

# Crimes (Female Genital Mutilation) Act 1996

Act No. 46/1996

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Victoria

No. 46 of 1996

## Crimes (Female Genital Mutilation) Act 1996<sup>†</sup>

[Assented to 26 November 1996]

The Parliament of Victoria enacts as follows:

### 1. *Purpose*

The purpose of this Act is to amend the **Crimes Act 1958** to make provision with respect to the practice of female genital mutilation.

### 2. *Commencement*

This Act comes into operation on the day on which it receives the Royal Assent.

**3. Insertion of new definitions**

In section 15 of the **Crimes Act 1958** insert the following definitions—

' **"child"** means any person under the age of 18 years;

**"female genital mutilation"** means all or any of the following—

- (a) infibulation;
- (b) the excision or mutilation of the whole or a part of the clitoris;
- (c) the excision or mutilation of the whole or a part of the labia minora or labia majora;
- (d) any procedure to narrow or close the vaginal opening;
- (e) the sealing or suturing together of the labia minora or labia majora;
- (f) the removal of the clitoral hood;

**"medical practitioner"** means—

- (a) a registered medical practitioner; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a person who, in the place in which the female genital mutilation took place, holds an authority to practise medicine which is similar to that of a registered medical practitioner;

**"midwife"** means—

- (a) a registered midwife; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a

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person who, in the place in which the female genital mutilation took place, holds an authority to practise midwifery which is similar to that of registered midwife;

**"prohibited female genital mutilation"** means female genital mutilation the performance of which would be an offence under this Act if carried out in the State;

**"registered medical practitioner"** has the same meaning as in the **Medical Practice Act 1994**;

**"registered midwife"** means a person who is registered under Part 2 of the **Nurses Act 1993** in Division 1 of the Register established under that Act and who has completed a course in midwifery approved by the Nurses Board of Victoria, established under that Act;'

**4. Insertion of new sections 32 to 34A**

After section 31 of the **Crimes Act 1958** insert—

**"32. Offence to perform female genital mutilation**

- (1) A person must not perform female genital mutilation on a child.

Penalty: Level 4 imprisonment.

- (2) A person must not perform on a person other than a child any type of female genital mutilation referred to in paragraphs (a) to (e) of the definition of female genital mutilation.

Penalty: Level 4 imprisonment.

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**33. *Offence to take a person from the State with the intention of having prohibited female genital mutilation performed***

- (1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.

Penalty: Level 4 imprisonment.

- (2) In proceedings for an offence under sub-section (1), proof that—
- (a) the defendant took the person, or arranged for the person to be taken from the State; and
  - (b) the person was subjected, while outside the State, to prohibited female genital mutilation—

is, in the absence of proof to the contrary, proof that the defendant took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

**34. *Consent not a defence to a charge under sections 32 or 33***

It is not a defence to a charge brought under section 32 or 33 to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.

**34A. *Exceptions to offences under section 32***

- (1) It is not an offence against section 32 if the performance of the female genital mutilation is by a surgical operation which is—
    - (a) necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or
    - (b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or
    - (c) is a sexual reassignment procedure which is performed by a medical practitioner.
  - (2) For the purposes of sub-section (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person.
  - (3) The burden of proving that the performance of the female genital mutilation did not occur in any of the circumstances set out in sub-section (1) lies with the prosecution."
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Notes

**NOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 10 October 1996*

*Legislative Council: 12 November 1996*

The long title for the Bill for this Act was "to amend the **Crimes Act 1958** to make provision with respect to female genital mutilation and for other purposes."