



Australian Capital Territory

Health (Improving Abortion Access) Amendment Act 2018

A2018-37

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Australian Capital Territory

Health (Improving Abortion Access) Amendment Act 2018

A2018-37

An Act to amend the *Health Act 1993*

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](#), 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](#), 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](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the [Health Act 1993](#).

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*, 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](#).

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](#), 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](#) on 27 September 2018.

3 Republications of amended laws

For the latest republication of amended laws, see 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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