

1998

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN
CAPITAL TERRITORY

Health Regulation (Maternal Health Information) Bill 1998

EXPLANATORY MEMORANDUM

CIRCULATED BY THE AUTHORITY OF
PAUL OSBORNE MLA

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Explanatory Memorandum

OUTLINE

Sections 40-45 of the *Crimes Act 1900* concerns abortion and related matters. Some of the corresponding provisions in the criminal statutes of other Australian jurisdictions have been subject to judicial interpretation, notably in Victoria (the *Menhennitt* ruling and in New South Wales (the *Levine* and *Superclinics* rulings). Those rulings have provided for ready access to abortion. Those rulings do not provide for the provision of information to women who are contemplating abortion, or for the circumstances in which their consent is given for such a procedure. It is not the intention of this Act to amend the *Crimes Act 1900* in relation to abortion.

The purpose of this Act is to provide a legislative basis for the provision of prescribed information to women contemplating an abortion and, for anyone who decides to have an abortion, to require a cooling-off period between making the decision and undergoing the procedure.

Under this Act a woman contemplating an abortion must be provided with information about the procedure before she signs a consent.

If the woman wishes to have an abortion, the medical practitioner providing the information and receiving the consent must provide a certificate to the abortion provider stating that approved information has been provided and that consent has been signed.

The abortion cannot be carried out without the issuing of the certificate referred to above and not before 72 hours has expired from the signing of the consent.

The Act sets out the type of information to be provided and in what format. The Act also establishes an Advisory Panel to approve the information pamphlet.

CLAUSE NOTES

The Preamble sets this Act in the context of the provisions of the *Crimes Act 1900* which relate to abortion and related offences. It emphasises that nothing in this Act in any way modifies the provisions of the *Crimes Act 1900*.

Clauses 1 and 2 are formal requirements. They refer to the short title and specify that the Act will commence upon being notified in the *Gazette*.

Clause 3 sets the Act into the wider context of its relationship with the *Crimes Act 1900* and the legal status of abortion.

Clause 4 contains the meanings of important terms which are used throughout the Act.

Clause 5 states that an abortion can only be performed by a medical practitioner and in an approved facility.

Clause 6 states that an abortion cannot be performed unless a certificate has been issued declaring that certain information has been provided to a woman seeking an abortion. This section does not apply in the case of a medical emergency.

Clause 7 specifies the verbal and printed information to be given to a woman who is proposing to have an abortion. The information must be provided by a doctor not associated with an abortion facility. There is to be no charge for the information. Providing information under this section does not relieve any medical practitioner from providing other, relevant information to a patient about their medical condition.

Clause 8 specifies the content of the certificate to be issued by the doctor providing the information.

Clause 9 outlines the requirement to give consent to the procedure. This section does not apply in the case of a medical emergency but does not override the normal practices for giving consent in circumstances where a patient is unable to give consent.

Clause 10 requires a 72 hour "cooling off" period between the giving of consent in section 9 and the performing of an abortion. This section does not apply in the case of a medical emergency.

Clause 11 requires that a medical practitioner who performs an abortion in a medical emergency must lodge, within 7 days, a report setting out information relating to the medical emergency.

Clause 12 sets the circumstances under this Act which would lead to the suspension of the registration of a medical practitioner.

Clause 13 makes it clear that there is no obligation on anyone to participate, in any way, in an abortion; nor is anyone required to refer for, or provide advice or counselling on, abortion.

Clause 14 relates to the privacy provisions and states that the identity of any woman who has had an abortion shall not be disclosed unless she agrees.

Clause 15 relates to the compilation of an information pamphlet. Subclause 15 (2) establishes an advisory panel to prepare an information pamphlet.

Clause 16 sets out the requirements for a facility which conducts abortions to furnish an annual report for tabling in the Assembly. The report cannot contain information which would allow the identification of any woman who had had an abortion at the facility. The report must be tabled by the responsible Minister within 5 sitting days of receipt.

Clause 17 provides that the Executive may make regulations for the purposes of the Act.

FINANCIAL IMPLICATIONS

This Act has no financial implications for the Territory.