



Australian Capital Territory

Health Regulation (Maternal Health Information) Act 1998 No 62

Republication No 1

Republication date: 11 January 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Health Regulation (Maternal Health Information) Act 1998* as in force on 11 January 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Health Regulation (Maternal Health Information) Act 1998

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Health Regulation (Maternal Health Information) Act 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

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 *Crimes Act 1900*, sections 42 to 47 which deal with abortion and related matters.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Regulation (Maternal Health Information) Act 1998*.

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; and
- (b) ensure that a decision by a woman to proceed or not to proceed with an abortion is carefully considered; and
- (c) ensure that abortions are only performed by appropriately qualified persons and in suitable premises; and
- (d) provide statistical reports to government on the occurrences of abortions in the ACT; and
- (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 *Crimes Act 1900*, sections 42 to 47 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 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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 section 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 18 years.

Part 2 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.

Maximum penalty: imprisonment for 5 years.

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

Maximum 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.

Maximum 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; and
 - (ii) any particular medical risks specific to the woman concerned of termination of pregnancy and of carrying a pregnancy to term; and
 - (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; and
- (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; and
- (c) provide the woman with any information approved under section 14 (2); and
- (d) provide the woman with any information approved under section 14 (4); and
- (e) provide the woman with any information approved under section 14 (5).
- (2) No charge shall be made for the materials provided under subsection (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 subsection (1).

Maximum 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.

Maximum 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 3 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; or
- (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) commits an offence.

Maximum 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 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; and
 - (b) a specialist in neonatal medicine nominated by the ACT Health and Community Care Services Board; and
 - (c) a specialist in obstetrics nominated by the Calvary Hospital Board of Management; and
 - (d) a specialist in neonatal medicine nominated by the Calvary Hospital Board of Management; and
 - (e) a specialist in psychiatry nominated by the Territory branch of the relevant specialist college or institution; and
 - (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 section 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 section 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 section 8 (1) (e), approve materials containing information on—
- (a) agencies operating in the ACT which provide assistance to women through pregnancy; and
 - (b) agencies operating in the ACT that make arrangements for the adoption of children; and
 - (c) agencies operating in the ACT 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; and
 - (b) the reasons for which abortions were performed; and
 - (c) the ages of the women concerned; and
 - (d) the gestational ages of the foetuses at the time of abortion; and
 - (e) the number of women who had previously had an abortion performed at that facility; and
 - (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.

Maximum 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.

Maximum penalty: 50 penalty units.

16 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

Health Regulation (Maternal Health Information) Act 1998 No 62

notified 11 December 1998 (Gaz 1998 No S209)

s 1, s 2 commenced 11 December 1998 (s 2 (1))

remainder commenced 11 June 1999 (s 2 (3))

Legislation (Consequential Amendments) Act 2001 No 44 pt 182

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 182 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.2072

Regulation-making power

s 16 sub 2001 No 44 amdt 1.2073

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