

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

Health Regulation (Abortions) Bill 1998

A BILL

FOR

An Act to regulate the performing of abortions

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Health Regulation (Abortions) Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*

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(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period

5 **3. Interpretation**

In this Act, unless the contrary intention appears—

“abortion” means—

- (a) the administration of a drug; or
- (b) the use of an instrument or any other means;

10 to procure a woman’s miscarriage,

“approved facility” means a medical facility that has been prescribed in the regulations for the purposes of this definition;

15 “grave medical risk” means a medical condition of a pregnant woman that makes it necessary to perform an abortion to avert substantial and irreversible impairment of a major bodily function;

“grave psychiatric risk” means a psychiatric condition of a pregnant woman that makes it necessary to perform an abortion to avert a mental disturbance or defect, to a substantially disabling degree, of perceptual interpretation, memory, motivation or emotion;

20 “medical emergency”, in relation to a requirement under this Act, means a grave medical risk that does not allow reasonable time to comply with the requirement;

“medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Act 1930*;

25 “parent”, in relation to a child—

- (a) includes a step-parent, adopting parent or guardian of the child and a person who is by law liable to maintain the child; and
- (b) does not include a parent in respect of whom a court has made an order that the parent be no longer a guardian of the child;

30 “specialist”, in relation to a medical specialty, means a medical practitioner with qualifications or experience in that specialty that are recognised by a relevant Australian specialist college or institution;

35 “woman” includes a girl who has not attained the age of eighteen years

PART II—PROCEDURE

4. Abortions must be performed in approved facilities

(1) An abortion shall not be performed except—

(a) by a medical practitioner; and

5 (b) in an approved facility;

in accordance with this Act.

(2) Paragraph (1) (b) does not apply in the case of a medical emergency.

5. When abortions may be performed

10 (1) An abortion may be performed on a woman at any time during a pregnancy if the woman is subject to grave medical risk.

(2) Where a pregnancy is to be terminated under subsection (1) at a time during the pregnancy when the foetus is capable of surviving on delivery, the medical practitioner performing the termination shall take all reasonable steps to ensure a live delivery.

15 (3) An abortion may be performed on a woman when the probable gestational age of the foetus is not more than 12 weeks if the woman is subject to grave psychiatric risk.

6. Assessment of medical or psychiatric condition

20 (1) A woman shall be regarded as being subject to grave medical risk only if 2 medical practitioners, 1 of whom is a specialist in obstetrics or gynaecology, agree in writing on the assessment.

(2) Subsection (1) does not apply in the case of a medical emergency.

25 (3) A woman shall be regarded as being subject to grave psychiatric risk only if 2 medical practitioners, 1 of whom is a specialist in psychiatry, agree in writing on the assessment.

7. Assessment of probable gestational age

30 The assessment of the probable gestational age of a foetus shall be made by a medical practitioner not employed by or associated with an approved facility, and shall be made by a method which includes ultrasound techniques.

8. Information to be provided

(1) Where it is proposed to perform an abortion, a medical practitioner who will not perform or assist in performing the abortion shall inform the woman in person of—

35 (a) the name of the medical practitioner who will perform the abortion;

- (b) the probable gestational age of the foetus at the time the abortion will be performed;
- (c) the particular medical risks associated with the type of abortion procedure to be used, including the risks of infection, haemorrhage, breast cancer, danger to subsequent pregnancies and infertility;
- (d) possible detrimental psychological effects of abortion; and
- (e) agencies operating in the Territory which provide assistance to women through pregnancy or which make arrangements for the adoption of children.
- (2) The medical practitioner shall provide the woman with pamphlets approved by the Minister that include—
- (a) pictures or drawings and descriptions of the anatomical and physiological characteristics for a foetus at intervals of 2 weeks from conception to full term; and
- (b) the information referred to in paragraphs (1) (c) to (e) (inclusive).
- (3) No charge shall be made for the pamphlets provided under subsection (2).
- (4) The medical practitioner shall provide a certificate in writing stating that this section has been complied with, specifying the time and date.
- (5) This section does not apply in the case of a medical emergency.

9. Consent

- (1) A woman who proposes to have an abortion performed shall give consent in writing, specifying the time and date.
- (2) Where the woman is a child under the age of 18, the consent in writing, specifying the time and date, of—
- (a) in the case of a child subject to a residential order under the *Children's Services Act 1986*—the Director of Children's Services; or
- (b) in any other case—a parent of the child;
- shall also be obtained.
- (3) The provisions of this section do not apply in the case of a medical emergency

10. Delay required between consent and performance of abortion

- (1) A medical practitioner shall not perform an abortion unless the certificate required under subsection 8 (4) and any consents required under section 9 were obtained more than 72 hours previously.

- (2) This section does not apply in the case of a medical emergency.

PART III—MISCELLANEOUS

11. Offences and penalties

5 (1) Where a medical practitioner performs an abortion otherwise than in accordance with this Act, the practitioner's registration under the *Medical Practitioners Act 1930* shall be suspended for 12 months in addition to any other penalty imposed in disciplinary proceedings under that Act or in criminal proceedings under that or any other Act.

10 (2) Where a report required by section 15 is not provided, each person knowingly responsible for the failure commits an offence.

Penalty: 50 penalty units.

(3) Where a report required by section 15 contains false or misleading information, each person knowingly responsible for the false or misleading information contained in the report commits an offence.

15 Penalty: 50 penalty units.

12. No obligation on any person to perform an abortion

No individual or body is under a duty, whether by contract, or by statutory or other legal requirement, to perform or assist in performing an abortion.

20 13. Privacy

In the reports of any civil or criminal proceedings under this Act or section 43 of the *Crimes Act 1900*, the identity of a woman on whom an abortion was performed or attempted shall be suppressed unless she agrees to its inclusion.

25 14. Approval of information pamphlets

The Minister may, by written instrument, approve informational pamphlets for use under subsection 8 (2) if he or she is satisfied that they are medically accurate and appropriate for the purpose.

15. Annual report

30 (1) An approved facility shall, not later than 3 months after the end of each financial year, provide the Minister with a report setting out prescribed details of—

- 35 (a) the number of abortions performed at the facility during that year;
(b) the reasons for which abortions were performed;
(c) the ages of the women concerned;
(d) the gestational ages of the foetuses at the time of abortion; and

(e) the number of women who had previously had an abortion performed at that facility.

(2) The Minister shall table a copy of a report under this section before the Assembly within 5 sitting days after receiving it

5 **16. Regulations**

The Executive may make regulations for the purposes of this Act.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*