

WESTERN AUSTRALIA

**ACTS AMENDMENT (ABORTION)
ACT 1998**

No. 15 of 1998

AN ACT to amend *The Criminal Code* to remove offences related to procuring abortion, to amend the *Health Act 1911* to regulate the performance of abortion, as a consequence, to amend the *Evidence Act 1906* and the *Children's Court of Western Australia Act 1988* and for related purposes.

[Assented to 26 May 1998]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Abortion) Act 1998*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

PART 2 — THE CRIMINAL CODE & EVIDENCE ACT 1906

The Code

3. In this Act “**the Code**” means *The Criminal Code*.

[*Reprinted as at 21 April 1997 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Compilation Act 1913.*
For subsequent amendments see Act No. 19 of 1997.]

Sections 199, 200 and 201 repealed and section 199 substituted

4. Sections 199, 200 and 201 of the Code are repealed and the following section is substituted —

“

Abortion

199. (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 Act 1911*.

(2) A person who unlawfully performs an abortion is guilty of an offence.

Penalty: \$50 000.

(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.

s. 5

(4) In this section —

“**medical practitioner**” has the same meaning as it has in the *Health Act 1911*.

(5) 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.

”.

Section 259 repealed and a section substituted

5. Section 259 of the Code is repealed and the following section is substituted —

“

Surgical and medical treatment

259. A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment —

(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.

”.

***Evidence Act 1906* amended and saving**

6. (1) The Second Schedule to the *Evidence Act 1906** is amended in Part 1 —

(a) in the item commencing “s. 199”, by deleting “Attempt to procure the miscarriage of a woman” and substituting the following —

“ Abortion ”; and

(b) by deleting the items commencing “s. 200” and “s. 201”.

(2) In relation to an offence committed before the commencement of this Act, the *Evidence Act 1906** applies as if subsection (1) had not been enacted.

[* *Reprinted as at 10 September 1996.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1. pp. 76-77, and Act No. 57 of 1997.]

**PART 3 — HEALTH ACT 1911 & CHILDREN'S COURT OF
WESTERN AUSTRALIA ACT 1988**

***Health Act 1911* amended**

7. (1) After section 333 of the *Health Act 1911* the following section is inserted —

“

Performance of abortions

334. (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) Paragraphs (b), (c) or (d) of subsection (3) 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;
- (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.

s. 7

(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.

(8) For the purposes of this section —

- (a) subject to subsection (11), a woman who is a dependant minor shall not be regarded as having given informed consent unless a custodial parent of the woman has been informed that the performance of an abortion is being considered and has been given the opportunity to participate in a counselling process and in consultations between the woman and her medical practitioner as to whether the abortion is to be performed;

- (b) a woman is a dependant minor if she has not reached the age of 16 years and is being supported by a custodial parent or parents; and
- (c) a reference to a parent includes a reference to a legal guardian.

(9) A woman who is a dependant minor may apply to the Children's Court for an order that a person specified in the application, being a custodial parent of the woman, should not be given the information and opportunity referred to in subsection (8) (a) and the court may, on being satisfied that the application should be granted, make an order in those terms.

(10) An order made under subsection (9) has effect according to its terms and is not liable to be challenged, appealed against, reviewed, quashed or called in question in or by any court.

(11) If the effect of an order under subsection (9) is that no custodial parent of the woman can be given the information and opportunity referred to in subsection (8) (a), subsection (8) does not apply in relation to the woman.

”.

(2) Section 335 (5) of the *Health Act 1911* is amended —

- (a) in paragraph (a) by inserting after “abortion” the following —

“

(other than an abortion to which paragraph (d) applies)

”;

and

s. 8

- (b) by inserting after paragraph (c) the following paragraphs —

“

(d) When a medical practitioner performs an abortion, the medical practitioner shall notify the Executive Director, Public Health of the fact in the prescribed form within 14 days of the abortion being performed.

(e) A notification under paragraph (d) must not contain any particulars from which it may be possible to ascertain the identity of the patient.

”.

Review of provisions relating to abortion

8. (1) The Minister administering the *Health Act 1911* is to carry out a review of the operation and effectiveness of the provisions of the *Health Act 1911* and *The Criminal Code* related to abortion as soon as is practicable after the expiration of 3 years from the commencement of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

***Children’s Court of Western Australia Act 1988* amended**

9. Section 20 of the *Children’s Court of Western Australia Act 1988* is amended —

- (a) by deleting “and” after paragraph (b); and

(b) after paragraph (c) by inserting the following —

“

; and

(d) under section 334 of the *Health Act 1911*.

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