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THE PRESIDENCY

No. 599

22 June 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 3 of 2005: Sterilisation Amendment Act, 2005



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 18 June 2005.)

ACT

To amend the Sterilisation Act, 1998, so as to substitute a definition; to make provision for a medical opinion in certain circumstances; to provide for additional information to be considered when contemplating sterilisation; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 44 of 1998

1. Section 1 of the Sterilisation Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “sterilisation” of the following definition: 5

“ ‘sterilisation’ means [a surgical procedure performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad] a procedure whereby a person could be permanently rendered incapable of fertilisation or reproduction.” 10

Amendment of section 2 of Act 44 of 1998

(i) consent is given by a person who is lawfully entitled to give consent; and 25

- (ii) an independent medical practitioner who, before a panel is convened in terms of section 3(2), has consulted with the person to be sterilised and has provided a written opinion to the effect that the sterilisation is in the best interest of that person.”.

Amendment of section 3 of Act 44 of 1998

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3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the heading to section 3 of the following heading:
“Person incapable of consenting or incompetent to consent due to **[severe]** mental disability”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) if a panel contemplated in subsection (2) after considering all relevant information, including **[the fact that]**—
- (i) the **[person is 18 years of]** person’s age[, **unless the physical health of the person is threatened; and;** 15
 - (ii) whether there- **[is no]** are other safe and effective **[method] alternatives [of contraception except] to** sterilisation; 20
 - (iii) the person’s mental and physical health and wellbeing;
 - (iv) the potential effect of sterilisation on the person’s mental and physical health and wellbeing;
 - (v) the nature of the sterilisation procedure to be performed;
 - (vi) the likelihood that the person will become capable of consenting to sterilisation;
 - (vii) whether the sterilisation is in the best interests of the person to be sterilised; and 25
 - (viii) the benefit which the person may derive from sterilisation, concurs that sterilisation may be performed; and”;
- (c) by the deletion of subsection (6); and
- (d) by the substitution for subsection (7) of the following subsection: 30
“(7) For the purposes of this section, **“[severe] mental disability”** means a range of functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to **[severely]** restrained sensory and motor 35
functioning and requiring nursing care.”.

Amendment of section 4 of Act 44 of 1998

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

- “(c) understood and signed the prescribed consent form.”. 40

Short title

5. This Act is called the Sterilisation Amendment Act, 2004.