

Fact Sheet

The law on abortion in NSW



The NSW Crimes Act 1900 says that unlawfully procuring an abortion is an offence punishable by imprisonment for up to ten years, and unlawfully supplying “any drug or noxious thing, or any instrument or thing whatsoever” for the purpose of procuring an abortion is punishable by imprisonment for up to five years.

Levine judgement: lawful and unlawful abortion

The circumstances in which an abortion is lawful were expanded in 1971 by a decision of the NSW District Court in which Justice Levine said that an abortion was not unlawful if a doctor honestly believed on reasonable grounds that “the operation was necessary to preserve the woman involved from serious danger to her life or physical or mental health which the continuance of pregnancy would entail” (R v Wald [1971]).

“Mental health” has since been interpreted to include “the effects of economic or social stress that may pertain either during pregnancy or after birth” (CES v Superclinics Australia Pty Ltd [1995] 38 NSWLR 47).

In NSW, an abortion is only lawful if the woman’s doctor believes on reasonable grounds that it is necessary to avoid a serious danger to her life or her physical or mental health, taking into account economic and social factors as well as medical ones, and the risks of the abortion are not out of proportion to the danger to be averted (Skene, 2004).

Women are not entitled to abortion on demand.

Availability

There are two types of abortion available in Australia: medical and surgical.

A medical abortion is performed up to nine weeks from the first day of a woman’s last period.

A surgical abortion is usually carried out between 7-12 weeks from the first day of a woman’s last period. In NSW, services for abortion are available up to 18-20 weeks of pregnancy.

Abortions must be carried out by a registered doctor and are available through clinics and public or private hospitals. Women in NSW do not need a referral from a doctor to a clinic, which means a woman can call direct to the clinic for an appointment.

Informed consent

In order to make an informed consent the woman will need information about the procedure, the possible risks and complications, as well as information on the psychological and emotional feelings commonly experienced after the abortion.

Women under 16 years

A young woman under 16 years of age may give valid consent to an abortion without her parent or guardian’s knowledge. That is, if the doctor judges the young woman to be mature enough to understand the implications of making the decision.

Women with an intellectual disability

A woman with an intellectual disability has the same rights as any young women if she is able to give informed consent.

Parenting rights

Parental rights only arise at birth, so only the woman (if able to make an informed consent) and a doctor have the right to decide on whether the best option at the time is to have an abortion.

For more information

- Contact the Family Planning NSW Talkline on 1300 658 886 or go to www.fpnsw.org.au/talkline
- NRS (for deaf) 133 677
- See the Family Planning NSW factsheet “Unplanned pregnancy – Abortion”
- www.childrenbychoice.org.au

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References

FPA Health. 2006. *Sex and the Law: A guide for health and community workers in New South Wales*, Redfern Legal Centre Publishing, Sydney.

Skene L. 2004. *Law and medical practice rights, duties, claims and defences*, Butterworths, Sydney, pp. 366.

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