



Department of
Health

Abortion Legislation Reform Act 2023

Information for health practitioners

Acknowledgement of Country

- WA Health acknowledges the Aboriginal people of the many traditional lands and language groups of Western Australia.
- It acknowledges the wisdom of Aboriginal Elders both past and present and pays respect to Aboriginal communities of today.

Objectives

- Understand key aspects of the [*Abortion Legislation Reform Act 2023 \(WA\)*](#) as it relates to clinical practice.
- Understand the role, responsibilities, and obligations of Registered Health Practitioners under the Act.

Overview

- The *Abortion Legislation Reform Act 2023*
- Commencement
- Performing an abortion
- Assisting in an abortion
- Later term abortions
- Conscientious objection or unable to perform
- Consent
- Statutory notifications

The *Abortion Legislation Reform Act 2023*

- Passed by State Parliament on 20 September 2023.
- The Act repeals all provisions related to abortion within the *Health (Miscellaneous Provisions) Act 1911 (WA)* and creates a new framework relating to abortion under Part 12 C of the *Public Health Act 2016 (WA)*.
- Consequential amendments have also been made to the Criminal Code, *Children's Court Act*, *Coroner's Act*, *Freedom of information Act 1992* and the *Guardianship and Administration Act 1990*.
- The new abortion legislation aims to remove unnecessary barriers to abortion care; and thereby improve access.

Commencement of the Reform Act

- Sections 1 and 2 of the Reform Act came into operation upon Royal Assent on 27 September 2023.
- The substantive sections of the Reform Act, which effect clinical practice, take effect on 27 March 2024.
- **Clinicians must continue to comply with the existing legislation until the new legislation comes into effect.**

Performing an abortion



Within their scope of practice and training:

- A medical practitioner may perform a lawful abortion on request up to 23 weeks' gestation. Under the new laws only one health practitioner needs to be involved in abortion care provision up to 23 weeks.
- A registered medical practitioner and prescribing practitioner (nurse practitioner or endorsed midwife) may prescribe the medical abortion medicine (MS-2 Step) as part of the care management pathway for early medical abortion.
- MS-2 Step is indicated in females of childbearing age for the medical termination of an intrauterine pregnancy, up to 63 days (9 weeks) of gestation.

Up to 23 weeks' gestation means that the gestation of the pregnancy is less than, or equal to, 23 weeks and 0 days.

Assisting in an abortion



When it is within their scope of practice:

- A registered health practitioner (such as Aboriginal and Torres Strait Islander health practitioners, medical practitioners, enrolled nurses, midwives, pharmacist, or students) may assist in an abortion.

Later term abortions [1]

- For a patient who is more than 23 weeks pregnant, an abortion may be performed by a medical practitioner if additional requirements are met.
- The medical practitioner must have fully considered:
 - all relevant medical circumstances;
 - current and future physical, psychological and social circumstances; **and**
 - professional standards and guidelines commonly accepted by members of the medical profession in relation to the performance of the abortion.
- The medical practitioner must have **consulted with at least one other medical practitioner** who also agrees that an abortion is appropriate.

More than 23 weeks pregnant means the gestation of the pregnancy is greater than, or equal to, 23 weeks and 1 days.

Later term abortions [2]

Removal of Ministerial approval requirements

- Approval from a Ministerial Panel is no longer required for later term abortions.
- Approval from the Minister for Health is no longer required for facilities to perform later term abortions.

Conscientious objection

Registered Health Practitioners



- Registered health practitioners have a right to refuse to participate in an abortion when it conflicts with their own personal beliefs and values.
- **Conscientious objection does not absolve a registered health practitioner of any duty to perform, assist with, make a decision about, or advise a patient about a termination of pregnancy in an emergency.**

Registered health practitioners include medical practitioners, prescribing practitioners, and others involved in dispensing medication or assisting with procedures

Conscientious objection

Registered Health Practitioners



- A registered health practitioner who will not participate in, or provide advice on, an abortion **must**, without delay, disclose their conscientious objection to the patient **and/or** other practitioners who request their assistance immediately.

Registered health practitioners include medical practitioners, prescribing practitioners, and others involved in dispensing medication or assisting with procedures

Conscientious objection

Obligation to the pregnant patient

A medical practitioner, nurse practitioner or endorsed midwife who will not participate in, or provide advice on, an abortion for **must**, without delay:

- Disclose their conscientious objection to the patient **and/or** other practitioners who request their assistance immediately; **and**
- Refer the patient to a health practitioner or health facility which they believe can provide the requested service(s); **or**
- Provide the patient with the Patient Information Approved by the Chief Health Officer, available from 27 March 2024 at www.health.wa.gov.au/Abortion

Conscientious objection

Students undertaking professional placement



- A student undertaking professional placement in a healthcare setting who conscientiously objects to assisting in an abortion should notify their supervisor of their objection when the request is made.
- The student's right to abstain from participating in an abortion must be respected by their supervisor.

Professional obligations when unable to perform an abortion

- Medical practitioners or prescribing practitioners may be unable to perform or have to refuse to perform an abortion for another reason.
- Reasons for refusing to perform an abortion (other than conscientious objection) may include such reasons as:
 - the practitioner's inability to meet essential requirements (such as qualification requirements or not having completed relevant training)
 - being unwilling or unable to perform the duties (for example, the facility in which they work does not offer the service or have appropriate equipment).

Professional obligations when unable to perform an abortion

- **A medical practitioner or prescribing practitioner who refuses to perform an abortion is not absolved of any duty to perform, assist with, make a decision about, or advise a patient about a termination of pregnancy in an emergency (for example in a life-threatening situation), where it is their duty to assist.**
- This means that health practitioners are expected to provide treatment to pregnant patients with reasonable care and skills. They are also obligated to prevent foreseeable harm from occurring to pregnant patients.

Professional obligations when unable to perform an abortion

Medical practitioners or prescribing practitioners who are unable to perform or have to refuse to perform an abortion are required to without delay:

- refer the patient to a health practitioner or health service that they reasonably believe can provide the abortion service sought; or
- provide the pregnant patient with information approved by the Chief Health Officer for this purpose - available from 27 March 2024 at www.health.wa.gov.au/Abortion

Consent [1]



- A registered health practitioner is required to obtain informed consent from the pregnant patient in line with existing standards of care and professional obligations.
- The historical legislated provisions requiring a pregnant patient to undergo mandated counselling in order for a health practitioner to obtain the patient's informed consent for the abortion have been removed.

Consent [2]



Adult without capacity to consent

- Where a pregnant adult is unable to make reasonable judgements about abortion care, the law enables relevant parties to apply to the State Administrative Tribunal (SAT) to make a decision on their behalf.
- A Guardian previously appointed to the pregnant adult under the *Guardianship and Administration Act 1990* is not permitted to give consent to an abortion on the pregnant adult's behalf.
- A specific application to the SAT is required to seek decision and consent for an abortion.

Consent [3]



Consent for an abortion on a patient aged less than 18 years

A pregnant patient aged less than 18 years is not required to involve their parent or guardian in their abortion decision if they have been assessed as having sufficient understanding and intelligence (ie if they are a mature minor) to consent to their own medical treatment.

If a pregnant patient aged less than 18 years is deemed not competent (ie they are not a mature minor) to make a medical decision, they can:

- agree to allow the registered health practitioner to defer to their parent or guardian for a decision. In this circumstance, the health practitioner may obtain informed consent from the parent or guardian;
- or**
- refuse to allow the registered health practitioner to defer to their parent or guardian for a decision. In this circumstance, the registered health practitioner must apply to the Supreme Court or Family Court of WA for a decision on whether the abortion should occur.

Changes to statutory notifications [1]

Public Health Act 2016

Notifications of Abortion (terminations of pregnancy)

- Medical practitioners and prescribing practitioners (endorsed midwives and nurse practitioners) must notify the Chief Health Officer (CHO) if they perform an abortion via a [new online form](#) within 14 days of the abortion being performed.
- Notifications about abortion can no longer be made using the notification system under the *Health (Miscellaneous Provisions) Act 1911*. The **old Form 1** will no longer be used and **must** be destroyed.

Coroners Act 1996

Notifications of the death of a child born alive following the performance of the abortion

- Are no longer reportable to the Coroner.

No other changes have been made to deaths reportable to the Coroner. Further information can be found at <https://coronerscourt.wa.gov.au/>

Changes to statutory notifications [2]

Health (Miscellaneous Provisions) Act 1911

Notifications of birth events and cases attended by midwives

- Midwives are no longer required to provide notification of a birth (case attended) that resulted from the performance of an abortion.
- In all other cases, the CHO must be [notified](#) of a birth event (case attended), including where the outcome is a baby:
 - born alive or stillborn
 - premature or full-term.
- The midwife attending the birth is responsible for making the notification.

Changes to statutory notifications [3]

Health (Miscellaneous Provisions) Act 1911

Notifications of perinatal and infant deaths

- Medical practitioners are no longer required to provide notification of perinatal and infant deaths that resulted from the performance of an abortion.
- In all other cases, the CHO must be [notified](#) whenever a child:
 - born from 20 weeks' gestation onwards is stillborn; **or**
 - less than the age of 1 year dies from any cause whatsoever.
- The medical practitioner who certified the cause of the child's death is responsible for making the notification.

Changes to statutory notifications [4]

Health (Miscellaneous Provisions) Act 1911

Notifications of developmental anomalies

- There have been no changes to [notifications required](#).

Notifications of death of a woman as a result of pregnancy or childbirth

- There have been no changes to [notifications required](#). The death of a woman following an abortion must be notified.

Births, Deaths and Marriages Registration Act 1998

- There have been no changes to notifications required by the *Births, Deaths and Marriages Registration Act 1998*. Further information can be found at: <https://www.wa.gov.au/organisation/department-of-justice/the-registry-of-births-deaths-and-marriages>

More information



Further information is available on the Department of Health website at:

[Abortion \(health.wa.gov.au\)](https://www.health.wa.gov.au/abortion).

Resources available on this website include:

- Key changes to the legislation
- Information for health practitioners with a conscientious, or other, objection
- Statutory notifications requirement changes
- Informed consent
- Summary of notification requirements

The *Abortion Legislation Reform Act 2023 (WA)* is available at:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147399.html