

## In Confidence

Office of the Associate Minister of Health

Social Wellbeing Cabinet Committee

## Regulation of information collection from abortion and sterilisation service providers

### Proposal

- 1 This paper seeks agreement to develop regulations to collect information from abortion and sterilisation service providers.

### Relation to government priorities

- 2 Improving wellbeing is a core Government priority for 2021. These regulations will support improved health and wellbeing outcomes for people accessing abortion, abortion-related counselling and sterilisation services by establishing a strong monitoring and oversight framework to inform service improvements and reduce barriers and inequity.

### Executive Summary

- 3 The Abortion Legislation Act 2020 introduced changes to decriminalise abortion and better align the provision of abortion services with other health services. It also introduced information collection, review and reporting obligations for the Director-General of Health (Director-General) on contraception, sterilisation, abortion, abortion-related information and advice, and abortion-related counselling services. The Act also introduced requirements on the Minister of Health to take reasonable steps to ensure that these services are available throughout New Zealand.
- 4 Collecting good information will help improve timely and equitable access to quality services. Regulations are required to enable the Director-General to collect some of the information needed to meet the obligations recently introduced.
- 5 I am seeking Cabinet agreement to make regulations requiring:
  - 5.1 abortion service providers to submit information about each abortion, including information on abortion-related counselling, within a month of the abortion being provided. Temporary provisions requiring notification of all abortions performed by abortion service providers are in place while permanent provisions are developed
  - 5.2 abortion and sterilisation service providers to submit information annually about their services more generally.
- 6 Alternative sources are available to collect information about contraception and information or advisory services.

- 7 Regulations need to be in force by 24 September 2021, when the temporary statutory notification requirements for abortions expire.

## Background

- 8 The Contraception, Sterilisation and Abortion Act 1977 sets out the conditions and requirements under which contraception, sterilisation and abortion-related services can be provided in New Zealand.
- 9 The Abortion Legislation Act 2020 came into force on 24 March 2020 and amended several Acts, including the Contraception, Sterilisation and Abortion Act 1977. The resulting legislative changes decriminalised abortion, modernised the legal framework for abortion, and better aligned the regulation of abortion services with other health services.

## Information collection, reviewing and reporting obligations were recently introduced

- 10 Prior to the Abortion Legislation Act, information on abortion services was collected and reported on by the Abortion Supervisory Committee. The Abortion Supervisory Committee was disestablished when the Contraception, Sterilisation and Abortion Act 1977 was amended, and some of its functions were transferred to the Director-General.
- 11 To meet the new obligations under the Contraception, Sterilisation and Abortion Act 1977, the Director-General must now, amongst other things:
- 11.1 collect, collate, analyse and publish information about the provision of abortion and abortion-related counselling services
  - 11.2 review and report to the Minister of Health every 5 years on whether there is timely and equitable access to, and the relative costs to women of:
    - 11.2.1 contraception
    - 11.2.2 sterilisation
    - 11.2.3 abortion services
    - 11.2.4 information or advisory services about whether to continue or terminate a pregnancy
    - 11.2.5 abortion-related counselling services
  - 11.3 review and report to the Minister of Health every 5 years on whether there is evidence of abortions being sought solely because of a preference for a fetus to be of a particular sex
  - 11.4 compile and maintain a list of the names and contact details of abortion service providers in New Zealand.
- 12 Regulations can be made to give effect to the legislation if the information needed to support the Director-General's obligations cannot be collected in any other way.

- 13 Prior to the Abortion Legislation Act, the Contraception, Sterilisation and Abortion Act 1977 contained provisions for monthly reporting. Abortion and sterilisation service providers were required to notify information about each abortion and sterilisation procedure respectively, to the Director-General, within a month of the procedure being performed.
- 14 The Abortion Legislation Act replaced the monthly notification requirement for abortion service providers with a temporary provision detailing the information to be notified to the Director-General within a month of each abortion being performed. The temporary provision was intended to act as a bridge between the old reporting requirements and the new ones, to be addressed through operational arrangements or the making of regulations. The temporary provisions expire on 24 September 2021.
- 15 The monthly notification requirements for sterilisation service providers were not affected by the Abortion Legislation Act and remain permanently in place.

## Analysis

### Good quality information needs to be collected

- 16 Collection of good quality information is needed to:
  - 16.1 monitor and oversee the service.
    - 16.1.1 The Minister of Health is required to take reasonable steps to ensure that the services described in paragraph 11.2 are available throughout New Zealand.
    - 16.1.2 The Director-General is required to ensure that abortion and abortion-related counselling services are provided in accordance with standards published by the Director-General.
  - 16.2 understand barriers to access, particularly for groups of high interest, to:
    - 16.2.1 improve the equitable access to quality services, including through understanding workforce capability and capacity
    - 16.2.2 improve the timely access to services
    - 16.2.3 address funding gaps
  - 16.3 understand whether the recent legislative changes have achieved the intended outcomes
  - 16.4 plan targeted sex education and family planning services to help prevent unwanted pregnancies and the need for abortions in New Zealand.
- 17 The changes to the legislation and need for regulations to replace the temporary abortion information collection provisions provide an opportunity to review and revise all the information currently collected to better meet the intent of the Abortion Legislation Act. The regulations will sit within a wider information collection framework developed by the Ministry to support the

intent of the Abortion Legislation Act and ensure good quality information is collected. This framework will allow the Ministry to monitor and evaluate services, inform recommendations for improving services, and measure the effectiveness of interventions to ensure we continue to improve equitable outcomes.

**Regulations are needed to collect additional information from abortion and sterilisation service providers**

- 18 After considering what information is already available, I consider it necessary to make regulations requiring abortion and sterilisation service providers to submit information to the Director-General to support them to meet the requirements described in paragraph 11.
- 19 Regulations provide certainty and clarity of requirements for service providers and the Director-General, and are in line with current notification requirements. Much of the information needed is not currently collected so cannot be accessed from other sources.
- 20 Regulations are needed by 24 September 2021, when temporary provisions for monthly notifications about each abortion performed expire. Without making regulations, there is no legal framework for collecting much of the information needed, and it may not be possible to meet the obligations imposed by the Abortion Legislation Act.
- 21 Alternative sources are available to collect information about contraception and information or advisory services about whether to continue or terminate a pregnancy.
- 22 The focus of the regulations I am proposing is abortion service providers and sterilisation service providers. Currently, information from providers of contraception or abortion-related counselling services is not collected. I do not propose to make regulations at this time to collect information from these providers because:
  - 22.1 the provision of contraception is widespread and complex, involving many providers (eg, supermarkets (condoms), pharmacies, doctors' practices) with different operating systems. The administrative burden on these providers would be significant, and enough information can be collected from other sources such as dispensing data
  - 22.2 counselling services are similarly complex with abortion-related counselling being difficult to define and therefore report on. Work is underway to develop an accepted definition of what abortion-related counselling is, and the training or qualifications needed to deliver it. While this work is progressing, information can be collected from the abortion service providers, with little added administrative burden, about abortion-related counselling that is provided by counselling services associated with the abortion service providers.

- 23 The Director-General is required to regularly review the services and report to the Minister of Health. I intend to keep the suitability of what information is collected and how under review.

### **Proposed monthly notification requirements**

#### *Abortion service providers*

- 24 I propose to make regulations requiring abortion service providers to continue to submit abortion notifications within a month of each procedure. I propose a modest increase in the amount of information to be collected about each abortion, for the monthly notification requirement to better reflect the purpose of the Abortion Legislation Act and paragraph 11 identified above.
- 25 Information about abortion-related counselling that is provided by counselling services associated with the abortion service providers can also be collected from the abortion service providers with little added administrative burden.
- 26 Appendix 1 provides a list of the information currently collected and what I propose to collect once the current provisions expire from abortion service providers, including information about abortion-related counselling. I propose to continue to collect the information that is already collected because it provides continuity of information collection and supports the Director-General to review and advise on improving access to services.
- 27 The new reporting requirements being proposed are:
- 27.1 how the abortion consultation was delivered (eg, in person or by phone). This information will help to monitor service provision options and improve the equitable provision of quality of services
- 27.2 whether it was a self-referral. Self-referrals to abortion services, as opposed to referral from a medical practitioner, were introduced under the recent legislative changes. I propose to collect this information to monitor the uptake of self-referrals and the average wait times in relation to referral method to monitor the impacts of the recent changes
- 27.3 wait times. The Director-General must review and report on whether there is timely and equitable access to abortion. I propose to collect information on how long individuals waited for abortion services from initial referral or self-referral
- 27.4 the type of health practitioner who provided the service (eg, a midwife or doctor). Changes to the Contraception, Sterilisation and Abortion Act 1977 mean abortions can be provided by a wider range of health practitioners in more settings and it is important to monitor how these changes impact on individuals and the provision of services
- 27.5 how the abortion was funded (eg, privately, publicly or mixed). This information will help the Director-General meet the obligation to review

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whether there is equitable access to services, including who is providing what services, where, and who is able to access them

- 27.6 age of individual. This will provide similar information to what was already sought (date of birth of the individual) while providing better privacy for the individual
- 27.7 whether the individual required an interpreter. Individuals whose first language is not English and members of the deaf community (disabled people) were identified as high priority in terms of equity and collecting this information will inform improvements to equitable access to services
- 27.8 the relationship of any person who gave informed consent on behalf of the individual receiving the procedure. Improving national data collection on bodily integrity issues in New Zealand is one of the two key improvement areas identified in the Disability Action Plan 2019-2023
- 27.9 details of any assessment carried out to determine the capacity of the individual to give or refuse consent, including the qualifications and relationship to the individual of the person carrying out the assessment. This information, and the information described in the following two paragraphs, is needed to ensure appropriate use and provision of services, in addition to the equitable and timely access to these services. This includes ensuring those who lack the capacity to give informed consent are not over-represented
- 27.10 any court order regarding the capacity of the individual and/or the performance of the procedure
- 27.11 whether sterilisation was carried out at the same time as the abortion procedure
- 27.12 whether the individual received abortion-related counselling, including the name and location of the service provider, and wait times for counselling. This will help the Director-General meet the obligation to collect information about the provision of abortion-related counselling services more broadly, meet the Ministry's monitoring and oversight obligations and improve equitable access to services
- 27.13 gender identity and disability status. This information will help identify specific population groups to support the Director-General to meet the obligation to review whether there is equitable access to services
- 27.14 whether the individual was charged for the service or associated medical costs (eg, scans) and for which services they were charged. This information will support the Director-General to review the costs to women of services and improve equitable access to services where cost may be a barrier.

*Sterilisation service providers*

- 28 Sterilisation refers to any procedure that leaves a person permanently unable to reproduce, although reversal of sterilisation procedures is sometimes possible. Vasectomy is the most common procedure for males. Tubal ligation (fallopian tubes are blocked or removed) is the most common procedure for females but hysterectomies (removal of the uterus) and bi-lateral oophorectomy (removal of both ovaries) are also performed. Sterilisation procedures, particularly for women, are heavily under-reported.
- 29 A permanent provision requiring monthly reporting already exists and cannot be changed through regulations. To meet the new obligations for the Director-General under the Contraception, Sterilisation and Abortion Act 1977, I intend to amend the monthly notification form to ask for additional information on a voluntary basis. I expect the Ministry of Health to also work on improving reporting rates.
- 30 The additional information will align with the information to be collected from abortion service providers where relevant, for example, details of the provider, demographics of the individual and wait times. It will also give better oversight of services to inform the provision of quality services, improve access, reduce inequities, and gather information on non-consensual sterilisation. This supports one of the key improvement areas of the Disability Action Plan 2019-2023 to improve national data collection on sterilisation and bodily integrity issues and evidence to inform understanding of the situation of disability-related sterilisation in New Zealand.

**Proposed annual reporting requirements**

- 31 I do not expect an annual reporting requirement to have a large impact on providers as it is a small amount of information about their services which should be easy to collate. An annual reporting requirement will focus on provider's services more broadly, rather than on specific procedures, and will include information that is unlikely to change often.
- 32 I am seeking slightly different information for the annual sterilisation report in comparison to the annual abortion report. The regulatory powers for information collection from sterilisation service providers are restricted to timeliness, equity and cost whereas the Director-General is required to collect broader information about abortion services.

*Abortion service providers*

- 33 I propose to make regulations to introduce an annual reporting requirement for abortion service providers to meet the new obligations for the Director-General under the Contraception, Sterilisation and Abortion Act 1977.
- 34 I propose an annual update from abortion service providers should include information on:

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- 34.1 whether their facility provides abortion-related counselling or not, and the training, qualifications and professional membership of any individuals providing that counselling at that facility. This information is needed to build a picture of who is providing what services to support the Director-General to review and report on the equitable provision of services
- 34.2 the types of procedures they carry out or form of counselling they provide (eg, in person or by phone). I consider this forms part of the Director-General's review and report obligation in relation to equitable access to services
- 34.3 the gestational limits they perform abortions up to. This information will support the Director-General to improve equitable access to quality services
- 34.4 the number and type of the health professionals, ethnicity and gender breakdown of the workforce available at their facility to provide the services. This will help the Director-General meet the obligations to review equitable access to services and to collect and publish information about the provision of abortion services in New Zealand
- 34.5 whether individuals have sought abortions solely because of a preference for a fetus to be of a particular sex. Providers will be asked to report on the number of enquiries they have received. The Director-General is required to review and report on this information and I expect this information to be contextualised with other data sources, for example sex of live births at a population level. I do not expect or want providers to ask individuals directly, or report on the details of the individual who made the enquiry
- 34.6 what interpreting services they offer. This information will help the Director-General to meet the obligation to review whether there is equitable access to services
- 34.7 the number of abortion enquiries where the individual chose not to proceed, and the average amount of time spent supporting each individual. Prior to the procedure, providers may need to consult with the individual several times. This information will support the Director-General to review and advise on improving access to services
- 34.8 the number of refused abortions, the grounds, and the processes the providers have in place to ensure that individuals they are not able to help are able to access abortion services elsewhere (eg, at a facility equipped to provide later term abortions). This information will help the Director-General to meet the obligation to review whether there is equitable access to services and to inform service planning
- 34.9 details of any cultural competency and inclusivity training completed by staff. This information will help improve the equitable provision of quality services

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34.10 the cost of the abortion and abortion-related counselling to the individual, including directly related medical costs such as scans and blood tests. The Director-General is required to review the costs to women of services

34.11 the circumstances under which individuals may face a charge for abortion and abortion-related counselling services, including directly related medical costs such as scans and blood tests. This information will support the Director-General to improve equitable access to services where cost may be a barrier.

### *Sterilisation service providers*

35 I propose an annual update from sterilisation service providers should include information on:

35.1 the details of the provider (eg, Organisation Health Provider Index, Facility Health Provider Index and Health Practitioner Common Person Number)

35.2 the types of procedures they offer, average wait times and the cost

35.3 the number of refused sterilisations and the reasons.

36 This information will support the Director-General's to review and report obligation in relation to timely and equitable access to services.

### **Implementation**

37 The Ministry has established a team to manage the implementation and ongoing operation of the provisions of the Abortion Legislation Act 2020.

38 Targeted consultation was undertaken with the sector, selected health advocacy groups and the Office of the Privacy Commissioner on the proposed regulatory changes. The Ministry will continue to work with the sector to improve reporting rates, mechanisms and data quality.

### **Financial Implications**

39 There are no immediate financial implications arising from the contents of this paper. Funding previously received by the Ministry of Justice to administer the Contraception, Sterilisation and Abortion Act 1977 has been transferred to the Ministry to administer the Act.

### **Legislative Implications**

40 Regulations are needed to implement the proposals in this paper. To avoid a gap between the current monthly notification requirements for abortion service providers and the proposed requirements, regulations must take effect by 24 September 2021. The Parliamentary Counsel Office have been consulted on the proposals and timeframes and consider them appropriate.

## Impact Analysis

### Regulatory Impact Statement

- 41 The Regulatory Quality Team at the Treasury has determined that a separate Regulatory Impact Statement is not required for the regulatory proposals in this paper because the impacts of the proposals are minor, and it would substantively duplicate the Abortion Law Reform Regulatory Impact Assessment.

### Climate Implications of Policy Assessment

- 42 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct emissions impact.

### Population Implications

- 43 The high priority groups identified are minors, Māori, Pacific and non-New Zealand European individuals including migrant individuals, refugees and individuals for whom English is not their first language, disabled people, individuals on lower incomes, sexual and gender minorities, and people who live in non-rural areas who must travel long distances to services. Each group has their own experiences of interacting with the health and disability system and face additional barriers in accessing services. Overall, these groups face additional barriers to abortion and sterilisation services which include systemic discrimination, stigma, cultural and financial barriers. Where a group is overrepresented in abortion rates, this may indicate other equity issues, including access to contraception.
- 44 The regulatory proposals will enable the collection of information about each of the identified groups to better understand the additional challenges they face in accessing services. The collection of good quality information will inform recommendations on how to improve access to services for everyone, but the proposals will allow us to focus on reducing the inequities faced by the groups identified as a priority.

### Human Rights

- 45 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Consultation

- 46 The Ministry undertook targeted consultation with the health sector and selected health advocacy groups on the proposals, and I have considered their feedback when developing these proposals.
- 47 The following agencies were consulted in the development of this paper: the Department of the Prime Minister and Cabinet, the Treasury, the Ministry of Justice, Te Puni Kōkiri, the Ministry for Women, Oranga Tamariki, the Ministry

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of Social Development (Office for Disability Issues), and the Ministry for Pacific Peoples.

### Communications

- 48 I intend to communicate the decisions arising from this paper in a press release.

### Proactive Release

- 49 This paper will be proactively released within a month of this Cabinet meeting, subject to any necessary redactions justified in accordance with the Official Information Act 1982.

### Recommendations

I recommend that the Committee:

- 1 **note** that the passing of the Abortion Legislation Act 2020 introduced information collection, review and reporting obligations on the Director-General of Health for contraception, sterilisation, abortion, abortion-related information and advice, and abortion-related counselling services
- 2 **note** that regulations are needed to enable the Director-General of Health to fulfil these obligations under the Contraception, Sterilisation and Abortion Act 1977
- 3 **note** that current temporary notification provisions for abortion service providers expire on 24 September 2021
- 4 **agree** to make regulations requiring:
  - 4.1 abortion service providers to submit information to the Director-General of Health about each abortion within a month of the abortion being provided
  - 4.2 abortion and sterilisation service providers to submit information to the Director-General of Health annually about their services
- 5 **agree** the information to be submitted by abortion service providers about each abortion within a month of each abortion being provided should include information on:
  - 5.1 service provision and quality:
    - 5.1.1 name and address of provider
    - 5.1.2 how the abortion consultation was provided
    - 5.1.3 whether the individual self-referred
    - 5.1.4 the date of the procedure and wait times

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- 5.1.5 type of procedure used and the type of health practitioner performing the procedure
  - 5.1.6 how the abortion was funded and whether the individual was charged for the service or associated medical costs and for which services they were charged
  - 5.1.7 the detail of complications occurring before discharge
  - 5.1.8 whether the individual required an interpreter
  - 5.1.9 whether the individual received abortion-related counselling, and the name and location of the service provider, and wait times for counselling
  - 5.1.10 the relationship of any person who gave informed consent on behalf of the individual receiving the procedure, details of any assessment carried out to determine the capacity of the individual to give or refuse consent, including the qualifications and relationship to the individual of the person carrying out the assessment, any court order regarding the capacity of the individual and/or the performance of the procedure
  - 5.1.11 whether sterilisation was carried out at the same time as the abortion procedure
  - 5.2 demographics: age of individual, ethnicity, gender identity, disability status, New Zealand resident status, the individual's residential area
  - 5.3 reproductive health: number of previous pregnancies expressed as live births and induced abortions, the estimated duration of the pregnancy, the type of contraception used at conception and the type of contraception provided at the time of the abortion
- 6 **agree** the information to be submitted annually by abortion service providers should include:
- 6.1 the details of the provider
  - 6.2 whether their facility also provides abortion-related counselling, and the training, qualifications and professional membership of any individuals providing that counselling at that facility
  - 6.3 the type of procedures and abortion-related counselling available
  - 6.4 the costs of abortion services, including directly related medical costs, the cost of abortion-related counselling services their facility provides, and the circumstances under which individuals may face a charge for these services
  - 6.5 the gestational limits they perform up to

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- 6.6 the number and type of health professionals at the facility, ethnicity and gender breakdown of the workforce at the facility
  - 6.7 how many enquiries they have received about performing abortions because of a preference for the fetus to be of a particular sex
  - 6.8 the number of and time spent on consultations where the individual has chosen not to proceed with an abortion
  - 6.9 the number of abortion procedures refused by practitioners, the grounds and the processes they have in place to ensure individuals they are not able not help have access to appropriate services
  - 6.10 what interpreting services they offer
  - 6.11 details of any cultural competency and inclusivity training completed by each service provider
- 7 **agree** the information to be submitted annually by sterilisation service providers should include the details of the provider, the number of sterilisation procedures refused by practitioners and the reasons, the types of procedures they offer, average wait times and the cost to the individual
- 8 **authorise** the Associate Minister of Health (Women's Health) to issue drafting instructions to the Parliamentary Counsel Office to draft regulations under the Contraception, Sterilisation and Abortion Act 1977 as agreed in recommendations 4 to 7 above.

Authorised for lodgement

Hon Dr Ayesha Verrall

Associate Minister of Health

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**Appendix 1: Information to be collected within a month of the abortion being provided from abortion service providers**

Information to be collected on each abortion	Information already collected?
The address of the abortion service provider (Organisation Health Provider Index, Facility Health Provider Index, and Health Practitioner Common Person Number)	Yes
How the abortion consultation was delivered (eg, in person or by phone)	No
Whether it was a self-referral	No
The date that the surgical abortion was performed; or the medicine was prescribed or administered for purpose of inducing the abortion	Yes
Wait times	No
The type of procedure used (eg, medical or surgical)	Yes
The type of health practitioner who has provided the service (eg, a midwife or doctor)	No
How the abortion was funded (privately, publicly or mixed)	No
Whether the individual was charged for the service or associated medical costs (eg, scans and blood tests) and for which services they were charged	No
Detail of any complications occurring before discharge	Yes
Whether the individual received abortion-related counselling including name and location of abortion-related counselling service provider and wait times for abortion-related counselling	No
Age of individual	No
Ethnicity	Yes
Gender identity and disability status	No
Whether the individual is a New Zealand resident	Yes
Whether the individual required an interpreter	No
The individual's residential area	Yes
The relationship of any person who gave informed consent on behalf of the individual receiving the procedure	No
Details of the assessment carried out to determine the capacity of the individual to give or refuse informed consent, including the qualifications and relationship of the person carrying out the assessment	No
Any court order regarding the capacity of the individual and/or the performance of the procedure	No
Whether sterilisation was carried out at the same time as the abortion procedure	No
The number of previous pregnancies the individual has had – recorded as the number of previous live births plus the number of previous induced abortions (New Zealand and overseas)	Yes
The estimated duration of the individual's pregnancy	Yes
The type of contraception used (if any) at the time of conception	Yes

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The type of contraception provided at the time of the abortion	Yes
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**Appendix 2: Information to be collected annually from abortion service providers**

Information to be collected on the service	Information already collected?
The details of the provider	No
Whether their facility provides abortion-related counselling, and the training, qualifications and professional membership of any individuals providing that counselling at that facility	No
The types of procedures they carry out or form of counselling they provide (eg, in person, by phone)	No
The gestational limits they perform abortions up to	No
The number and type of the health professionals, ethnicity and gender breakdown of the workforce available to provide abortion services	No
Whether individuals have sought abortions solely because of a preference for a fetus to be of a particular sex	No
What interpreting services they offer	No
The number of abortion assessments where the individual chooses not to proceed, and the average amount of time spent supporting each individual	No
The number of refused abortions, the grounds, and the processes the providers have in place to ensure individuals they are not able to help are able to access abortion services elsewhere	No
Details of any cultural competency and inclusivity training completed by staff	No
The cost of the abortion and abortion-related counselling to the individual, including directly related costs such as scans and blood tests	No
The circumstances under which individuals may face a charge for abortion and abortion-related counselling services, including directly related medical costs such as scans and blood tests	No