
Nurse-led medical termination of pregnancy in Australia

Legislative scan

Second edition

Acknowledgement

Marie Stopes Australia acknowledges the Traditional Owners and Custodians of the land on which we live and work. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging. We also acknowledge the enduring connection to their Traditional estates across Australia and to the ongoing passion, responsibility and commitment for their lands, waters, seas, flora and fauna as Traditional Owners and Custodians.

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Second Edition Foreword

I was pleased to facilitate the work of University of Queensland law students Jane Beilby, Rachna Nagesh and Bridget Mullins. All have volunteered their time to prepare this overview of the law as part of their commitment to working in the public interest for the benefit of the community. Every year the University of Queensland Pro Bono Centre supports organisations through the work of student volunteers, alongside academic supervisors, to undertake a range of law related activities in the public interest.

In 2021 I moved to the University of Melbourne Law School. In this role I hope to continue to contribute to the improvement of women's access to reproductive healthcare through my teaching, research and law reform efforts.

Equal access to reproductive health care is in the public interest. While abortion care, as an aspect of reproductive health care, should be equally available to all, for some, particularly those living in regional and remote areas, it can be difficult to access a doctor to provide abortion care in a timely way. Nurse-led abortion care could be considered as a way to address this issue. Abortion has become an increasingly safe procedure that can be performed across a diverse range of health settings and as SA has shown, there is no doubt that nurses and midwives can be trained to provide comprehensive abortion care.

I hope this overview of relevant legislation is useful in considering ways forward for nurse-led abortion care in Australia.

Professor Heather Douglas

Melbourne Law School

University of Melbourne

A shortage of trained providers is a significant barrier to accessing abortion care services in Australia. When coupled with a growing global shortage of healthcare workers, and the impacts of the COVID-19 pandemic, the need for more innovative models of care that better utilise the skills of doctors and nurses is a critical consideration for health systems across the world.

While doctors play a leading role in abortion provision, evidence from across the world shows that nurses can and should play a greater, more autonomous role in abortion care provision, particularly early medical abortion. Evidence from the World Health Organisation (WHO) shows that nurse and midwife-led abortion care models are clinically safe, effective and acceptable to pregnant people.

In Australia, access to abortion care in rural, regional, and remote settings is a challenge. Nurses, particularly Nurse Practitioners, are skilled at providing vital services and abortion care should be no exception. Our health systems are built on innovations including early adoption of telehealth models, so nurse-led models of care represent another step in our journey towards innovation for healthcare access.

The health system in Australia is multi-jurisdictional and abortion care is regulated and governed by a variety of State and Territory legal and regulatory structures. Innovation in a multi-jurisdictional environment is not without its challenges, yet we do have an opportunity to identify and pilot how nurse-led abortion care can be provided. This paper investigates potential pilot sites for nurse-led abortion care models and represents an important contribution to the further development of our health care system and how it can better support the sexual and reproductive health needs of Australians.

This second edition comes as systemic reforms are in motion. We have updated this paper accordingly. The legislative considerations in this paper are a small part of a larger conversation which needs to include strategic partnerships, systems development, education and health sector capacity building, consumer advisory, evolving models of care and continuous improvement.

Marie Stopes Australia would like to acknowledge and thank the University of Queensland (UQ) Pro Bono Centre for collating much of the information in this paper. Specifically thank you to Jane Beilby, Rachna Nagesh and Bridget Mullins who wrote the first edition of this paper under the academic supervision of Professor Heather Douglas. Thank you to Professor Heather Douglas who supported the development of this Second Edition from her new role at the University of Melbourne. I'd also like to acknowledge the significant work by Bonney Corbin, Head of Policy in leading and making this work possible.

We look forward to working with partners from across the sexual and reproductive health sector, governments and health reform advocates, to explore how evolving models of care can be provided across our country.

Jamal Hakim

Managing Director

1. Forewords

This paper alerts the reader to the chaotic, conservative and misogynist nature of Abortion Law in Australia. (You might also hear the frustration I feel as a Nurse Practitioner providing care for communities in rural, remote and disenfranchised communities in this Foreword). The research completed by the University of Queensland law students Jane Beilby, Rachna Nagesh and Bridget Mullins, under the supervision of Professor Heather Douglas gives a snapshot of the current legislative situation and to the huge amount of work required in the future to allow for an improvement in access to holistic, safe and effective provision of abortion services and care by nurses and midwives.

Over several decades I have helped women both personally and professionally seeking to stop their pregnancy. In my naivety as a young woman, I wasn't aware of the shame and guilt women faced in the early 1980's when I was asked by a couple of friends to take them to the Bertram Wainer's 'Fertility Control Clinic' in East Melbourne. I was equally unaware of the legislation around abortion and the colonial history to these laws that still appear to dominate the thinking of many contemporary lawmakers.

The politicisation of this health issue has always astounded me. No person should ever have to make the terrible decision to stop their pregnancy, but we live in a world where some people have no say over their reproduction; contraception certainly has never been 100% effective and being pregnant has always been a health risk to the person. Throughout the ages, now and into the future abortion has and will be found by those in crisis one way or another.

The initial research highlighted for me the progressive thinking of the lawmakers in the Australian Capital Territory (ACT). After reading the summary I went to the ACT government's explanatory statement to the *Health (Improving Abortion Access) Amendment Bill 2018*. This proposed amendment to the legislation was to "...make key improvements to access, availability and affordability to ensure safe, legal outcomes for persons procuring abortion in the ACT."¹

Unfortunately, the Bill was not adopted, making it illegal for anyone other than a 'doctor' to prescribe, supply or administer an abortifacient.

¹ Legislative Assembly for The Australian Capital Territory Health (Improving Abortion Access) Amendment Bill 2018: Explanatory Statement Presented by Caroline Le Couteur MLA Member for Murrumbidgee Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au 2018 https://www.legislation.act.gov.au/View/es/db_57802/20180321-68314/PDF/db_57802.PDF](https://www.legislation.act.gov.au/View/es/db_57802/20180321-68314/PDF/db_57802.PDF) accessed 27/9/2020

The ACT explanatory statement was very progressive, stating “ (e)fforts to increase autonomy, access and affordability of abortion services, on the whole, improve health outcomes to women and non-binary Canberrans. Likewise, provision of services by phone or in-home services open up access to health consumers who might otherwise avoid or be hesitant to engage with the public nature of abortion services in the ACT”.²

Nurses currently assess, prepare, assist and care for patients before, during and after abortion. It is an essential expansion of care to allow nurses to supply prescriptions to their clients. It is nonsensical that as an expert clinical nurse I am allowed to assess the client and care for them post-abortion, refer them for surgical abortion, but have to bring in a medical practitioner to write the script for a medical abortion. (I also cannot ask for a pelvic ultrasound scan for my client under the Medicare Benefits Scheme – but that’s an argument for another day!).

Allowing Nurse and Midwife Practitioners to provide medical abortions will increase access for our clients, especially in rural, remote and marginalised communities. These big issues of health need teams of consumers, health care practitioners, human rights lawyers and lawmakers to shift the conservative nature of abortion laws in this country. There will be a requirement to have pilot projects in the states where laws may be relaxed to allow nurse-led abortion services, (just as there were years of pilot projects to allow Nurse Practitioners in Australia) even though it is well known the Nurse-Led abortion services are functionally very effectively in other countries.

Professor Douglas and her team of researchers on behalf of Marie Stopes Australia, have given us a glimpse of the difficult and bumpy road ahead to allow nursing models of abortion care. May this paper be on every politicians, lawyers, doctor and nurses reading list, hopefully encouraging further research, lobbying and support to the ‘Pro-Choice’ movement.

Penny Kenchington

Registered Nurse, Nurse Practitioner, Vice President ASHM

The Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)

Equitable access to abortion services for Australian women is a key priority of the National Women's Health Strategy 2020- 2030 and a particularly problematic issue for rural women. With few general practitioners currently providing abortion services, nurse-led models of care provide a mechanism by which equity of access to these essential health services can be achieved.

The SPHERE Centre of Research Excellence in Women's Sexual and Reproductive Health in Primary Care recently released a consensus statement³ through its COVID-19 Coalition supporting nurse and midwifery-led provision of mifepristone and misoprostol for the purposes of early medical abortion. The statement notes that "the number and distribution of early medical abortion providers can be increased by task-shifting abortion provision from doctors to appropriately trained nurses and midwives" and that "provision of early medical abortion by nurses is as effective and safe as physician provision and is supported by the World Health Organization".

Increasing provision of nurse-led models of early medical abortion has the potential to not only increase access to abortion for women in regional and remote areas due to greater reach of services, but also for disadvantaged and vulnerable women in other settings. It could also potentially reduce associated costs at a health-system level.

It is essential therefore to understand how such models of care can be implemented and whether they are able to occur under current legislation. This legislative scan, undertaken by University of Queensland researchers and Marie Stopes Australia is an important piece of work that provides us with the necessary clarity to move forward as these models are being developed.

Bringing about change in health care is never easy, but understanding what needs to change in order to achieve the desired outcomes is the first step.

Professor Danielle Mazza

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School of Primary and Allied Health Care

Faculty of Medicine Nursing and Health Sciences

Monash University

³ SPHERE COVID-19 Coalition. Nurse and midwife-led provision of mifepristone and misoprostol for the purposes of early medical abortion: a consensus statement. Available at <https://www.spherecre.org/coalition-outputs> Accessed 18/10/20

2. Acronyms

AMA	Australian Medical Association
ACN	Australian College of Nursing
ACT	Australian Capital Territory
AHPRA	Australian Health Practitioner Regulation Agency
ATSI	Aboriginal and Torres Strait Islander
CEDAW	Committee on the Elimination of Discrimination against Women
CNMO	Chief Nursing and Midwifery Officer
COVID-19	2019 novel coronavirus
DTP	Drug Therapy Protocol
LGBTIQ+	Lesbian, Gay, Bisexual, Trans, Intersex, Queer, Plus
GP	General Practitioner
MPTGA	<i>Medicines, Poisons and Therapeutic Goods Act 2012 (NT)</i>
MToP	Medical Termination of Pregnancy
NSW	New South Wales
NT	Northern Territory
QLD	Queensland
QLRC	Queensland Law Reform Commission
QNMU	Queensland Nurses and Midwives Union
SA	South Australia
Tas	Tasmania
TOPA	<i>Termination of Pregnancy Act 2018 (QLD)</i>
TOPLRA	<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>
UQ	University of Queensland
Vic	Victoria
WA	Western Australia

3. Executive summary

Abortion access is an issue across metropolitan, rural, regional and remote areas of Australia. The burden of health inequity has been shouldered foremost by women and pregnant people, some of whom have not been able to access their choice of care. Healthcare services have also been directly funded by non-profit organisations including family, domestic and sexual violence services and women's health services that use combinations of crowdfunding and financial reserves. In addition to financial resources, the health sector faces a global skills shortage.

We are at a critical point in evolving models of care in order to maintain and expand access to sexual and reproductive health. Nurse-led care is evolving. Across the health system, nurses and midwives have experienced extended scope of practice, recognising their capacity and broader potential for healthcare. Nurse-led abortion care is possible, we know this from international experience. However, to apply nurse-led abortion care in Australia, we need to ensure there is a supportive legislative environment.

This document provides a legislative scan of state and territory legislation relevant to nurse-led medical abortion (hereafter referred to as Medical Termination of Pregnancy or 'MToP'). The scan is framed in the context of considering where a nurse-led MToP pilot could be conducted. This is because sexual and reproductive health providers will need to pilot nurse-led MToP in order to inform evolved models of care and subsequent clinical guidelines.

This report recommends that based on legislation alone:

- Nurse-led MToP is not possible in New South Wales, Tasmania or Western Australia. Legislation in the Australian Capital Territory is most dissimilar to other jurisdictions, and pilot findings would therefore be less transferrable.
- Nurse-led MToP may be more amenable in Queensland or the Northern Territory. In these jurisdictions a partially nurse-led approach would be more realistic given the need to involve a medical practitioner. The medical practitioner would conduct their analysis of the patient and prescribes the mifepristone and misoprostol, but all other aspects of MToP would be conducted by the nurse.

The most appropriate state or territory for a nurse-led MToP pilot would be Victoria or South Australia. In Victoria a nurse or midwife's authority to prescribe, supply and administer drugs depends on whether they are listed on the Minister or Secretary approval lists referred to by section 13 of the *Drugs, Poisons and Controlled Substances Act 1981*. In South Australia legislation passed in early 2021 enables a registered health practitioner to prescribe MToP, however at the time of publication abortion regulations were still being drafted. Given the legislation in most jurisdictions, it may be best to engage in partial nurse-led MToP in a way that involves GPs and/or other medical practitioners, as required by law, either directly or through telehealth where available. This kind of partial nurse-led MToP, which

involves medical practitioners at least remotely, would likely be lawful in Queensland, the Northern Territory, Victoria, and South Australia and any of these States or Territories could be utilised as a transferrable pilot model.

This document has been published to contribute to evolving models of care that enable sexual and reproductive health access and equity. Nurse-led MToP will only be successful with nurse leadership, sexual and reproductive health sector support and health consumer advisory.

4. Background

Abortion is a procedure that has strict time constraints, increasing in complexity and risk with gestation. Medical abortion (MToP) in Australia is available up to 63 days/9 weeks gestation. Surgical abortion is available up to 19-24 weeks gestation depending on state/territory legislated gestational limits. Ideally, women and pregnant people who seek abortion care could choose between medical or surgical abortion methods.

Women and pregnant people in Australia have the right to choose and access abortion. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) have enshrined sexual and reproductive health within women's right to health.⁴ As a CEDAW signatory, Australia is obliged to respect, protect and fulfil sexual and reproductive health and rights.

The Australian Government has committed to increasing access and equity in abortion care. The Australian Government *Women's Health Strategy (2020-2030)* priority area 1 includes 'increase access to sexual and reproductive health care information, diagnosis, treatment and services'. A key measure of success is 'equitable access to pregnancy termination services'.

Despite national and international policy recognition, abortion access in Australia is limited for both medical and surgical abortion. There is a growing trend towards access towards medical rather than surgical abortions, however, less than 5% of General Practitioners ('GPs') are registered prescribers of MToP. MToP via telehealth provides greater accessibility to rural, regional and remote areas, however for some people telehealth is not a suitable healthcare communication method. Communities across Australia have limited access to surgical abortion care services. There is also a shortage of healthcare professionals who can administer later gestation surgical abortion care.

Equity is limited for both medical and surgical abortion in Australia. Non-profit women's health centres, community centres and domestic and family violence support agencies fill a health funding gap in abortion care. When a woman or pregnant person wants to access abortion and cannot afford out of pocket costs, local communities step in with crowdfund fundraising measures and non-profit organisations dip into organisational reserves. Each year Marie Stopes Australia provides hundreds of bursaries for women and pregnant people seeking abortion and experiencing financial hardship. This level of hardship support is not financially sustainable.⁵

⁴ Office of the United Nations High Commissioner (2020), Sexual and Reproductive Health and Rights, at <<https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.asp>>

⁵ Marie Stopes Australia (2020), Sexual and Reproductive Health Rights in Australia, published 24 July 2020 at <https://resources.mariestopes.org.au/SRHRinAustralia.pdf>.

Inequity is greater for people who already experience barriers to sexual and reproductive healthcare. This includes Aboriginal and Torres Strait Islander Peoples, people of migrant and refugee backgrounds including those on temporary visas, people with disability, sex workers, LGBTIQ+ populations, young people, people who are incarcerated and people living in regional, rural and remote areas. During the COVID-19 pandemic these populations have experienced ongoing and reinforced barriers to pregnancy options counselling and care, including reproductive coercion.⁶

Nurse-led care is evolving. Nurses and midwives are at the forefront of the COVID-19 response and provide critical support not only for patients but for the entire health system. Across the health system nurses and midwives have experienced extended scope of practice, recognising their capacity and broader potential for healthcare.⁷ Not only has nurse-led care reduced systemic burdens, it has maintained quality and safe patient-centred care throughout a situation of crisis.

It is in this context that Marie Stopes Australia, an accredited sexual and reproductive health provider, is considering if and how nurse-led abortion care could increase sexual and reproductive health access and equity. This requires assessing whether registered nurses who are endorsed to supply and/or prescribe medicines could lead medical termination of pregnancies (‘MToP’) in Australia. The nurse-led or partial nurse-led provision of MToP up to certain gestation limits has already been implemented in a number of countries, including the United Kingdom, South Africa, China and Malawi, and international research shows support for the initiative.

4.1 University of Queensland Pro Bono Centre

The first edition report was researched and authored by University of Queensland (UQ) law students Jane Beilby, Rachna Nagesh, Bridget Mullins, and under the academic supervision of Professor Heather Douglas. This report was prepared for and on behalf of Marie Stopes Australia, a national non-profit family planning organisation providing reproductive health services. Student researchers and Professor Heather Douglas undertook this task on a pro bono basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession. In the first edition Heather was working with University of Queensland and contributed to the second edition through her role with the University of Melbourne.

4.2 Marie Stopes Australia

As an independent, non-profit organisation, Marie Stopes Australia is Australia’s only nationally accredited provider of abortion, contraception and vasectomy services, and the country’s longest running provider of teleabortion. Our holistic, client-centred approach empowers individuals to lead their own reproductive

⁶ Marie Stopes Australia (2020), Sexual and Reproductive Health Rights in Australia, published 6 October 2020 at <https://resources.mariestopes.org.au/SRHRinAustralia.pdf>.

⁷ Marie Stopes Australia (2020), Sexual and Reproductive Health Rights in Australia, published 6 October 2020 at <https://resources.mariestopes.org.au/SRHRinAustralia.pdf>.

healthcare safely, and with dignity, regardless of their circumstances. Through active partnerships with healthcare providers, researchers and communities, our models of care ensure the total wellbeing of our clients is supported at every stage.

4.3 The Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)

The Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) is a peak organisation of health professionals in Australia and New Zealand who work in HIV, viral hepatitis, other BBVs and sexual health. ASHM draws on its experience and expertise to support the health workforce and to contribute to the sector, domestically and internationally. ASHM is a professional, not-for-profit, member-based organisation. It supports its members, sector partners and collaborators to generate knowledge and action in clinical management and research, education, policy and advocacy in Australasia and internationally. It is committed to quality improvement, and its products and services are sought after by governments, members, health care workers and affected people. ASHM's dedicated membership, high-calibre staff and commitment to partnership assure its effectiveness in achieving its mission.

4.4 SPHERE

SPHERE, the NHMRC Centre of Research Excellence in Sexual and Reproductive Health for Women in Primary Care, is an exciting new collaborative network of experts and researchers that aims to transform the delivery of sexual and reproductive health care services to women in Australian primary care. It is a five-year program funded by the National Health and Medical Research Council.

Led by a multidisciplinary team of national and international researchers, policymakers, women's health organisations, healthcare professionals, and consumers, our aim is to create innovative and evidence-based solutions in primary care that will improve the quality, safety, and capacity of these services to achieve better outcomes for women's sexual and reproductive health.

4.5 The language of nursing

Nurses use a patient-centred approach to provide holistic care. Their work includes clinical care, care coordination, directing quality and safety in care, facilitating evaluation and research, and advocating for policy and legislative reforms. The importance of investment in the development of nurse leadership is recognised by our international commitments and domestic policy.⁸ Nursing and

⁸ Australian College of Nursing (ACN). 2015, Nurse Leadership, ACN, Canberra. Reprinted in 2017, viewed at <https://www.acn.edu.au/wp-content/uploads/2017/10/acn_nurse_leadership_white_paper_reprint_2017_web.pdf>. World Health Organisation (2006), Resolution WHA64.7 - Strengthening nursing and midwifery, viewed at <<https://www.who.int/hrh/resources/WHA59-27.pdf?ua=1&ua=1>>.

midwifery education is accredited by the Australian Nursing and Midwifery Accreditation Council. Nurses and midwives register with the Nursing and Midwifery Board of Australia (NMBA) which defines professional standards for nurses and midwives in Australia.⁹

4.5.1 Midwife

“Protected title for a person with prescribed educational preparation and competence for practice who is registered by the NMBA. The NMBA has endorsed the International Confederation of Midwives definition of a midwife and applied it to the Australian context.”¹⁰

4.5.2 Nurse

“Refers to a registered nurse, enrolled nurse or nurse practitioner. The term is reserved in Australia, under law, for a person who has completed the prescribed training, demonstrates competence to practise, and is registered as a nurse under the National Law.”¹¹

4.5.3 Nurse Practitioner

“Advanced practice nurse endorsed by the Nursing and Midwifery Board of Australia to practise within their scope under the legislatively protected title ‘nurse practitioner’.”¹²

Nurse Practitioners usually have greater prescribing authority, with a level of authority that varies by jurisdiction. Nurses and midwives are unable to prescribe in Australia, but can, as highlighted, supply and administer certain medicines dependant on jurisdictional legislation.

4.5.4 Nurse-led

Nurse-led care is often used to broadly refer to clinical practice where nurses, nurse practitioners and/or midwives have leadership roles. For the sake of this paper, the term ‘nurse-led care’ is used to refer to end to end leadership of a patient journey, or a complete episode of patient care. ‘Partial nurse-led care’ to refer to a patient journey where there are partial nurse-leadership roles and clinician involvement at various points (e.g. clinicians may be prescribers). This paper has focused predominantly on ‘nurse-led care’ rather than ‘midwifery-led care’, though there are times where there are intersections or alignment in policy and legislation.

⁹ Australian Nursing and Midwifery Council (2020), ‘home’ at <<https://www.anmac.org.au/>>.

¹⁰ Nursing and Midwifery Board of Australia (2018) Code of conduct for midwives at <<https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>>.

¹¹ Nursing and Midwifery Board of Australia (2018) Code of conduct for nurses, at <<https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>>.

¹² Nursing and Midwifery Board of Australia (2014) Nurse practitioner standards for practice at <<https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards/nurse-practitioner-standards-of-practice.aspx>>.

4.6 The language of gender

Marie Stopes Australia provides sexual and reproductive healthcare to people of all genders and non-binary people. Each year, thousands of women and pregnant people across Australia choose to access abortion care through Marie Stopes Australia clinics.

This report is a scan of legislation that is predominantly gendered. Subsequently sections of this report that reference legislation refers to women as if they are sole service users of abortion care. Women may be primary users, but they are not the only service users.

Women and pregnant people, in all of our intersectional diversity, deserve reproductive autonomy. Subsequently there is much work to do beyond nurse-led care, to ensure sexual and reproductive healthcare is accessible and equitable for all people in Australia.

5. Summary of state and territory legislation

This section summarises state and territory legislation relevant to nurse-led provision of MToP. It is divided into sections by how appropriate it would be to conduct a pilot in that jurisdiction. Firstly, it considers which jurisdictions are inappropriate, followed by more amenable jurisdictions, and finally it suggests one state to be most appropriate.

5.1 Clearly inappropriate states or territories

5.1.1 New South Wales

5.1.1.1 Key provisions

Abortion Law Reform Act 2019 (NSW)

Section 5 Termination by medical practitioners at not more than 22 weeks

(1) A person who is a medical practitioner may perform a termination on a person who is not more than 22 weeks pregnant.

Section 8 Registered health practitioners who may assist

(1) A person who is a medical practitioner, nurse, midwife, pharmacist or Aboriginal and Torres Strait Islander health practitioner, or another registered health practitioner prescribed by the regulations, may, in the practice of the person's health profession, assist in the performance of a termination on a person by a medical practitioner.

...

(3) A reference in this section to assisting in the performance of a termination includes dispensing, supplying or administering a termination drug on the instruction of the medical practitioner.

The Act amended the Crimes Act 1900 (NSW), inserting the following:

Section 82 Abortion performed by unqualified person

(1) An unqualified person who performs a termination on another person commits an offence.

Maximum penalty—7 years imprisonment.

...

(3) *A reference in subsection (2) to assisting in the performance of a termination includes—*

(a) *supplying, or procuring the supply of, a termination drug for use in a termination, and*

(b) *administering a termination drug.*

(5) *In this section—*

medical practitioner *means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.*

perform *includes attempt to perform.*

termination *means an intentional termination of a pregnancy in any way, including, for example, by—*

(a) *administering a drug, or*

(b) *using an instrument or other thing.*

unqualified person *means—*

(a) *in relation to performing a termination on another person—a person who is not a medical practitioner, or*

(b) *in relation to assisting in the performance of a termination on another person—a person who is not authorised under section 8 of the Abortion Law Reform Act 2019 to assist in the performance of the termination*

5.1.1.2 Discussion

The Abortion Law Reform Act 2019 ('the Act') defines 'medical practitioner' as a person registered under the *Health Practitioner Regulation National Law* (NSW) to practise in the medical profession, other than as a student.

'Assist' is not defined in the Act, nor does the Explanatory Memorandum provide any further guidance.¹³ The Second Reading Speech introducing the Bill stated that 'Under this bill, terminations can be performed only by qualified doctors regardless of whether the procedure is surgical or medical. The Bill provides for healthcare professionals—namely, nurses, midwives, pharmacists, Aboriginal and Torres Strait Islander health practitioners and other doctors—who can assist with terminations, which includes dispensing, supplying or administering a termination drug.'¹⁴

¹³ Explanatory Note, Reproductive Health Care Reform Bill 2019 (NSW).

¹⁴ New South Wales, Hansard, Legislative Assembly, 1 August 2019, 4 (Alex Greenwich).

This suggests that ‘assist’ is intended to necessarily require some involvement by a medical practitioner.

In March 2020, the New South Wales Chief Nursing and Midwifery Officer (CNMO) authorised all nurse practitioners in New South Wales to possess, use, supply and/or prescribe any Schedule 2 or 3 medicine, restricted substances (Schedule 4) or drugs of addiction (Schedule 8), where in accordance with the nurse practitioner’s scope of practice.¹⁵ Previously, authorisation for nurse practitioners to do so was provided by the CNMO as a delegate of the Secretary of Health on an *individual basis*. Through this change, nurse practitioners can supply mifepristone and misoprostol in accordance with their scope of practice, following prescription by a medical professional. Given the clear legislative intention of only allowing medical practitioners to perform MToP, it is unlikely that anything other than assistance is permitted. Even if supply of mifepristone is permitted, the regulations specify that the medical practitioner’s instruction is still required for any supply.

5.1.1.3 Conclusion

It is clear that only doctors are authorised to perform an abortion in New South Wales. As such nurse-led MToP would not be lawful in New South Wales at present and is not an appropriate location for a pilot. As in Queensland, a health practitioner ‘performing’ rather than ‘assisting’ in a termination of pregnancy commits an offence.

However, there is scope for legislative reform; if it is accepted that nurse practitioners are sufficiently qualified to supply a Schedule 4 drug – like mifepristone—on an individual basis, then the next logical step in easing the burden on medical practitioners and ensuring adequate access to health services is permitting the ‘performance’ of MToP.

5.1.2 Tasmania

5.1.2.1 Key provisions

Reproductive Health (Access to Terminations) Act 2013 (Tas)

3. Interpretation

(1) In this Act, unless the contrary intention appears –

¹⁵ Department of Health NSW, ‘Authority to prescribe for privately practicing Nurse Practitioners in NSW’ (Authority, 18 March 2020) <<https://www.health.nsw.gov.au/nursing/practice/Pages/authority-to-prescribe.aspx>>.

midwife means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the midwifery profession;

nurse means a registered nurse or an enrolled nurse;

terminate means to discontinue a pregnancy so that it does not progress to birth by –

(a) using an instrument or a combination of instruments; or

(b) using a drug or a combination of drugs; or

(c) any other means –

but does not include –

(d) the supply or procurement of any thing for the purpose of discontinuing a pregnancy; or

(e) the administration of a drug or a combination of drugs for the purpose of discontinuing a pregnancy by a nurse or midwife acting under the direction of a medical practitioner;

woman means a female person of any age.

PART 2 - Access to terminations

4. The pregnancy of a woman who is not more than 16 weeks pregnant may be terminated by a medical practitioner with the woman's consent.

Criminal Code Act 1924 (Tas)

178D. Termination by person other than medical practitioner or pregnant woman

(1) A person who performs a termination on a woman and who is not –

(a) a medical practitioner; or

(b) the pregnant woman –

is guilty of a crime.

Charge: Termination by person other than medical practitioner or pregnant woman.

5.1.2.2 Discussion

It is a crime for anyone other than a medical practitioner or the pregnant woman to perform an abortion on a pregnant woman.¹⁶ In addition, the definition of ‘termination’ specifically excludes ‘the administration of a drug or a combination of drugs for the purpose of discontinuing a pregnancy by a nurse or midwife acting under the direction of a medical practitioner’.¹⁷ Therefore, it would not be appropriate to use Tasmania as a pilot as any attempts for nurse-led MToP would clearly be a crime.

5.1.2.3 Conclusion

Tasmania is not a suitable state for a pilot as nurse-led MToP is explicitly defined as a crime under the relevant legislation.

5.1.3 Western Australia

5.1.3.1 Key provisions

Criminal Code Act Compilation Act 1913 (WA)

Section 199 Abortion

- (1) It is unlawful to perform an abortion unless —
- (a) the abortion is performed by a **medical practitioner** in good faith and with reasonable care and skill; and
 - (b) the performance of the abortion is justified under section 334 of the *Health (Miscellaneous Provisions) Act 1911*.
- (2) A person who unlawfully performs an abortion is guilty of an offence.
- (3) Subject to section 259, if a person who is **not a medical practitioner** performs an abortion that person is **guilty of a crime and is liable to imprisonment for 5 years**;
- (4) In this section — medical practitioner means a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession.
- (5) A reference in this section to performing an abortion includes a reference to —
- (a) attempting to perform an abortion; and

¹⁶ Criminal Code Act 1924 (Tas) s 178D(1).

¹⁷ Reproductive Health (Access to Terminations) Act 2013 (Tas) s 3(1)(e).

(b) doing any act with intent to procure an abortion, whether or not the woman concerned is pregnant.

Section 259 *Surgical and medical treatment, liability for*

(1) A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment (including palliative care)

—

(a) to another person for that other person's benefit; or

(b) to an unborn child for the preservation of the mother's life,

if the administration of the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Health (Miscellaneous Provisions) Act 1911 (WA)

Section 334 *Performance of abortions*

(1) A reference in this section to performing an abortion includes a reference to — (a) attempting to perform an abortion; and (b) doing any act with intent to procure an abortion, whether or not the woman concerned is pregnant.

(2) No person, hospital, health institution, other institution or service is under a duty, whether by contract or by statutory or other legal requirement, to participate in the performance of any abortion.

(3) Subject to subsections (4) and (7), the performance of an abortion is justified for the purposes of section 199(1) of The Criminal Code if, and only if — (a) the woman concerned has given informed consent; or (b) the woman concerned will suffer serious personal, family or social consequences if the abortion is not performed; or (c) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or (d) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.

(4) Subsection (3)(b), (c) or (d) do not apply unless the woman has given informed consent or in the case of paragraphs (c) or (d) it is impracticable for her to do so.

(5) In this section — informed consent means consent freely given by the woman where — (a) a medical practitioner has properly, appropriately and adequately provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term; and (b) a medical practitioner has offered her the opportunity of referral to appropriate and adequate counselling about matters relating to termination of pregnancy and carrying a pregnancy to term; and (c) a medical practitioner has informed her that appropriate and adequate

counselling will be available to her should she wish it upon termination of pregnancy or after carrying the pregnancy to term.

(6) A reference in subsection (5) to a medical practitioner does not include a reference to — (a) the medical practitioner who performs the abortion; nor (b) any medical practitioner who assists in the performance of the abortion.

(7) If at least 20 weeks of the woman's pregnancy have been completed when the abortion is performed, the performance of the abortion is not justified unless — (a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure; and (b) the abortion is performed in a facility approved by the Minister for the purposes of this section.

... (subsequent subsections deal with specific requirements for minors obtaining termination)

5.1.3.2 Discussion

The lawful performance of abortions in Western Australia is specifically limited to medical practitioners.¹⁸ Further, an unlawful abortion performed by anyone other than a medical practitioner is a crime.¹⁹

5.1.3.3 Conclusion

Nurse-led MToP would be a crime under Western Australian legislation and therefore, it is not an appropriate state for a pilot.

5.1.4 Australian Capital Territory

5.1.4.1 Key provisions

Health Act 1993 (ACT) (amended by *Health (Improving Abortion Access) Amendment Act 2018* effective 1 July 2019)

Section 80 Definitions—pt 6

¹⁸ Criminal Code Act Compilation Act 1913 (WA) s 199.

¹⁹ Ibid s 199(2).

In this part:

abortifacient means a medicine, drug or other substance that causes a pregnancy to end prematurely.

abortion means a medical abortion or surgical abortion.

approved medical facility means a medical facility approved under section 84.

surgical abortion means a surgical procedure or any other procedure or act (other than the administration or supply of an abortifacient) that causes a pregnancy to end prematurely.

(2) In this section:

medical abortion means the prescription, supply or administration of an abortifacient.

Section 81 Offence—unauthorised supply or administration of abortifacient

(1) A person commits an offence if—

- (a) the person supplies or administers an abortifacient to another person; and
- (b) the abortifacient is supplied or administered by the person for the purpose of ending a pregnancy; and
- (c) the person is not a doctor.

Maximum penalty: imprisonment for 5 years.

2) Subsection (1) does not apply to—

- (a) a pharmacist supplying an abortifacient in accordance with a prescription; or
- (b) a person assisting a pharmacist in supplying an abortifacient in accordance with a prescription.

...

5.1.4.2 Discussion

The lawful performance of abortions in the Australian Capital Territory is specifically limited to doctors.²⁰ Further, an unlawful abortion performed by anyone other than a doctor warrants up to 5 years imprisonment.²¹ Pharmacists are legally able to supply, or be assisted in supplying, an abortifacient in accordance with a prescription.

Opportunities for reform

The *Health (Improving Abortion Access) Amendment Act 2018* had initially proposed a very different regime for regulating abortion compared with the rest of Australia. A person authorised to carry out an MToP included both a registered medical and

²⁰ Health Act 1993 (ACT) at <https://www.legislation.act.gov.au/a/1993-13/> (section 81(1)(c))

²¹ Ibid

nurse practitioner. Reference to nurse practitioners were removed in a late amendment to the Bill.

Given recent commitments to improve access to abortion care and an appetite for nurse leadership in the ACT, it is possible that further reforms could be made in the near future to expand the scope of MToP provision. If or when there is reform, it would be advisable for any Bill to avoid specifying which professions can 'supply or administer abortifacient'. An example of this is in s53 of the Health Act 1993 (ACT) which refers to a 'practitioner for a health facility'.

Health practitioner scope of care should be delegated to the relevant colleges, regulations and guidelines, which means that the list of those eligible can be easily expanded alongside continuously emerging evidence of best practice within evolving models of care.

5.1.4.3 Conclusion

Nurse-led MToP could lead to imprisonment under Australian Capital Territory legislation. Regardless of future reforms which may enable nurse-led care, current legislative differences means a pilot program in the Australian Capital Territory would be less transferrable to other jurisdictions.

5.2 States or territories with more amenable legislation

These jurisdictions, Queensland and the Northern Territory, while likely not permitting nurse-only MToP, are potential locations for partial nurse-led MToP, where involvement of medical practitioners to assess and prescribe mifepristone and misoprostol are still required but other aspects of MToP are undertaken by nurses.

5.2.1 Queensland

5.2.1.1 Key provisions

Medicines and Poisons Act 2019 (QLD)

Medicines and Poisons (Medicines) Regulation 2021 (QLD) ('the Regulation')

Termination of Pregnancy Act 2018 (QLD) ('TOPA')

Section 5 Termination by medical practitioner at not more than 22 weeks

A ***medical practitioner*** may perform a termination on a woman who is not more than 22 weeks pregnant.

Section 7 Registered health practitioner who may assist

(2) A nurse, midwife, pharmacist, Aboriginal and Torres Strait Islander health practitioner or other registered health practitioner prescribed by regulation may, in the practice of his or her health profession, ***assist*** in the performance of a termination on a woman by a medical practitioner.

...

(4) A reference in this section to assisting in the performance of a termination by a medical practitioner includes dispensing, supplying or administering a termination drug on the medical practitioner's instruction.

The TOPA amended the Criminal Code QLD, inserting the following:

Section 319A Termination of pregnancy performed by unqualified person

(1) An unqualified person who performs a termination on a woman commits a crime.

...

(3) A reference in subsection (2) to assisting in the performance of a termination includes—

(a) supplying, or procuring the supply of, a termination drug for use in a termination;
and

(b) administering a termination drug.

(4) In this section - ...

"unqualified person" means—

(a) in relation to **performing** a termination on a woman—**a person who is not a medical practitioner**; or

(b) in relation to assisting in the performance of a termination on a woman—a person who is not—

(i) a medical practitioner; or

(ii) a prescribed practitioner providing the assistance in the practice of his or her health profession.

"prescribed practitioner" means a person registered under the Health Practitioner Regulation National Law to practise in any of the following health professions, other than as a student—

(a) the Aboriginal and Torres Strait Islander health practice profession;

(b) the midwifery profession;

(c) the nursing profession;

(d) the pharmacy profession;

(e) the health profession of a registered health practitioner prescribed under the Termination of Pregnancy Act 2018, section 7 (2).

5.2.1.2 Discussion

‘Medical practitioner’

Medical practitioner is not defined in the TOPA. Under Schedule 1 of the *Acts Interpretation Act 1954* (QLD), a medical practitioner means a person registered under the Health Practitioner Regulation National Law (‘the National Law’) to practise in the medical profession. The relevant registration board is the Register of Medical Practitioners. ‘Medical practitioner’ means doctors, not nurses, midwives, pharmacists, or Aboriginal and Torres Strait Islander health practitioners.²²

‘In the practice of their profession’

The Second-Reading Speech to the Termination of Pregnancy Bill 2018 (QLD) (‘the Bill’) does not provide explicit assistance regarding the meaning of this phrase,

²² Acts Interpretation Act 1954 (QLD) sch 1.

however it likely is utilised to reflect the varying standards and guidelines that exist for health practitioners. For example, pharmacists are subject to different professional guidelines and standards to midwives and nurses.

Some guidance is provided by the Australian Commission on Safety and Quality in Health Care, who discussed that factors influencing ‘scope of clinical practice’ include: clinician’s skills, knowledge, performance and professional suitability; and the needs and service capability of the organisation for which they work.²³ To define an individual health practitioner’s scope of clinical practice, in the public sector they undergo a process of ‘credentialing’. This recognises that certain health practitioners, in certain environments and circumstances, may possess or be required to possess a greater scope of practice. This is important for the task at hand as it recognises the higher potential for non-medical practitioners to have a greater role in medical abortions in rural and regional communities where there are generally fewer health practitioners.

‘Assist’

‘Assist’ is not defined further in the TOPA, however, the Explanatory Note to the Bill states that ‘The type and extent of assistance that may be provided by an assisting health practitioner will depend on the type of termination involved and the practitioner’s qualifications and scope of practice.’ The Explanatory Note also states that “[t]hese specified health practitioners are authorised under this provision to assist to the extent that they may do so ‘in the practice of their health profession’. For example, a pharmacist may be authorised to assist in the performance of a medical termination by dispensing or, in some circumstances, supplying, a termination drug to a woman but will not be authorised to assist in a surgical termination as that would fall outside the practice of pharmacy.”²⁴

The Second-Reading Speech for the Bill stated that ‘the type and extent of assistance that may be provided by an assisting health practitioner will depend on the type of termination involved, the practitioner’s qualifications and scope of practice’.²⁵ This is also reflected in the Queensland Law Reform Commission (QLRC) Report on Queensland’s abortion laws (‘QLRC Report’).²⁶ It should be noted that the Second-Reading Speech specifically discusses how the bill ‘allows for expansion by regulation of the list of health practitioners who may assist in the performance of terminations’, to ensure flexibility and adaptability with future

²³ Australian Commission on Safety and Quality in Health Care, National Safety and Quality Health Service Standards (2nd ed, November 2017) 75. See also Queensland Health, Department of Health Guideline QH-GDL-390-1-1:2017, Credentialing and Defining the Scope of Clinical Practice for Medical Practitioners and Dentists: A Best Practice Guideline (23 October 2017) 55.

²⁴ See, e.g., Health (Drugs and Poisons) Regulation 1996 (QLD) ss 175(1)(b), 167(1)(c), (d), 171(1)(b), (e).

²⁵ Queensland, Hansard (Record of Proceedings), Legislative Assembly, 22 August 2018, 1964 (Yvette D’Ath, Attorney-General and Minister for Justice).

²⁶ Queensland Law Reform Commission, Review of termination of pregnancy laws (Report No 76, June 2018) 57 (‘QLRC Report’).

changes in clinical practice.²⁷ Consequently, there is definitely scope for lobbying in this field to reflect the extensive research into nurse-led medical abortion. In fact, numerous submissions to the QLRC Report recommended authorisation of other health practitioners to perform or assist in the performance of a termination.²⁸

In the context of describing the assistance that may be provided by other health practitioners, the QLRC Consultation Paper on Queensland's abortion laws discussed the Regulation.²⁹ Under the Regulation, mifepristone and misoprostol are classified as 'restricted drugs'. Regulatory reforms in late 2021 supported opportunities for nurse leadership when extended practice authorities superseded previous drug therapy protocols.³⁰

Nurse Practitioners are authorised, to *administer, supply or prescribe* a restricted drug.³¹ A **registered nurse** may *administer* and, in some cases including isolated practice areas, *supply* a restricted drug on the oral or written instructions of a **nurse practitioner**.³²

A **rural and isolated practice area endorsed nurse, an Aboriginal and Torres Strait Islander Health Practitioner** or an **Indigenous Health Worker** is authorised to *supply or administer* up to 1000 micrograms of the drug misoprostol.³³

A **midwife** can *administer or supply* a restricted drug on the oral or written instruction of a nurse practitioner, or under the relevant extended practice authority.³⁴ This also relevantly provides that a **midwife** may *administer or supply* up to 1000 micrograms of the drug misoprostol.³⁵

'On the medical practitioner's instruction'

There is also a lack of discussion of what is meant by 'on the medical practitioner's instruction'. Given the consistent reference to medical or nurse practitioners' instructions at every step – as discussed above – it is likely that a general instruction to perform a termination is insufficient and specific instructions to administer the drugs for medical termination in each case is necessary. Without greater insight into legislative intention, this is speculative.

²⁷ Hansard (Record of Proceedings) 22 Aug 2018 – p.1964.

²⁸ QLRC Report (n 20) 55.

³⁰ Queensland Health (2021), 'Legislation, standards and extended practice authorities, < <https://www.health.qld.gov.au/system-governance/licences/medicines-poisons-act/legislation-standards>>

³¹ Medicines and Poisons Act 2019 (Qld) at 21 September 2021. Relevantly, the Health (Drugs and Poisons) Regulation 2021 (Qld)

³² Medicines and Poisons Act 2019 (Qld) at 21 September 2021. Relevantly, the Health (Drugs and Poisons) Regulation 2021 (Qld) Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Registered Nurses (12 August 2021), <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1108947/epa-registered-nurses.pdf>.

³³ Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Registered Nurses (12 August 2021), <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1108947/epa-registered-nurses.pdf>.

Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Aboriginal and Torres Strait Islander Health Practitioner (12 August 2021), < https://www.health.qld.gov.au/__data/assets/pdf_file/0024/1108941/epa-atsi-health-practitioners.pdf> Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Indigenous Health Worker (12 August 2021), <https://www.health.qld.gov.au/__data/assets/pdf_file/0025/1108942/epa-indigenous-health-workers.pdf>.

³⁴ Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Midwives (12 August 2021), <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1108947/epa-registered-nurses.pdf>.

³⁵ Medicines and Poisons Act 2019 (Qld) – Extended Practice Authority – Midwives (12 August 2021), <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1108947/epa-registered-nurses.pdf>.

Opportunities for reform

Opportunities for further reform exist in a 2021 Bill which proposes to amend the Criminal Code and make minor amendments to TOPA.³⁶ This Bill has the potential to enable nurse led care by reclassifying which professions can provide abortion care, and enabling pre-service training and education pathways.

Health and Other Legislation Amendment Bill 2021 (QLD) “The Bill”

Division 2 Amendment of the Criminal Code

Clause 7, Section 319A(4)

assisting, in the performance of a termination on a woman—

(a) includes—

(i) ***dispensing*** a termination drug for use in the termination; and

(ii) ***supplying***, or ***procuring the supply of***, a termination drug for use in the termination; and

(iii) ***administering*** a termination drug; but

(b) does not include providing care to the woman before or after the termination is performed.

prescribed health profession means any of the following health professions under the Health Practitioner Regulation National Law—

(a) *Aboriginal and Torres Strait Islander health practice;*

(b) *medical;*

(c) *midwifery;*

(d) *nursing;*

(e) *pharmacy;*

(f) *another health profession prescribed under the Termination of Pregnancy Act 2018*

....

In terms of changes to the Queensland Criminal Code, the Bill would effectively decriminalise an Aboriginal and Torres Strait Islander health practitioner, nurse, midwife or pharmacists' involvement in dispensation, supply or administration of medical abortion medication. This remains an incremental shift as it does not enable these health professionals to provide care before or after a termination is performed.

The Bill would also enable a student from a prescribed health profession to assist under the supervision of a medical practitioner or other prescribed practitioner or the student's primary clinical supervisor, when it relates to the student's profession. This could give greater confidence to universities and clinical education providers to embed abortion education in courses such as nursing and midwifery.

³⁶ Health and Other Legislation Amendment Bill 2021 (Qld) at <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2021-037>.

5.2.1.3 Conclusion

It appears that under the current Act, if a nurse – or any of the other professions listed under section 7(2) – are considered to be ‘performing the termination’ rather than merely ‘assisting’ they will be committing an offence under s 319A of the Criminal Code.

The scope of what ‘assist’ may mean in practice remains vague, especially when considering the above discussion of the authorisation provided to nurse practitioners, who may then themselves instruct registered nurses, midwives and the like. Nurse practitioners necessarily blur the line between medical and health practitioners. Furthermore, where mifepristone and misoprostol are utilised, the line between supplying and administering the drugs and performing the termination becomes exceedingly difficult to draw.

Regardless, the QLRC Report concluded by stating that ‘the provision should also specify that ‘assisting in the performance of a termination by a medical practitioner’ includes dispensing, supplying or administering a termination drug *on the medical practitioner’s instruction*’ (emphasis added).³⁷ Furthermore, there is a clear legislative distinction made – at least through the choice of words – between performance and assistance. Perhaps the point could be made that the former involves being the primary practitioner in relation to the abortion and the latter one who is secondary and operates only on the instruction of the primary. Difficulty arises in the broad nature of the term ‘assist’, and legislative intention that it is specific to context.

However, read within the broader context of the criminalising performance of abortions by unqualified persons, it is apparent that a medical practitioner must always be involved. This specific wording as adopted by the Act, makes it unlikely that the performance of MToP in the absence of any involvement by a medical practitioner is currently lawful in Queensland. If the Bill passes in the current form, it is possible that this may change in the near future.³⁸

Further, if the Bill passes in the current form, nurse led medical abortion care would be decriminalised, and combined with the extended practice authority provides greater opportunities for implementation. Should the Bill pass in 2022, Queensland would be an appropriate jurisdiction for a pilot site.

³⁷ QLRC Report (n 15) 57.

³⁸ Health and Other Legislation Amendment Bill 2021 (Qld) at <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2021-037>.

5.2.2 Northern Territory

5.2.2.1 Key provisions

MEDICINES, POISONS AND THERAPEUTIC GOODS ACT 2012 (NT) ('MPTGA') (and regulations)

Termination of Pregnancy Law Reform Act 2017 (NT) ('TOPLRA')

Termination of Pregnancy Law Reform Legislation Amendment Act 2021 (NT)

Section 6 Performing a termination

(1) A medical practitioner who does any of the following, intending to induce an abortion, performs a termination

- (a) performs a surgical procedure;
- (b) prescribes, supplies or administers a termination drug;
- (c) any other action.

(2) An ATSI health practitioner, a midwife or a nurse assists in the performance of a termination by supplying or administering, under the direction of a medical practitioner, a termination drug, knowing it is intended to induce an abortion

Section 7 Termination of pregnancy by a medical practitioner at not more than 24 weeks

A medical practitioner may perform a termination on a woman who is not more than 24 weeks pregnant, if the medical practitioner considers the termination is appropriate in all the circumstances, having regard to:

- (a) all relevant medical circumstances; and
- (b) the woman's current and future physical, psychological and social circumstances; and
- (c) professional standards and guidelines.

8 Termination of pregnancy by an authorised health practitioner at not more than 14 weeks

(1) A suitably qualified medical practitioner may **direct** an authorised ATSI health practitioner, authorised midwife, authorised nurse or authorised pharmacist to **assist** in the performance of a termination on a woman who is not more than 14 weeks pregnant, if the medical practitioner considers the termination is appropriate.

(2) In considering whether the termination is appropriate, as mentioned in subsection (1), the medical practitioner must have regard to each of the matters mentioned in section 7.

(3) An authorised ATSI health practitioner, authorised midwife or authorised nurse may supply or administer a termination drug:

(a) if directed to do so by a medical practitioner; and

(b) in accordance with that direction

5.2.2.2 Discussion

The QLRC Report stated that in the Northern Territory, an Aboriginal and Torres Strait Islander health practitioner, a midwife or a nurse authorised under the MPTGA may supply or administer a termination drug (or provide assistance in a surgical procedure), and an authorised pharmacist may supply a termination drug to assist in the performance of a termination on a woman who is not more than 14 weeks pregnant, if directed to do so by a suitably qualified medical practitioner.³⁹

In the Explanatory Statement to the *Termination of Pregnancy Law Reform Bill 2017* (NT) ('the Bill'), assistance is clearly established as distinct to performance, and this is replicated in the structure of the legislation (as above) as well.⁴⁰

Usefully, the Second Reading Speech to the Bill discusses extensively the distinction between performance and assistance. Performance involves the *suitably qualified* medical practitioner assessing the woman having regard to 'all relevant circumstances, medical circumstances, her current and future physical health, [and] psychological and social circumstances' and accordingly providing her with the relevant care in accordance with professional standards and guidelines.⁴¹ Assistance by nurses, midwives and Aboriginal and Torres Strait Islander health practitioners is described as the supply and administration of drugs, *but not prescription*.⁴² This negatively defines performance of medical abortions as including prescription.

The *Termination of Pregnancy Law Reform Legislation Amendment Bill 2021* (NT) which passed in late 2021 omitted the term *suitably qualified* and retained *medical practitioner*.⁴³ Importantly it removes the requirement that medical practitioners would need any additional credentials above the Australian Health Practitioners

³⁹ QLRC Report (n 15) 52-53; Explanatory Statement, *Termination of Pregnancy Law Reform Bill 2017* (NT) 3.

⁴⁰ Explanatory Statement, *Termination of Pregnancy Law Reform Bill 2017* (NT) 3.

⁴¹ Northern Territory, Parliamentary Debates, Legislative Assembly, 15 February 2017, 838 (Natasha Fyles, Minister for Health).

⁴² Ibid.

⁴³ *Termination of Pregnancy Law Reform Legislation Amendment Bill 2021* (NT)

Regulation Agency (AHPRA) and their employers. While this alone would not enable nurse-led abortion care, the removal of unnecessary requirements demonstrates an appetite to modernise abortion laws alongside evolving models of care.

5.2.2.3 Conclusion

Access to medical abortions may be more difficult in the Northern Territory because of the requirement of a 'suitably qualified medical practitioner', as opposed to simply 'medical practitioners'. Along with the exclusion of prescription from the scope of assistance, nurse-only MToPs are unlikely to be supported in the near future.

5.3 Appropriate states or territories

5.3.1 Victoria

5.3.1.1 Key provisions

Abortion Law Reform Act 2008 (Vic)

Section 4 Termination of pregnancy by registered medical practitioner at not more than 24 weeks

A registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant.

Section 6 Supply or administration of drugs by registered pharmacist or registered nurse—at not more than 24 weeks

*A registered pharmacist or registered nurse who is authorised under the **Drugs, Poisons and Controlled Substances Act 1981** to supply a drug or drugs may administer or supply the drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant.*

The Act amended the *Crimes Act 1958 (Vic)*, inserting the following:

Section 65 Abortion performed by unqualified person

(1) A person who is not a qualified person must not perform an abortion on another person.

Penalty: Level 5 imprisonment (10 years maximum).

...

(3) For the purposes of this section—

(a) a registered medical practitioner is a qualified person; and

(b) a registered pharmacist or registered nurse is a qualified person only for the purpose of performing an abortion by administering or supplying a drug or drugs in accordance with the Abortion Law Reform Act 2008.

(4) In this section—

abortion has the same meaning as in the Abortion Law Reform Act 2008;

perform an abortion includes supply or

procure the supply of any drug or other

registered medical practitioner means a medical practitioner registered under the Health Professions Registration Act 2005;

registered nurse means a nurse registered under the Health Professions Registration Act 2005

5.3.1.2 Discussion

Nurse authority to supply

Pursuant to the national *Standard for the Uniform Scheduling of Medicines and Poisons* (the SUSMP), to which the *Drugs, Poisons and Controlled Substances Act 1981* refers in classifying drugs for the purpose of the Act, mifepristone and misoprostol are classified as Schedule 4 drugs.⁴⁴

Under section 13(bb) of the *Drugs, Poisons and Controlled Substances Act 1981*, any registered nurse whose registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* is authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 4 poison approved by the Minister in relation to the relevant category of nurse in the lawful practice of his or her profession as a registered nurse. 'Administer' means to personally introduce a medication to a person's body (or personally observe its introduction). 'Supply' means to provide a medication to be administered at a later time.

Under section 13(ba) of the *Drugs, Poisons and Controlled Substances Act 1981* any nurse practitioner may be authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 4 poison approved by the Minister in relation to the relevant category of nurse practitioner in the lawful practice of his or her profession as a nurse practitioner.

⁴⁴ Poisons Standard October 2020:
<https://www.legislation.gov.au/Details/F2020L01255/Html/Text#_Toc28084707>.

Pursuant to section 14A of the *Drugs, Poisons and Controlled Substances Act 1981* the Minister may, by notice published in the Government Gazette, approve any Schedule 1, 2, 3, 4 or 8 poison (as the case requires) for the purposes of an authorisation referred to in various sections including section 13(bb) relating to registered nurses and section 13(ba) relating to nurse practitioners. On 23 July 2020 the Minister revoked all previous authorisations and approved 'for the purposes of authorisation under section 13(1)(ba) of the *Drugs, Poisons and Controlled Substances Act 1981* the use, sale or supply of all Schedule 2, 3, 4 and 8 poisons and all classes of Schedule 2, 3, 4 and 8 poisons in relation to any Nurse Practitioner or category of Nurse Practitioner in the lawful practice of his or her profession as a Nurse Practitioner.'⁴⁵

Legality of Nurse-led MTOP

The Explanatory Memorandum to the Abortion Law Reform Bill, relating to the Abortion Law Reform Act 2008, states that:

Certain drugs, such as the so-called "morning after pill" which are intended to cause abortion in the very early stages of pregnancy are already authorised for over the counter sale by pharmacists, or supply by nurse practitioners... This provision is included to ensure that pharmacists and nurses operating lawfully within the *Drugs Poisons and Controlled Substances Act 1981* are also authorised under this Act. A pharmacist or nurse who supplied or administered drugs when not authorised to do so or in a manner inconsistent with their authorisation will be liable to be found to have engaged in professional misconduct under the *Health Professions Registration Act 2005*.⁴⁶

Unlike in New South Wales and Queensland, nurses in Victoria are not limited to merely 'assist' with medical terminations. However, there are limitations on nurses' authorisation to supply drugs under the *Drugs, Poisons and Controlled Substances Act 1981*. Whether a nurse practitioner or registered nurse may supply, or in the case of nurse practitioners, prescribe mifepristone and misoprostol will be determined by whether these drugs are listed on the Minister or Secretary approval

⁴⁵ Victorian Government Gazette,

<<http://www.gazette.vic.gov.au/gazette/Gazettes2020/GG2020G029.pdf> 23 July 2020>.

Victorian Government (2020), Nurse Practitioner Prescribing Arrangements: Consultation Summary:

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REVOCATION OF APPROVAL UNDER SECTION 14A (4), page 1428:

<<http://www.gazette.vic.gov.au/gazette/Gazettes2020/GG2020G029.pdf>>.

⁴⁶ Abortion Law Reform Bill 2008 Explanatory Memoranda:

<[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA2570CE0018AC6DCA2574AA00087950/\\$FILE/561293exi1.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA2570CE0018AC6DCA2574AA00087950/$FILE/561293exi1.pdf)>.

lists referred to by section 13 of the *Drugs, Poisons and Controlled Substances Act 1981*.⁴⁷

Opportunities for reform

Fiona Patten MP made an adjournment in April 2021 advocating the Victorian Parliament to amend section 13 of the *Drugs, Poisons and Controlled Substances Act 1981*.⁴⁸ It is unclear if this will progress with the current government yet to make any public announcements about nurse-led abortion care.

5.3.1.3 Conclusion

Victoria may be an appropriate location for a nurse-led MToP. There has already been a significant amount of research conducted in relation to nurse-led MToP service delivery in Victoria.⁴⁹ However, the regulations around prescription and supply of scheduled drugs by nurse practitioners and registered nurses and how they are applied in Victoria is very complex and requires further detailed research to determine in what circumstance and what categories of nurses, if any, are authorised to prescribe/supply the drugs necessary for MToP.

5.3.2 South Australia

5.3.2.1 Key provisions

Termination of Pregnancy Act 2021 (SA)

Part 2—Termination of pregnancies

Division 1—Lawful termination of pregnancies

5—Terminations may be lawfully performed in South Australia

(1) A termination may be performed on a person if—

(a) in the case of a termination performed by a medical practitioner acting in the ordinary course of the practitioner's profession—the termination is performed on a person who is not more than 22 weeks and 6 days pregnant; or

⁴⁷ See 'Nurses and Midwives' from Health Vic website: < <https://www2.health.vic.gov.au/public-health/drugs-and-poisons/health-practitioners/nurses-and-midwives>>.

⁴⁸ Parliament of Victoria, Parliamentary Debates (Hansard) Legislative Council 29 April 2021 p.1369. <https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2021/Legislative_Council_2021-04-29.pdf>

See 'Nurses and Midwives' from Health Vic website: < <https://www2.health.vic.gov.au/public-health/drugs-and-poisons/health-practitioners/nurses-and-midwives>>.

⁴⁹ Jane E. Tomnay, Lauren Coelli, Ange Davidson, Alana Hulme-Chambers, Catherine Orr, Jane S. Hocking, 'Providing accessible medical abortion services in a Victorian rural community: description of audit of service delivery and contraception follow up' *Sexual & Reproductive Healthcare* (v. 16, June 2018) 175-80: <<https://www.sciencedirect.com/science/article/pii/S187757561730201X>>; Alana Hulme-Chambers, Samantha Clune, Jane Tomnay, 'Medical termination of pregnancy service delivery in the context of decentralisation: social and structural influences' *International Journal for Equity in Health* (v. 17, 2018): <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6249871/>>.

- (b) in the case of a termination performed by any other **registered health practitioner** acting in the ordinary course of the practitioner's profession—
- (i) the termination is performed by administering a prescription drug or by prescribing a drug; and
 - (ii) the **registered health practitioner** is authorised to prescribe the drug under section 18 of the Controlled Substances Act 1984.
- (2) A medical practitioner may perform a termination on a person who is more than 22 weeks and 6 days pregnant if—
- (a) the medical practitioner is acting in the ordinary course of the practitioner's profession; and
 - (b) the termination is performed in accordance with section 6.

5.3.2.2 Discussion

Summary of legislation

Under the *Termination of Pregnancy Act 2021* (SA) ('the Act'), it is not an offence for an abortion drug to be administered or prescribed 'by a registered health practitioner', provided particular requirements are met.⁵⁰

'Registered health practitioner'

The definition of 'registered health practitioner', under s3 of the Act, is 'a medical practitioner or any other person registered under the *Health Practitioner Regulation National Law* to practise in a health profession, other than as a student'. According to the *Health Practitioner Regulation National Law (South Australia) Act 2010* (SA), nurses and midwives are both considered 'registered health practitioners'. Based on these definitions, there is scope for nurse-led MToP in South Australia.⁵¹

Despite being one of the first states to provide a pregnancy advisory service, South Australia was one of the last states to remove abortion from the Criminal Code. It is promising to see the State now leading the Nation in terms of deregulation of abortion care.

⁵⁰ Ibid s 82A.

⁵¹ Health Practitioner Regulation National Law (SA) Act 2010 at [https://www.legislation.sa.gov.au/LZ/C/A/HEALTH%20PRACTITIONER%20REGULATION%20NATIONAL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202010/CURRENT/2010.5.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/HEALTH%20PRACTITIONER%20REGULATION%20NATIONAL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202010/CURRENT/2010.5.AUTH.PDF).

5.3.2.3 Conclusion

Changes made to State abortion laws in March 2021 demonstrate a willingness of the government to keep pace with changing needs of society.⁵² While regulations are yet to be made, it is clear that there will be scope to develop nurse-led models of MToP. South Australia is a potential location to develop a nurse-led care pilot model.

⁵² Angela Skujins, COVID-19 Could Prompt Temporary Changes to SA Abortion Law (InDaily: Adelaide Independent News, April 17 2020) <<https://indaily.com.au/news/2020/04/17/covid-19-prompts-temporary-change-to-sa-abortion-law/>>.

6. Position of national peak bodies

The Australian Medical Association (AMA) released a position statement stating MToP should be performed by ‘appropriately trained medical practitioners’, without differentiating between medical and surgical termination.⁵³ In their submissions to the QLRC and the Health, Communities, Disability Services and Family Violence Prevention Committee’s inquiry into the *Termination of Pregnancy Bill 2018*, the AMA made the same statement in the specific context of non-surgical abortions.⁵⁴ This indicates that they prefer the involvement of medical practitioners in an assessment and performance capacity, and health practitioners like nurses in only an ‘assistance’ role under the direction of a medical practitioner.

Similarly, the Australian College of Nursing (ACN), in their submission to the South Australian Law Reform Institute’s Consultation on Abortion Law and Practice, stated that because of the health risks associated with abortions, only a medical practitioner should be able to perform them.⁵⁵ They make the same comment regarding registered nurses’ and midwives’ assistance in performing terminations, and providing pre-surgical and post-surgical care.⁵⁶ This highlights a lack of differentiation between medical and surgical terminations. Interestingly, after this submission was published, ACN published an article supporting nurse-led services in rural and remote activities.⁵⁷ The latter also reinforces ACN’s discussion paper on improving health outcomes in rural and remote Australia, where significant analysis is conducted of the qualifications and efficiency of nurses.⁵⁸ The importance of tele-health services where GPs are referred to and contacted over the phone is also discussed.⁵⁹

While these statements and submissions seem to exemplify the position of most states and territories in Australia regarding medical practitioner involvement, there is an acknowledgement of the difficulties in rural and regional Australia, and positive discussion about the potential for nurse-led services like MToP, especially in those areas.

⁵³ Australian Medical Association, Reproductive Health and Reproductive Technology (Position Statement, 2005) 2

<https://ama.com.au/sites/default/files/documents/Position_Statement_on_Reproductive_Health_And_Reproductive_Technology_1998_revised_2005.pdf>.

⁵⁴ Australian Medical Association, Submission No 102 to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Inquiry into the Termination of Pregnancy Bill 2018 (5 September 2018) 4; Australian Medical Association, Submission to Queensland Law Reform Commission, Termination of Pregnancy Bill 2018 (6 March 2018) 1.

⁵⁵ Australian College of Nursing, Submission to South Australian Law Reform Institute, Consultation on Abortion Law and Practice (13 June 2019) 2.

⁵⁶ Ibid.

⁵⁷ Lydia Mainey (ACN), Empower nurses to improve abortion care (The Hive article, 2 December 2019) <<https://www.acn.edu.au/the-hive-2019/empower-nurses-improve-abortion-care>>.

⁵⁸ Australian College of Nursing, Improving health outcomes in rural and remote Australia: Optimising the contribution of nurses (Discussion Paper, December 2018).

⁵⁹ Ibid 7.

7. Studies on nurse-led approaches

Even when considering studies that have been conducted in this space, such as tele-medicine, doctors and other health practitioners have had at least some specific involvement and provided specific directions to each individual client seeking a medical or surgical abortion.⁶⁰ Most studies - such as Tomnay et al. and Ireland, Belton and Doran - that discussed novel methods of providing MToP still involved nurses in an assistance role, either by providing support through the process (e.g. first point of contact, post-abortion care etc.) and involved GPs (always directly though sometimes first after the GP reviewed the screening test) who were required to authorise the dispensing of the method of abortion.⁶¹ This seems to indicate that even where telemedicine is utilised, a doctor is still needed; even if the doctor then authorises a pharmacy to supply the requisite medication, they did so in every instance. However, it is evident that the role of GPs was greatly minimised by nurses who take over the role of supporting women throughout and after the process.⁶²

For example, Tomnay et al. conducted a study on a MToP clinical service in rural Victoria. The service 'use[d] a nurse-led with [GP] support integrated model of care'.⁶³ Women entered the service through self-referral or GP-referral and there was usually adherence to a two appointment policy with the nurse and GP attending both.

⁶⁰ See, e.g., Jane E Tomnay et al, 'Providing accessible medical abortion services in a Victorian rural community: A description and audit of service delivery and contraception follow up' (2018) 16 Sexual and Reproductive Healthcare 175; Paul Hyland, Elizabeth G Raymond and Erica Chong, 'A direct-to-patient telemedicine abortion service in Australia: Retrospective analysis of the first 18 months' (2018) 58(3) Australian and New Zealand Journal of Obstetrics and Gynaecology 335; Sarah Ireland, Suzanne Belton and Frances Doran, 'I didn't feel judged': exploring women's access to telemedicine abortion in rural Australia (2020) 129(1) Journal of Primary Health Care 49; Caroline de Moel-Mandel, Melissa Graham and Ann Taket, 'Expert Consensus on a Nurse-Led Model of Medication Abortion Provision in Regional and Rural Victoria, Australia: A Delphi Study' (2019) 100(5) Contraception 380.

⁶¹ Jane E Tomnay et al, 'Providing accessible medical abortion services in a Victorian rural community: A description and audit of service delivery and contraception follow up' (2018) 16 Sexual and Reproductive Healthcare 175; Sarah Ireland, Suzanne Belton and Frances Doran, 'I didn't feel judged': exploring women's access to telemedicine abortion in rural Australia (2020) 129(1) Journal of Primary Health Care 49.

⁶² See, e.g., Jane E Tomnay et al, 'Providing accessible medical abortion services in a Victorian rural community: A description and audit of service delivery and contraception follow up' (2018) 16 Sexual and Reproductive Healthcare 175; Paul Hyland, Elizabeth G Raymond and Erica Chong, 'A direct-to-patient telemedicine abortion service in Australia: Retrospective analysis of the first 18 months' (2018) 58(3) Australian and New Zealand Journal of Obstetrics and Gynaecology 335; Sarah Ireland, Suzanne Belton and Frances Doran, 'I didn't feel judged': exploring women's access to telemedicine abortion in rural Australia (2020) 129(1) Journal of Primary Health Care 49; Angela J Dawson et al, 'Medical termination of pregnancy in general practice in Australia: a descriptive-interpretive qualitative study' (2017) 14(39) Reproductive Health 39.

⁶³ Jane E Tomnay et al, 'Providing accessible medical abortion services in a Victorian rural community: A description and audit of service delivery and contraception follow up' (2018) 16 Sexual and Reproductive Healthcare 175, 176.

The first consultation involves a 'non-directive pregnancy options discussion' where the nurse assesses whether the woman is eligible for MToP based on her circumstances and provides further information about the process.

The second consultation involves a review of any investigations conducted to gain more information about the woman's circumstances, and if the decision is made to pursue MToP, the nurse informs that the woman can be prescribed MToP.

After their own individual assessment of eligibility, the GP provides the woman with a single prescription for MToP and any other contraception. A follow-up is scheduled for a week after the dose, where further discussions of contraception are had and any post care support is provided.⁶⁴ The audit conducted by Tomnay et al. of this service demonstrated that, 'MToP can be accessible [and low-cost] and delivered safely in primary care services whilst meeting the needs of the local community'.⁶⁵

Recent studies show shifting attitudes in Australia towards nurse and midwifery leadership in abortion care.⁶⁶ They point to legislative and policy barriers being a hurdle in moving beyond task based to comprehensive care. Findings highlight the value of nurses and midwives skills, knowledge and potential in extending scope of abortion care, particularly in supporting trauma informed care pathways.⁶⁷

⁶⁴ Ibid 176-177.

⁶⁵ Ibid 179.

⁶⁶ Mainey, Lydia, Catherine O'Mullan, Kerry Reid-Searl, Annabel Taylor, and Kathleen Baird. "The role of nurses and midwives in the provision of abortion care: A scoping review." *Journal of clinical nursing* 29, no. 9-10 (2020): 1513-1526.

⁶⁷ Mainey L, O'Mullan C, Reid-Searl K. Unfit for purpose: A situational analysis of abortion care and gender-based violence. *Collegian*. 2022 Jan 29.

8. Conclusion

8.1 Summary of jurisdictions

8.1.2 Clearly inappropriate states

The legislation relating to MToP in New South Wales, Australian Capital Territory, Tasmania and Western Australia is inappropriate for trialling nurse-led MToP.

A clear legislative intention to restrict the performance of abortions to medical practitioners only exists in New South Wales. Nevertheless, there may be scope for legislative reform in the State, given that it is accepted that nurse practitioners are qualified to prescribe, supply and administer a Schedule 4 drug without authorisation, then the next logical step may be allowing nurses or Nurse Practitioners to administer MToP. Nevertheless, nurse-led MToP would not be lawful in New South Wales at present.

Furthermore, nurse-led MToP is explicitly defined as a crime under the relevant legislation in Tasmania and therefore, that is not a suitable state. Similarly, in Western Australia and the Australian Capital Territory the performance of abortions is limited to medical practitioners and it is an offence for any other person to perform an abortion; therefore, it is not an appropriate pilot state for nurse-led MToP.

8.1.3 More amenable states

The viability of nurse-led models of care in Queensland largely depends on the definition and interpretation of 'assist', which is not well-defined in the relevant legislation. The definition of 'assist' in the Northern Territory may be used to inform the meaning in Queensland; the second reading speech of the relevant Bill in the Northern Territory reveals that the definition of 'assist' there is very broad and difficult to distinguish from prescribe, administer and supply, all of which nurse practitioners are permitted to do in these jurisdictions. However, in Queensland, any assistance must be 'on the medical practitioner's instruction', meaning that a medical practitioner must be involved in some capacity in all cases. Therefore, it is unlikely that nurse-led MToP, without the involvement of a medical practitioner, is lawful in Queensland.

Nevertheless, in the Northern Territory assistance is permitted only where 'directed' by a 'suitably qualified medical practitioner' and 'assistance' by nurses is defined as supply and administration of drugs, not prescription, meaning that nurse-led MToP without the involvement of a medical practitioner in that State is also unlikely to be lawful.

However, in both states, a partially nurse-led approach where the medical practitioner or suitably-qualified medical practitioner is involved to a minimal extent is possible. The medical practitioner would conduct their analysis of the patient and prescribes the mifepristone and misoprostol, but all other aspects of MToP would be conducted by the nurse.

8.1.4 Most appropriate state and territory

Legislation in Victoria differs from that in Queensland and the Northern Territory in that there is no limitation of nurses merely assisting. However, a nurse or midwife's authority to prescribe, supply and administer drugs depends whether they are listed on the Minister or Secretary approval lists referred to by section 13 of the *Drugs, Poisons and Controlled Substances Act 1981*. Given that a nurse does not supply or administer drugs in a matter inconsistent with their authorisation, there is scope for nurse-led MToP in Victoria.

South Australian abortion law does not specify which registered health practitioner can administer or prescribe MToP, so would be an appropriate location to develop a pilot model. If a model was successful in South Australia, it could be deemed gold-standard and could be transferrable to other jurisdictions.

8.2 Final note and disclaimer

As discussed, the meaning of 'assist' is likely to be found to mean everything but prescribe, given the second reading speech from the relevant Northern Territory Bill. Moreover, 'perform' is likely to be interpreted as a GP conducting their own independent assessment, which will be faster because of nurse's more extensive investigations, and prescribing mifepristone and misoprostol. It should be noted that investigations can be conducted by a nurse practitioner in Queensland and New South Wales. This at the least will reduce the necessary GP involvement.

Of course, nurse-led MToP can only be successful with the involvement of nurses themselves. Research shows that nurse unions generally advocate that nurses should be restricted to assisting roles in MToP, yet no further insight is provided as to what this means and whether this mirrors, for example, the meaning of 'assist' intended in the Northern Territory. Nevertheless, the unions do agree that the situation is complicated in rural and isolated areas of Australia.

Given the legislation in most States and the view of nurse unions, it may be best to engage in nurse-led MToP in a way that involves GPs and/or other medical practitioners, as required by law, either directly or through telemedicine where available. This kind of nurse-led MToP, which involves medical practitioners at least remotely, would likely be lawful in Queensland, the Northern Territory, Victoria and South Australia, and any of these States or Territories could be utilised to develop a transferrable pilot model.

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Drugs, Poisons and Controlled Substances Act 1981 (VIC)

Health and Other Legislation Amendment Bill 2021 (QLD)

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9.2 Other

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Appendix – summary table of legislation

State/territory (in order of appropriateness)	Key legislation	Other relevant legislation	Who can perform MToP	Stipulated role of nurses
Victoria	Abortion Law Reform Act 2008 Crimes Act 1958, s 65	Drugs, Poisons and Controlled Substances Act 1981, s 13. Drugs, Poisons And Controlled Substances Regulations 2017 (Reg 39, 40) See <i>Minister-approved prescriber lists</i> made pursuant to the Act for indication as to specific drugs.	<p>Medical practitioner</p> <p>Registered pharmacist or registered nurse (if authorised under the <i>Drugs, Poisons and Controlled Substances Act 1981</i> to supply a drug or drugs).</p> <p>A person who is not a qualified person must not perform an abortion...a registered medical practitioner is a qualified person; and a registered pharmacist or registered nurse is a qualified person only for the purpose of performing an abortion by administering or supplying a drug or drugs in accordance with</p>	<p>Nurse practitioner is authorised to use or supply schedule 4 drugs that have been approved by the Minister in relation to the relevant category of nurse practitioner.</p> <p>Any registered nurse whose registration is endorsed under section 94 of the <i>Health Practitioner Regulation National Law</i> is authorised to use or supply any Schedule 4 drug approved by the Minister in relation to the relevant category of nurse.</p> <p>Regulations 39 and 40 of <i>Drugs, Poisons and Controlled Substances Regulations 2017</i> allow for nurse practitioners and authorised (by ministerial approval) nurses and midwives to sell or supply schedule 4 drugs. Regulation 20 allows for nurse</p>

			the <i>Abortion Law Reform Act 2008</i> .	<p>practitioners to prescribe schedule 4 drugs.</p> <p>Additionally, regulations 91 – 93 and 96 broadly allow for the administration of all schedule 4 drugs by nurse practitioners, nurses, and midwives (regardless of ministerial approval referred to under s 13 of the Act) subject to certain requirements/limitations. Additionally, a nurse practitioner may authorise administration (reg 80).</p>
Australian Capital Territory	Health Act 1993 (ACT) (amended by <i>Health (Improving Abortion Access) Amendment Act 2018</i> effective 1 July 2019)	Health (Improving Abortion Access) Amendment Bill 2018 (ACT) Health (Patient Privacy) Amendment Bill 2015 (ACT) Medical Practitioners (Maternal Health)	Medical Practitioner	<p>Doctors can prescribe MToP.</p> <p>Only doctors are authorised to perform a surgical termination and surgical terminations can only occur within an approved medical facility (S83). This does not apply to MToP.</p>

<u>Amendment Act 2002 (ACT)</u>				
Queensland	<u>Termination of Pregnancy Act 2018</u> <u>Criminal Code 1899, s 319A</u>	<u>Medicines and Poisons Act 2019 (Qld)</u> Medicines and Poisons Regulation 2021 (Qld) Health and Other Legislation Amendment Bill 2021 (Qld)	Medical practitioner Nurse practitioner An unqualified person who performs a termination on a woman commits a crime.	<p><i>A nurse, midwife...or other registered health practitioner prescribed by regulation may, in the practice of his or her health profession, assist in the performance of a termination on a woman by a medical practitioner. Assisting...includes dispensing, supplying or administering a termination drug on the medical or nurse practitioner's instruction.</i></p> <p>The Explanatory Note states that “the type and extent of assistance that may be provided by an assisting health practitioner will depend on the type of termination involved and the practitioner’s qualifications and scope of practice.”</p> <p>See <i>Medicines and Poisons Act 2019</i> and <i>Extended Practice Authorities</i> for circumstances in which specific health practitioners</p>

				may dispense, supply, or administer restricted drugs (which includes Misoprostol and Mifepristone).
Northern Territory	<u>Termination of Pregnancy Law Reform Act 2017</u> <u>Termination of Pregnancy Law Reform Legislation Amendment Bill 2021</u>	<u>Medicines, Poisons and Therapeutic Goods Act 2012</u> <u>Medicines, Poisons and Therapeutic Goods Regulations 2014</u> See also Government Gazette notices regarding authorisation to supply scheduled drugs.	Medical practitioner	<p>A suitably qualified medical practitioner may direct an authorised Aboriginal and Torres Strait Islander health practitioner, authorised midwife, authorised nurse or authorised pharmacist to assist in the performance of a termination on a woman who is not more than 14 weeks pregnant, if the medical practitioner considers the termination is appropriate.</p> <p>...</p> <p>An authorised Aboriginal and Torres Strait Islander health practitioner, authorised midwife or authorised nurse may supply or administer a termination drug if directed to do so by a suitably qualified medical practitioner, in accordance with that direction.</p> <p>See section 65 of <i>Medicines, Poisons and Therapeutic Goods</i></p>

				Act 2012 regarding authorisation of nurses and midwives to supply or use schedule 4 drugs. See also Government Gazette notices relating to the Medicines, Poisons and Therapeutic Goods Act.
NSW	<u>Abortion Law Reform Act 2019</u> <u>Crimes Act 1900, s 82</u>	<u>Poisons and Therapeutic Goods Act 1966, s 17A</u> <u>Poisons and Therapeutic Goods Regulation 2008, s 43</u>	<p>Medical practitioner</p> <p>An unqualified person (a person who is not a medical practitioner) who performs a termination on another person commits an offence.</p>	<p>A person who is a medical practitioner, nurse, midwife...or another registered health practitioner prescribed by the regulations, may, in the practice of the person's health profession, assist in the performance of a termination on a person by a medical practitioner.</p> <p>Assisting...includes dispensing, supplying or administering a termination drug on the instruction of the medical practitioner.</p> <p>Neither the Act nor Explanatory Memorandum provide guidance as to the breadth of 'assist' or 'instruction'. However, the second reading speech expressed that "under this bill, terminations can be performed only by qualified</p>

				doctors regardless of whether the procedure is surgical or medical ".
South Australia	<u>Termination of Pregnancy Act 2021 (SA)</u>	<u>Controlled Substances Act 1984.</u>	<p>Registered health practitioner</p> <p>An unqualified person who performs a termination or assists with a termination on another person commits an offence.</p>	<p>In the case of a termination performed by any other registered health practitioner acting in the ordinary course of the practitioner's profession—</p> <p>(i) the termination is performed by administering a prescription drug or by prescribing a drug; and</p> <p>(ii) the termination is performed on a person who is not more than 63 days pregnant; and</p> <p>(iii) the registered health practitioner is authorised to prescribe the drug under section 18 of the <u>Controlled Substances Act 1984.</u></p>
Tasmania	<u>Reproductive Health (Access to Terminations) Act 2013</u> <u>Criminal Code Act 1924, s 178D</u>	N/A	<p>Medical practitioner</p> <p>A person who is not a medical practitioner that performs an abortion is guilty of a crime.</p>	Nil

Western Australia	Criminal Code Act Compilation Act 1913, s 199 Health (Miscellaneous Provisions) Act 1911, s 334	N/A	Medical practitioner	Nil
			A person who is not a medical practitioner that performs an abortion is guilty of a crime.	

Further information and feedback

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