

Australian Capital Territory

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Australian Capital Territory

Health (Improving Abortion Access) Amendment Act 2018

An Act to amend the [Health Act 1993](http://www.legislation.act.gov.au/a/1993-13)

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Health (Improving Abortion Access) Amendment Act 2018*.

2 Commencement

(1) This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 77 (1)).

(2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

(3) The [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the [Health Act 1993](http://www.legislation.act.gov.au/a/1993-13).

4 Division 6.1

substitute

Division 6.1 Abortions—generally

80 Definitions—pt 6

(1) In this part:

***abortifacient*** means a medicine, drug or other substance that causes a pregnancy to end prematurely.

***abortion*** means a medical abortion or surgical abortion.

***approved medical facility*** means a medical facility approved under section 84.

***surgical abortion*** means a surgical procedure or any other procedure or act (other than the administration or supply of an abortifacient) that causes a pregnancy to end prematurely.

(2) In this section:

***medical abortion*** means the prescription, supply or administration of an abortifacient.

81 Offence—unauthorised supply or administration of abortifacient

(1) A person commits an offence if—

(a) the person supplies or administers an abortifacient to another person; and

(b) the abortifacient is supplied or administered by the person for the purpose of ending a pregnancy; and

(c) the person is not a doctor.

Maximum penalty: imprisonment for 5 years.

(2) Subsection (1) does not apply to—

(a) a pharmacist supplying an abortifacient in accordance with a prescription; or

(b) a person assisting a pharmacist in supplying an abortifacient in accordance with a prescription.

(3) For this section, it does not matter whether or not—

(a) the other person was pregnant; or

(b) the abortifacient supplied or administered was sufficient to end a pregnancy.

(4) In this section:

prescription—see the [Medicines, Poisons and Therapeutic Goods Act 2008](http://www.legislation.act.gov.au/a/2008-26), dictionary.

82 Offence—unauthorised surgical abortion

(1) A person commits an offence if the person—

(a) carries out a surgical abortion; and

(b) is not a doctor.

Maximum penalty: imprisonment for 5 years.

(2) Subsection (1) does not apply to a person assisting a doctor to carry out a surgical abortion.

83 Surgical abortion to be carried out in approved medical facility

A person commits an offence if the person carries out a surgical abortion other than in an approved medical facility.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

84 Approval of facilities

(1) A person may apply to the Minister to have a medical facility, or a part of a medical facility, approved to carry out surgical abortions.

(2) The Minister must approve the application if reasonably satisfied the medical facility is suitable.

(3) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14).

84A Conscientious objection

(1) Subject to subsection (2), an authorised person may refuse to prescribe, supply or administer an abortifacient, or carry out or assist in carrying out a surgical abortion, on religious or other conscientious grounds (a conscientious objection).

(2) An authorised person must not refuse, only because of a conscientious objection—

(a) to carry out, or assist in carrying out, a surgical abortion in an emergency where an abortion is necessary to preserve the life of the pregnant person; or

(b) to provide medical assistance or treatment to a person requiring medical treatment because of an abortion.

(3) There is no breach of duty (by contract or by statutory or other legal requirement) or contravention of a territory law if an authorised person refuses to prescribe, supply or administer an abortifacient, or carry out or assist in carrying out a surgical abortion, because of a conscientious objection.

(4) However, if an authorised person refuses to prescribe, supply or administer an abortifacient, or carry out or assist in carrying out a surgical abortion because of a conscientious objection, the authorised person must tell a person requesting the abortifacient or abortion that the authorised person refuses because of the objection.

(5) In this section:

authorised person means a doctor or nurse.

5 Definitions—div 6.2  
Section 85 (1), definition of approved medical facility

omit

6 Section 85 (1), definition of *prohibited behaviour*

omit

an approved medical

substitute

a protected

7 Section 85 (1), definition of *prohibited behaviour,* paragraph (a) (i)

omit

approved medical

substitute

protected

8 Section 85 (1), definition of *prohibited behaviour,* paragraph (a) (ii)

substitute

(ii) having an abortion, providing a surgical abortion or prescribing, supplying or administering an abortifacient in the protected facility;

9 Section 85 (1), definition of *prohibited behaviour,* paragraph (b) (ii)

substitute

(ii) is intended to stop a person from—

(A) entering the protected facility; or

(B) having an abortion, providing a surgical abortion or prescribing, supplying or administering an abortifacient in the protected facility;

10 Section 85 (1), definition of *prohibited behaviour,* paragraph  (c)

omit

the provision of abortions in the approved medical facility

substitute

a person doing any of the things mentioned in paragraph (b) (ii) (A) or (B)

11 Section 85 (1), new definition of *protected facility*

insert

***protected facility*** means an approved medical facility or other place around which a protected area has been declared under section 86.

12 Section 85 (2)

omit

an approved medical

substitute

a protected

13 Declaration of protected area  
New section 86 (1A)

insert

(1A) The Minister may declare an area around a place where an abortifacient is prescribed, supplied or administered to be a protected area.

14 Section 86 (2) (a)

omit

approved medical

substitute

protected

15 Section 86 (2) (b)

omit

an approved medical

substitute

the protected

16 Prohibited behaviour in or in relation to protected area  
Section 87 (2) (a)

omit

an approved medical

substitute

a protected

17 Section 87 (2) (b)

substitute

(b) the person does so with the intention of stopping a person from—

(i) having an abortion; or

(ii) providing a surgical abortion; or

(iii) prescribing, supplying or administering an abortifacient; and

18 Review of decisions  
New section 130 (2)

insert

(2) An applicant under section 84 may apply to the ACAT for review of a decision of the Minister to refuse approval of a medical facility, or a part of a medical facility, to carry out surgical abortions.

19 Pt 10 obligations—no contracting out  
Section 131

before

this part

insert

for section 130

20 New part 23

insert

Part 23 Transitional—Health (Improving Abortion Access) Amendment Act 2018

261 Meaning of commencement day—pt 23

In this part:

commencement day means the day the Health (Improving Abortion Access) Amendment Act 2018, section 3 commences.

262 Existing approvals of medical facilities

(1) An existing approval is taken to be an approval under section 84.

(2) In this section:

existing approval means an approval—

(a) under section 83 (Approval of facilities) as in force immediately before the commencement day; and

(b) in force immediately before the commencement day.

263 Expiry—pt 23

This part expires on the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 88).

21 Dictionary, note 2

insert

 doctor

 Minister (see s 162)

 notifiable instrument (see s 10)

 penalty unit (see s 133)

22 Dictionary, new definition of *abortifacient*

insert

abortifacient, for part 6 (Abortions)—see section 80 (1).

23 Dictionary, definition of *abortion*

substitute

abortion, for part 6 (Abortions)—see section 80 (1).

24 Dictionary, definition of approved medical facility

substitute

approved medical facility, for part 6 (Abortions)—see section 80 (1).

25 Dictionary, new definitions

*insert*

protected facility, for division 6.2 (Patient privacy in protected areas)—see section 85.

surgical abortion, for part 6 (Abortions)—see section 80 (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 March 2018.

2 Notification

Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 27 September 2018.

3 Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

I certify that the above is a true copy of the Health (Improving Abortion Access) Amendment Bill 2018, which was passed by the Legislative Assembly on 19 September 2018.

Clerk of the Legislative Assembly

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