

CONTRACEPTION, STERILISATION, AND ABORTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill contains the amendments to the Contraception, Sterilisation, and Abortion Act 1977 and the Crimes Amendment Act 1977 recommended by the Abortion Supervisory Committee in its report to Parliament of 18 April 1978.

Clause 1 relates to the Short Title.

PART I

AMENDMENTS OF THE CONTRACEPTION, STERILISATION, AND ABORTION ACT 1977

Clause 2 is a machinery provision.

Clause 3 substitutes a new procedure where a female seeks an abortion. The procedure is set out in the proposed *section 32*.

Subsection (1) of that section provides that where a medical practitioner is consulted by a female seeking an abortion, he shall, if requested by her to do so, arrange for the case to be considered in accordance with the succeeding provisions of the section and of *section 33* of the Act.

Subsection (2) requires that practitioner (termed in the section the woman's own doctor) to consider the case. If, having done so, he believes that it may be one in which an abortion can properly be performed, he must deal with the case in one of 2 ways depending on whether or not he would himself be prepared to perform the abortion if it were authorised under the Act.

Paragraph (a) applies where the woman's own doctor will not perform the abortion himself, and requires him in such a case to refer the patient to another practitioner (termed the operating surgeon) who may be willing to undertake the operation.

Paragraph (b) deals with the situation where the woman's own doctor is willing to perform the operation. In such a case, his next step depends on whether or not he is himself a certifying consultant. If he is, he is required to refer the case to 1 other certifying consultant for consideration in accordance with *section 33* of the Act. If the woman's own doctor is a practising obstetrician or gynaecologist within the meaning of the Act, the other certifying consultant need not be. However, if the woman's own doctor is not a practising obstetrician or gynaecologist, he must refer the case to a certifying consultant who does have that status.

If the woman's own doctor is not a certifying consultant, he must refer the case to 2 certifying consultants, at least 1 of whom must be a practising obstetrician or gynaecologist.

Subsection (3) prescribes the procedure to be followed where a case is referred to an operating surgeon by the woman's own doctor. If the surgeon is satisfied, after considering the case, that it is one in which an abortion can properly be performed, he must proceed in one of 2 ways depending on whether or not he is himself a certifying consultant. If he is, he must refer the case to 1 other certifying consultant (who must not be the woman's own doctor). If the operating surgeon is a practising obstetrician or gynaecologist within the meaning of the Act, the other certifying consultant need not be. However, if the operating surgeon is not a practising obstetrician or gynaecologist, he must refer the case to a certifying consultant who has that status.

If the operating surgeon is not a certifying consultant, he must refer the case to 2 certifying consultants, at least 1 of whom must be a practising obstetrician or gynaecologist, and of whom 1 may be the woman's own doctor.

Subsections (4) to (7) bring forward existing provisions from the present section 32.

Subsection (8) makes it clear that no certifying consultant can be obliged to determine any case without first seeing the patient.

Subclause (2) consequentially amends section 2 of the principal Act.

Clause 4 amends section 33 of the principal Act relating to the determination of cases by certifying consultants.

Subclause (1) is of a consequential nature only.

Subclause (2) provides that where the operating surgeon is not one of the certifying consultants, he shall endorse on the certificate issued by the consultants a statement that he is willing to perform the operation. However, a failure to comply with this requirement does not invalidate the certificate.

Clause 5 makes it clear that once a certificate authorising an abortion has been issued in accordance with section 33 any medical practitioner may perform the abortion. The authority is not limited to the operating surgeon who originally intended to undertake the operation.

PART II

AMENDMENT OF CRIMES ACT 1961

Clause 6 is a machinery provision.

Clause 7 amends section 187A (1) (a) of the principal Act. This provision authorises an abortion during the first 20 weeks of pregnancy if the person performing it believes "that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl, and that the danger cannot be averted by any other means". The amendment removes the words ", and that the danger cannot be averted by any other means".

Hon. Mr Thomson

**CONTRACEPTION, STERILISATION, AND
ABORTION AMENDMENT**

ANALYSIS

Title
1. Short Title

PART I

**AMENDMENTS OF THE CONTRACEPTION,
STERILISATION, AND ABORTION ACT
1977**

2. This Part to be read with Contraception, Sterilisation, and Abortion Act 1977

3. Procedure where woman seeks abortion
4. Determination of case
5. Performance of abortion by other practitioner

PART II

AMENDMENT OF CRIMES ACT 1961

6. This Part to be read with Crimes Act 1961
7. Meaning of "unlawfully"

A BILL INTITULED

**An Act to give effect to recommendations made by the
Abortion Supervisory Committee for the amendment of
the Contraception, Sterilisation, and Abortion Act 1977
5 and the Crimes Amendment Act 1977**

BE IT ENACTED by the General Assembly of New Zealand
in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title—This Act may be cited as the Contracep-
10 tion, Sterilisation, and Abortion Amendment Act 1978.

2 *Contraception, Sterilisation, and Abortion Amendment*

PART I

AMENDMENTS OF THE CONTRACEPTION, STERILISATION, AND
ABORTION ACT 1977

2. This Part to be read with Contraception, Sterilisation,
and Abortion Act 1977—This Part of this Act shall be read
together with and deemed part of the Contraception, Sterili- 5
sation, and Abortion Act 1977* (in this Part referred to as
the principal Act).

3. Procedure where woman seeks abortion—(1) The prin- 10
cipal Act is hereby amended by repealing section 32, and
substituting the following section:

“32. (1) Every registered medical practitioner (in this
section referred to as the woman’s own doctor) who is con-
sulted 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 15
female, arrange for the case to be considered and dealt with
in accordance with the succeeding provisions of this section
and of section 33 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) 20
to (d) of subsection (1), or (as the case may require) sub-
section (3), of section 187A of the Crimes Act 1961 applies,
he shall comply with whichever of the following provisions
is applicable, namely:

“(a) Where he does not propose to perform the abortion 25
himself, he shall refer the case to another regis-
tered medical practitioner (in this section 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); or 30

“(b) Where he proposes to perform the abortion himself
(in the event of it being authorised in accordance
with this Act), he shall—

“(i) If he is himself a certifying consultant, refer 35
the case to 1 other certifying consultant (who
shall be a practising obstetrician or gynaecologist
if the woman’s own doctor is not) with a request
that he, together with the woman’s own doctor,
determine, in accordance with section 33 of this
Act, whether or not to authorise the performance 40
of an abortion; or

Contraception, Sterilisation, and Abortion Amendment 3

5 “(ii) If he is not himself a certifying consultant, refer the case to 2 certifying consultants (of whom at least 1 shall be a practising obstetrician or gynaecologist) with a request that they determine, in accordance with section 33 of this Act, whether or not to authorise the performance of an abortion.

10 “(3) Where an operating surgeon to whom a case is referred under subsection (2) (a) 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, he shall, if he is willing to perform the abortion, either—

15 “(a) If he is himself a certifying consultant, refer the case to 1 other certifying consultant (who shall be a practising obstetrician or gynaecologist if the operating surgeon is not, and who shall not be the woman's own doctor) with a request that he, together with the operating surgeon, determine, in accordance with section 33 of this Act, whether or not to authorise an abortion; or

20 “(b) If he is not himself a certifying consultant, refer the case to 2 certifying consultants (of whom at least 1 shall be a practising obstetrician or gynaecologist, and of whom 1 may be the woman's own doctor) with a request that they determine, in accordance with section 33 of this Act, whether or not to authorise the performance of an abortion.

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

30 “(5) As soon as practicable after a case is referred to him, each certifying consultant 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 agrees).

35 “(6) The woman's own doctor and the proposed operating surgeon shall be entitled (with the patient's consent) to make such representations and to adduce such medical or other reports concerning the case as he thinks fit to each certifying consultant.

4 Contraception, Sterilisation, and Abortion Amendment

“(7) Every certifying consultant may, in considering any case, with the consent of the patient, consult with any other person (whether or not a registered medical practitioner) as he thinks fit in order to assist him in his consideration of the case, but he shall not disclose the patient’s identity without her consent. 5

“(8) Notwithstanding anything in this section, or in section 33 of this Act, no certifying consultant shall be obliged to determine any case without first interviewing and examining the patient.” 10

(2) Section 2 of the principal Act is hereby amended by omitting the definitions of the terms “operating surgeon” and “woman’s own doctor”.

4. Determination of case—(1) Section 33 of the principal Act is hereby amended by omitting from subsection (5) the words “satisfy themselves that an operating surgeon is available to the woman, and shall”. 15

(2) The said section 33 is hereby further amended by inserting, after subsection (5), the following subsection:

“(5A) Where the operating surgeon is not one of the certifying consultants issuing the certificate, he shall endorse on the certificate a statement that he is willing to perform an abortion on the patient to whom the certificate relates, but a failure to 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.” 25

5. Performance of abortion by other practitioner—The principal Act is hereby further amended by inserting, after section 33, the following section:

“33A. 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.” 30

PART II

AMENDMENT OF CRIMES ACT 1961

5 **6. This Part to be read with Crimes Act 1961**—This Part of this Act shall be read together with and deemed part of the Crimes Act 1961* (in this Part referred to as the principal Act).

10 **7. Meaning of “unlawfully”**—Section 187A of the principal Act (as inserted by section 6 of the Crimes Amendment Act 1977) is hereby amended by omitting from subsection (1) (a) the words “, and that the danger cannot be averted by any other means”.

*1961, No. 43

Amendments: 1963, No. 120; 1966, No. 98; 1969, No. 73; 1973, No. 118; 1977, No. 113