

CONTRACEPTION, STERILISATION, AND ABORTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Contraception, Sterilisation, and Abortion Act 1977 in 2 respects: contraception in relation to persons under 16 years of age; and the persons by whom and the procedure by which abortions may be authorised in certain cases.

Clause 2 repeals section 3 of the principal Act. That section has the following effects:

- (a) It makes it an offence, subject to certain exemptions, to sell or give or otherwise dispose of a contraceptive to any child under 16 years of age, or to offer to sell or give or otherwise dispose of a contraceptive to any child under that age:
- (b) It makes it an offence, subject to certain exemptions, to direct or persuade or attempt to direct or persuade any child under 16 years of age to use a contraceptive:
- (c) It makes it an offence, subject to certain exemptions, to sell or give or otherwise supply any information about, or any instruction in the use of, contraceptives to any child under 16 years of age, or to offer to sell or give or otherwise supply any such information or instruction to any child under that age:
- (d) It makes it an offence for a person under the age of 16 years to procure or attempt to procure any contraceptive, knowing its purpose, other than from a person who is authorised under the section to supply it to that person.

Clause 3 removes the requirement for 2 certifying consultants to authorise an abortion. Instead, the authority may be given by 2 registered medical practitioners.

Clause 4 revises the present procedure for authorising an abortion. The changes are largely consequential upon the abolition of the need for certifying consultants.

In essence, the procedure required is as follows:

- (a) A woman consults a medical practitioner (called the woman's own doctor) seeking an abortion:

- (b) If that practitioner is able and willing to perform an abortion (if it is lawful), he or she refers the case to another medical practitioner for his or her opinion. Either the referring practitioner or the other one must be a practising obstetrician or gynaecologist:
- (c) If the woman's own doctor is not able to perform an abortion, he or she must refer the case to a practitioner who is able, called the operating surgeon. If the operating surgeon is willing to perform the abortion, he or she refers the case to another medical practitioner (who may be the woman's own doctor) for his or her opinion:
- (d) If, in either case, 2 medical practitioners (1 of whom is an obstetrician or gynaecologist) is satisfied that the abortion is lawful, they may issue a certificate authorising an abortion.

Clause 5 makes it clear that a medical practitioner may decline to consider a case under the Act on grounds of conscience.

Hon. Helen Clark

**CONTRACEPTION, STERILISATION, AND
ABORTION AMENDMENT**

ANALYSIS

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A BILL INTITULED

An Act to amend the Contraception, Sterilisation, and Abortion Act 1977 in relation to the sale and disposal of contraceptives to children, and in relation to the persons by whom and the procedure by which abortions are to be authorised

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Contraception, Sterilisation, and Abortion Amendment Act 1989, and shall be read together with and deemed part of the Contraception, Sterilisation, and Abortion Act 1977 (hereinafter referred to as the principal Act).

2. Sale or disposal, etc., of contraceptives to children—
(1) Section 3 of the principal Act is hereby repealed.
(2) Section 2 of the principal Act is hereby consequentially amended by repealing the definition of the term “family planning clinic”.

3. Abortions not to be performed unless authorised by 2 registered medical practitioners—(1) The principal Act is

hereby amended by repealing section 29, and substituting the following section:

“29. Subject to the provisions of this Act, no abortion shall be performed unless and until it is authorised by 2 registered medical practitioners.” 5

(2) Section 30 of the principal Act is hereby consequentially repealed.

(3) Section 35 of the principal Act is hereby consequentially amended by omitting the words “certifying consultants”, and substituting the words “registered medical practitioners”. 10

(4) Section 36 (1) of the principal Act is hereby consequentially amended by omitting the words “certifying consultant”, and substituting the words “registered medical practitioner”.

(5) Section 37 (1) (b) of the principal Act is hereby 15 consequentially amended by omitting the words “by 2 certifying consultants”.

(6) Section 40 of the principal Act is hereby consequentially amended by omitting the words “certifying consultant”, and substituting the words “registered medical practitioner”. 20

(7) Section 41 (2) of the principal Act is hereby consequentially amended—

(a) By omitting the words “certifying consultant” where they first occur, and substituting the words “registered medical practitioner who considers any case under 25 this Act”;

(b) By omitting the words “certifying consultant” where they secondly occur, and substituting the words “such registered medical practitioner”.

(8) Section 187A of the Crimes Act 1961 (as inserted by 30 section 6 of the Crimes Amendment Act 1977) is hereby consequentially amended by omitting the words “by 2 certifying consultants”.

4. New sections (relating to authorising of abortions) substituted—(1) The principal Act is hereby amended by 35 repealing section 32 (as substituted by section 2 (1) of the Contraception, Sterilisation, and Abortion Amendment Act 1978), section 33, and section 33A (as inserted by section 4 of the Contraception, Sterilisation, and Abortion Amendment Act 1978), and substituting the following sections: 40

“32. **Procedure—**(1) Every registered medical practitioner (in this section and section 32A of this Act referred to as the woman’s own doctor) who is consulted by or in respect of a

female who wishes to have an abortion shall, if requested to do so by or on behalf of that female, arrange for the case to be considered and dealt with in accordance with the succeeding provisions of this section and of sections 32A, 33, and 33A (2) of this Act.

“(2) If, after considering the case, the woman’s own doctor considers that it may be one to which any of paragraphs (a) to (d) of subsection (1), or (as the case may require) subsection (3), of section 187A of the Crimes Act 1961 applies, the woman’s own doctor shall comply with whichever of the following provisions is applicable, namely:

“(a) Where the woman’s own doctor proposes to perform the abortion (in the event of it being authorised in accordance with this Act), the woman’s own doctor shall refer the case to another registered medical practitioner (who shall be a practising obstetrician or gynaecologist if the woman’s own doctor is not) with a request that the other practitioner, together with the woman’s own doctor, determine, in accordance with section 33 of this Act, whether or not to authorise the performance of an abortion; or

“(b) Where the woman’s own doctor does not propose to perform the abortion, the woman’s own doctor shall refer the case to another registered medical practitioner (in this section and section 32A of this Act referred to as the operating surgeon) who may be willing to perform an abortion (in the event of it being authorised in accordance with this Act).

“(3) Where an operating surgeon to whom a case is referred under subsection (2) (b) of this section is satisfied, after considering the case, that it is one to which any of paragraphs (a) to (d) of subsection (1), or (as the case may require) subsection (3), of section 187A of the Crimes Act 1961 applies, the operating surgeon shall, if the operating surgeon is willing to perform the abortion, refer the case to one other registered medical practitioner (who shall be a practising obstetrician or gynaecologist if the operating surgeon is not, and who may be the woman’s own doctor) with a request that the other practitioner, together with the operating surgeon, determine, in accordance with section 33 of this Act, whether or not to authorise an abortion.

“(4) Where any registered medical practitioner is required to refer any case to any other practitioner under this section, the practitioner shall refer it in accordance with the procedure for the time being prescribed by the Supervisory Committee.

“(5) Subject to **section 32A** of this Act, as soon as practicable after a case is referred to a registered medical practitioner in accordance with the preceding provisions of this section, that practitioner shall consider the case and shall, if requested to do so by the patient, interview her; and at any such interview she shall be entitled to be accompanied by her own doctor (if he or she agrees). 5

“(6) The woman’s own doctor shall be entitled (with the patient’s consent) to make such representations, and to adduce such medical or other reports concerning the case, as the woman’s own doctor thinks fit to any other registered medical practitioner who is considering the case. 10

“(7) Every registered medical practitioner who is considering a case may, with the consent of the patient, consult with any other person (whether or not a registered medical practitioner) as the practitioner thinks fit in order to assist that practitioner in the consideration of the case, but shall not disclose the patient’s identity without her consent. 15

“(8) Notwithstanding anything in this section, or in **section 33** of this Act, no registered medical practitioner considering a case shall be obliged to determine any case without first interviewing and examining the patient. 20

“**32A. Procedure where practitioner objects on grounds of conscience**—Where any case is referred to a registered medical practitioner under **section 32** of this Act and that practitioner declines, on grounds of conscience, to consider and determine whether or not to authorise the performance of an abortion, that practitioner shall forthwith advise the woman’s own doctor or the operating surgeon from whom the reference was received, who shall refer the case to another registered medical practitioner in accordance with **section 32** of this Act. 25 30

“**33. Determination of case**—(1) If, after considering the case, the registered medical practitioners are of the opinion that the case is one to which any of paragraphs (a) to (d) of subsection (1), or (as the case may require) subsection (3), of **section 187A** of the Crimes Act 1961 applies, they shall forthwith issue in accordance with **subsection (5)** of this section, a certificate in the prescribed form authorising the performance of an abortion. 35

“(2) If the practitioners considering the case are of the contrary opinion, they shall refuse to authorise the performance of an abortion. 40

“(3) If one of the practitioners is of the opinion that the case is one to which any of the said provisions applies and the other

practitioner is of the contrary opinion, they shall refer the case to another registered medical practitioner who is willing to consider the case for that practitioner's opinion.

5 “(4) If that other registered medical practitioner is of the opinion that the case is one to which any of the said provisions applies, the practitioner who is of the same opinion shall issue, in accordance with **subsection (5)** of this section, a certificate in the prescribed form authorising the performance of an abortion.

10 “(5) Where 2 registered medical practitioners determine that they should authorise an abortion, they shall forward the said certificate to the holder of the licence in respect of the licensed institution in which the abortion is to be performed.

15 “(6) If, in respect of any case, any registered medical practitioner considering the case has not reached a decision within 14 days after it was referred to the practitioner, the practitioner shall advise the Supervisory Committee in writing of the matter, and of the reasons for the delay.

20 **“33A. Performance of abortion by other practitioners—**(1) Nothing in **section 32** or **section 33** of this Act shall prohibit the performance of an abortion duly authorised in accordance with those sections by any registered medical practitioner who is not the operating surgeon within the meaning of **section 32** of this Act.

25 “(2) Where the registered medical practitioner who is to perform the abortion is not one of the practitioners issuing the certificate, that practitioner shall endorse on the certificate a statement that he or she is willing to perform an abortion on the patient to whom the certificate relates, but a failure to
30 comply with this requirement shall not invalidate the certificate for the purposes of section 37 (1) (b) of this Act or section 187A (4) of the Crimes Act 1961.”

(2) The Contraception, Sterilisation, and Abortion Amendment Act 1978 is hereby consequentially repealed.

35 **5. Conscientious objection—**(1) Section 46 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

40 “(1A) Notwithstanding anything in any other enactment, or any rule of law, or the term of any oath or of any contract (whether of employment or otherwise), no registered medical practitioner shall be under any obligation to consider or determine, in any case where a female wishes to have an

abortion, whether or not the performance of an abortion should be authorised.”

(2) Section 46 (2) of the principal Act is hereby amended—

- (a) By inserting in paragraph (a), after the expression “subsection (1)”, the words “or subsection (1A)”: 5
- (b) By omitting from paragraph (b) the words “that subsection”, and substituting the words “either of those subsections”.