Government of **Western Australia**
Department of **Health**

Abortion Legislation – Proposal for reform in Western Australia

Discussion Paper

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health.wa.gov.au

This paper was prepared by:

Public Health Regulation Directorate

Department of Health of Western Australia

189 Royal Street

EAST PERTH WA

PO Box 8172

Perth Business Centre WA 6849

Web: www.health.wa.gov.au

Disclaimer

The views expressed in this document may not, in any circumstances, be interpreted as stating an official position of the Department of Health.

This document is intended to serve as the basis for further discussion with interested stakeholders.

Contents

Minister's Foreword

I am pleased to present this Discussion Paper, inviting feedback from the community, on reforms to the legislation that controls access to abortion services in Western Australia (WA).

The McGowan Government is committed to protecting the reproductive rights of women in WA, including equitable access to abortion services. In 2021, the McGowan Government strengthened protections to legal termination procedures by legislating for Safe Access Zones, ensuring women in WA can seek abortions without fear of intimidation and harassment.

In 1998, WA was the first State in Australia to decriminalise abortion. For the last two decades, these laws have provided a robust framework for the safe provision of abortion services.

However, medical care around abortion services has advanced since 1998, and legislation in other States and Territories has also changed over this time. The existing law in WA has not kept pace with these changes and, in some circumstances, poses unnecessary barriers to timely care for those seeking abortion services. There is now a need to reform the legislation for abortions in WA with the intent to:

- streamline care pathways and remove clinically unnecessary barriers to care; and
- align with laws in other States and Territories when suitable for the Western Australian context.

This Discussion Paper outlines the proposed changes that need community comment to assist designing this modern legislation. This is an important opportunity for the community to provide input and guide the assessment of the options available. Timely and genuine consultation will ensure that the impacts and proposed changes are well understood, and that the legislation developed is fit for purpose.

I encourage women, people who have accessed abortion services, reproductive healthcare providers and all interested individuals to make a written or online submission in response to the questions raised in this Discussion Paper.

Hon Amber-Jade Sanderson MLA

Minister for Health; Mental Health

How to make a submission

You are invited to provide feedback via the online survey, by email or by post as outlined below. Please explain the reasons behind your suggestions and, where possible, provide evidence to support your views, including case studies and experiences.

Plan for consultation

The information gathered from this consultation will form the basis for the next stage of the policy development process. Your input is crucial as it will support the development of the reform and assist in identifying issues of concern.

Following the consultation period, the Department of Health (DOH) will review all submissions provided and a summary report will be publicly released.

Your feedback forms part of a public consultation process. The DOH may quote from your comments in future publications. If you prefer your name and organisation to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to requests made under the *Freedom of Information Act 1992*, please do not include any personal or confidential information that you do not wish to become available to the public.

Submissions close

The closing date for submissions is Saturday 17 December 2022.

Where to send your submissions

Online survey	https://consultation.health.wa.gov.au/pahd-ocho-alr/abortion-laws
Email	abortionlaws@health.wa.gov.au
Post	Abortion Legislation – Proposal for reform in Western Australia Public Health Regulation Directorate Department of Health PO Box 8172 Perth Business Centre WA 6849

Glossary of Terms

Abortion: In broad medical terms, “abortion” includes both miscarriage (also known as ‘spontaneous abortion’) and induced abortion. For the purposes of this document, ‘abortion’ refers specifically to induced abortion (or termination of pregnancy), which includes both medical abortions and surgical abortions.

ABS: Australian Bureau of Statistics.

Conscientious objection: A refusal by a health practitioner to provide, or participate in, a lawful treatment or procedure because it conflicts with that practitioner’s personal beliefs, values or moral concerns.

Department: Department of Health of Western Australia.

Gestational age: The duration of a pregnancy in number of completed weeks. Methods used to assess gestational age include known date of ovulation, date of the last menstrual period and diagnostic ultrasound. The average term of a pregnancy is between 37 and 42 completed weeks of gestation.

Health practitioner: An individual who qualified in the practice of a particular field of the health profession and registered with the relevant regulatory authority.

Induced abortion: The performance of a procedure or administration of a substance that is intended to terminate the natural duration a pregnancy.

Late gestational age: Gestational age where pregnancy termination is impacted by additional legislative governance. Late gestational age is not a medical definition and varies across jurisdictions. Current WA legislation specifies 20 weeks and 0 days as the beginning of the “late” gestational age range.

Late abortion: An abortion which occurs at a late gestational age.

Medical abortion: The use of pharmaceutical medications to induce a termination of pregnancy. The most commonly used medications are mifepristone and misoprostol (MS-2 Step).

Medical practitioner: An individual who is registered by the Australian Health Practitioner Regulation Agency (AHPRA) as a medical practitioner.

Surgical abortion: A procedure which involves the removal of the pregnancy (sometimes known as the ‘contents of the uterus' or ‘products of conception’) via the vagina by surgical means.

Viability: The minimum time at which a fetus, if born, may be capable of surviving outside the uterus with medical intervention.

WA: Western Australia.

Woman: For the purpose of the Discussion Paper, the term ‘women’ refers to females of any age, including girls. It is acknowledged that there is diversity in sex characteristics, gender and sexuality among people accessing abortion care.

Introduction

In 1998, WA became the first Australian jurisdiction to decriminalise abortion with the passing of legislation, contingent on specific requirements being met. This legislative change paved the way for other Australian States and Territories to decriminalise the provision of abortion and modernise their statutory frameworks.

WA's legislation differs from the majority of other Australian jurisdiction on several key issues, including the following requirements:

- that two medical practitioners, rather than one, be involved in counselling and care for terminations before 20 weeks;
- that counselling is mandatory, rather than optional; and
- that terminations after 20 weeks can only be approved by members of a Ministerial Panel.

As a result, patients and health practitioners in WA face unique challenges in accessing and providing abortion services. Best practice laws should keep up with medical advances and changes in social and community attitudes. This Discussion Paper outlines the barriers to care and proposes potential legislative amendments to remove clinically unnecessary steps and streamline care pathways to contemporise WA's abortion legislation.

The Department of Health is aware many people hold strong views on this subject. It is not part of this consultation to consider if abortion should be precluded or prevented. Abortion is legally available in WA. Rather, this Discussion Paper focuses on the legislation that could be in place around these medical procedures.

While the current statutory framework refers exclusively to women, the Department recognises that abortion care is accessed by a variety of people, including adult women, girls and people who identify as any gender. This Discussion Paper uses varied terms to reflect different experiences across the WA community.

Abortion care in Western Australia

Current medical practices

There are two types of abortion procedures: medication abortion and surgical abortion. Both procedures are considered safe and severe complications are rare.

Most people accessing abortion care have the option to choose between a surgical or a medication abortion; however, the availability of each is dependent on individual circumstances, such as the number of weeks the pregnancy has progressed.

Surgical abortion

Surgical abortion involves the use of surgical instruments to terminate a pregnancy. This can include vacuum aspiration, also known as dilation and curettage, or dilation and evacuation. Surgical abortions are generally performed under anaesthetic and can only occur in hospitals or appropriately licensed private clinics.

Medical abortion

Medical abortion uses pharmaceutical drugs to induce an abortion.

Medication for use in abortions in early pregnancy has been available in Australia since 2012 and its use has increased over time. A combination of Mifepristone and Misoprostol is used to terminate a pregnancy up to 63 days (9 weeks) gestation. Most medical abortions in early pregnancy are low-risk and are safely managed by general practices and in private outpatient settings.

Medication can also be used to induce an abortion after 63 days gestation, however these abortions occur in a hospital setting.

Counselling and other supports available

Free, non-directive, pregnancy options counselling is available across Western Australia, either in person of via telehealth or phone, for anyone considering parenting, adoption or abortion. Post-abortion counselling is also available to anyone who has had an abortion.

Additional supports are available for people who receive a fetal anomaly diagnosis, including through the King Edward Memorial Hospital social work team.

Data on abortion care

The Department collects and reports data about abortions in WA as required under the Act. Reports on abortions in WA are available to view on the Department's website at: https://ww2.health.wa.gov.au/Reports-and-publications/Reports-on-induced-abortions-in-Western-Australia

This data captures all induced abortions performed in WA, including as a result of medical complications and personal choice.

In 2021, a total of 8184 induced abortions were notified to the Department.[1] In twenty years between 2002 and 2021, an average of 8229 abortions per year were notified.

The abortion rate per 1000 women of reproductive age (15 to 44 years) has declined from 19.5 in 2002 to 14.9 in 2021. **Figure 1** plots the number of abortions and the abortion rate per 1000 women of reproductive age, notified in WA between 2002 and 2021.

In 2021, 83 per cent of abortions occurred at a gestational age of less than 10 weeks. Approximately 16 per cent occurred between 10 and 19 completed weeks, and 0.9 per cent occurred beyond 20 weeks. This distribution was similar in earlier years.

[1]Data from the Abortion Notification System held at the Department of Health, retrieved 15/11/2022

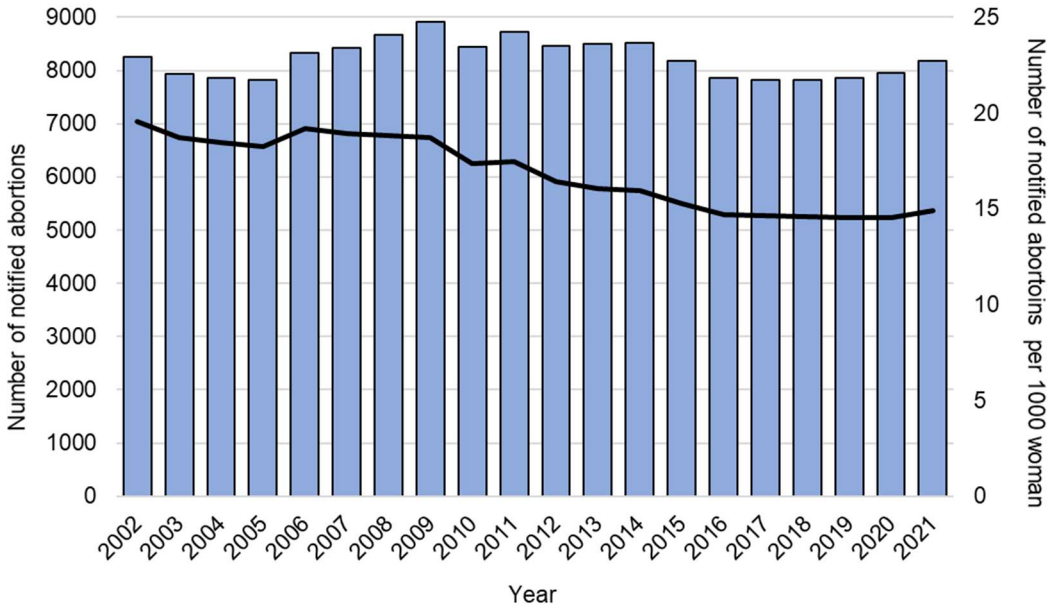

Figure 1: Number of abortions notified in WA between 2002 and 2021 (blue bars, left axis) and the abortion notification rate per 1000 women of reproductive age in WA between 2002 and 2021 (black line, right axis)

Current situation

The *Criminal Code*

Under section 199 of the *Criminal Code*, abortion is lawful in WA, as long as it is performed by a medical practitioner in good faith and with reasonable care and skill, and the performance of the abortion is justified under section 334 of the *Health (Miscellaneous Provisions) Act 1911* (the Act).[2]

A person who unlawfully performs an abortion is guilty of an offence (Penalty: $50,000). If a person who is not a medical practitioner performs an abortion that person is guilty of a crime and is liable to imprisonment for 5 years.

Although there is currently no definition of 'abortion' in the statute book, this Discussion Paper will define abortion as "the performance of a procedure or administration of a substance that is intended to terminate a pregnancy."

The *Health (Miscellaneous Provisions) Act 1911*

The Act, Part XIII, section 334 defines the circumstance under which an abortion can be lawfully performed in WA. The performance of an abortion is only justified if:

- the woman concerned has given informed consent (including receipt of counselling); or
- the woman concerned will suffer serious personal, family or social consequences if the abortion is not performed; or
- there would be serious danger to the physical or mental health of the woman concerned if the abortion is not performed; or
- for the woman concerned, the pregnancy is causing serious danger to her physical or mental health.

In addition, to the above requirements, if the pregnancy exceeds a gestational period of 20-weeks, the abortion may not be performed by a medical practitioner unless two medical practitioners,

[2] Health (Miscellaneous Provisions) Act 1911 - [17-f0-00].pdf (legislation.wa.gov.au).

who are members of a Ministerial appointed medical panel, have agreed to the abortion. The abortion must be carried out in a facility approved by the Minister for Health.

Existing abortion laws in Australia

There is no single uniform way in which abortion is dealt with across Australia. While it is lawful in all States and Territories in Australia to terminate a pregnancy, the circumstances under which pregnancies can be terminated vary between each State and Territory (Appendix A). This lack of uniformity has resulted in women travelling outside their State or Territory to obtain an abortion in a jurisdiction where the procedure is available to access. This action has impacts on the health and wellbeing of those women.

Proposal to reform the abortion legislation

Purpose of the abortion laws

The overall aim of the abortion legislation is to:

- enable reasonable and safe access to abortion; and
- regulate the conduct of health practitioners in relation to abortion.

Desired outcome of the abortion legislation reform

The Department of Health seeks to improve access to safe and timely healthcare for women in this state.

Statutory framework and offences related to abortion

Prior to 1998, laws pertaining to the prohibition of abortions were contained in the Criminal Code. In 1998, the Criminal Code was amended to exclude the performance of abortions as a crime, if certain requirements were met.

As noted above, the Criminal Code currently provides that it is unlawful to perform an abortion unless the abortion is performed by a medical practitioner and the performance of the abortion is justified under section 334 of the Act.

Recent reforms across Australia have removed offences from criminal legislation which emphasises that termination is a health issue rather than a criminal issue. In other jurisdictions, like New South Wales (NSW), the law is permissive [a medical practitioner may perform a termination]. In these jurisdictions, termination only becomes an offence, in certain circumstances, e.g. if performed by an unqualified person (section 82 Crimes Act 1900). NSW, Queensland (QLD), Tasmania (TAS) and Victoria (VIC) still have criminal offences in relation to unlawful abortion included in their equivalent criminal laws.

In the Australian Capital Territory, these offences are included in their equivalent health legislation.

Decriminalisation of abortion will not result in deregulation of the procedure. It is proposed that the *Criminal Code* offence be repealed. While an offence would remain for an “unqualified person” to perform or assist with an abortion (as is the case elsewhere), this amendment would complete the decriminalisation of abortion, aligning WA with other jurisdictions.

Informed consent and mandatory counselling requirements

Informed consent is an important principle in the provision of healthcare, and a necessary standard of appropriate care. Prior to administering a medical treatment or performing a procedure, a healthcare provider must explain the nature, the intended consequences and the risks of the intervention to the individual, and discuss any alternative interventions, including the

option for no intervention. For informed consent to be valid, it must be freely given by the individual or, if the individual does not have the capacity to give consent, an appropriate representative. In exceptional circumstances, such as in an imminently life-threating situation where the individual, or their representative, is unable to provide consent, informed consent may not be required.

Under 334 (5) of the Act, informed consent is defined as consent given by the woman where a medical practitioner, other than the one performing the abortion, has provided the woman with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term, and offered her referral for counselling about matters relating to both these options regardless of choice made.

Free, non-directive, pregnancy options counselling is available across WA, either in person or via telehealth or phone, for anyone considering parenting, adoption or abortion. Post-abortion counselling is also available to anyone who has had an abortion.

Regulatory options in relation to informed consent and mandatory counselling requirements

Option 1: No change**.** Retain the existing provisions requiring mandatory counselling in order to obtain informed consent for abortion, as per the Act.

Option 2: Remove existing legislated provisions requiring mandatory counselling in in order to obtain informed consent. Medical practitioners would continue to be required to obtain informed consent in line with existing standards of care and professional obligations.

Free, non-directive, pregnancy option counselling would continue to be available to people wishing to access this service.

The Department's WA Health Consent to Treatment Policy outlines the minimum mandatory requirements for health professionals in obtaining a patient's consent to treatment.

Requirement for two medical practitioners to be involved before a woman can have an abortion

The current legislation requires that informed consent be obtained by a medical practitioner other than those involved in the performing the abortion. The medical practitioner performing the abortion also needs to obtain informed consent. This means two medical practitioners must counsel the pregnant woman prior to the abortion being performed.

This requirement is inconsistent with the laws in all other Australian jurisdictions (Appendix A). It is also inconsistent with requirements for informed consent expected for other medical treatments and procedures in WA.

This legal requirement has several disadvantages such as:

- The requirement for additional consultations may delay the abortion. Delays to accessing medical intervention can increase the risk of complications and recovery time for the patient.
- The requirement can be a barrier for some people, particularly those living in rural and remote areas with fewer medical practitioners.
- Seeing multiple practitioners can result in extra cost for the patient.

Removing this requirement would enable women to access abortion from a single medical practitioner (excluding late abortions). This will align abortion with other medical treatments and with abortion legislation in all other Australian jurisdictions.

Regulatory options in relation to the requirement for two medical practitioners to be involved before a woman can have an abortion

Option 1: No change**:** Retain the existing provisions requiring two medical practitioners to be involved before a woman can have an abortion.

Option 2: Amend provisions to allow only one health practitioner to be involved (excludes late abortions).

Conscientious objection

WA's current abortion legislation does not provide clear guidance to practitioners, services and patients on how conscientious objections should be managed, including in the case of a medical emergency.

Section 334 (2) of the Act provides that no person, hospital, health institution, other institution or service is under a duty to participate in the performance of any abortion. There is no requirement on the person or service to disclose such objections.

In practice this means that women may need to visit several health practitioners before obtaining a referral for abortion care. For people in regional and remote areas, where there are fewer health practitioners, this can create an additional barrier to accessing time-critical care.

Conscientious objection may speak to a health practitioners' personal moral integrity, and form part of their personal identity. It may, therefore, be justifiable to allow health practitioners to conscientiously object to providing abortion services; however, the rights of the health practitioners must be balanced against the rights of the person to access safe and timely health care.[3]

The Australian Medical Association Code of Ethics[4] states, in section 2.1.3:

> "If you refuse to provide or participate in some form of diagnosis or treatment based on a conscientious objection, inform the patient so that they may seek care elsewhere. Do not use your conscientious objection to impede patients' access to medical treatments including in an emergency situation."

Some Australian jurisdictions, such as VIC and QLD, legislate that a health practitioner who has a conscientious objection to abortion is obliged to refer or direct the woman to another health practitioner who is willing to provide the relevant information and to act[5].

Recently enacted legislation pertaining to voluntary assisted dying in WA provided for conscientious objection by health practitioners[6]. These provisions allowed practitioners to object to participation in voluntary assisted dying but required that they declare their objection immediately and provide the patient with approved information on their healthcare options. This requirement allowed practitioners' beliefs to be respected, without compromising the service provided to a patient.

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[3] Brock D. Conscientious refusal by physicians and pharmacists: who is obligated to do what, and why? Theoretical Medicine and Bioethics. 2008; 29:187–200.
[4] AMA Code of Ethics 2004. Editorially Revised 2006. Revised 2016
[5] Keogh, L.A., Gillam, L., Bismark, M. et al. Conscientious objection to abortion, the law and its implementation in Victoria, Australia: perspectives of abortion service providers. BMC Med Ethics 20, 11 (2019).
[6] Voluntary Assisted Dying Act 2019 (WA) WALW - Voluntary Assisted Dying Act 2019 - Home Page (legislation.wa.gov.au)

Requiring health practitioners who conscientiously object to refer the patient to another health practitioner who is willing to provide the relevant information and to act, will ensure that the beliefs of the health practitioner are respected while also ensuring that the patient's right to access safe and timely health care is not impeded.

Regulatory options in relation to conscientious objection

Option 1: Retain current provision allowing a person, hospital, health institution or other institution to conscientiously object to providing abortion care, without any requirement to refer the patient to a practitioner who is willing and able to provide abortion care.

Option 2: Provide updated provisions to allow health practitioners to conscientiously object with clear and unambiguous directions to refer the patient to another health practitioner who is willing and able to provide abortion care.

This provision would not allow a health practitioner or institution to invoke conscientious objection if the abortion is required to manage an emergency health care event.

Additional requirements for late abortions

Gestational limit of 20-weeks

Under the current WA legislation abortions after 20 weeks gestation require approval from two members of an appointed Ministerial Panel, who agree that the pregnant woman or the fetus has a severe medical condition that justifies the procedure. The procedure can only be performed at an approved facility.

In most States and Territories additional approval is required for terminations beyond 22 or 24-weeks, with the agreement of two medical practitioners (Table 1; Appendix A). For example, the Northern Territory (NT) and VIC permitting abortion up to 24-weeks gestation.

Late abortions can be extremely challenging for both the medical practitioner and the woman involved. While abortions completed at a later-stage gestation can be complex due to the potential viability of the fetus, they are rare in WA, accounting for only 0.9% of all abortions in 2021.

In Australia, terminations after 20-weeks are almost always performed because of severe congenital anomalies or conditions that affect the fetus, or maternal conditions in which continuation of the pregnancy would be significantly detrimental to the mental or physical health of the woman. [7]

Since 1998, there has been significant progress in assessment techniques and the ability to diagnose rare and significant maternal and fetal conditions. This provides reliable information and enables informed choice regarding options for care during pregnancy. Reasonable time is required for information to be compiled, options discussed and choices made.

Many assessments for fetal anomalies or other conditions require a pregnancy to reach a certain gestational age and time allowed for procedures and examinations to be undertaken and clinically assessed. Concerning congenital anomalies are often identified for the first time at 20-week fetal development and anatomical scans. Further investigation may be required before a confident diagnosis can be made. Once a diagnosis is determined, several different specialists may be needed to counsel the woman and family on what the diagnosis does or could mean. Then time is required for the woman and their family to consider their options and decide.

[7] Rosser S, Sekar R, Laporte J, et al. Late termination of pregnancy at a major Queensland tertiary hospital, 2010–2020. Med J Aust 2022; 217: 410 - 414.

Consequentially, a pregnancy may be more than 20 weeks of gestation before an abortion procedure can be performed. In almost all cases, these pregnancies are very much wanted but the health risks to women or the likely outcome for the fetus, if born, have contributed to the difficult decision.

Increasing the gestational age at which additional requirements apply would:

- enable more time for the woman and their family to consider options and choices during a highly emotive and distressing period in their lives, before additional approval and other requirements need to be met.
- align the WA legislation with other Australian jurisdictions; and
- provide women with certainty that care can be accessed in WA and reduce the necessity to travel interstate

Regulatory options in relation to gestational limit for additional requirements

Option 1: No change. Retain additional requirements from 20 weeks gestation.

Option 2: Increase the gestational age at which additional requirements will apply from 20 weeks to 24-weeks gestation.

Ministerial Panel decision maker in late abortions

Under the current Act, post 20-week abortions are only authorised when two medical practitioners (members of a statutory panel of at least six medical practitioners) agree that either the pregnant woman or the unborn baby has a severe medical condition that, in their clinical opinion, warrants the procedure.

No other Australian jurisdiction uses a Ministerial Panel for the approval of late abortion. Some jurisdictions (VIC, NT and QLD) require consultation with another registered medical practitioner, while others required the involvement of at least one specialist medical practitioner (NSW and TAS). In addition, Queensland has published guidelines to assist the legislation.[8]

It is proposed to dissolve the Panel. Instead a medical practitioner will only be permitted to perform a late abortion if the practitioner reasonably believes the abortion is appropriate and has consulted with another medical practitioner who also reasonably believes the abortion is appropriate.

This change also aims to make it easier for a registered medical practitioner to refer to another registered medical practitioner with the appropriate training and skills.

Regulatory options in relation to a Ministerial Panel

Option 1: No change. Retain the requirement for members of a Ministerial Panel to approve abortions beyond the gestational age limit (i.e. late abortions).

Option 2: Remove the requirement for members of a Ministerial Panel to approve abortions beyond the gestational age limit (i.e. late abortions) but require an additional medical practitioner to be consulted.

Ministerial approval for a facility to conduct late abortions

In WA, late abortions (currently from 20 weeks gestation) can only be performed at health services approved by the Minister for Health for that purpose. Currently, there are only two facilities approved for this purpose, one in the Perth metropolitan area and one in regional WA. Pregnant

[8] : Maternity and Neonatal Clinical Guidelines | Queensland Clinical Guidelines | Queensland Health

women living in rural and remote areas often have to travel long distances, and be separated from support networks, in order to access abortion services.

Late abortion care is the only service where sites require express approval from the Minister for Health. A Minister for Health may choose to refuse an application. For all other services, including Voluntary Assisted Dying, the requirements are set out in the relevant health legislation.

Most jurisdictions do not require ministerial approval for a hospital to perform abortions. In SA the abortion must be performed at a prescribed hospital. In NSW, the Secretary of the Ministry of Health must approve a hospital, or other facility as a facility at which terminations may be performed on women who are more than 22 weeks pregnant (Appendix A).

Removing this requirement would align abortion care to the provision of other healthcare in WA. As late abortions are complex medical procedures, some patients will still be required to travel to a facility where this specialised care can be provided.

Regulatory options in relation to health service approval to perform late abortions

Option 1: No change. Retain the requirement for Ministerial approval for a health service to perform late abortions.

Option 2: Remove the requirement for Ministerial approval for a health service to perform late abortions.

Conclusion

This Discussion Paper sets out the challenges which patients, practitioners and other stakeholders experience when accessing or providing abortion services under WA's current legislation.

Potential impacts from proposed legislative changes on health service providers, staff, patients and other stakeholders will be considered prior to implementation.

Community feedback received in response to this Discussion Paper will inform the plan to amend the WA abortion legislation in a way that ensures it will meet the needs of the WA community.

Consultation Questions

The following questions are devised to assist respondents to structure their comments to respond to the issues raised in this document.

If you choose to have your response kept confidential, your responses will still be included in in deidentified summary information, but no excerpts or direct quotes will be published in any resulting publications.

To help us understand the context of views received during this consultation for each submission we request that gender, age, postcode, individual or organisation, and residence in WA be completed; however, if you wish not to disclose this information, you may select "Prefer not to disclose' for each.

1. Do you wish your response to be kept confidential? (Required)	☐ Yes ☐ No
2. What is your gender? (Required)	☐ Female ☐ Male ☐ Other ☐ Prefer not to disclose ☐
3. What is your age? (Required)	☐ 17 or younger ☐ 18–24 ☐ 25–34 ☐ 35–44 ☐ 45–54 ☐ 55–64 ☐ 65–74 ☐ 75 or older ☐ Prefer not to disclose ☐
4. Are you a resident of Western Australia? (Required)	☐ Yes ☐ No
5. What is your postcode? (Required)	☐ Answer
6. Is your response as an individual, or on behalf of an organisation? (Required)	☐ Individual response. ☐ Responding on behalf of an organisation (name of organisation) Organisation Name: _____
7. Before this survey, how would you describe your level of awareness of abortion legislation in Western Australia? (Required)	☐ Not aware ☐ Somewhat aware ☐ Aware ☐ Very aware

8. Have you ever accessed abortion services as a patient (or support person) in WA? (Required)	☐ Yes (go to Q 9) ☐ No (go to Q 10)
9. In your experience, can you identify any barriers to accessing abortion services in WA?	☐ Difficulty obtaining a referral ☐ Delays in clinical assessment ☐ Delays in obtaining mandatory counselling ☐ Medical practitioner's conscientious objection ☐ Medical practitioner's clinical objection ☐ Challenges understanding multiple steps ☐ Financial impact (of multiple appointments, travel, accommodation) ☐ Challenges due to age ☐ Challenges due to remote/rural location of residence ☐ Other, please specify _____ Please provide brief reasons for your answer
10 Have you ever provided abortion services in WA? (Required)	☐ Yes (go to Q 11) ☐ No (go to Q 13)
11 When you provided abortion services, what was your professional role?	☐ Medical practitioner ☐ Nurse or midwife ☐ Other (please specify)
12 In your experience, can you identify any barriers to providing abortion services in WA?	☐ Difficulty engaging another medical practitioner in provision of counselling or procedure ☐ Difficulty in accessing suitable pregnancy assessment services ☐ Difficulty in accessing advice on appropriate care provision ☐ Difficulty in accessing hospital facilities ☐ Difficulty in dispensing of prescriptions ☐ Gestational age more than 9 weeks at first appointment (in the case of a medical abortion) ☐ Gestational age from 20 weeks at first appointment ☐ Medical practitioner's conscientious objection ☐ Medical practitioner's clinical objection ☐ Challenges navigating the multiple steps required ☐ Financial impact on patient ☐ Emotional impact on patient ☐ Challenges due to age of the patient ☐ Challenges due to remote/rural location of practice ☐ Other: ____ Please provide brief reasons for your answer_____
13 In relation to obtaining informed consent for abortion and the requirement for mandatory counselling, which option do you support? (Required)	☐ Option 1: No change. Retain the existing provisions requiring mandatory counselling in order to obtain informed consent for abortion, as per the Act. ☐ Option 2: Remove existing legislated provisions requiring mandatory counselling in in order to obtain informed consent. Medical practitioners would continue to be required to obtain

		informed consent in line with existing standards of care and professional obligations. ☐ No preference or unsure. Please provide brief reasons for your answer
14	In relation to the requirement for two medical practitioners to be involved before a woman can have an abortion, which option do you support? (Required)	☐ Option 1: No change. Retain the requirement for a pregnant woman to consult with a medical practitioner who is not the medical practitioner who will perform or assist with the performance of the abortion. ☐ Option 2: Amend provisions to allow only one health practitioner to be involved (excludes late abortions). ☐ No preference or unsure. Please provide brief reasons for your answer
15	In relation to health practitioners having a right to conscientiously object to participating in an abortion, which option do you most support? (Required)	☐ Option 1: No change. Retain current provision allowing a person, hospital, health institution or other institution to conscientiously object to providing abortion care, without any requirement to refer the patient to a practitioner who is willing and able to assist. ☐ Option 2: Provide updated provisions to allow health practitioners to conscientiously object with clear and unambiguous directions to refer the patient to another health practitioner who is willing and able to provide abortion care. ☐ No preference or unsure. Please provide brief reasons for your answer
16	In relation to the gestational age limit at which an abortion can proceed without additional requirements, which option do you most support? (Required)	☐ Option 1: No change. Retain additional requirements from 20 weeks gestation. ☐ Option 2: Increase the gestational age at which additional requirements will apply from 20-weeks to 24-weeks gestation. ☐ No preference or unsure. Please provide brief reasons for your answer
17	In relation to additional requirements for abortions beyond the gestational age limit (i.e. late abortions), which option do you most support? (Required)	☐ Option 1: No change. Retain the requirement for members of a Ministerial Panel to approve abortions beyond the gestational age limit (i.e. late abortions). ☐ Option 2: Remove the requirement for members of a Ministerial Panel to approve abortions beyond the gestational age limit (i.e. late abortions) but require an additional medical practitioner to be consulted. ☐ No preference or unsure. Please provide brief reasons for your answer
18	In relation to the requirement for Ministerial approval for a health service to perform late abortions, which option do you support? (Required)	☐ Option 1: No change. Retain the requirement for Ministerial approval for a health service to perform late abortions ☐ Option 2: Remove the requirement for Ministerial approval for a health service to perform late abortions ☐ No preference or unsure Please provide brief reasons for your answer
19	Other comments on the proposed reform of the WA legislation regarding abortion.	

Appendix A: Australian abortion legislation summary

Table 1: Summary of current legislation in other Australian jurisdictions[9]

	Western Australia	Victoria	Queensland	Northern Territory	New South Wates	South Australian	Australian Capital Territory	Tasmania
Statutory framework and offences related to abortion - **Criminal offences for unlawful termination**	*Criminal Code s.199* provides that it is unlawful to perform an abortion unless — the abortion is performed by a medical practitioner and the performance of the abortion is justified under section 334 of the *Health (Miscellaneous Provisions)* *Act 1911.*	*Crimes Act 1958* section 65 provides that a person who is not a qualified person must not perform an abortion on another person.	*Criminal Code 1899 s 313(1A)* provides that a person does not commit an offence of killing an unborn child by performing a termination, or assisting in the performance of a termination.	*Criminal Code Act 1983 (s208A)*. A person commits an offence if they terminate a pregnancy and the person is not a qualified person. A qualified person includes a suitably qualified medical practitioner, an authorised ATSI health practitioner, an authorised midwife, an authorised nurse, an authorised pharmacist.	*Crimes Act 1900 (s82)*: An unqualified person who performs a termination on another person commits an offence. An unqualified person is a person that is not a medical practitioner or is not to assist in the performance of the termination.	*Criminal Law Consolidation Act 1935*, Version 29.8.22 Abolished common law offence – abortion.	Offence included in the *Health Act 1993* sections 81 and 82: A person commits an offence if they supply/administer an abortifacient or carries out a surgical abortion and is not a doctor. There are exceptions for pharmacists or persons assisting a pharmacist and persons assisting a doctor.	*Criminal Code 1924* section 178D provides that a person that performs a termination and who is not a medical practitioner or a pregnant woman, is guilty of a crime.
Additional medical review required	Yes, for informed consent, must be seen by a doctor that is not involved in the abortion	Not required if not more than 24 weeks. A medical practitioner can perform an abortion on a woman at more than 24 weeks only if they have consulted with another registered medical practitioner	Not required if not more than 22 weeks If a medical practitioner performs an abortion >22 weeks, they must consult another medical practitioner	Not required if not more than 24 weeks. A medical practitioner can perform an abortion on a woman at more than 24 weeks only if they have consulted with another registered medical practitioner	Not required if not more than 22 weeks. Required specialist medical practitioner to consult with another specialist medical practitioner after 22 weeks A termination on a person who is more than 22 weeks pregnant, the specialist medical practitioner **may** seek advice from a multi-disciplinary team or hospital advisory committee.	Not required up to 22+6 weeks gestation	Not required	Not if not more than 16 weeks. If more than 16 weeks, medical practitioner must consult with another medical practitioner and at least one must be a specialist in obstetrics or gynaecology

[9] Table 1 is intended to assist individuals or organisations responding to the consultation questions outline in this document. Table 1 is not legal advice. Table 1 is not medical advice. It is the responsibility of any individual or organisation using Table 1, for any and all purposes, including responding to the consultation questions, to also refer to the relevant legislation on which Table 1 in based, and any other relevant legislation, irrespective of whether that legislation is explicitly referred to in Table 1. Table 1 covers three pages (page 19 to 21).

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	Western Australia	Victoria	Queensland	Northern Territory	New South Wates	South Australian	Australian Capital Territory	Tasmania
Consideration of conscientious objection model	No health service or health practitioner need be involved in an abortion if they have an objection…	A GP who has a conscientious objection to abortion must refer the woman or pregnant person to a medical practitioner who does not object	Health practitioner with a conscientious objection to abortion must refer the patient to a practitioner who does not have an objection to abortion.	A medical practitioner must declare their conscientious objection to the patient and refer them to another authorised health practitioner/doctor known not to object.	A health practitioner with a conscientious objection must declare their objection and refer the patient to a health practitioner who does not object.	If a person asks a registered health professional to perform/assist/ provide advice about an abortion, and the health professional has a conscientious objection to abortion, they must disclose the conscientious objection.	If an authorised person objects to prescribing, supplying or carrying out an abortion, they must declare their objection.	Unless an emergency, a doctor does not have to provide any assistance or information about the procedure to a woman seeking a termination. However, they must disclose this reservation and refer the patient to another health service provider who will be able to assist.
Mandatory counselling requirements	Currently required for informed consent.	Counselling referral is optional	Counselling is optional	Counselling referral is optional.	A doctor must assess whether it is necessary to discuss counselling with the person. After 22 weeks' gestation, doctors must provide information about access to counselling, except in the event of an emergency.	Before performing a termination on a person, a registered health practitioner must provide all necessary information to the person about access to counselling, including publicly funded counselling.	Counselling available but not mandatory.	Counselling referral is optional.
Late Gestational Age Limit	From 20	More than 24	More than 22	More than 24	More than 22	From 23	NA	From 16

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	Western Australia	Victoria	Queensland	Northern Territory	New South Wates	South Australian	Australian Capital Territory	Tasmania
Ministerial Panel as decision maker in abortions after gestational limit	Yes. If, at least 20 weeks of a pregnancy has been completed, the performance of an abortion is not justified unless 2/6 medical practitioners on the Ministerial Panel have agreed.	Not required A registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if they have consulted with at least one other registered medical practitioner	Not required If a medical practitioner performs a termination on a woman who is more than 22 weeks pregnant, the medical practitioner must consult with another medical practitioner.	Not required A registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if they have consulted with at least one other registered medical practitioner	Not required Requires a specialist medical practitioner to consult with another specialist medical practitioner for a termination after 22 weeks. A termination on a person who is more than 22 weeks pregnant, the specialist medical practitioner **may** seek advice from a multi-disciplinary team or hospital advisory committee. Secretary of the Ministry of Health must approve a hospital, or other facility as a facility at which terminations may be performed on women who are more than 22 weeks pregnant	Not required. Abortion must be performed at a prescribed hospital.	Not required.	Not required More than 16 weeks requires the medical practitioner to consult with another medical practitioner, and at least one must be a specialist in obstetrics or gynaecology

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