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## GENERAL NOTICES

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### NOTICE 1388 OF 2003

### DEPARTMENT OF HEALTH

#### CHOICE ON TERMINATION OF PREGNANCY AMENDMENT BILL, 2003

The Minister of Health intends to table the Choice on Termination of Pregnancy Amendment Bill, 2003 in Parliament during this year.

Interested persons are invited to submit any substantiated comments or representations on the Choice on Termination of Pregnancy Amendment Bill, 2003 to the Director-General of Health [for the attention of the Chief-Director: Maternal, Child and Women's Health (Dr Mhlanga)], Private Bag X828, Pretoria, 0001 within one month of the date of publication of this notice.

[ ] Words in bold type in square brackets indicate omissions from existing enactments

— Words underlined with a solid line indicate insertions in existing enactments

### DRAFT BILL

To amend the Choice on Termination of Pregnancy Act, 1996, so as to replace the designation of facilities by the Minister with approval by the Member of the Executive Council, and the making of regulations connected thereto; to enable public and private facilities offering 24 hour maternity service to provide termination of pregnancy services; to provide for the recording of information and submission of statistics; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

#### Amendment of section 1 of Act 92 of 1996

1. Section 1 of the Choice on Termination of Pregnancy Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by-

(a) the insertion before definition of "incest" of the following definition:

" 'Head of Department' means the head of a Provincial health department;"

(b) the insertion, before the definition of "Minister" of the following definition:

" 'Member of the Executive Council' means the Member of the Executive Council of a province, who is responsible for health in that province"; and

- (c) the substitution for the definition of "**registered midwife**" of the following definition:

" '**registered nurse**' means a person registered as such under the Nursing Act, 1978 (Act No.50 of 1978) and trained in terms of this Act;"

### **Substitution of section 3 of Act 92 of 1996**

2. The following section is hereby substituted for section 3 of the principal Act:

#### **"3. Place where termination of pregnancy may take place**

- (1) Termination of a pregnancy may take place only at a facility approved by the Member of Executive Council by notice in the Provincial Gazette for that purpose.
- (2) The Member of the Executive Council shall, by notice in the Provincial Gazette, determine requirements and conditions necessary to approve such facilities referred to subsection (1).
- (3) The Member of the Executive Council may, on good cause shown, withdraw any approval granted in terms of subsection (1).
- (4) Any public or private health facility that has a 24 hour maternity service, and which complies with the requirements and conditions contemplated in subsection (2), is exempted from requiring approval to terminate pregnancies of up to and including 12 weeks.
- (5) The Member of Executive Council shall on an annual basis provide the Minister with statistics of approved facilities for that particular year.

- (6) The Minister may exercise the powers and functions accorded the Member of the Executive Council, in order to achieve the objects of this Act: Provided that in case of a conflict on the exercise of these powers and functions, section 146 of the Constitution of the Republic of South Africa, 1996, shall be used to resolve the said conflict.”

### **Amendment of section 7 of Act 92 of 1996**

3. Section 7 of the principal Act is hereby amended:

4. by the substitution for subsection (3) of the following subsection:

“(3) The person in charge of a facility referred to in section 3, shall, within one month of the termination of a pregnancy at such facility, collate the prescribed information and forward it by registered post confidentially to the ~~[Director-General]~~ Head of Department: Provided that the name and address of a woman who has requested or obtained a termination of pregnancy, shall not be included in the prescribed information.”;

- (b) by the substitution for subsection (4) of the following subsection:

“(4) The ~~[Director-General]~~ Head of Department shall keep the record of the prescribed information which he or she receives in terms of subsection (3)”; and

- (c) by the insertion of the following subsection (4):

“(4A) The Head of Department shall provide the Director – General with the information referred to in subsection (4) every six months.”

**Substitution of section 8 of Act 92 of 1996**

4. The following section is hereby substituted for section 8 of the principal Act:

**“8. Delegation**

- (1) The **[Minister]** Member of the Executive Council may, on such conditions as he or she may determine, in writing delegate to the **[Director-General]** Head of Department or any other officer in the service of the State, any power conferred upon the **[Minister]** Member of the Executive Council by or under this Act, except the power referred to in section 9.
- (2) The **[Director-General]** Head of Department may, on such conditions as he or she may determine, in writing delegate to an officer in the service of the State, any power conferred upon the **[Director-General]** Head of Department by or under this Act or delegated
- (3) The **[Minister or Director-General]** Member of the Executive Council or Head of Department shall not be divested of any power delegated by him or her, and may amend or set aside any decision taken by a person in the exercise of any such power delegated to **[him or her]** that person.”

**Amendment of section 9 of Act 92 of 1996**

5. The following section is hereby substituted for section 9 of the principal Act –

**“9. Regulations**

- (1) The **[Minister]** Member of the Executive Council may make regulations relating to any matter which he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.
- (2) The regulations contemplated in subsection (1) shall be approved by the Minister before they can be put into effect by the Member of the Executive Council.”

**Amendment of section 10 of Act 92 of 1996**

6. Section 10 of the principal Act is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Any person who –

- (a) is not a medical practitioner or a registered **[midwife]** nurse who has completed the prescribed training course and who performs the termination of a pregnancy referred to in section 2(1)(a);
- (b) is not a medical practitioner and who performs the termination of pregnancy referred to in section 2(1)(b) or (c); **[or]**
- (c) prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy [,] ; or
- (d) terminates a pregnancy, allows a termination of pregnancy at a facility not approved in terms of

section 3(1), or provides access to such a facility for termination of pregnancy,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

#### **Amendment of Act 92 of 1996**

7. The principal Act is hereby amended by the substitution for the phrase  
“registered midwife” wherever it appears in the Act, of the phrase “registered nurse”.

#### **Insertion of section 11A in Act 92 of 1996**

8. The principal Act is hereby amended by the insertion after section 11 of  
the following section :

##### **“11A. Transitional Provision**

Any facility designated in terms of section 3(1), is deemed to have been approved by the Member of the Executive Council in terms of this Act.”

#### **Short Title**

9. This Act is called the Choice on Termination of Pregnancy Amendment Act, 2003.