

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, the 11th Day of October 1977

CONTRACEPTION, STERILISATION, AND ABORTION BILL

Proposed Amendments

Mr BIRCH, in Committee, to move the following amendments:

Clause 2: To insert on page 4, after the definition of the term "licensed institution", the following definition:

"Operating surgeon", in relation to a woman proposing to have an abortion, means a registered medical practitioner who—

(a) Is permitted to perform abortions in any licensed institution; and

(b) Is willing to perform an abortion on the woman:

To omit the definition of the term "panel" on that page.

To insert on that page, after the definition of the term "private hospital", the following definition:

"Practising obstetrician or gynaecologist" means a registered medical practitioner who is registered as a specialist in obstetrics or gynaecology or obstetrics and gynaecology or, in the opinion of the Supervisory Committee, is experienced in one or both of those branches of medicine:

To add the following definition:

"Woman's own doctor", in relation to any woman seeking an abortion, means the registered medical practitioner consulted by her about her pregnancy or an abortion, or, where she has consulted more than one practitioner, the practitioner nominated by her for the purposes of section 36 of this Act.

Clause 17, subclause (1): To add to paragraph (i) on page 12 the words ", and to ensure the effective operation of this Part of this Act and the procedures thereunder:".

Clause 20: To add the following subclause on page 14:

(3) Notwithstanding anything in the Hospitals Act 1957, any Hospital Board may from time to time, at the request of the Supervisory Committee, execute any work or enter into arrangements for the execution or provision by the Board for

the Supervisory Committee of any work or service, or for the supply to the Supervisory Committee of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

Proposed clause 31B: To insert on page 20, before clause 32, the following clause:

31B. Abortions not to be performed unless authorised by 2 certifying consultants—Subject to the provisions of this Part of this Act, no abortion shall be performed unless and until it is authorised by 2 certifying consultants.

Clause 32: To omit the clause on page 20.

Clause 33: To omit clause 33, on pages 20 and 21, and substitute the following clause:

33. Supervisory Committee to set up and maintain list of certifying consultants—(1) The Supervisory Committee shall set up and maintain a list of registered medical practitioners (in this Part of this Act termed certifying consultants) who may be called upon to consider cases referred to them by any registered medical practitioner and determine, in accordance with section 37 of this Act, whether to authorise an abortion.

(2) Before drawing up the list, the Supervisory Committee shall determine the minimum number of certifying consultants required to ensure, so far as possible, that every woman seeking an abortion has her case considered expeditiously, and shall make that number of appointments in accordance with this section. Thereafter, the Committee shall keep that number under review, and shall from time to time make such further appointments, or revoke such number of appointments, as it considers necessary to meet any change in the circumstances.

(3) Having determined the number of appointments to be made, the Supervisory Committee shall consult with the New Zealand Medical Association, and may consult with any other professional or other body, before determining whom to appoint.

(4) In making appointments to the list, the Supervisory Committee shall ensure that the following requirements are met:

(a) At least one half of the total number of appointees shall be practising obstetricians or gynaecologists, and the list shall be marked in such a way as to indicate which of the appointees are so qualified:

(b) There shall be a sufficient number of appointees practising in each area of New Zealand to ensure that every woman seeking an abortion can have her case considered without involving her in considerable travelling or other inconvenience.

(5) In addition, in making such appointments, the Supervisory Committee shall have regard to the desirability of appointing medical practitioners who hold views in relation to abortion generally that are compatible with the tenor of this Act. Without otherwise limiting the discretion

of the Supervisory Committee in this regard, the following views shall be considered incompatible in that sense for the purposes of this subsection:

(a) That an abortion should not be performed in any circumstances:

(b) That the question of whether an abortion should or should not be performed in any case is entirely a matter for the woman and a doctor to decide.

(6) Every appointment to the list of certifying consultants shall be for a term of 1 year, but the Supervisory Committee may reappoint any practitioner on the expiry of his term.

(7) The Supervisory Committee may at any time, at its discretion, revoke the appointment of any certifying consultant.

Clause 34: To omit the clause on page 21.

Clause 35: To omit paragraph (a) on page 22.

To omit from lines 6 and 7 on that page the words “, who may or may not be the Counselling Supervisor of the Panel”.

Clause 36: To omit the clause on page 22, and substitute the following clause:

36. Procedure—(1) Every registered medical practitioner who—

(a) Is consulted by a woman who wishes to have an abortion; or

(b) Proposes to perform an abortion on any woman if the abortion is authorised under this Part of this Act— shall, if requested to do so by the woman, refer the case, in accordance with the procedure for the time being prescribed by the Supervisory Committee, 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 37 of this Act, whether or not to authorise the performance of an abortion.

(2) On referring a case to any certifying consultant, the practitioner shall submit to him, in writing,—

(a) A statement that the woman is pregnant and seeks an abortion; and

(b) A statement of the ground or grounds on which she seeks an abortion; and

(c) Such other information as may be prescribed from time to time by the Supervisory Committee.

(3) As soon as practicable after a case is referred to him under subsection (1) of this section, 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.

(4) The woman's own doctor and the proposed operating surgeon shall be entitled (with the woman'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.

(5) Every certifying consultant may, in considering any case, 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 woman's identity to any such person without her consent.

Clause 37: To omit from line 40 on page 22 and line 1 on page 23 the words "2 members of the Panel who are medical practitioners", and substitute the words "certifying consultants".

To insert in line 5 on page 23, after the words "shall forthwith issue", the words ", in accordance with subsection (5) of this section,".

To omit from line 7 on that page, and also from line 9 on that page, the words "those members", and substitute in each case the words "the certifying consultants"; and also to omit from line 11 on that page the words "of those members", and substitute the word "consultant"; and also to omit from line 14 on that page the words "deputies maintained under section 33 (3)", and substitute the words "certifying consultants maintained under section 33 (1)"; and also to omit from line 18 on that page the words "member of the Panel", and substitute the words "certifying consultant".

To insert in line 19 on that page, after the words "shall issue", the words ", in accordance with subsection (5) of this section,".

To omit subclause (5) on that page, and substitute the following subclauses:

(5) Where 2 certifying consultants determine that they should authorise an abortion, they shall satisfy themselves that an operating surgeon is available to the woman, and 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.

(6) If, in respect of any case, any certifying consultant has not reached a decision within 14 days after it was referred to him, he shall advise the Supervisory Committee in writing of the matter, and of the reasons for the delay.

Clause 38: To omit this clause on page 23, and substitute the following clause:

38. Counselling—When the certifying consultants have made a decision in any case (whether they have decided to authorise or to refuse to authorise the performance of an abortion), they shall (in consultation, where practicable, with the woman's own doctor) advise her of her right to seek counselling from any appropriate person or agency.

Clause 39: To omit from line 30 on page 23 the word "Panels", and substitute the words "Certifying consultants"; and also to omit from line 31 on that page the word "Panel", and substitute the words "certifying consultant"; and also to omit from line 32 on that page the word "it", and substitute the word "him"; and also to omit from line 33 on that page the word "its", and substitute the word "his".

Clause 40: To omit from line 37 on page 23 the words "registered medical practitioner", and substitute the word "person".

To omit from line 2 on page 24 the words "a Panel", and substitute the words "2 certifying consultants".

Clause 43: To omit the clause on page 24, and substitute the following clause:

43. Protection of persons acting in good faith—No member of the Supervisory Committee, and no certifying consultant, shall be personally liable for any act done or omitted to be done by it or him in good faith in pursuance of the powers conferred on it or him by this Part of this Act.

Clause 44: To omit from lines 39 and 40 on page 24 the words “and of every Panel,”; and also to insert in line 1 on page 25, after the words “appointed by it,”, the words “and to every certifying consultant,”; and also to omit from lines 6 and 7 on that page the words “and each Panel, the Panel or”, and substitute the word “, the”; and also to add to the clause on that page the words “, and as if, in the case of every certifying consultant, he were a member of such a Board”.

Clause 54: To omit from line 21 on page 29 the words “a Panel”, and substitute the words “2 certifying consultants”.

EXPLANATORY NOTE

The object of the amendments set out in this Supplementary Order Paper is to replace the proposed panel system for determining in any case whether an abortion should be authorised with a procedure whereby that decision is made by 2 certifying consultants. For this purpose, the proposed Supervisory Committee is required by these amendments to maintain a list of medical practitioners whom it believes to be qualified to act as certifying consultants, according to the criteria proposed.

Briefly, the procedure prescribed by these amendments is as follows:

- (a) The woman's own doctor, or the doctor who will perform the abortion if it is authorised, will refer the case to 2 certifying consultants (at least 1 being a practising obstetrician or gynaecologist):
- (b) The woman is entitled to an interview with the consultants if she wishes, and, with her consent, her own doctor and the operating surgeon is entitled to put forward his views of the case and any medical reports for consideration by the consultants:
- (c) Provision is made for reference to another certifying consultant if the first two fail to agree:
- (d) If the certifying consultants agree to authorise an abortion, they must ensure that an operating surgeon is available to the woman, and must then issue a certificate authorising the abortion:
- (e) It is expected that a decision can be reached by the certifying consultants within 2 weeks after it is referred to them, and so, where this does not happen, they are required to explain the delay to the Supervisory Committee.

Clause 2: The amendments define the terms “operating surgeon” (for the purposes of the amendments to *clauses 36 and 37*), “practising obstetrician or gynaecologist” (*clauses 33 and 36*), and “woman's own doctor” (*clause 36*). The definition of the term “panel” is consequentially omitted.

Clause 17: The amendment makes it clear that the Supervisory Committee must take steps to ensure the effective operation of this Part of the Bill.

Clause 20: The amendment authorises Hospital Boards to enter into agreements for the provision of goods and services to the Supervisory Committee.

Proposed clause 31b: This is a key provision. It provides that no abortion is to be performed (except in emergencies) unless it is authorised by 2 certifying consultants. As stated above, this is proposed as an alternative to the proposed panel system and, if it is accepted, *clause 32* will be redundant. Accordingly, it is intended to oppose that clause.

Clause 33: It is intended to oppose the clause, and substitute a new clause relating to the appointment of certifying consultants.

Subclause (1) requires the Supervisory Committee to set up and maintain a list of registered medical practitioners who may act as certifying consultants.

Subclause (2) requires the Supervisory Committee, before making any appointments, to assess the minimum number of certifying consultants necessary to ensure that every case can be dealt with expeditiously, and then to appoint that number.

Subclause (3) requires the Supervisory Committee, before making any appointments, to consult with the New Zealand Medical Association, and empowers the Committee to consult with other professional or other bodies.

Subclause (4) sets out the criteria to be met by the Supervisory Committee in making appointments to the list. Briefly, these are:

- (a) At least one half of the appointees must be practising obstetricians or gynaecologists:
- (b) There must be a sufficient geographical spread so as to ensure that every case can be dealt with without involving the woman in considerable travelling or other inconvenience.

Subclause (5) further requires the Supervisory Committee to avoid appointing persons whose views in relation to abortion generally are incompatible with the tenor of this Act, and refers to 2 views that are to be considered incompatible in that sense.

Subclause (6) provides that every appointment is to be for 12 months, but may be renewed, and *subclause (7)* allows the Supervisory Committee to revoke any appointment.

Clauses 34 and 35: The amendments are consequential upon the proposal to remove the Panel system.

Clause 36: The substituted clause sets out the procedure to be followed where a woman wishes to have an abortion.

Subclause (1) requires the woman's doctor or the operating surgeon to refer the case to 2 certifying consultants, of whom at least 1 must be a practising obstetrician or gynaecologist.

Subclause (2) specifies the information to be supplied to the certifying consultants.

Subclause (3) requires each certifying consultant to consider the case expeditiously, and to interview the woman if she requests him to do so.

Subclause (4) entitles the woman's doctor and the operating surgeon to make representations and adduce medical reports to the certifying consultants.

Subclause (5) empowers each certifying consultant to discuss the case with any other person, but he must not disclose the woman's identity without her consent.

Clause 37: The first 4 amendments are of a consequential drafting nature only.

The proposed *subclause (5)* requires the certifying consultants, where they propose to authorise an abortion, to satisfy themselves that an operating surgeon is available to the woman, and to issue the certificate of authorisation to the institution in which the abortion is to be performed.

The proposed *subclause (6)* provides that where a certifying consultant has not determined the case within 14 days after it was referred to him, he must report the matter to the Supervisory Committee.

Clause 38: The substituted clause requires the certifying consultants to advise the woman of her right to seek counselling, whether they decide to authorise or to refuse to authorise an abortion.

Clauses 39, 40, 43, 44, and 54: The amendments are of a consequential drafting nature only, with the exception of the first amendment to *clause 40*. This provides that any person (whether or not a registered medical practitioner) who performs an abortion otherwise than in accordance with this Part of the Bill commits an offence.