



AUSTRALIAN CAPITAL TERRITORY

Health Regulation (Maternal Health Information) Act 1998

No. 62 of 1998

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

[Notified in ACT Gazette S209: 11 December 1998]

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 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.

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*.

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*.
- (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. Objects

The objects of this Act are to—

- (a) ensure that adequate and balanced medical advice and information are given to a woman who is considering an abortion;
- (b) ensure that a decision by a woman to proceed or not to proceed with an abortion is carefully considered;
- (c) ensure that abortions are only performed by appropriately qualified persons and in suitable premises;
- (d) provide statistical reports to government on the occurrences of abortions in the Territory;
- (e) protect the privacy of women having abortions; and
- (f) provide for the right of persons and bodies to refuse to participate in abortions.

4. Relationship to the Crimes Act

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.

5. 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;
to procure a woman’s miscarriage;

“approved facility” means a medical facility, or a part of a medical facility, that has been approved under subsection 11 (1);

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

(a) makes it necessary to perform an abortion to avert substantial impairment of a major bodily function of the woman; and

(b) 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*;

“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;

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

PART II—PROCEDURE

6. 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.

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

Penalty: 50 penalty units or imprisonment for 6 months, or both.

7. Abortion must not be performed unless information has been provided

(1) A person shall not perform an abortion on a woman unless—

(a) information has been provided to her in accordance with section 8; and

(b) a statement to that effect has been duly completed in accordance with section 9.

Penalty: 50 penalty units.

(2) This section does not apply where the person honestly believes that there is a case of medical emergency involving the woman.

8. What information must be provided

(1) Where it is proposed to perform an abortion a medical practitioner shall—

- (a) properly, appropriately and adequately provide the woman with advice about—
 - (i) the medical risks of termination of pregnancy and of carrying a pregnancy to term;
 - (ii) any particular medical risks specific to the woman concerned of termination of pregnancy and of carrying a pregnancy to term;
 - (iii) any particular medical risks associated with the type of abortion procedure proposed to be used; and
 - (iv) the probable gestational age of the foetus at the time the abortion will be performed;
- (b) offer the woman the opportunity of referral to appropriate and adequate counselling—
 - (i) about her decision to terminate the pregnancy or to carry the pregnancy to term; and
 - (ii) after termination of pregnancy or during and after carrying the pregnancy to term;
- (c) provide the woman with any information approved under subsection 14 (2);
- (d) provide the woman with any information approved under subsection 14 (4); and
- (e) provide the woman with any information approved under subsection 14 (5).

(2) No charge shall be made for the materials provided under paragraphs (1) (c), (1) (d) or (1) (e).

(3) 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.

9. Declaration that information has been provided

(1) Where all the information, advice and referrals referred to in section 8 have been provided to or offered to the woman concerned in accordance with that section, the woman and the medical practitioner concerned may jointly make a declaration in writing to that effect, stating the date and time.

(2) A person shall not make a false declaration for the purposes of subsection (1).

Penalty: 50 penalty units.

10. Abortion must not be performed without consent

(1) A person shall not perform an abortion on a woman unless her consent has been obtained in writing, stating the date and time, at a time not less than 72 hours after making a declaration under section 9.

Penalty: 50 penalty units.

(2) 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.

PART III—MISCELLANEOUS

11. Approval of facilities

(1) Where a facility is suitable on medical grounds for the performance of abortions, the Minister may, by instrument in writing, approve that facility or an appropriate part of that facility.

(2) The Minister shall not unreasonably refuse or delay a request by a medical facility for approval under subsection (1).

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

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
- (c) refer a person to another person who will do the things mentioned in paragraphs (a) or (b).

13. 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.

(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 or any other publication.

14. Approval of information pamphlets

(1) For the purposes of this section, the Minister shall appoint an Advisory Panel with 7 members, consisting of—

- (a) a specialist in obstetrics nominated by the ACT Health and Community Care Services Board;
- (b) a specialist in neonatal medicine nominated by the ACT Health and Community Care Services Board;
- (c) a specialist in obstetrics nominated by the Calvary Hospital Board of Management;
- (d) a specialist in neonatal medicine nominated by the Calvary Hospital Board of Management;
- (e) a specialist in psychiatry nominated by the Territory branch of the relevant specialist college or institution;
- (f) a registered nurse, currently specialising in women’s health issues, nominated by the Calvary Hospital Board of Management; and
- (g) a registered nurse, currently specialising in neonatal medicine, nominated by the ACT Health and Community Care Services Board.

(2) The Advisory Panel appointed under subsection (1) may, for the purposes of paragraph 8 (1) (c), approve materials containing information on the medical risks of termination of pregnancy and of carrying a pregnancy to term.

(3) An Advisory Panel appointed under subsection (1) shall comprise at least 3 women among its membership.

(4) The Advisory Panel appointed under subsection (1) may, for the purposes of paragraph 8 (1) (d), approve materials which present pictures or drawings and descriptions of the anatomical and physiological characteristics of a foetus at regular intervals.

(5) The Minister may, for the purposes of paragraph 8 (1) (e), approve materials containing information on—

- (a) agencies operating in the Territory which provide assistance to women through pregnancy;
- (b) agencies operating in the Territory that make arrangements for the adoption of children; and

- (c) agencies operating in the Territory that provide assistance with family planning.

15. Quarterly reports from approved facilities

(1) Subject to subsection (2) the person or persons responsible for the management of an approved facility shall, not later than 3 months after the end of each calendar quarter, provide the Minister with a report setting out prescribed details of—

- (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;
- (e) the number of women who had previously had an abortion performed at that facility;
- (f) the number of abortions performed at the facility which did not comply with the requirements of section 8 on the grounds of medical emergency; and
- (g) if any details are reported under paragraph (f)—the kinds of emergencies that caused the requirements of section 8 not to be complied with.

(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.

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.

16. Regulations

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

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NOTE

Penalty units

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

[Presentation speech made in Assembly on 18 November 1998]

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