with the following NSW Health Policy Directives:

Reference	Title
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
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
PD2020_011	Verification of Death and Medical Certificate of Cause of Death
PD2020_014	Tiered Networking Arrangements for Perinatal Care in NSW
PD2020_018	Recognition and Management of Patients who are Deteriorating
Consent to Medical and Healthcare Treatment Manual (2020)	