

2.2 Births, Deaths and Marriages Registration Act

Under the Births, Deaths and Marriages Registration Act 1995 ("the Registration Act") there is a requirement to register all births.

2.2.1 Stillbirth

"Birth" includes "stillbirth", which means the birth of a "stillborn child" (a fetus of at least 20 weeks gestation or, if the gestational age is not known, having a body mass of at least 400 grams at birth). If the gestational age of the fetus is not accurately known, the weight of the fetus becomes relevant. When notice of a stillbirth is given, the responsible person must also give a doctor's certificate certifying the cause of fetal death. No registration of "death" is required in respect of stillborn children.

2.2.2 Neonatal birth and death

A child born alive, irrespective of gestational age, must be registered as a birth- see section 12 of the Registration Act. If the child subsequently dies it must be registered and notified to the Registrar together with the cause of death in accordance with the Registration Act or alternatively reported to the Coroner. *Refer to circular 98/114 Register of Deaths*

2.3 Duty of Care

This section outlines the legal responsibilities in relation to both adult and child patients in the context of terminations of pregnancy. Both the civil and criminal law is relevant.

2.3.1 Adult patient

The law imposes on a medical practitioner a duty to his or her patient to exercise reasonable care and skill in the provision of professional advice and treatment. Appropriate and adequate information must be provided to patients in order for the patient to make an informed choice about treatment.

In relation to the actual performance of the termination, a duty of care is owed to the patient and the standard of reasonable care and skill required is that of a medical practitioner experienced in that area of practice. Where the standard of care falls below that which could be reasonably expected in the circumstances, negligence may be established.

2.3.2 Child

For the purposes of this section "child" refers to a child who has been expelled or removed from the mother's womb alive. It should be noted that a fetus *in utero* is not recognised as a separate legal entity. However, once a fetus has been expelled or removed from the mother's womb, and is born alive, he/she has the legal status of a person whose rights exist independently of the rights of the parents.

ANNEXURE 1

Testing for Genetic Disorder

Reference *should be made to Circular 97/48 called "Guidelines for Testing for Genetic Disorders"*

Before considering consent to the termination, consideration needs to be given to the implications of the range of testing eg ultrasound available to pregnant women.

Testing may benefit individuals and their families in a number of ways but it may also create dilemmas for the individual being tested and other members of their families which need sensitive management. Pre test and post test counselling is an essential element of genetic testing. Each test has distinct advantages, disadvantages and limitations and should only be used after the individual being tested has given full consideration to these issues. All testing should be carried out with the consent of the person being tested. The person must be provided with comprehensive information as to the purpose of the test or the procedure and the possible implications of the results, and consequences of those results, before being asked to give consent. Careful consideration should be given to the way results are conveyed.

Certain results must be reported to the NSW Birth Defects Register as set out in the Circular.

Where there is prenatal diagnosis using amniocentesis, chorion villus sampling and fetal blood sampling it is recommended that where possible patients are counselled face to face at least one day before the procedure. Counselling should address a clear and simple explanation of the probability of an affected fetus, explanation of the process of the procedure, options to be considered if the result is abnormal, acknowledgment of the individual nature of decisions about continuing or terminating the pregnancy and methods of termination of pregnancy (and other factors, refer page 9 and 10 of the Circular).

Ultrasound has become a routine part of prenatal care. Parents may not have given consideration to the prospect of an adverse result. When an abnormality is detected, care should be taken to provide counselling and emotional support to minimise the impact of the result on the woman and her family.

Maternal serum testing is an optional and voluntary prenatal test for women of any age, which, when combined with age and other factors, can provide an assessment of risk for Down syndrome and other abnormalities such as neural tube defects. The test alone does not identify any birth defect. An increased risk result indicates the need to consider definitive prenatal diagnostic tests such as amniocentesis. It is important that women consider all aspects of this blood test before agreeing to have it done. (Refer page 13 and 14 of Circular).

Neural tube defects include anencephaly, spina bifida and encephalocele. Serum Alpha Fetoprotein Testing is a voluntary and optional prenatal test which gives a risk assessment for neural tube defects. Issues to be discussed with patients are set out on page 16 of the Circular.