Act No. 3, 2005

No. 27702

STERILISATION AMENDMENT ACT, 2005

GENERAL EXPLANATORY NOTE:

Words in bold type in square brackets indicate omissions from existing enactments. Words underlined with a solid line indicate insertions in

> (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 steriisation; and to provide for matters connected therewith.

BEIT 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:

'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."

Amendment of section 2 of Act 44 of 1998

- 2. Section 2 of the principal Act, is hereby amended-
 - (a) by the substitution for subsection (1) of the following subsection:
 - "(1) [No] A person [is prohibited from having sterilisation performed on him or her] may be sterilised if he or she is-
 - (a) capable of consenting; and
 - (b) 18 years of age or above.";
 - (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 - "(a) Sterilisation may [not] be performed on a person who is under the age of 18 years [except where] if failure to do so would jeopardize the person's life or seriously impair his or her [physical] health."; and
 - (c) by the addition to subsection (3) of the following paragraph:
 - "(c) A person contemplated in paragraph (a), may be sterilised if-
 - (i) consent is given by a person who is lawfully entitled to give consent: and



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(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

- 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]—
 - the [person is 18 years of] <u>person's</u> age[, unless the physical health of the person is threatened; and];
 - (ii) whether there [is no] are other safe and effective [method] alternatives [of contraception except] to sterilisation;
 - (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 he performed;
 - (vi) the likelihood that the person will become capable of consenting to
 - (vii) whether the sterilisation is in the best interests of the person to be sterilised; and
 - (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:
 - "(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 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) <u>understood and</u> signed the prescribed consent form.".

Short title

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

