

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

HEALTH REGULATION (MATERNAL HEALTH INFORMATION) BILL 1998

AMENDMENTS TO BE MOVED BY MR MOORE

EXPLANATORY MEMORANDUM

Circulated by authority of
Michael Moore MLA

On the premise that the Bill is approved *in principle*, these amendments are based on accepting the nominal aims of the Bill, and moderating clauses with potential additional consequences, undue hardships, or excessive breaches of personal rights.

DETAILS

Amendment 1 — This amendment inserts an Objects clause into the Bill. The terms of the clause are drawn from the general themes of the Bill. In addition to being an aid to interpretation, the clause aims to emphasise the point that this Bill does not address the wider issue of the legality of particular abortions.

Amendment 2 — *Consequential*. This amendment is consequential upon Amendment 20.

Amendment 3 — This amendment aims to moderate the restrictive definition of medical emergency.

Amendment 4 — *Consequential*. This amendment is consequential upon Amendment 15.

Amendment 5 — *Consequential*. This amendment is merely a drafting improvement. It would omit a definition which, consequential upon amendment 14, would have only one remaining usage in the Bill. See also amendment 29.

Amendment 6 — *Consequential*. This is a consequential amendment which is part of the package of new provisions to simplify the procedural requirements of the Bill.

The simplified procedures would require only one doctor to undertake the 'information-giving' requirements (see Amendment 11). As a result, this definition would be redundant.

Amendment 7 — This amendment aims to moderate a penalty.

Amendment 8 — This amendment aims to moderate a penalty.

Amendment 9 — *Consequential*. This is a consequential amendment which is part of the package of new provisions to simplify the procedural requirements of the Bill.

Amendment 10 — This amendment is part of the package of new provisions to simplify the procedural requirements of the Bill.

This amendment would redraft the requirement that an abortion not proceed unless the requirements of clause 7 have been fulfilled.

Amendment 11 — This amendment is part of the package of new provisions to simplify the procedural requirements of the Bill.

This amendment sets out a proposed new list of information requirements. The requirements would include:

1. four requirements regarding medical advice, drafted in balanced and generic language;
2. required offers of referral to counselling before and after the woman's decision; and
3. three requirements for the presentation of approved materials

The new formulation also differs from the original in that it requires actions by only one doctor.

Amendment 12 — *Consequential*. This is a consequential amendment which is part of the package of new provisions to simplify the procedural requirements of the Bill.

Amendment 13 — *Consequential*. This is a consequential amendment which is part of the package of new provisions to simplify the procedural requirements of the Bill.

Amendment 14 — This amendment is part of the package of new provisions to simplify the procedural requirements of the Bill.

This amendment would omit the original clause dealing with a "Certificate" and replace it with a simpler written record process.

The declaration would be made jointly by the woman and her doctor. The purpose of the document is simply to record a fact for the purposes of other requirements of the legislation.

The declaration would be an element of the two offences described in clause 6 and clause 9. A declaration would be private and, as part of a medical record, its confidentiality would be supported by the *Health Records (Privacy and Access) Act 1997*.

A declaration could, however, be used by the woman and doctor to demonstrate that the requirements of the legislation had been complied with.

Amendment 15 — This amendment has two roles.

1. The amendment's primary purpose is to redraft the offence in the clause such that the restriction on women under 18 is omitted.
2. This amendment is also part of the package of new provisions to simplify the procedural requirements of the Bill.

The new offence would include three concepts in one - a requirement for consent, a requirement that the information procedure has been followed, and the 72 hour cooling-off period between receiving the information and giving consent.

Amendment 16 — *Consequential*. This amendment is consequential upon Amendment 15.

Amendment 17 — *Consequential*. This is a consequential amendment which is part of the package of new provisions to simplify the procedural requirements of the Bill. The

'delay' requirement originally located in the omitted clause 10 would be included in the redrafted clause 9 - see Amendment 15.

Amendment 18 — This amendment would omit clause 11. This clause requires that the private details of individual cases be revealed to, in the first instance, the Minister, and potentially to other persons.

The clause as proposed would be in complete conflict with the objectives of the *Health Records (Privacy and Access) Act 1997*.

Partly to replace this section, additional generic reporting requirements are proposed for clause 16 - see Amendments 31 and 32.

Amendment 19 — This amendment would omit the special (and unappealable) disciplinary penalties imposed on medical practitioners should they be convicted under this legislation or the *Crimes Act*.

Amendment 20 — This amendment aims to improve the basis of the "approval" of suitable medical facilities. It clarifies the power of the minister to confer approved status on any facility provided that it is suitable on medical grounds for the medical tasks involved.

Subclause (2) addresses a related issue by providing that suitable premises could not be improperly denied approval where they are adequate to the task on medical grounds.

Amendment 21 — *Consequential*. This is a consequential amendment to Amendment 26 which is part of the package of new provisions to simplify the procedural requirements of the Bill.

Amendment 22 — This amendment substitutes a more appropriate class of specialist for the "paediatric" specialist referred to in the original Bill. Amendment 24 deals with the identical issue.

Amendment 23 — This amendment substitutes a more appropriate reference to the governing body of The Canberra Hospital for that used in the original Bill. Amendment 25 deals with the identical issue.

Amendment 24 — This amendment substitutes a more appropriate class of specialist for the "paediatric" specialist referred to in the original Bill. Amendment 22 deals with the identical issue.

Amendment 25 — This amendment substitutes a more appropriate reference to the governing body of The Canberra Hospital for that used in the original Bill. Amendment 23 deals with the identical issue.

Amendment 26 — This amendment is part of the package of new provisions to simplify the procedural requirements of the Bill.

These new subclauses perform the same task performed by the original subclause (1).

The Advisory Panel would have two tasks - approving the medical advice and approving the pictorial material.

The Minister would approve the material regarding support organisations.

Note that each provision, and the terms of paragraphs (c), (d) and (e) of subclause 7(1), are phrased in such a way that if the Panel or the Minister has at any time not approved any of the materials, the information requirements are not enforced with respect to such non-existent items. This will assist with the start-up of the operation of the legislation if there are delays, or if the Panel should at any time withdraw its materials temporarily.

Amendment 27 — This amendment, together with Amendment 30, would require the reports of approved facilities to be quarterly, rather than annual.

Amendment 28 — This amendment is merely a drafting improvement. It would strengthen the intended relationship between subclause (1) and subclause (2).

Amendment 29 — *Consequential*. This amendment is merely a drafting improvement. It would insert words taken from an omitted definition (see amendment 5).

Consequential upon amendments to clause 8, the original words would have only one remaining usage in the Bill.

Amendment 30 — This amendment, together with Amendment 27, would require the reports of approved facilities to be quarterly, rather than annual.

Amendment 31 — *Consequential*. This amendment is consequential upon Amendment 32.

Amendment 32 — This amendment would add to the reporting requirements of approved facilities the requirement that they report generically - not individually - regarding instances of medical emergency abortions which did not comply with the primary requirements of the legislation.

The amendment is proposed partly in replacement for clause 11, which it is proposed to omit.

PLAN OF AMENDMENTS

Setting out the Objects of the legislation.....	Amendment 1
Clarifying the arrangements for approval of facilities	Amendment 20
.....	Amendment 2 (consequential)
Moderating the restrictive definition of “medical emergency”	Amendment 3
Omitting the specially restrictive treatment of women under 18	Amendment 15*
.....	Amendment 4 (consequential)
.....	Amendment 16 (consequential)*
Moderating the penalties	Amendment 7
.....	Amendment 8
Simplifying process for certification, information, consent	
<i>[NB: these amendments have been drafted with extensive cross-references and should be regarded as a cognate set]</i>	
New 6(1) - Redrafted offence of proceeding without information.....	Amendment 10
.....	Amendment 9 (consequential)
New 7(1) - Redrafted information requirements	Amendment 11
.....	Amendment 6 (consequential)
.....	Amendment 12 (consequential)
.....	Amendment 13 (consequential)
New 8 - Redrafted capacity to declare that information received	Amendment 14
.....	Amendment 5 (consequential)
.....	Amendment 29 (consequential)
New 9 - Redrafted offence of non-consent, and cooling-off period.....	Amendment 15*
.....	Amendment 16 (consequential)*
.....	Amendment 17 (consequential)
New 15 - Redrafted Advisory Panel powers	Amendment 26
.....	Amendment 21 (consequential)
[* Special note: amendments 15 and 16 have been drafted to cover two topics. If the Assembly supports one issue but opposed the other, collateral amendments would be necessary.]	
Omitting the individual reporting of medical emergencies.....	Amendment 18
Omitting the inappropriate penalisation of medical practitioners.....	Amendment 19
Improvements to the composition of the Advisory Panel.....	Amendments 22-25

Approved facilities to report quarterly Amendment 27
..... Amendment 30

Medical emergency added to approved
facility reporting requirements Amendment 32
..... Amendment 31 (consequential)

Drafting improvement Amendment 28

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