

# Abortion Legislation Reform Bill 2023

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Western Australia

LEGISLATIVE ASSEMBLY

## **Abortion Legislation Reform Bill 2023**

**A Bill for**

**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.**

The Parliament of Western Australia enacts as follows:

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**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.



1 **Part 2 — *The Criminal Code* amended**

2 **3. Act amended**

3 This Part amends *The Criminal Code*.

4 **4. Section 199 deleted**

5 Delete section 199.

1 **Part 3 — Public Health Act 2016 amended**

2 **5. Act amended**

3 This Part amends the *Public Health Act 2016*.

4 **6. Section 4 amended**

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

6

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

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

12

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

15

16 profession (other than as a student);

17

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

20

21 (other than as a student)

22

23 **7. Part 12C heading replaced**

24 Delete the heading to Part 12C and insert:

25

26 **Part 12C — Abortion**

27

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

2 At the beginning of Part 12C insert:  
3

4 **Division 1 — Preliminary**

5 **202MA. Terms used**

6 In this Part —

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

9 ***dispense*** means to supply in accordance with a  
10 prescription;

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

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

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

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

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

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

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

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

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

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- 1                   poison, in the *Medicines and Poisons Act 2014*  
2                   section 7(1);
- 3                   ***primary clinical supervisor***, in relation to a student,  
4                   means a registered health practitioner who has primary  
5                   responsibility for supervising the clinical work  
6                   performed by the student in connection with the  
7                   student's program of study for, or the student's clinical  
8                   training in, the student's health profession;
- 9                   ***private hospital service provider*** has the meaning  
10                  given in the *Private Hospitals and Health Services*  
11                  *Act 1927* section 2(1);
- 12                  ***registered health practitioner*** means a person  
13                  registered under the *Health Practitioner Regulation*  
14                  *National Law (Western Australia)* to practice a health  
15                  profession (other than as a student);
- 16                  ***relevant health profession*** means any of the following  
17                  health professions —
- 18                   (a) Aboriginal and Torres Strait Islander health  
19                   practice;
- 20                   (b) medical;
- 21                   (c) midwifery;
- 22                   (d) nursing;
- 23                   (e) pharmacy;
- 24                   (f) a health profession that is prescribed by the  
25                   regulations for the purposes of this definition;
- 26                  ***relevant person*** means —
- 27                   (a) a registered health practitioner who is  
28                   authorised under Division 2 to perform an  
29                   abortion; or
- 30                   (b) the chief executive of a health service provider  
31                   that provides health services that include, or are  
32                   related to, the performance of abortions under  
33                   Division 2; or

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

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

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

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

15 **202MB. Performance of abortion**

16 (1) A person *performs an abortion* on another person if  
17 the person does any act with the intention of causing  
18 the termination of the pregnancy of the other person.

19 (2) Without limiting subsection (1), the acts to which it  
20 applies include the following —

21 (a) prescribing an abortion drug for the other  
22 person;

23 (b) supplying an abortion drug to the other person;

24 (c) administering an abortion drug to the other  
25 person;

26 (d) carrying out a surgical or other procedure on  
27 the other person.

28 (3) However, assisting a person to do an act done with the  
29 intention of causing the termination of a pregnancy of  
30 another person is not an act to which subsection (1)  
31 applies.

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**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

- 1 abortion on a person who is more than 23 weeks  
2 pregnant if —
- 3 (a) the primary practitioner, after having regard to  
4 the matters referred to in subsection (2),  
5 reasonably believes that performing the  
6 abortion is appropriate in all the circumstances;  
7 and
- 8 (b) the primary practitioner has consulted with at  
9 least 1 other medical practitioner who, after  
10 having regard to the matters referred to in  
11 subsection (2), also reasonably believes that  
12 performing the abortion is appropriate in all the  
13 circumstances.
- 14 (2) In considering whether performing an abortion on a  
15 person is appropriate in all the circumstances, a  
16 medical practitioner must have regard to —
- 17 (a) all relevant medical circumstances; and  
18 (b) the person’s current and future physical,  
19 psychological and social circumstances; and  
20 (c) the professional standards and guidelines  
21 commonly accepted by members of the medical  
22 profession that apply to the medical practitioner  
23 in relation to the performance of the abortion.
- 24 (3) Subsection (2) does not limit the matters to which a  
25 medical practitioner may have regard in considering  
26 whether performing an abortion on a person is  
27 appropriate in all the circumstances.
- 28 (4) For the purposes of subsection (1)(b) —
- 29 (a) the principal place of practice (as defined in the  
30 *Health Practitioner Regulation National Law*  
31 *(Western Australia)* section 5) of a medical  
32 practitioner with whom the primary practitioner  
33 consults need not be in Western Australia; and

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1                   (b) if a medical practitioner with whom the primary  
2                   practitioner consults does not believe that  
3                   performing the abortion is appropriate in all the  
4                   circumstances, this does not prevent the  
5                   primary practitioner from consulting with  
6                   another medical practitioner.

7                   (5) In an emergency, a medical practitioner is authorised to  
8                   perform an abortion on a person who is more than  
9                   23 weeks pregnant without complying with  
10                  subsection (1) if the medical practitioner considers it  
11                  necessary to perform the abortion to save the person’s  
12                  life or save another foetus.

13                  **202MF. Performance of medical abortion by certain**  
14                  **registered health practitioners on direction of**  
15                  **medical practitioner or prescribing practitioner**

16                  (1) In this section —  
17                  *directing practitioner* means —

18                   (a) in relation to the performance of an abortion on  
19                   a person who is not more than 23 weeks  
20                   pregnant — a medical practitioner or  
21                   prescribing practitioner; and

22                   (b) in relation to the performance of an abortion on  
23                   a person who is more than 23 weeks  
24                   pregnant — a medical practitioner.

25                  (2) A pharmacist is authorised to perform an abortion on a  
26                  person by supplying an abortion drug to the person if  
27                  the pharmacist, in accordance with the *Medicines and*  
28                  *Poisons Act 2014* —

29                   (a) dispenses the abortion drug to the person under  
30                   a prescription issued by a directing practitioner;  
31                   or



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

12 **202MG. Assistance by certain registered health practitioners**  
13 **or students in performance of abortion by medical**  
14 **practitioner or prescribing practitioner**

- 15 (1) A registered health practitioner in a relevant health  
16 profession, acting in the course of the practice of that  
17 profession, is authorised to assist in the performance of  
18 an abortion on a person by —
- 19 (a) a medical practitioner as authorised under  
20 section 202MC or 202ME(1); or
- 21 (b) a prescribing practitioner as authorised under  
22 section 202MD(2).
- 23 (2) Subsection (1) does not apply in relation to the  
24 performance of an abortion that the registered health  
25 practitioner knows is being performed by —
- 26 (a) a medical practitioner other than as authorised  
27 under section 202MC or 202ME(1); or
- 28 (b) a prescribing practitioner other than as  
29 authorised under section 202MD(2).

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- 1 (3) A student in a relevant health profession is authorised  
2 to assist in the performance of an abortion on a person  
3 by —
- 4 (a) a medical practitioner as authorised under  
5 section 202MC or 202ME(1); or
- 6 (b) a prescribing practitioner as authorised under  
7 section 202MD(2).
- 8 (4) An act done by a student under subsection (3) must be  
9 done —
- 10 (a) in the course of the student’s program of study  
11 for, or clinical training in, the relevant health  
12 profession; and
- 13 (b) under the supervision of —
- 14 (i) the medical practitioner or prescribing  
15 practitioner; or
- 16 (ii) a registered health practitioner in the  
17 relevant health profession who is  
18 assisting in the performance of the  
19 abortion under subsection (1); or
- 20 (iii) the student’s primary clinical  
21 supervisor.
- 22 (5) Subsection (3) does not apply in relation to the  
23 performance of an abortion that the student knows is  
24 being performed by —
- 25 (a) a medical practitioner other than as authorised  
26 under section 202MC or 202ME(1); or
- 27 (b) a prescribing practitioner other than as  
28 authorised under section 202MD(2).

1           **202MH. Registered health practitioner with conscientious**  
2           **objection to abortion**

- 3           (1) A registered health practitioner who has a  
4           conscientious objection to abortion has the right to  
5           refuse to do any of the following —
- 6               (a) perform an abortion on a person;
  - 7               (b) assist in the performance of an abortion on a  
8               person;
  - 9               (c) make a decision under section 202ME(1)(a) or  
10              (b) whether performing an abortion on a person  
11              is appropriate in all the circumstances;
  - 12              (d) advise a person about the performance of an  
13              abortion on the person or another person.
- 14           (2) If a registered health practitioner who has a  
15           conscientious objection to abortion is requested by a  
16           person (the *requesting person*) to do a thing referred to  
17           in subsection (1), the registered health practitioner  
18           must disclose the practitioner's conscientious objection  
19           to the requesting person immediately after the  
20           requesting person makes the request.
- 21           (3) Subsection (1) does not limit the circumstances in  
22           which a registered health practitioner may refuse to do  
23           any of the things referred to in that subsection.
- 24           (4) This section does not limit or otherwise affect any duty  
25           of a registered health practitioner to do a thing referred  
26           to in subsection (1) in an emergency.

- 1           **202MI. Obligations of medical practitioners and**  
2           **prescribing practitioners who refuse to participate**  
3           **in abortion**
- 4           (1) This section applies if —
- 5               (a) a person (the *patient*) —
- 6                   (i) requests a medical practitioner or  
7                   prescribing practitioner to perform an  
8                   abortion on the patient; or
- 9                   (ii) makes a request to a medical  
10                  practitioner that would require the  
11                  medical practitioner to make a decision  
12                  under section 202ME(1)(a) whether  
13                  performing an abortion on the patient is  
14                  appropriate in all the circumstances; or
- 15                  (iii) requests a medical practitioner or  
16                  prescribing practitioner to advise the  
17                  patient about the performance of an  
18                  abortion on the patient;
- 19               and
- 20               (b) the medical practitioner or prescribing  
21               practitioner (the *refusing practitioner*) refuses  
22               the request, whether for the reason that the  
23               refusing practitioner has a conscientious  
24               objection to abortion or for some other reason.
- 25           (2) The refusing practitioner must —
- 26               (a) without delay transfer the patient’s care —
- 27                   (i) to another registered health practitioner  
28                   who, in the refusing practitioner’s  
29                   reasonable belief, can provide the  
30                   requested service; or

- 
- 1 (ii) to a health facility at which, in the  
2 refusing practitioner's reasonable belief,  
3 the requested service can be provided by  
4 another registered health practitioner;  
5 or  
6 (b) immediately give the patient information,  
7 approved by the Chief Health Officer for the  
8 purposes of this paragraph, about how to locate  
9 or contact a registered health practitioner of the  
10 kind referred to in paragraph (a)(i) or a facility  
11 of the kind referred to in paragraph (a)(ii).
- 12 (3) Information approved by the Chief Health Officer for  
13 the purposes of subsection (2)(b) —  
14 (a) must be kept up-to-date, and reviewed at least  
15 once each year, by the Chief Health Officer;  
16 and  
17 (b) must not contain details of —  
18 (i) a registered health practitioner unless, in  
19 the Chief Health Officer's reasonable  
20 belief, the registered health practitioner  
21 is of the kind referred to in  
22 subsection (2)(a)(i); or  
23 (ii) a health facility unless, in the Chief  
24 Health Officer's reasonable belief, the  
25 facility is of the kind referred to in  
26 subsection (2)(a)(ii).
- 27 (4) This section does not limit or otherwise affect any duty  
28 of the refusing practitioner to do a thing referred to in  
29 subsection (1)(a) in an emergency.

- 1           **202MJ. Student with conscientious objection to abortion**
- 2           (1) In this section —
- 3           *supervising person*, in relation to a student in a
- 4           relevant health profession, means —
- 5           (a) a medical practitioner performing an abortion
- 6           as authorised under section 202MC or
- 7           202ME(1); or
- 8           (b) a prescribing practitioner performing an
- 9           abortion as authorised under section 202MD(2);
- 10           or
- 11           (c) a registered health practitioner in the relevant
- 12           health profession who is assisting in the
- 13           performance of an abortion as authorised under
- 14           202MG(1); or
- 15           (d) the student’s primary clinical supervisor.
- 16           (2) A student in a relevant health profession who has a
- 17           conscientious objection to abortion has the right to
- 18           refuse to assist in the performance of an abortion on a
- 19           person.
- 20           (3) If a student in a relevant health profession who has a
- 21           conscientious objection to abortion is requested by a
- 22           supervising person to assist in the performance of an
- 23           abortion on a person, the student must disclose the
- 24           student’s conscientious objection to the supervising
- 25           person immediately after the supervising person makes
- 26           the request.
- 27           **202MK. Compliance with Division relevant to professional**
- 28           **conduct or performance**
- 29           (1) In considering a matter under a written law about a
- 30           registered health practitioner’s professional conduct or

- 1 performance, regard may be had to whether the  
2 practitioner —
- 3 (a) performs an abortion on a person other than as  
4 authorised under section 202MC, 202MD(2),  
5 202ME(1) or 202MF(2) or (3); or
- 6 (b) assists in the performance of an abortion on a  
7 person other than as authorised under  
8 section 202MG(1); or
- 9 (c) contravenes section 202MH(2) or 202MI(2).
- 10 (2) The matters to which subsection (1) applies include —
- 11 (a) a notification under the *Health Practitioner*  
12 *Regulation National Law (Western Australia)*;  
13 or
- 14 (b) a complaint under the *Health and Disability*  
15 *Services (Complaints) Act 1995*.

16 **202ML. *The Criminal Code s. 177 does not apply***

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

19 **202MM. *Consent to performance of abortion on children***  
20 ***who are not mature minors***

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

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- 1 (b) the registered health practitioner considers —
- 2 (i) that the patient does not have the
- 3 capacity to consent, on their own behalf,
- 4 to the abortion being performed on them
- 5 because the patient has not achieved a
- 6 sufficient understanding and
- 7 intelligence to enable them to
- 8 understand fully what is proposed; or
- 9 (ii) that it is not possible to ascertain
- 10 whether the patient has the capacity to
- 11 consent, on their own behalf, to the
- 12 abortion being performed on them;
- 13 and
- 14 (c) the patient agrees to a parent or guardian of the
- 15 patient participating in the decision-making as
- 16 to whether the abortion is performed on the
- 17 patient by the registered health practitioner.
- 18 (3) If this section applies —
- 19 (a) the parent or guardian referred to in
- 20 subsection (2)(c) may consent or refuse consent
- 21 to the performance of the abortion on the
- 22 patient by the registered health practitioner; and
- 23 (b) to the extent that the common law would
- 24 require the performance of the abortion on the
- 25 patient by the registered health practitioner to
- 26 be authorised by a court, that requirement does
- 27 not apply.
- 28 (4) This section does not affect the inherent jurisdiction of
- 29 the Supreme Court or the jurisdiction of the Family
- 30 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 —
  - (a) a medical practitioner; or

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- 1 (b) a pharmacist supplying the abortion drug as  
2 referred to in section 202MF(2); or
- 3 (c) a registered health practitioner in a relevant  
4 health profession (other than pharmacy)  
5 supplying the abortion drug as referred to in  
6 section 202MF(3).
- 7 (6) In relation to the performance of an abortion on a  
8 person who is not more than 23 weeks pregnant by  
9 administering an abortion drug to the person, an  
10 **unqualified person** is a person who is not —
- 11 (a) a medical practitioner; or  
12 (b) a prescribing practitioner; or  
13 (c) a registered health practitioner in a relevant  
14 health profession (other than pharmacy)  
15 administering the abortion drug as referred to in  
16 section 202MF(3).
- 17 (7) In relation to the performance of an abortion on a  
18 person who is more than 23 weeks pregnant by  
19 administering an abortion drug to the person, an  
20 **unqualified person** is a person who is not —
- 21 (a) a medical practitioner; or  
22 (b) a registered health practitioner in a relevant  
23 health profession (other than pharmacy)  
24 administering the abortion drug as referred to in  
25 section 202MF(3).
- 26 (8) In relation to the performance of an abortion not  
27 referred to in subsections (3) to (7), an **unqualified**  
28 **person** is a person who is not a medical practitioner.

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**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

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- 1 (ii) the identity of a person who has  
2 performed, or has assisted in the  
3 performance of, an abortion on a person.
- 4 (4) Without limiting subsection (3), the information  
5 specified in a direction under subsection (1) cannot  
6 include any of the following —
- 7 (a) the postcode, suburb or address (street or  
8 postal) of a person referred to in  
9 subsection (3)(b);
- 10 (b) the postcode, suburb or address (street or  
11 postal) of the particular hospital or other health  
12 facility at which an abortion has been  
13 performed;
- 14 (c) the age of a person on whom an abortion has  
15 been performed, other than as an age category  
16 including a range of not less than 5 years (for  
17 example, under 15 years of age, 15 to 19 years  
18 of age, and so on);
- 19 (d) the particular race or nationality of a person on  
20 whom an abortion has been performed;
- 21 (e) the gestational age of the foetus at the date on  
22 which an abortion was performed on a person,  
23 other than as an age range (for example,  
24 9 weeks or less, 10 to 13 weeks, and so on);
- 25 (f) the particular reason for an abortion having  
26 been performed on a person, including any  
27 particular clinical reason (for example, the  
28 diagnosis of a particular abnormality or  
29 condition in the foetus or in the person on  
30 whom the abortion was performed);
- 31 (g) the particular clinical method (for example, the  
32 particular abortion drug prescribed or the  
33 particular surgical procedure carried out) used  
34 to perform an abortion on a person;

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

16 **202MQ. Purposes for which Chief Health Officer may**  
17 **record, use or disclose information given under**  
18 **s. 202MP**

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

- 22 (a) enabling the provision, monitoring, planning  
23 and evaluation of health services relating to  
24 abortion;
- 25 (b) compiling and publishing statistical or  
26 summary information relating to abortion;
- 27 (c) enabling research, education and training in  
28 respect of abortion, including the use of  
29 abortion drugs and health services relating to  
30 abortion;

**s. 8**

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

4 **202MR. Protection from liability**

- 5 (1) This section applies if —  
6 (a) a relevant person acting in good faith gives  
7 information to the Chief Health Officer under  
8 section 202MP(6); or  
9 (b) the Chief Health Officer acting in good faith  
10 records, uses or discloses information, given to  
11 the Chief Health Officer under  
12 section 202MP(6), in accordance with  
13 section 202MQ.
- 14 (2) If this section applies —  
15 (a) no civil or criminal liability is incurred in  
16 respect of giving, recording, using or disclosing  
17 the information; and  
18 (b) giving, recording, using or disclosing the  
19 information is not to be regarded as —  
20 (i) a breach of any duty of confidentiality  
21 or secrecy imposed by law; or  
22 (ii) a breach of professional ethics,  
23 professional standards or any principles  
24 of conduct applicable to the person's  
25 employment; or  
26 (iii) unprofessional conduct.  
27

1 **9. Part 12C Division 6 heading inserted**

2 Before section 202N insert:

3

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

6

7 **10. Section 202N amended**

8 In section 202N delete “Part” and insert:

9

10 Division

11

12 **11. Section 202O amended**

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

14

15 Division —

16

17 **12. Section 280 amended**

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

20

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

23

24 (2) At the end of section 280 insert:

25

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

**s. 13**

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- 1 (3) Proceedings for an offence under section 202MN(1)  
2 may only be commenced by a person referred to in the  
3 *Criminal Procedure Act 2004* section 20(3)(a)(ii) or  
4 (iii) or (b).  
5

6 **13. Section 297 amended**

7 After section 297(5) insert:  
8

- 9 (6) This section is in addition to and does not affect the  
10 operation of section 141(2), 188(5), 202MR(1)(b) or  
11 (2), 298(3) or 299(6).  
12

13 **14. Section 299 amended**

- 14 (1) In section 299(3) and (5) delete “A” and insert:  
15

16 Subject to subsection (5A), a  
17

- 18 (2) After section 299(5) insert:  
19

20 (5A) Information about abortion can only be disclosed under  
21 subsection (3), or requested under subsection (5), if the  
22 information —

- 23 (a) meets the requirements set out in  
24 section 202MP(3) and (4); and  
25 (b) is disclosed or requested for a purpose referred  
26 to in section 202MQ.

27 (5B) Subsection (5A) does not prevent the disclosure under  
28 subsection (3) of information about a suspected offence  
29 under section 202MN(1) to a person referred to in  
30 section 280(3).  
31



1 **15. Section 306C inserted**

2 After section 306B insert:

3

4 **306C. Review of amendments made by *Abortion***  
5 ***Legislation Reform Act 2023***

- 6 (1) The Minister must review the operation and  
7 effectiveness of the amendments made to this Act by  
8 the *Abortion Legislation Reform Act 2023*, and prepare  
9 a report based on the review, as soon as practicable  
10 after the 5<sup>th</sup> anniversary of the day on which the  
11 *Abortion Legislation Reform Act 2023* section 15  
12 comes into operation.
- 13 (2) The Minister must cause the report to be laid before  
14 each House of Parliament as soon as practicable after it  
15 is prepared, but not later than 12 months after the  
16 5<sup>th</sup> anniversary.

17

18 **16. Part 21 inserted**

19 After section 322 insert:

20

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

23 **323. Term used: commencement day**

24 In this Part —

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

- 1           **324. Decisions made under *Health (Miscellaneous***  
2           ***Provisions) Act 1911 s. 334(7)(a) before***  
3           ***commencement day***
- 4           (1) This section applies if —
- 5               (a) before commencement day under the *Health*  
6               *(Miscellaneous Provisions) Act 1911*  
7               section 334(7)(a) 2 medical practitioners agree  
8               that the performance of an abortion on a person  
9               is justified; and
- 10              (b) immediately before commencement day the  
11              abortion has not yet been performed on the  
12              person.
- 13           (2) On and after commencement day, to the extent that  
14           section 202ME(1) applies to the performance of the  
15           abortion —
- 16              (a) the requirements referred to in  
17              section 202ME(1)(a) and (b) are taken to have  
18              been complied with; and
- 19              (b) a medical practitioner is authorised under that  
20              section to perform the abortion.
- 21           **325. Applications made under *Health (Miscellaneous***  
22           ***Provisions) Act 1911 s. 334(9) before commencement***  
23           ***day***
- 24           If, immediately before commencement day, an  
25           application made to the Children’s Court under the  
26           *Health (Miscellaneous Provisions) Act 1911*  
27           section 334(9) has not been determined by the  
28           Children’s Court, the application is taken to have been  
29           discontinued on commencement day.  
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**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;

**Abortion Legislation Reform Bill 2023**

**Part 4** Other Acts amended

**Division 3** Evidence Act 1906 amended

**s. 21**

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- 1 (b) the child is born alive and subsequently dies  
2 following the performance of the abortion;
- 3 (c) at the time the abortion is performed, the  
4 performance of the abortion does not constitute  
5 an offence under a written law.
- 6 (2) Subsection (1) applies whether the death occurs before,  
7 on or after the day on which the *Abortion Legislation*  
8 *Reform Act 2023* section 20 comes into operation.  
9

10 **Division 3 — Evidence Act 1906 amended**

11 **21. Act amended**

12 This Division amends the *Evidence Act 1906*.

13 **22. The Second Schedule amended**

- 14 (1) In The Second Schedule Part 1 delete the item relating to s. 199.  
15 (2) At the end of The Second Schedule insert:  
16

17 **Part 6 — Offence under the Public Health Act 2016**  
18

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

19

1 **Division 4 — *Freedom of Information Act 1992* amended**

2 **23. Act amended**

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

4 **24. Schedule 1 clause 13A inserted**

5 After Schedule 1 clause 13 insert:

6

7 **13A. Abortion information**

8 (1) Matter is exempt matter if its disclosure would reveal or  
9 tend to reveal the identity of anyone as —

10 (a) a person on whom an abortion mentioned in the  
11 *Public Health Act 2016* Part 12C Division 2 has  
12 been performed; or

13 (b) a person who has performed, or has assisted in the  
14 performance of, an abortion mentioned in the *Public*  
15 *Health Act 2016* Part 12C Division 2.

16 (2) Without limiting subclause (1), matter is exempt matter  
17 under that subclause if it contains an identification number,  
18 or other identifying particular, by reference to which a  
19 person referred to in subclause (1)(a) or (b) can be  
20 identified.

21 (3) Matter is not exempt matter under subclause (1) merely  
22 because its disclosure would reveal or tend to reveal —

23 (a) the applicant as a person on whom an abortion  
24 mentioned in the *Public Health Act 2016* Part 12C  
25 Division 2 has been performed; or

26 (b) the identity of a person who has performed on the  
27 applicant, or has assisted in the performance of on  
28 the applicant, an abortion mentioned in the *Public*  
29 *Health Act 2016* Part 12C Division 2; or

**Abortion Legislation Reform Bill 2023**

**Part 4** Other Acts amended

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

**s. 25**

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1 (c) the applicant as a person who has performed, or has  
2 assisted in the performance of, an abortion  
3 mentioned in the *Public Health Act 2016* Part 12C  
4 Division 2.

5 (4) This clause applies whether the abortion was performed  
6 before, on or after the day on which the *Abortion*  
7 *Legislation Reform Act 2023* section 24 comes into  
8 operation.  
9

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

12 **25. Act amended**

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

15 **26. Section 3 amended**

16 After section 3(1) insert:  
17

18 (1A) In this Act, a reference to the performance of an  
19 abortion on a person —

20 (a) is a reference to the provision of treatment to  
21 the person, including treatment referred to in  
22 the *Public Health Act 2016* section 202MB(2),  
23 with the intention of causing the termination of  
24 the pregnancy of the person; and

25 (b) does not include a reference to the provision of  
26 treatment to the person without that intention  
27 even if the treatment results or may result in the  
28 termination of the pregnancy of the person.  
29

1   **27.   Section 13 amended**

2           After section 13(e) insert:

3

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

9

10   **28.   Part 3 Division 3 Subdivision 1 heading inserted**

11           At the beginning of Part 3 Division 3 insert:

12

13                               **Subdivision 1 — Preliminary**

14

15   **29.   Section 18A inserted**

16           After section 18 insert:

17

18           **18A.   Application of Division**

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

29

1 **30. Part 3 Division 3 Subdivision 2 heading inserted**

2 Before section 19 insert:

3

4 **Subdivision 2 — Appeals by leave from determinations of**  
5 **State Administrative Tribunal generally**  
6

7 **31. Section 19 amended**

8 In section 19:

9 (a) delete “Division,” and insert:

10

11 Subdivision,

12

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

14

15 President.

16

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

19 **32. Part 3 Division 3 Subdivision 3 inserted**

20 After section 25 insert:

21

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

24 **25A. Appeal from Tribunal’s decision relating to consent**  
25 **to performance of abortion**

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



- 1 (2) The appeal lies to the Court of Appeal.
- 2 (3) The appeal must be instituted —
- 3 (a) in accordance with the rules of the Supreme  
4 Court; and
- 5 (b) within the period of 2 days after the day on  
6 which the State Administrative Tribunal gives  
7 its reasons for the final decision under  
8 section 110ZND, unless the Court extends the  
9 period for making an application on the ground  
10 that there is good reason to allow it to be made  
11 outside that time.
- 12 Note for this subsection:
- 13 For the purposes of paragraph (b) — see the *State*  
14 *Administrative Tribunal Act 2004* section 77 for the  
15 requirement for the State Administrative Tribunal to give its  
16 reasons for a final decision.
- 17 (4) The party instituting the appeal must notify the  
18 executive officer about the institution of the appeal, but  
19 the Tribunal is not a party to the appeal and nor is any  
20 member of the Tribunal.

21 **25B. Grounds**

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

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

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

3 **25C. Status of State Administrative Tribunal’s decision**  
4 **pending disposal of appeal**

5 Where an appeal from a decision of the State  
6 Administrative Tribunal under section 110ZND is  
7 instituted under section 25A, the operation of the  
8 decision is stayed pending the disposal of the appeal.  
9

10 **33. Part 3 Division 3 Subdivision 4 heading inserted**

11 Before section 26 insert:  
12

13 **Subdivision 4 — General provisions about appeals**  
14

15 **34. Section 26 amended**

16 (1) In section 26 delete “Except where section 25 applies, the  
17 appellant shall” and insert:  
18

19 (1) The appellant must  
20

21 (2) At the end of section 26 insert:  
22

23 (2) The appeal may be determined if, in the opinion of the  
24 Court, sufficient notice of the appeal is given to each  
25 person who ought to be notified of the appeal.

26 (3) This section does not apply if section 25 applies.  
27

1   **35.   Section 28 amended**

2           At the end of section 28 insert:

3

4                       Note for this section:

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

8

9   **36.   Section 30 amended**

10           Before section 30(1) insert:

11

12           (1A)   In this section —

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

16

17   **37.   Section 31 amended**

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

19

20                       section 21 or 25B,

21

22   **38.   Section 34 amended**

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

24

25                       the appellant

26

**Abortion Legislation Reform Bill 2023**

**Part 4** Other Acts amended

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

**s. 39**

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1 (2) After section 34(3) insert:

2

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

5

6 **39. Section 35 amended**

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

8

9 the appellant

10

11 (2) After section 35(1) insert:

12

13 (1A) Subsection (1) does not apply to an appeal from a  
14 decision under section 110ZND to consent or refuse  
15 consent to the performance of an abortion on a person.

16

17 **40. Section 45 amended**

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

19

20 the person or persons

21

22 (2) In section 45(2):

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

24

25 the represented person

26

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

2

3 subsections (3A) and (4A),

4

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

6

7 (3A) A plenary guardian cannot make a decision in respect  
8 of the performance of an abortion on the represented  
9 person, including for the purposes of a treatment  
10 decision or medical research.

11

12 **41. Section 110G amended**

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

14

15 (3A),

16

17 **42. Section 110U replaced**

18 Delete section 110U and insert:

19

20 **110U. Priority of treatment decision in advance health**  
21 **directive**

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

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

- 1 (b) in the case of a treatment decision in respect of  
2 the performance of an abortion on the maker of  
3 the directive — in accordance with  
4 section 110ZLA.  
5

6 **43. Section 110ZD amended**

7 After section 110ZD(6) insert:  
8

- 9 (6A) The person responsible for the patient cannot make a  
10 treatment decision in respect of the performance of an  
11 abortion on the patient.  
12

13 **44. Section 110ZH amended**

14 In section 110ZH delete the definition of *urgent treatment* and  
15 insert:  
16

17 *urgent treatment* —

- 18 (a) means treatment (other than the performance of  
19 an abortion) urgently needed by a patient —  
20 (i) to save the patient’s life; or  
21 (ii) to prevent serious damage to the  
22 patient’s health; or  
23 (iii) to prevent the patient from suffering or  
24 continuing to suffer significant pain or  
25 distress;  
26 and  
27 (b) includes the performance of an abortion on a  
28 patient if performing the abortion is urgently  
29 needed —  
30 (i) to save the patient’s life; or

- 1 (ii) to prevent serious damage to the  
2 patient's health; or  
3 (iii) to save another foetus,  
4 but  
5 (c) does not include:  
6 (i) psychiatric treatment, which is  
7 treatment as defined in the *Mental*  
8 *Health Act 2014* section 4; or  
9 (ii) the sterilisation of the patient.  
10

11 **45. Part 9D Division 2 Subdivision 1 heading inserted**

12 At the beginning of Part 9D Division 2 insert:  
13

14 **Subdivision 1 — Urgent treatment**  
15

16 **46. Section 110ZI amended**

17 (1) Delete section 110ZI(1)(d) and insert:  
18

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

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**Part 4** Other Acts amended

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

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1 (ii) in the case of the performance of an  
2 abortion on the patient — a decision of  
3 the State Administrative Tribunal under  
4 Division 3 Subdivision 2 in respect of  
5 the performance of the abortion, as  
6 referred to in section 110ZLA(3).  
7

8 (2) Delete section 110ZI(2) and insert:  
9

10 (2) The health professional may provide the treatment to  
11 the patient —

12 (a) in the case referred to in subsection (1)(d)(i) —  
13 in the absence of a treatment decision in  
14 relation to the patient from the patient's  
15 guardian or enduring guardian or the person  
16 responsible for the patient; or

17 (b) in the case referred to in subsection (1)(d)(ii) —  
18 in the absence of a decision of the State  
19 Administrative Tribunal under Division 3  
20 Subdivision 2.  
21

22 **47. Part 9D Division 2 Subdivision 2 heading inserted**

23 After section 110ZIA insert:  
24

25 **Subdivision 2 — Other treatment**  
26



1 **48. Section 110ZIB inserted**

2 Before section 110ZJ insert:

3

4 **110ZIB. Application of Subdivision**

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

7

8 **49. Section 110ZJ amended**

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

11

12 Subdivision 1 and section 110ZIB,

13

14 **50. Part 9D Division 2 Subdivision 3 inserted**

15 At the end of Part 9D Division 2 insert:

16

17 **Subdivision 3 — Performance of abortion**

18 **110ZLA. Treatment decisions in relation to**  
19 **performance of abortion**

20 (1) Subject to Subdivision 1, this section applies if it is  
21 proposed to perform an abortion on a person who —

22 (a) has reached 18 years of age; and

23 (b) is unable to make reasonable judgments in  
24 respect of whether or not the abortion should be  
25 performed on them.

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

10 **110ZLB. Performance of abortion without advance**  
11 **health directive or State Administrative Tribunal**  
12 **consent an offence**

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

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

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

1           **110ZLC.           Effect of State Administrative Tribunal**  
2                           **consent**

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

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

11           **110ZLD.           Reliance by health professional on**  
12                           **treatment decisions in respect of performance of**  
13                           **abortion**

14                   (1) In this section —  
15                           *abortion treatment decision*, in relation to a person  
16                           referred to in section 110ZLA(1)(a), means —

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

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

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

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

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**Part 4** Other Acts amended

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

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- 1 (ii) relying in good faith on what is  
2 purportedly an abortion treatment  
3 decision in respect of the person;
- 4 or
- 5 (b) takes abortion action —
- 6 (i) in circumstances where it is reasonable  
7 for the health professional to rely on  
8 some other health professional having  
9 ascertained whether the taking of the  
10 abortion action is in accordance with an  
11 abortion treatment decision in respect of  
12 the person; and
- 13 (ii) reasonably assuming that some other  
14 health professional has ascertained that  
15 the taking of the abortion action is in  
16 accordance with an abortion treatment  
17 decision in respect of the person.
- 18 (3) The health professional is taken for all purposes to take  
19 the abortion action in accordance with a treatment  
20 decision that has effect as if —
- 21 (a) it had been made by the person; and  
22 (b) the person were of full legal capacity.
- 23 (4) Without limiting subsection (3), a health professional  
24 who takes abortion action as referred to in  
25 subsection (2) does not commit an offence under  
26 section 110ZLB.
- 27 (5) For subsection (2)(a)(ii), a health professional is taken  
28 to have relied in good faith on what was purportedly an  
29 abortion treatment decision if, after considering  
30 whether or not to rely on it, the health professional  
31 acted honestly in relying on it.
- 32 (6) For the purpose of determining under  
33 subsection (2)(b)(ii) whether the health professional's

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

- 3 (a) whether the health professional sighted any  
4 written evidence that some other health  
5 professional had ascertained that the taking of  
6 the abortion action was in accordance with the  
7 abortion treatment decision;
- 8 (b) anything else relevant to the determination.  
9

10 **51. Part 9D Division 3 Subdivision 1 heading inserted**

11 At the beginning of Part 9D Division 3 insert:  
12

13 **Subdivision 1 — Declarations for purposes of s. 110ZJ**  
14

15 **52. Section 110ZM amended**

16 In section 110ZM delete “Division.” and insert:  
17

18 Subdivision.  
19

20 **53. Part 9D Division 3 Subdivision 2 inserted**

21 At the end of Part 9D Division 3 insert:  
22

23 **Subdivision 2 — Decisions for purposes of s. 110ZLA**

24 **110ZNA. Only Full Tribunal to act under this**  
25 **Subdivision**

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

- 1           **110ZNB.           Who may apply for decision under this**  
2                           **Subdivision**
- 3           (1) The following persons may apply to the State  
4           Administrative Tribunal for a decision under this  
5           Subdivision for the purposes of section 110ZLA(3) —
- 6                   (a) the person on whom the abortion is proposed to  
7                   be performed;
- 8                   (b) if the person has an enduring guardian or a  
9                   guardian, that guardian;
- 10                  (c) a relative of the person as referred to in  
11                  subsection (2);
- 12                  (d) the Public Advocate;
- 13                  (e) a person who, in the opinion of the Tribunal,  
14                  has a proper interest in the matter.
- 15           (2) For the purposes of subsection (1)(c), a relative of the  
16           person is any of the following relatives of the person  
17           who have reached 18 years of age —
- 18                   (a) a spouse or de facto partner;
- 19                   (b) a child;
- 20                   (c) a parent;
- 21                   (d) a sibling.
- 22           **110ZNC.           Notice of hearing**
- 23           (1) If an application is made under section 110ZNB(1), the  
24           State Administrative Tribunal must give the following  
25           persons reasonable notice in writing of the hearing of  
26           the application —
- 27                   (a) the applicant;
- 28                   (b) the person on whom the abortion is proposed to  
29                   be performed;
- 30                   (c) the nearest relative, as referred to in  
31                   subsection (2) (if any), of the person;

- 1 (d) if the person has an enduring guardian or  
2 guardian, that guardian;
- 3 (e) the Public Advocate;
- 4 (f) any other person who in the opinion of the State  
5 Administrative Tribunal has a proper interest in  
6 the proceedings.
- 7 (2) For the purposes of subsection (1)(c), the nearest  
8 relative of the person is the first in order of priority of  
9 the following relatives of the person who have reached  
10 18 years of age —
- 11 (a) a spouse or de facto partner;
- 12 (b) a child;
- 13 (c) a parent;
- 14 (d) a sibling.
- 15 (3) A notice under subsection (1) must include —
- 16 (a) particulars of the application and the time and  
17 place of the hearing; and
- 18 (b) in the case of the notice given to the applicant  
19 or the person on whom the abortion is proposed  
20 to be performed, a summary of —
- 21 (i) the provisions of section 16 and  
22 Schedule 1 clause 13, and the *State*  
23 *Administrative Tribunal Act 2004*  
24 sections 39, 87 and 88, as they affect  
25 that person; and
- 26 (ii) the functions of the State Administrative  
27 Tribunal under this Subdivision.
- 28 (4) The State Administrative Tribunal is not required to  
29 give notice to a person referred to in subsection (1) if,  
30 after reasonable enquiry, the whereabouts of the person  
31 cannot be ascertained.

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

6 **110ZND. State Administrative Tribunal consent to**  
7 **performance of abortion**

- 8 (1) On hearing an application under section 110ZNB(1),  
9 the State Administrative Tribunal may, by order in  
10 writing, consent to performance of the abortion on the  
11 person if the Tribunal is satisfied that —
- 12 (a) the person has reached 18 years of age; and
  - 13 (b) the person is unable to make reasonable  
14 judgments in respect of whether or not the  
15 abortion should be performed on them; and
  - 16 (c) the person has not made an advance health  
17 directive containing a treatment decision that is  
18 inconsistent with the performance of the  
19 abortion on the person; and
  - 20 (d) the performance of the abortion on the person is  
21 in the best interests of the person.
- 22 (2) Without limiting subsection (1)(d), in deciding whether  
23 the performance of the abortion on the person is in the  
24 best interests of the person, the Tribunal must take into  
25 account —
- 26 (a) whether the person is likely within the  
27 foreseeable future to regain the ability to make  
28 reasonable judgments in respect of whether or  
29 not the abortion should be performed on them;  
30 and
  - 31 (b) any wishes of the person so far as they can be  
32 ascertained.



- 1           (3) The consent of the State Administrative Tribunal under  
2           this section may be given subject to compliance with  
3           any condition that the Tribunal considers appropriate.  
4

5   **54. Section 110ZT amended**

- 6   (1) In section 110ZT(2):  
7       (a) in paragraph (b) delete “candidate.” and insert:  
8           candidate; or  
9       (b) after paragraph (b) insert:  
10       (c) the performance of an abortion on the  
11       candidate.  
12  
13   (2) After section 110ZT(3) insert:  
14  
15  
16   (4) A person must not, for the purposes of medical  
17       research, perform or assist in the performance of an  
18       abortion on a research candidate.  
19       Penalty for this subsection: imprisonment for 2 years or  
20       a fine of \$10 000.  
21  
22  
23

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

3 **55. Act amended**

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

6 **56. Section 331 amended**

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

8  
9 *birth* has the meaning given in the *Births, Deaths and*  
10 *Marriages Registration Act 1998* section 4;

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

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

15 *still-birth* has the meaning given in the *Births, Deaths*  
16 *and Marriages Registration Act 1998* section 4.  
17

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

20  
21 profession;  
22

23 **57. Section 332 inserted**

24 After section 331 insert:

25  
26 **332. Application of Part to abortion**

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

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

23 **58. Section 334 deleted**

24 Delete section 334.

25 **59. Section 335 amended**

26 (1) In section 335(1) delete “stillbirth, or abortion.” and insert:

27

28 stillbirth.

29

30 (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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- 1 (3) In section 335(5):
- 2 (a) in paragraph (a) delete “birth, stillbirth or abortion
- 3 (other than an abortion to which paragraph (d) applies),”
- 4 and insert:
- 5
- 6 birth or stillbirth,
- 7
- 8 (b) delete paragraphs (d) and (e).

=====