

LEGISLATIVE ASSEMBLY

ABORTION LAW REFORM BILL 2008

(Amendments and New Clauses to be moved by Ms Campbell in substitution for amendments previously circulated)

1. Clause 3, lines 12 to 17, omit all words and expressions on these lines and insert—
 "**abortion** means intentionally causing the death of a foetus by the administration or use of any of the following to or on a pregnant woman, or a foetus within or partially within the body of a woman—
 - (a) an instrument or device; or
 - (b) a drug or other substance; or
 - (c) any other means—
but does not include an administration or use of any of those means for the purpose of—
 - (d) inducing the birth of a live child to protect the woman from a serious risk to her health; or
 - (e) inducing the birth of a live child to protect the child from a serious risk to his or her health or life; or
 - (f) removing an ectopic pregnancy;
 - (g) treating a serious illness or disease of the woman where the treatment indirectly results in the loss of life of a foetus and there were no other reasonably available options for successfully treating the serious illness or disease of the woman that would not similarly have risked the life of the foetus;"
2. Clause 3, after line 17 insert—
 "**Health Minister** means the Minister for the time being administering the **Health Services Act 1988**;"
3. Clause 3, before line 18 insert—
 "**independent professionally accredited counsellor**, in relation to performing an abortion, means a counsellor who—
 - (a) is accredited by an appropriate professional organisation or other body; and
 - (b) has no material interest, pecuniary or otherwise, in the performance of the abortion; and
 - (c) has no material interest, pecuniary or otherwise in the hospital or medical facility in which the abortion is to be performed;

independent registered medical practitioner, in relation to an abortion, means a registered medical practitioner who—

- (a) is not involved in performing the abortion; and
- (b) has no material interest, pecuniary or otherwise, in the performance of the abortion;

informed consent has the meaning given by section 4;

prescribed hospital or medical facility means a hospital or medical facility approved by the Health Minister under section 10(1);

prescribed public hospital means a public hospital approved by the Health Minister under section 10(2);".

- 4. Clause 3, page 3, lines 1 to 3, omit all words and expressions on these lines.
- 5. Clause 4, line 7, omit "pregnant." and insert "pregnant only if—".
- 6. Clause 4, after line 7 insert—
 - "(a) the woman has been offered counselling by an independent professionally accredited counsellor; and".
- 7. Clause 4, after the new paragraph (a) proposed by Amendment 6 insert—
 - "(b) the registered medical practitioner has a diploma in obstetrics and gynaecology or an equivalent qualification; and
 - (c) the woman has been referred in writing to the practitioner by an independent registered medical practitioner; and
 - (d) the woman has given informed consent to the abortion and has not withdrawn that consent; and
 - (e) the consent has been given freely and without coercion; and
 - (f) the abortion is performed at a prescribed hospital or medical facility; and
 - (g) at least 2 registered medical practitioners, at least one of whom is an independent registered medical practitioner, honestly believe on reasonable grounds that the abortion—
 - (i) is necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being the normal dangers of pregnancy) which continuing the pregnancy would entail; and
 - (ii) is, in the circumstances, not out of proportion to the danger to be averted; and
 - (h) the registered medical practitioner, before performing the abortion, has provided the woman with information on the nature of the abortion and the risks and possible effects of the abortion on the woman and the foetus."

8. Clause 5, line 12, omit "the medical practitioner".
9. Clause 5, after line 12 insert—
 - "(a) the woman has been offered counselling by an independent professionally accredited counsellor; and".
10. Clause 5, after the new paragraph (a) proposed by Amendment 9 insert—
 - "(b) the registered medical practitioner has a diploma in obstetrics and gynaecology or an equivalent qualification; and
 - (c) the woman has been referred in writing to the practitioner by an independent registered medical practitioner; and
 - (d) the woman has given informed consent to the abortion and has not withdrawn that consent; and
 - (e) the consent has been given freely and without coercion; and
 - (f) the registered medical practitioner, before performing the abortion, has provided the woman with information on the nature of the abortion and the risks and possible effects of the abortion on the woman and the foetus."
11. Clause 5, line 13, before "reasonably" insert "the medical practitioner".
12. Clause 5, line 15, before "has consulted" insert "the medical practitioner".
13. Clause 5, line 21, omit "must have regard to—" and insert "may only so conclude if the abortion is necessary to preserve the life of the woman."
14. Clause 5, lines 22 to 24, omit all words and expressions on these lines.
15. Clause 9, omit this clause.

NEW CLAUSES

16. Insert the following New Clause to follow clause 3—

"A Meaning of informed consent

 - (1) Subject to subsections (2) and (4), for the purposes of this Act, a pregnant woman gives informed consent for an abortion to be performed if the woman gives her consent in writing in the form required by subsection (5) after—
 - (a) the independent registered medical practitioner to whom the woman is referred under this Act has offered to refer her to an independent professional counselling service for counselling about matters relating to the termination of pregnancy and carrying a pregnancy to term; and
 - (b) the independent registered medical practitioner has properly, appropriately and adequately provided her with counselling about

the medical risk of termination of pregnancy and of carrying a pregnancy to term; and

- (c) the independent registered medical practitioner has informed her that appropriate and adequate counselling will be available to her should she wish it on the termination of pregnancy or after carrying the pregnancy to term.
- (2) A pregnant woman who is in the custody or guardianship of the Secretary to the Department of Health Services under the **Children, Youth and Families Act 2005** only gives informed consent for an abortion to be performed if the woman has applied to the Children's Court for an order that the abortion be performed and the Court has made the order.
 - (3) The Family Division of the Children's Court has jurisdiction with respect to an application made under subsection (2).
 - (4) A pregnant woman who is a represented person within the meaning of the **Guardianship and Administration Act 1986** only gives informed consent for an abortion to be performed if the Victorian Civil and Administrative Tribunal has made an order for the abortion to be performed on the application of the Public Advocate on behalf of the woman.
 - (5) A written consent must include the following statements by the woman—
 - (a) that the woman has received information about the proposed procedure and the possible alternatives;
 - (b) that the woman has been offered counselling by an independent professionally accredited counsellor;
 - (c) that the woman has had explained to her the procedure involved and the risks of complications and has had her question answered;
 - (d) in the case of an abortion after 20 weeks of pregnancy, that the woman has received information concerning the likelihood of positive and false negatives in genetic diagnoses."

17. Insert the following New Clauses to follow Clause 5—

"B Registered medical practitioner to ensure informed consent

A registered medical practitioner who performs an abortion on a woman must—

- (a) keep a written record of the information provided to the woman on the proposed abortion; and
- (b) have procedures in place to ensure that the woman has consented to the abortion freely and without coercion; and
- (c) ensure that the consent form signed by the woman under section 5 or 6 is in accordance with section 4(5).

C Requirement to provide foetal tissue samples to police

- (1) This section applies if—

- (a) a registered medical practitioner performs an abortion on a woman; and
 - (b) the medical practitioner believes on reasonable grounds that the woman's pregnancy was the result of a rape, or in the case of a woman who is a child, of incest or sexual abuse.
- (2) The registered medical practitioner must—
- (a) take a tissue sample from the foetus that is sufficient for the purposes of forensic testing to determine the identity of the father of the foetus; and
 - (b) give the sample to a member of the police force as soon as practicable after it is taken.
- (3) If the woman is aged 17 years or more, the registered practitioner must only take a tissue sample under subsection (2) with the consent of the woman.

D Care for foetus

A foetus that is born alive has all the rights of a child regardless of whether the foetus was born during or after an attempted abortion.

E Approval of hospitals and medical facilities

- (1) The Health Minister may approve a hospital or medical facility where abortions may be performed in accordance with section 5.
- (2) The Health Minister may approve a public hospital within the meaning of the **Health Services Act 1988** where abortions may be performed in accordance with section 6.
- (3) The Health Minister may only approve a hospital or medical facility if the Health Minister is satisfied that the hospital or medical facility is capable of treating adverse events such as—
 - (a) haemorrhage, or gynaecological and obstetric emergencies; or
 - (b) health emergencies that may occur to a woman during or following an abortion.
- (4) The Health Minister may only approve a public hospital under subsection (2) if the Minister is satisfied that the hospital has a satisfactory termination review panel.

F Adverse Events Register

- (1) The proprietor of a prescribed hospital or medical facility must keep an Adverse Events Register for that hospital at that hospital.
- (2) The proprietor must ensure that there is recorded in the Adverse Events Register information, as required by subsection (3), about adverse events arising from the carrying out of abortions at that hospital or facility.
- (3) The information must be recorded in the Adverse Events Register in a way which will allow it to be used—

- (a) by the prescribed hospital or medical facility to provide information to a woman on the possible consequences of abortion, including any possible side-effects that may be suffered by a woman if an abortion is carried out;
- (b) to facilitate long-term studies on the adverse consequences of abortion, including—
 - (i) in respect of any adverse consequences on a woman's fertility; and
 - (ii) in respect of any adverse consequences on a woman's physical or mental health;
- (4) The proprietor must ensure that any information recorded for the purposes of this section must be kept for a period of 30 years.

G Quarterly reports from prescribed hospitals or medical facilities

- (1) Subject to subsection (2), the proprietor of a prescribed hospital or medical facility must, not later than 3 months after the end of each calendar quarter, submit to the Minister a report setting out the following details—
 - (a) the number of abortions performed at the prescribed hospital or medical facility during the quarter of the year to which the report relates;
 - (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 the abortions;
 - (e) the number of women who had previously had an abortion;
 - (f) the number of cases of a woman withdrawing her consent after the woman has signed a written consent under section 5 or 6;
 - (g) any information recorded for the purposes of the Adverse Events Register kept under section 11.
- (2) The proprietor of the prescribed hospital or medical facility must ensure a report submitted under subsection (1) does not contain information that could identify a woman on whom an abortion has been performed.
- (3) The Minister must cause a report submitted to him or her under this section to be laid before each House of Parliament within 5 sitting days after receiving it.
- (4) If 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.

H Review of Act

- (1) The Minister must cause a review of this Act and the amendments made by this Act to the **Crimes Act 1958** to be completed by 31 October 2012.

- (2) The Minister must cause a copy of the report and recommendations from the review to be tabled in each House of Parliament as soon as practicable after the Minister receives the report and recommendations."