

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

**Health Regulation (Maternal Health
Information) Bill 1998**

A BILL

FOR

**An Act to set certain requirements, in relation to
information to be provided and other matters, to be
satisfied before an abortion is performed**

PREAMBLE

1. The Legislative Assembly wishes to ensure that proper information is provided to a woman who is considering an abortion.

2. The Legislative Assembly also wishes to ensure that neither
5 complying nor failing to comply with these requirements to provide
information will affect whether or not an abortion or other act is lawful for
the purposes of sections 40 to 45 (inclusive) of the *Crimes Act 1900*, which
deal with abortion and related matters.

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

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Health Regulation (Maternal Health Information) Act 1998*.

5 2. Commencement

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

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

10 (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.

3. Relationship to the Crimes Act

15 For the purposes of sections 40 to 45 (inclusive) of the *Crimes Act 1900*, the lawfulness or unlawfulness of an abortion or other act or omission is not affected by either the compliance by any person or the failure by any person to comply with a provision of this Act.

4. Interpretation

20 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;

to procure a woman’s miscarriage;

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

“medical emergency”, in relation to a requirement under this Act, means a medical condition of a pregnant woman that—

- 30
- (a) makes it necessary to perform an abortion to avert substantial and irreversible impairment of a major bodily function of the woman; and
 - (b) does not allow reasonable time to comply with the requirement;

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

“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
- 5 (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;

“responsible officer” means, in relation to an approved facility—

- 10 (a) where a responsible officer has been prescribed by the regulations—that officer; or
- (b) in any other case—the person or persons responsible for the management of the facility;

“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;

“unrelated medical practitioner” means a medical practitioner who is not either—

- 20 (a) employed by or associated with an approved facility; or
- (b) the partner or business associate of a person employed by or associated with an approved facility;

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

PART II—PROCEDURE

25 5. Abortions must be performed by medical practitioners in approved facilities

(1) A person who is not a medical practitioner shall not perform an abortion.

Penalty: Imprisonment for 5 years.

30 (2) A person shall not perform an abortion except in an approved facility.

Penalty: Imprisonment for 5 years.

6. Abortion must not be performed without certificate that information has been provided

35 (1) A person shall not perform an abortion on a woman unless a certificate relating to her has been lodged in accordance with section 8.

Penalty: 200 penalty units.

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

7. What information must be provided

(1) Where it is proposed to perform an abortion, an unrelated medical practitioner shall inform the woman in person of—

- 5 (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;
- 10 (d) possible detrimental psychological effects of abortion;
- (e) agencies operating in the Territory that provide assistance to women through pregnancy; and
- 15 (f) agencies operating in the Territory that make arrangements for the adoption of children.

(2) The medical practitioner shall provide the woman with pamphlets approved under section 15 that include—

- 20 (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 (f) (inclusive).

(3) No charge shall be made for the pamphlets provided under subsection (2).

25 (4) Complying with this section does not in itself discharge any other contractual, statutory or other legal obligation of a medical practitioner or other person to provide information to a patient.

8. The certificate

30 (1) A medical practitioner who has provided information in accordance with section 7 may lodge a certificate to that effect with the responsible officer of an approved facility.

(2) The certificate shall state—

- (a) the name and provider number of the medical practitioner;
- (b) the name and address of the woman concerned;
- 35 (c) the time and date when the information was provided; and
- (d) any other prescribed information.

(3) A certificate is not valid unless lodged within 7 days after the information was provided.

(4) A person shall not lodge a certificate for the purposes of this section knowing it to be false in any material particular.

5 Penalty: 200 penalty units.

(5) The regulations may prescribe how the certificates lodged under this section are to be kept.

9. Abortion must not be performed without consent

10 (1) A person shall not perform an abortion on a woman unless the consent of—

(a) the woman; and

(b) where the woman is a child under the age of 18—

15 (i) 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

(ii) in any other case—a parent of the child;

has been obtained in writing, specifying in each case the time and date of the consent.

Penalty: 200 penalty units.

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

(3) Nothing in this section affects a consent given, or taken to be given, on behalf of the woman by a person with authority to do so in circumstances where the woman is unable to give consent herself.

10. Delay required before an abortion is performed

25 (1) A medical practitioner shall not perform an abortion unless the certificate required under section 6 and any consents required under section 9 were obtained more than 72 hours previously.

Penalty: 200 penalty units.

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

30 11. Reports on medical emergencies

(1) Where an abortion is performed without complying with a requirement of this Act on the ground of medical emergency, the person who performs the abortion shall, within 7 days, lodge with the prescribed officer a report stating—

35 (a) the name and provider number of the medical practitioner;

(b) the name and address of the woman concerned;

- (c) the date on which and the facility at which the abortion was performed;
 - (d) the medical condition that made the abortion necessary, including its history;
 - 5 (e) the substantial and irreversible impairment of bodily function that was threatened by the medical condition;
 - (f) the reasons why there was not sufficient time to comply with any requirement that was not complied with;
 - 10 (g) any treatment that was used to treat the condition or delay the onset of the impairment;
 - (h) any other treatments, if any, that might have been used to treat the condition or delay the onset of the impairment; and
 - (i) any other prescribed information.
- (2) The Minister may provide a copy of the report to a court, law enforcement agency or professional disciplinary body inquiring into the performance of the abortion.
- 15

PART III—MISCELLANEOUS

12. Suspension of registration of medical practitioner

Where a medical practitioner—

- 20 (a) is convicted of an offence against—
 - (i) this Act; or
 - (ii) section 40, 41, 43, 44 or 45 of the *Crimes Act 1900*; or
- 25 (b) is found in disciplinary proceedings under the *Medical Practitioners Act 1930* to have failed to comply with a requirement of this Act;

then, in addition to any other penalty imposed by the court or the Medical Practice Board, the practitioner's registration under the *Medical Practitioners Act 1930* is suspended for 12 months by force of this section.

13. No obligation on any person to act in relation to an abortion

- 30 No individual or body is under a duty, whether by contract or by statutory or other legal requirement, to—
- (a) perform or assist in performing an abortion;
 - (b) provide counselling or advice in relation to an abortion; or
 - 35 (c) refer a person to another person who will do the things mentioned in paragraphs (a) or (b).

14. Privacy

(1) A report of any civil, criminal or disciplinary proceedings shall not disclose the identity of a woman on whom an abortion has been performed unless she has agreed to the disclosure.

5 (2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: 50 penalty units.

(3) In this section—

“report” means any official report of a proceedings and any report appearing in the print or electronic media.

10 **15. Approval of information pamphlets**

(1) The Advisory Panel may, by written instrument, approve informational pamphlets for use under subsection 7 (2) if all its members are satisfied that they are medically accurate and appropriate for the purpose.

15 (2) For the purposes of this section, the Minister shall appoint an Advisory Panel with 5 members, consisting of—

(a) a specialist in obstetrics nominated by the Board of Canberra Hospital;

(b) a specialist in paediatric medicine nominated by the Board of Canberra Hospital;

20 (c) a specialist in obstetrics nominated by the Board of Calvary Hospital;

(d) a specialist in paediatric medicine nominated by the Board of Calvary Hospital; and

25 (e) a specialist in psychiatry nominated by the Territory branch of the relevant specialist college or institution.

16. Annual reports from approved facilities

(1) The responsible officer of 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—

30 (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

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

(2) A report shall not contain information that would enable a woman on whom an abortion had been performed to be identified.

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

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

5 Penalty: 50 penalty units.

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

Penalty: 50 penalty units.

10 **17. Regulations**

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

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.