



Western Australia

Abortion Legislation Reform Act 2023

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Abortion Legislation Reform Act 2023

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Western Australia

Abortion Legislation Reform Act 2023

No. 20 of 2023

An Act —

- **to amend *The Criminal Code* to remove offences related to abortion; and**
- **to amend the *Public Health Act 2016* to regulate the performance of abortion by registered health practitioners and prohibit the performance of abortion by certain persons; and**
- **to make consequential and related amendments to other Acts; and**
- **for related purposes.**

[Assented to 27 September 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Abortion Legislation Reform Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Section 199 deleted

Delete section 199.

Part 3 — *Public Health Act 2016* amended

5. Act amended

This Part amends the *Public Health Act 2016*.

6. Section 4 amended

- (1) In section 4(1) insert in alphabetical order:

health profession has the meaning given in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

student, in relation to a health profession, has the meaning given in section 202MA;

- (2) In section 4(1) in the definitions of *medical practitioner*, *midwife* and *nurse* delete “profession;” and insert:

profession (other than as a student);

- (3) In section 4(1) in the definition of *nurse practitioner* after “profession” insert:

(other than as a student)

7. Part 12C heading replaced

Delete the heading to Part 12C and insert:

Part 12C — Abortion

8. **Part 12C Divisions 1 to 5 inserted**

At the beginning of Part 12C insert:

Division 1 — Preliminary

202MA. Terms used

In this Part —

abortion drug means a medicine of a kind used to cause the termination of a pregnancy of a person;

dispense means to supply in accordance with a prescription;

health service has the meaning given in the *Health Services Act 2016* section 7;

health service provider has the meaning given in the *Health Services Act 2016* section 6;

medicine has the meaning given in the *Medicines and Poisons Act 2014* section 3;

perform an abortion has the meaning given in section 202MB;

person, when used in the context of the person upon whom an abortion is or may be performed, means a person of any age;

pharmacist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the pharmacy profession (other than as a student);

prescribe, in relation to an abortion drug, means to issue a prescription for the drug;

prescribing practitioner has the meaning given in section 202MD(1);

prescription, in relation to an abortion drug, has the same meaning as it has, in relation to a Schedule 4 or 8

poison, in the *Medicines and Poisons Act 2014* section 7(1);

primary clinical supervisor, in relation to a student, means a registered health practitioner who has primary responsibility for supervising the clinical work performed by the student in connection with the student's program of study for, or the student's clinical training in, the student's health profession;

private hospital service provider has the meaning given in the *Private Hospitals and Health Services Act 1927* section 2(1);

registered health practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practice a health profession (other than as a student);

relevant health profession means any of the following health professions —

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) medical;
- (c) midwifery;
- (d) nursing;
- (e) pharmacy;
- (f) a health profession that is prescribed by the regulations for the purposes of this definition;

relevant person means —

- (a) a registered health practitioner who is authorised under Division 2 to perform an abortion; or
- (b) the chief executive of a health service provider that provides health services that include, or are related to, the performance of abortions under Division 2; or

- (c) a private hospital service provider that provides health services that include, or are related to, the performance of abortions under Division 2;

student, in relation to a health profession, means a person whose name is entered in a student register for the health profession as being currently registered under the *Health Practitioner Regulation National Law (Western Australia)*;

student register, for a health profession, has the meaning given in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

supply, in relation to an abortion drug, has the same meaning as it has, in relation to a poison, in the *Medicines and Poisons Act 2014* section 8.

202MB. Performance of abortion

- (1) A person **performs an abortion** on another person if the person does any act with the intention of causing the termination of the pregnancy of the other person.
- (2) Without limiting subsection (1), the acts to which it applies include the following —
- (a) prescribing an abortion drug for the other person;
 - (b) supplying an abortion drug to the other person;
 - (c) administering an abortion drug to the other person;
 - (d) carrying out a surgical or other procedure on the other person.
- (3) However, assisting a person to do an act done with the intention of causing the termination of a pregnancy of another person is not an act to which subsection (1) applies.

Division 2 — Performance of abortion by registered health practitioners

202MC. Performance of abortion by medical practitioner at not more than 23 weeks

A medical practitioner is authorised to perform an abortion on a person who is not more than 23 weeks pregnant.

202MD. Performance of medical abortion by certain other registered health practitioners at not more than 23 weeks

(1) In this section —

prescribing practitioner means a person who is a member of a class of registered health practitioners that —

- (a) is authorised under the *Medicines and Poisons Act 2014* to prescribe an abortion drug; and
- (b) is prescribed by the regulations for the purposes of this definition.

(2) A prescribing practitioner is authorised to perform an abortion on a person who is not more than 23 weeks pregnant if the prescribing practitioner performs the abortion by —

- (a) prescribing an abortion drug for the person; or
- (b) supplying or administering an abortion drug to the person.

202ME. Performance of abortion by medical practitioner at more than 23 weeks

(1) Subject to subsection (5), a medical practitioner (the *primary practitioner*) is authorised to perform an

abortion on a person who is more than 23 weeks pregnant if —

- (a) the primary practitioner, after having regard to the matters referred to in subsection (2), reasonably believes that performing the abortion is appropriate in all the circumstances; and
 - (b) the primary practitioner has consulted with at least 1 other medical practitioner who, after having regard to the matters referred to in subsection (2), also reasonably believes that performing the abortion is appropriate in all the circumstances.
- (2) In considering whether performing an abortion on a person is appropriate in all the circumstances, a medical practitioner must have regard to —
- (a) all relevant medical circumstances; and
 - (b) the person’s current and future physical, psychological and social circumstances; and
 - (c) the professional standards and guidelines commonly accepted by members of the medical profession that apply to the medical practitioner in relation to the performance of the abortion.
- (3) Subsection (2) does not limit the matters to which a medical practitioner may have regard in considering whether performing an abortion on a person is appropriate in all the circumstances.
- (4) For the purposes of subsection (1)(b) —
- (a) the principal place of practice (as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5) of a medical practitioner with whom the primary practitioner consults need not be in Western Australia; and

- (b) if a medical practitioner with whom the primary practitioner consults does not believe that performing the abortion is appropriate in all the circumstances, this does not prevent the primary practitioner from consulting with another medical practitioner.
- (5) In an emergency, a medical practitioner is authorised to perform an abortion on a person who is more than 23 weeks pregnant without complying with subsection (1) if the medical practitioner considers it necessary to perform the abortion to save the person's life or save another foetus.

202MF. Performance of medical abortion by certain registered health practitioners on direction of medical practitioner or prescribing practitioner

- (1) In this section —
directing practitioner means —
 - (a) in relation to the performance of an abortion on a person who is not more than 23 weeks pregnant — a medical practitioner or prescribing practitioner; and
 - (b) in relation to the performance of an abortion on a person who is more than 23 weeks pregnant — a medical practitioner.
- (2) A pharmacist is authorised to perform an abortion on a person by supplying an abortion drug to the person if the pharmacist, in accordance with the *Medicines and Poisons Act 2014* —
 - (a) dispenses the abortion drug to the person under a prescription issued by a directing practitioner;
or

- (b) otherwise supplies the abortion drug to the person on the direction of a directing practitioner.
- (3) A registered health practitioner in a relevant health profession (other than pharmacy) is authorised to perform an abortion on a person by supplying or administering an abortion drug to the person if the registered health practitioner, in accordance with the *Medicines and Poisons Act 2014*, supplies or administers the abortion drug to the person on the direction of a directing practitioner.

202MG. Assistance by certain registered health practitioners or students in performance of abortion by medical practitioner or prescribing practitioner

- (1) A registered health practitioner in a relevant health profession, acting in the course of the practice of that profession, is authorised to assist in the performance of an abortion on a person by —
 - (a) a medical practitioner as authorised under section 202MC or 202ME(1); or
 - (b) a prescribing practitioner as authorised under section 202MD(2).
- (2) Subsection (1) does not apply in relation to the performance of an abortion that the registered health practitioner knows is being performed by —
 - (a) a medical practitioner other than as authorised under section 202MC or 202ME(1); or
 - (b) a prescribing practitioner other than as authorised under section 202MD(2).

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- (3) A student in a relevant health profession is authorised to assist in the performance of an abortion on a person by —
 - (a) a medical practitioner as authorised under section 202MC or 202ME(1); or
 - (b) a prescribing practitioner as authorised under section 202MD(2).
- (4) An act done by a student under subsection (3) must be done —
 - (a) in the course of the student’s program of study for, or clinical training in, the relevant health profession; and
 - (b) under the supervision of —
 - (i) the medical practitioner or prescribing practitioner; or
 - (ii) a registered health practitioner in the relevant health profession who is assisting in the performance of the abortion under subsection (1); or
 - (iii) the student’s primary clinical supervisor.
- (5) Subsection (3) does not apply in relation to the performance of an abortion that the student knows is being performed by —
 - (a) a medical practitioner other than as authorised under section 202MC or 202ME(1); or
 - (b) a prescribing practitioner other than as authorised under section 202MD(2).

202MH. Registered health practitioner with conscientious objection to abortion

- (1) A registered health practitioner who has a conscientious objection to abortion has the right to refuse to do any of the following —
 - (a) perform an abortion on a person;
 - (b) assist in the performance of an abortion on a person;
 - (c) make a decision under section 202ME(1)(a) or (b) whether performing an abortion on a person is appropriate in all the circumstances;
 - (d) advise a person about the performance of an abortion on the person or another person.
- (2) If a registered health practitioner who has a conscientious objection to abortion is requested by a person (the *requesting person*) to do a thing referred to in subsection (1), the registered health practitioner must disclose the practitioner's conscientious objection to the requesting person immediately after the requesting person makes the request.
- (3) Subsection (1) does not limit the circumstances in which a registered health practitioner may refuse to do any of the things referred to in that subsection.
- (4) This section does not limit or otherwise affect any duty of a registered health practitioner to do a thing referred to in subsection (1) in an emergency.

202MI. Obligations of medical practitioners and prescribing practitioners who refuse to participate in abortion

- (1) This section applies if —
 - (a) a person (the *patient*) —
 - (i) requests a medical practitioner or prescribing practitioner to perform an abortion on the patient; or
 - (ii) makes a request to a medical practitioner that would require the medical practitioner to make a decision under section 202ME(1)(a) whether performing an abortion on the patient is appropriate in all the circumstances; or
 - (iii) requests a medical practitioner or prescribing practitioner to advise the patient about the performance of an abortion on the patient;and
 - (b) the medical practitioner or prescribing practitioner (the *refusing practitioner*) refuses the request, whether for the reason that the refusing practitioner has a conscientious objection to abortion or for some other reason.
- (2) The refusing practitioner must —
 - (a) without delay transfer the patient's care —
 - (i) to another registered health practitioner who, in the refusing practitioner's reasonable belief, can provide the requested service; or

- (ii) to a health facility at which, in the refusing practitioner's reasonable belief, the requested service can be provided by another registered health practitioner;
 - or
 - (b) immediately give the patient information, approved by the Chief Health Officer for the purposes of this paragraph, about how to locate or contact a registered health practitioner of the kind referred to in paragraph (a)(i) or a facility of the kind referred to in paragraph (a)(ii).
- (3) Information approved by the Chief Health Officer for the purposes of subsection (2)(b) —
- (a) must be kept up-to-date, and reviewed at least once each year, by the Chief Health Officer; and
 - (b) must not contain details of —
 - (i) a registered health practitioner unless, in the Chief Health Officer's reasonable belief, the registered health practitioner is of the kind referred to in subsection (2)(a)(i); or
 - (ii) a health facility unless, in the Chief Health Officer's reasonable belief, the facility is of the kind referred to in subsection (2)(a)(ii).
- (4) This section does not limit or otherwise affect any duty of the refusing practitioner to do a thing referred to in subsection (1)(a) in an emergency.

202MJ. Student with conscientious objection to abortion

- (1) In this section —
supervising person, in relation to a student in a relevant health profession, means —
 - (a) a medical practitioner performing an abortion as authorised under section 202MC or 202ME(1); or
 - (b) a prescribing practitioner performing an abortion as authorised under section 202MD(2); or
 - (c) a registered health practitioner in the relevant health profession who is assisting in the performance of an abortion as authorised under 202MG(1); or
 - (d) the student’s primary clinical supervisor.
- (2) A student in a relevant health profession who has a conscientious objection to abortion has the right to refuse to assist in the performance of an abortion on a person.
- (3) If a student in a relevant health profession who has a conscientious objection to abortion is requested by a supervising person to assist in the performance of an abortion on a person, the student must disclose the student’s conscientious objection to the supervising person immediately after the supervising person makes the request.

202MK. Compliance with Division relevant to professional conduct or performance

- (1) In considering a matter under a written law about a registered health practitioner’s professional conduct or

performance, regard may be had to whether the practitioner —

- (a) performs an abortion on a person other than as authorised under section 202MC, 202MD(2), 202ME(1) or 202MF(2) or (3); or
 - (b) assists in the performance of an abortion on a person other than as authorised under section 202MG(1); or
 - (c) contravenes section 202MH(2) or 202MI(2).
- (2) The matters to which subsection (1) applies include —
- (a) a notification under the *Health Practitioner Regulation National Law (Western Australia)*; or
 - (b) a complaint under the *Health and Disability Services (Complaints) Act 1995*.

202ML. *The Criminal Code* s. 177 does not apply

The Criminal Code section 177 does not apply to a restriction or obligation under this Division.

202MM. Consent to performance of abortion on children who are not mature minors

- (1) In this section —
- guardian***, in relation to a person who is under 18 years of age, means a person who at law has parental responsibility, as defined in the *Family Court Act 1997* section 68, for the person.
- (2) This section applies if —
- (a) a registered health practitioner proposes to perform an abortion under this Division on a person (the ***patient***) who is under 18 years of age; and

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- (b) the registered health practitioner considers —
 - (i) that the patient does not have the capacity to consent, on their own behalf, to the abortion being performed on them because the patient has not achieved a sufficient understanding and intelligence to enable them to understand fully what is proposed; or
 - (ii) that it is not possible to ascertain whether the patient has the capacity to consent, on their own behalf, to the abortion being performed on them;and
 - (c) the patient agrees to a parent or guardian of the patient participating in the decision-making as to whether the abortion is performed on the patient by the registered health practitioner.
- (3) If this section applies —
- (a) the parent or guardian referred to in subsection (2)(c) may consent or refuse consent to the performance of the abortion on the patient by the registered health practitioner; and
 - (b) to the extent that the common law would require the performance of the abortion on the patient by the registered health practitioner to be authorised by a court, that requirement does not apply.
- (4) This section does not affect the inherent jurisdiction of the Supreme Court or the jurisdiction of the Family Court of Western Australia.

Division 3 — Performance of abortion by unqualified persons

202MN. Unqualified person must not perform abortion

- (1) An unqualified person who performs an abortion on another person commits a crime.
Penalty for this subsection: imprisonment for 7 years.
- (2) Subsections (3) to (8) set out who is an *unqualified person* for the purposes of subsection (1).
- (3) In relation to the performance of an abortion on a person who is not more than 23 weeks pregnant by prescribing an abortion drug for the person, an *unqualified person* is a person who is not —
 - (a) a medical practitioner; or
 - (b) a prescribing practitioner.
- (4) In relation to the performance of an abortion on a person who is not more than 23 weeks pregnant by supplying an abortion drug to the person, an *unqualified person* is a person who is not —
 - (a) a medical practitioner; or
 - (b) a prescribing practitioner; or
 - (c) a pharmacist supplying the abortion drug as referred to in section 202MF(2); or
 - (d) a registered health practitioner in a relevant health profession (other than pharmacy) supplying the abortion drug as referred to in section 202MF(3).
- (5) In relation to the performance of an abortion on a person who is more than 23 weeks pregnant by supplying an abortion drug to the person, an *unqualified person* is a person who is not —

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- (a) a medical practitioner; or
 - (b) a pharmacist supplying the abortion drug as referred to in section 202MF(2); or
 - (c) a registered health practitioner in a relevant health profession (other than pharmacy) supplying the abortion drug as referred to in section 202MF(3).
- (6) In relation to the performance of an abortion on a person who is not more than 23 weeks pregnant by administering an abortion drug to the person, an **unqualified person** is a person who is not —
- (a) a medical practitioner; or
 - (b) a prescribing practitioner; or
 - (c) a registered health practitioner in a relevant health profession (other than pharmacy) administering the abortion drug as referred to in section 202MF(3).
- (7) In relation to the performance of an abortion on a person who is more than 23 weeks pregnant by administering an abortion drug to the person, an **unqualified person** is a person who is not —
- (a) a medical practitioner; or
 - (b) a registered health practitioner in a relevant health profession (other than pharmacy) administering the abortion drug as referred to in section 202MF(3).
- (8) In relation to the performance of an abortion not referred to in subsections (3) to (7), an **unqualified person** is a person who is not a medical practitioner.

Division 4 — Protection from criminal liability

202MO. Person does not commit offence of abortion on themselves

Despite any other enactment, a person who performs an abortion on themselves, or consents to or does any act to assist in the performance of an abortion on themselves, does not commit an offence.

Division 5 — Information about abortion

202MP. Chief Health Officer may direct certain persons to give information about abortion

- (1) The Chief Health Officer may, for a purpose referred to in section 202MQ, direct a relevant person to give to the Chief Health Officer such demographic or clinical information about abortions performed under Division 2 as is specified in the direction.
- (2) A direction under subsection (1) may —
 - (a) specify the information by reference to a class of information; and
 - (b) specify the manner and form in which the information must be given to the Chief Health Officer.
- (3) The information specified in a direction under subsection (1) —
 - (a) can only be statistical or summary information; and
 - (b) cannot include any particulars from which it may be possible to ascertain —
 - (i) the identity of a person on whom an abortion has been performed; or

- (ii) the identity of a person who has performed, or has assisted in the performance of, an abortion on a person.
- (4) Without limiting subsection (3), the information specified in a direction under subsection (1) cannot include any of the following —
 - (a) the postcode, suburb or address (street or postal) of a person referred to in subsection (3)(b);
 - (b) the postcode, suburb or address (street or postal) of the particular hospital or other health facility at which an abortion has been performed;
 - (c) the age of a person on whom an abortion has been performed, other than as an age category including a range of not less than 5 years (for example, under 15 years of age, 15 to 19 years of age, and so on);
 - (d) the particular race or nationality of a person on whom an abortion has been performed;
 - (e) the gestational age of the foetus at the date on which an abortion was performed on a person, other than as an age range (for example, 9 weeks or less, 10 to 13 weeks, and so on);
 - (f) the particular reason for an abortion having been performed on a person, including any particular clinical reason (for example, the diagnosis of a particular abnormality or condition in the foetus or in the person on whom the abortion was performed);
 - (g) the particular clinical method (for example, the particular abortion drug prescribed or the particular surgical procedure carried out) used to perform an abortion on a person;

- (h) the particular clinical details or outcomes associated with the admission to a hospital of a person on whom an abortion has been performed.
- (5) A direction under subsection (1) may be given to 1 or more named relevant persons, 1 or more classes of relevant persons, or to all relevant persons.
- (6) A relevant person who is given a direction under subsection (1) must comply with the direction.
- (7) Information given to the Chief Health Officer by a relevant person under subsection (6) must meet the requirements set out in subsections (3) and (4).
- (8) *The Criminal Code* sections 177 and 178 do not apply to the obligations of a relevant person under subsections (6) and (7).

202MQ. Purposes for which Chief Health Officer may record, use or disclose information given under s. 202MP

The Chief Health Officer may record, use or disclose information given to the Chief Health Officer under section 202MP(6) for the following purposes —

- (a) enabling the provision, monitoring, planning and evaluation of health services relating to abortion;
- (b) compiling and publishing statistical or summary information relating to abortion;
- (c) enabling research, education and training in respect of abortion, including the use of abortion drugs and health services relating to abortion;

- (d) the performance by the Chief Health Officer of functions under this Act;
- (e) the administration or enforcement of this Act.

202MR. Protection from liability

- (1) This section applies if —
 - (a) a relevant person acting in good faith gives information to the Chief Health Officer under section 202MP(6); or
 - (b) the Chief Health Officer acting in good faith records, uses or discloses information, given to the Chief Health Officer under section 202MP(6), in accordance with section 202MQ.
- (2) If this section applies —
 - (a) no civil or criminal liability is incurred in respect of giving, recording, using or disclosing the information; and
 - (b) giving, recording, using or disclosing the information is not to be regarded as —
 - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
 - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
 - (iii) unprofessional conduct.

9. Part 12C Division 6 heading inserted

Before section 202N insert:

**Division 6 — Safe access to premises at which abortions
are provided**

10. Section 202N amended

In section 202N delete “Part” and insert:

Division

11. Section 202O amended

In section 202O delete “Part — ” and insert:

Division —

12. Section 280 amended

(1) In section 280 delete “Proceedings for an offence under this Act” and insert:

(1) Proceedings for an offence under this Act (other than an offence under section 202MN(1))

(2) At the end of section 280 insert:

(2) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

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- (3) Proceedings for an offence under section 202MN(1) may only be commenced by a person referred to in the *Criminal Procedure Act 2004* section 20(3)(a)(ii) or (iii) or (b).

13. Section 297 amended

After section 297(5) insert:

- (6) This section is in addition to and does not affect the operation of section 141(2), 188(5), 202MR(1)(b) or (2), 298(3) or 299(6).

14. Section 299 amended

- (1) In section 299(3) and (5) delete “A” and insert:

Subject to subsection (5A), a

- (2) After section 299(5) insert:

- (5A) Information about abortion can only be disclosed under subsection (3), or requested under subsection (5), if the information —
 - (a) meets the requirements set out in section 202MP(3) and (4); and
 - (b) is disclosed or requested for a purpose referred to in section 202MQ.
- (5B) Subsection (5A) does not prevent the disclosure under subsection (3) of information about a suspected offence under section 202MN(1) to a person referred to in section 280(3).

15. Section 306C inserted

After section 306B insert:

306C. Review of amendments made by *Abortion Legislation Reform Act 2023*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Abortion Legislation Reform Act 2023*, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which the *Abortion Legislation Reform Act 2023* section 15 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

16. Part 21 inserted

After section 322 insert:

Part 21 — Transitional provisions for *Abortion Legislation Reform Act 2023*

323. Term used: commencement day

In this Part —

commencement day means the day on which the *Abortion Legislation Reform Act 2023* section 16 comes into operation.

324. Decisions made under *Health (Miscellaneous Provisions) Act 1911* s. 334(7)(a) before commencement day

- (1) This section applies if —
 - (a) before commencement day under the *Health (Miscellaneous Provisions) Act 1911* section 334(7)(a) 2 medical practitioners agree that the performance of an abortion on a person is justified; and
 - (b) immediately before commencement day the abortion has not yet been performed on the person.
- (2) On and after commencement day, to the extent that section 202ME(1) applies to the performance of the abortion —
 - (a) the requirements referred to in section 202ME(1)(a) and (b) are taken to have been complied with; and
 - (b) a medical practitioner is authorised under that section to perform the abortion.

325. Applications made under *Health (Miscellaneous Provisions) Act 1911* s. 334(9) before commencement day

If, immediately before commencement day, an application made to the Children’s Court under the *Health (Miscellaneous Provisions) Act 1911* section 334(9) has not been determined by the Children’s Court, the application is taken to have been discontinued on commencement day.

Part 4 — Other Acts amended

Division 1 — *Children's Court of Western Australia Act 1988* amended

17. Act amended

This Division amends the *Children's Court of Western Australia Act 1988*.

18. Section 20 amended

In section 20(1):

- (a) in paragraph (b) delete “1999; and” and insert:

1999.

- (b) delete paragraph (d).

Division 2 — *Coroners Act 1996* amended

19. Act amended

This Division amends the *Coroners Act 1996*.

20. Section 3B inserted

After section 3A insert:

**3B. Certain deaths following performance of abortion
not reportable deaths**

- (1) Despite the definition of *reportable death* in section 3, a Western Australian death of a child is not a reportable death for the purposes of this Act if the death occurs in the following circumstances —

- (a) an abortion is performed on a person;

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Division 3 Evidence Act 1906 amended

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- (b) the child is born alive and subsequently dies following the performance of the abortion;
 - (c) at the time the abortion is performed, the performance of the abortion does not constitute an offence under a written law.
- (2) Subsection (1) applies whether the death occurs before, on or after the day on which the *Abortion Legislation Reform Act 2023* section 20 comes into operation.

Division 3 — Evidence Act 1906 amended

21. Act amended

This Division amends the *Evidence Act 1906*.

22. The Second Schedule amended

- (1) In The Second Schedule Part 1 delete the item relating to s. 199.
- (2) At the end of The Second Schedule insert:

Part 6 — Offence under the *Public Health Act 2016*

Provision	Description of offence
s. 202MN(1)	Performance of abortion by unqualified person

Division 4 — *Freedom of Information Act 1992* amended

23. Act amended

This Division amends the *Freedom of Information Act 1992*.

24. Schedule 1 clause 13A inserted

After Schedule 1 clause 13 insert:

13A. Abortion information

- (1) Matter is exempt matter if its disclosure would reveal or tend to reveal the identity of anyone as —
 - (a) a person on whom an abortion mentioned in the *Public Health Act 2016* Part 12C Division 2 has been performed; or
 - (b) a person who has performed, or has assisted in the performance of, an abortion mentioned in the *Public Health Act 2016* Part 12C Division 2.
- (2) Without limiting subclause (1), matter is exempt matter under that subclause if it contains an identification number, or other identifying particular, by reference to which a person referred to in subclause (1)(a) or (b) can be identified.
- (3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal or tend to reveal —
 - (a) the applicant as a person on whom an abortion mentioned in the *Public Health Act 2016* Part 12C Division 2 has been performed; or
 - (b) the identity of a person who has performed on the applicant, or has assisted in the performance of on the applicant, an abortion mentioned in the *Public Health Act 2016* Part 12C Division 2; or

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Division 5 Guardianship and Administration Act 1990 amended

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- (c) the applicant as a person who has performed, or has assisted in the performance of, an abortion mentioned in the *Public Health Act 2016* Part 12C Division 2.
- (4) This clause applies whether the abortion was performed before, on or after the day on which the *Abortion Legislation Reform Act 2023* section 24 comes into operation.

**Division 5 — *Guardianship and Administration Act 1990*
amended**

25. Act amended

This Division amends the *Guardianship and Administration Act 1990*.

26. Section 3 amended

After section 3(1) insert:

- (1A) In this Act, a reference to the performance of an abortion on a person —
 - (a) is a reference to the provision of treatment to the person, including treatment referred to in the *Public Health Act 2016* section 202MB(2), with the intention of causing the termination of the pregnancy of the person; and
 - (b) does not include a reference to the provision of treatment to the person without that intention even if the treatment results or may result in the termination of the pregnancy of the person.

27. Section 13 amended

After section 13(e) insert:

- (ea) jurisdiction to consent or refuse consent to the performance of abortion on persons who are unable to make reasonable judgments in respect of whether abortions should be performed on them; and

28. Part 3 Division 3 Subdivision 1 heading inserted

At the beginning of Part 3 Division 3 insert:

Subdivision 1 — Preliminary

29. Section 18A inserted

After section 18 insert:

18A. Application of Division

- (1) Subdivision 2 provides for appeals, by leave as provided in that Subdivision, from determinations of the State Administrative Tribunal generally.
- (2) Subdivision 3 provides for appeals from decisions of the State Administrative Tribunal under section 110ZND to consent or refuse consent to the performance of an abortion on a person.
- (3) There is no appeal from a determination of the State Administrative Tribunal other than as provided under this Division.

30. Part 3 Division 3 Subdivision 2 heading inserted

Before section 19 insert:

**Subdivision 2 — Appeals by leave from determinations of
State Administrative Tribunal generally**

31. Section 19 amended

In section 19:

- (a) delete “Division,” and insert:

Subdivision,

- (b) in paragraph (b) delete “President,” and insert:

President.

- (c) delete the passage that begins with “but otherwise” and continues to the end of the section.

32. Part 3 Division 3 Subdivision 3 inserted

After section 25 insert:

**Subdivision 3 — Appeals from decisions relating to consent
to performance of abortion**

**25A. Appeal from Tribunal’s decision relating to consent
to performance of abortion**

- (1) A party to a proceeding for a decision of the State Administrative Tribunal under section 110ZND to consent or refuse consent to the performance of an abortion on a person may appeal from the decision.

- (2) The appeal lies to the Court of Appeal.
- (3) The appeal must be instituted —
 - (a) in accordance with the rules of the Supreme Court; and
 - (b) within the period of 2 days after the day on which the State Administrative Tribunal gives its reasons for the final decision under section 110ZND, unless the Court extends the period for making an application on the ground that there is good reason to allow it to be made outside that time.

Note for this subsection:

For the purposes of paragraph (b) — see the *State Administrative Tribunal Act 2004* section 77 for the requirement for the State Administrative Tribunal to give its reasons for a final decision.

- (4) The party instituting the appeal must notify the executive officer about the institution of the appeal, but the Tribunal is not a party to the appeal and nor is any member of the Tribunal.

25B. Grounds

An appeal from a decision of the State Administrative Tribunal under section 110ZND may only be made on a ground or grounds coming within the following —

- (a) that the State Administrative Tribunal —
 - (i) made an error of law or fact, or of both law and fact; or
 - (ii) acted without or in excess of jurisdiction; or
 - (iii) did both of the things referred to in subparagraph (i) and (ii);

or

- (b) that there is some other reason that is sufficient to justify a review of the decision.

25C. Status of State Administrative Tribunal’s decision pending disposal of appeal

Where an appeal from a decision of the State Administrative Tribunal under section 110ZND is instituted under section 25A, the operation of the decision is stayed pending the disposal of the appeal.

33. Part 3 Division 3 Subdivision 4 heading inserted

Before section 26 insert:

Subdivision 4 — General provisions about appeals

34. Section 26 amended

- (1) In section 26 delete “Except where section 25 applies, the appellant shall” and insert:
- (1) The appellant must
- (2) At the end of section 26 insert:
- (2) The appeal may be determined if, in the opinion of the Court, sufficient notice of the appeal is given to each person who ought to be notified of the appeal.
- (3) This section does not apply if section 25 applies.

35. Section 28 amended

At the end of section 28 insert:

Note for this section:

See section 25C in relation to the status of a decision of the State Administrative Tribunal under section 110ZND pending disposal of an appeal from the decision.

36. Section 30 amended

Before section 30(1) insert:

(1A) In this section —

determination includes a decision under section 110ZND to consent or refuse consent to the performance of an abortion on a person;

37. Section 31 amended

In section 31 delete “section 21,” and insert:

section 21 or 25B,

38. Section 34 amended

(1) In section 34(3) delete “he” and insert:

the appellant

(2) After section 34(3) insert:

(4) This section does not limit the power of the Court to determine an appeal under section 26(2).

39. Section 35 amended

(1) In section 35(1) delete “he” and insert:

the appellant

(2) After section 35(1) insert:

(1A) Subsection (1) does not apply to an appeal from a decision under section 110ZND to consent or refuse consent to the performance of an abortion on a person.

40. Section 45 amended

(1) In section 45(1) delete “he or they” and insert:

the person or persons

(2) In section 45(2):

(a) in paragraph (c) delete “he” and insert:

the represented person

- (b) in paragraph (d) delete “subsection (4A),” and insert:
subsections (3A) and (4A),

- (3) After section 45(3) insert:

- (3A) A plenary guardian cannot make a decision in respect of the performance of an abortion on the represented person, including for the purposes of a treatment decision or medical research.

41. Section 110G amended

In section 110G(1) after “45(3),” insert:

(3A),

42. Section 110U replaced

Delete section 110U and insert:

110U. Priority of treatment decision in advance health directive

The priority to be given to a treatment decision in an advance health directive is determined —

- (a) in the case of a treatment decision in respect of treatment other than the performance of an abortion on the maker of the directive — in accordance with section 110ZJ; or

- (b) in the case of a treatment decision in respect of the performance of an abortion on the maker of the directive — in accordance with section 110ZLA.

43. Section 110ZD amended

After section 110ZD(6) insert:

- (6A) The person responsible for the patient cannot make a treatment decision in respect of the performance of an abortion on the patient.

44. Section 110ZH amended

In section 110ZH delete the definition of *urgent treatment* and insert:

urgent treatment —

- (a) means treatment (other than the performance of an abortion) urgently needed by a patient —
 - (i) to save the patient’s life; or
 - (ii) to prevent serious damage to the patient’s health; or
 - (iii) to prevent the patient from suffering or continuing to suffer significant pain or distress;
- and
- (b) includes the performance of an abortion on a patient if performing the abortion is urgently needed —
 - (i) to save the patient’s life; or

- (ii) to prevent serious damage to the patient's health; or
 - (iii) to save another foetus,
- but
- (c) does not include —
 - (i) psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4; or
 - (ii) the sterilisation of the patient.

45. Part 9D Division 2 Subdivision 1 heading inserted

At the beginning of Part 9D Division 2 insert:

Subdivision 1 — Urgent treatment

46. Section 110ZI amended

(1) Delete section 110ZI(1)(d) and insert:

- (d) it is not practicable for the health professional to obtain —
 - (i) in any case other than the performance of an abortion on the patient — a treatment decision in respect of the treatment from the patient's guardian or enduring guardian or the person responsible for the patient under section 110ZD, as referred to in section 110ZJ; or

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- (ii) in the case of the performance of an abortion on the patient — a decision of the State Administrative Tribunal under Division 3 Subdivision 2 in respect of the performance of the abortion, as referred to in section 110ZLA(3).

(2) Delete section 110ZI(2) and insert:

- (2) The health professional may provide the treatment to the patient —
 - (a) in the case referred to in subsection (1)(d)(i) — in the absence of a treatment decision in relation to the patient from the patient’s guardian or enduring guardian or the person responsible for the patient; or
 - (b) in the case referred to in subsection (1)(d)(ii) — in the absence of a decision of the State Administrative Tribunal under Division 3 Subdivision 2.

47. Part 9D Division 2 Subdivision 2 heading inserted

After section 110ZIA insert:

Subdivision 2 — Other treatment

48. Section 110ZIB inserted

Before section 110ZJ insert:

110ZIB. Application of Subdivision

This Subdivision does not apply to the performance of an abortion on a patient.

49. Section 110ZJ amended

In section 110ZJ(1) delete “sections 110ZI and 110ZIA,” and insert:

Subdivision 1 and section 110ZIB,

50. Part 9D Division 2 Subdivision 3 inserted

At the end of Part 9D Division 2 insert:

Subdivision 3 — Performance of abortion

110ZLA. Treatment decisions in relation to performance of abortion

- (1) Subject to Subdivision 1, this section applies if it is proposed to perform an abortion on a person who —
 - (a) has reached 18 years of age; and
 - (b) is unable to make reasonable judgments in respect of whether or not the abortion should be performed on them.

- (2) If the person has made an advance health directive containing a treatment decision in respect of the performance of the abortion on the person, whether or not the abortion is performed on the person must be decided in accordance with the treatment decision.
- (3) If subsection (2) does not apply, whether or not the abortion is performed on the person must be decided by the State Administrative Tribunal under Division 3 Subdivision 2.

110ZLB. Performance of abortion without advance health directive or State Administrative Tribunal consent an offence

Except where section 110ZLA(2) has effect, a health professional must not perform an abortion on a person referred to in section 110ZLA(1) unless —

- (a) the State Administrative Tribunal has, under section 110ZND, consented to the performance of the abortion on the person; and
- (b) no appeal from the decision to consent is instituted within the period provided under section 25A(3)(b) or, if an appeal is instituted, the appeal is finally disposed of, or is discontinued or dismissed (and is not reinstated or capable of reinstatement); and
- (c) the abortion is performed in accordance with any condition imposed by the State Administrative Tribunal under section 110ZND.

Penalty for this section: imprisonment for 2 years and a fine of \$4 000.

110ZLC. Effect of State Administrative Tribunal consent

A decision of the State Administrative Tribunal under Division 3 Subdivision 2 in relation to the performance of an abortion on a person referred to in section 110ZLA(1) has effect as if —

- (a) it were a treatment decision made by the person in respect of the performance of the abortion on the person; and
- (b) the person were of full legal capacity.

110ZLD. Reliance by health professional on treatment decisions in respect of performance of abortion

- (1) In this section —

abortion treatment decision, in relation to a person referred to in section 110ZLA(1)(a), means —

- (a) a treatment decision in respect of the performance of an abortion on the person, contained in an advance health directive made by the person; or
- (b) a decision of the State Administrative Tribunal under Division 3 Subdivision 2 in respect of the person;

take abortion action means to perform, or not to perform, an abortion on a person referred to in section 110ZLA(1)(a).

- (2) Subsection (3) applies if a health professional —

- (a) takes abortion action —
 - (i) reasonably believing that the person is unable to make reasonable judgments in respect of the abortion action; and

- (ii) relying in good faith on what is purportedly an abortion treatment decision in respect of the person;
- or
- (b) takes abortion action —
 - (i) in circumstances where it is reasonable for the health professional to rely on some other health professional having ascertained whether the taking of the abortion action is in accordance with an abortion treatment decision in respect of the person; and
 - (ii) reasonably assuming that some other health professional has ascertained that the taking of the abortion action is in accordance with an abortion treatment decision in respect of the person.
- (3) The health professional is taken for all purposes to take the abortion action in accordance with a treatment decision that has effect as if —
 - (a) it had been made by the person; and
 - (b) the person were of full legal capacity.
- (4) Without limiting subsection (3), a health professional who takes abortion action as referred to in subsection (2) does not commit an offence under section 110ZLB.
- (5) For subsection (2)(a)(ii), a health professional is taken to have relied in good faith on what was purportedly an abortion treatment decision if, after considering whether or not to rely on it, the health professional acted honestly in relying on it.
- (6) For the purpose of determining under subsection (2)(b)(ii) whether the health professional's

assumption was reasonable, the following matters must be taken into account —

- (a) whether the health professional sighted any written evidence that some other health professional had ascertained that the taking of the abortion action was in accordance with the abortion treatment decision;
- (b) anything else relevant to the determination.

51. Part 9D Division 3 Subdivision 1 heading inserted

At the beginning of Part 9D Division 3 insert:

Subdivision 1 — Declarations for purposes of s. 110ZJ

52. Section 110ZM amended

In section 110ZM delete “Division.” and insert:

Subdivision.

53. Part 9D Division 3 Subdivision 2 inserted

At the end of Part 9D Division 3 insert:

Subdivision 2 — Decisions for purposes of s. 110ZLA

110ZNA. Only Full Tribunal to act under this Subdivision

The functions of the State Administrative Tribunal under this Subdivision may only be performed by a Full Tribunal.

110ZNB. Who may apply for decision under this Subdivision

- (1) The following persons may apply to the State Administrative Tribunal for a decision under this Subdivision for the purposes of section 110ZLA(3) —
 - (a) the person on whom the abortion is proposed to be performed;
 - (b) if the person has an enduring guardian or a guardian, that guardian;
 - (c) a relative of the person as referred to in subsection (2);
 - (d) the Public Advocate;
 - (e) a person who, in the opinion of the Tribunal, has a proper interest in the matter.
- (2) For the purposes of subsection (1)(c), a relative of the person is any of the following relatives of the person who have reached 18 years of age —
 - (a) a spouse or de facto partner;
 - (b) a child;
 - (c) a parent;
 - (d) a sibling.

110ZNC. Notice of hearing

- (1) If an application is made under section 110ZNB(1), the State Administrative Tribunal must give the following persons reasonable notice in writing of the hearing of the application —
 - (a) the applicant;
 - (b) the person on whom the abortion is proposed to be performed;
 - (c) the nearest relative, as referred to in subsection (2) (if any), of the person;

- (d) if the person has an enduring guardian or guardian, that guardian;
 - (e) the Public Advocate;
 - (f) any other person who in the opinion of the State Administrative Tribunal has a proper interest in the proceedings.
- (2) For the purposes of subsection (1)(c), the nearest relative of the person is the first in order of priority of the following relatives of the person who have reached 18 years of age —
- (a) a spouse or de facto partner;
 - (b) a child;
 - (c) a parent;
 - (d) a sibling.
- (3) A notice under subsection (1) must include —
- (a) particulars of the application and the time and place of the hearing; and
 - (b) in the case of the notice given to the applicant or the person on whom the abortion is proposed to be performed, a summary of —
 - (i) the provisions of section 16 and Schedule 1 clause 13, and the *State Administrative Tribunal Act 2004* sections 39, 87 and 88, as they affect that person; and
 - (ii) the functions of the State Administrative Tribunal under this Subdivision.
- (4) The State Administrative Tribunal is not required to give notice to a person referred to in subsection (1) if, after reasonable enquiry, the whereabouts of the person cannot be ascertained.

- (5) If, by reason of circumstances of urgency, the State Administrative Tribunal considers it necessary to do so, the Tribunal may hear an application made under section 110ZNB(1) without giving notice to the persons referred to in subsection (1)(c), (d) and (f).

110ZND. State Administrative Tribunal consent to performance of abortion

- (1) On hearing an application under section 110ZNB(1), the State Administrative Tribunal may, by order in writing, consent to performance of the abortion on the person if the Tribunal is satisfied that —
- (a) the person has reached 18 years of age; and
 - (b) the person is unable to make reasonable judgments in respect of whether or not the abortion should be performed on them; and
 - (c) the person has not made an advance health directive containing a treatment decision that is inconsistent with the performance of the abortion on the person; and
 - (d) the performance of the abortion on the person is in the best interests of the person.
- (2) Without limiting subsection (1)(d), in deciding whether the performance of the abortion on the person is in the best interests of the person, the Tribunal must take into account —
- (a) whether the person is likely within the foreseeable future to regain the ability to make reasonable judgments in respect of whether or not the abortion should be performed on them; and
 - (b) any wishes of the person so far as they can be ascertained.

- (3) The consent of the State Administrative Tribunal under this section may be given subject to compliance with any condition that the Tribunal considers appropriate.

54. Section 110ZT amended

- (1) In section 110ZT(2):
- (a) in paragraph (b) delete “candidate.” and insert:

candidate; or
 - (b) after paragraph (b) insert:

(c) the performance of an abortion on the candidate.
- (2) After section 110ZT(3) insert:
- (4) A person must not, for the purposes of medical research, perform or assist in the performance of an abortion on a research candidate.
Penalty for this subsection: imprisonment for 2 years or a fine of \$10 000.

**Division 6 — *Health (Miscellaneous Provisions) Act 1911*
amended**

55. Act amended

This Division amends the *Health (Miscellaneous Provisions) Act 1911*.

56. Section 331 amended

- (1) In section 331 insert in alphabetical order:

birth has the meaning given in the *Births, Deaths and Marriages Registration Act 1998* section 4;

neonatal death has the meaning given in the *Births, Deaths and Marriages Registration Act 1998* section 4;

perform an abortion has the meaning given in the *Public Health Act 2016* section 202MB;

still-birth has the meaning given in the *Births, Deaths and Marriages Registration Act 1998* section 4.

- (2) In section 331 in the definition of *school dental therapist* delete “profession.” and insert:

profession;

57. Section 332 inserted

After section 331 insert:

332. Application of Part to abortion

- (1) Regulations made under section 333 cannot make provision in relation to —

- (a) the performance of abortions; or
 - (b) any matter related to or connected with the performance of abortions (including births, still-births or neonatal deaths that result from the performance of abortions).
- (2) Despite anything in sections 335 and 336A, no person is required under those provisions to give any report or notification to the Chief Health Officer or to any other person in relation to —
- (a) the performance of an abortion on a person; or
 - (b) any birth, still-birth or neonatal death that results from the performance of the abortion.
- (3) If a person dies as a result of the performance of an abortion on the person, or as a result of any complications arising from or following upon the performance of an abortion on the person, the death is to be treated as the result of pregnancy for the purposes of section 336 and that section applies accordingly.
- (4) This section does not affect the obligations of a person under the *Births, Deaths and Marriages Registration Act 1998*.

58. Section 334 deleted

Delete section 334.

59. Section 335 amended

- (1) In section 335(1) delete “stillbirth, or abortion.” and insert:
- stillbirth.
- (2) Delete section 335(4).

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Part 4 Other Acts amended

Division 6 Health (Miscellaneous Provisions) Act 1911 amended

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- (3) In section 335(5):
- (a) in paragraph (a) delete “birth, stillbirth or abortion (other than an abortion to which paragraph (d) applies),” and insert:

birth or stillbirth,
 - (b) delete paragraphs (d) and (e).

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