

Australian Capital Territory

Public Health (Health Care Facility) Risk Declaration 2021 (No 1)

Disallowable instrument DI2021–239

made under the

Public Health Act 1997, s18- Public health risk activities and procedures- declaration

EXPLANATORY STATEMENT

This explanatory statement relates to the Public Health (Health Care Facility) Declaration 2021 (No 1) (this Declaration) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Declaration and to help inform debate on it. It does not form part of the Declaration and has not been endorsed by the Assembly.

Overview

The intent of this Declaration is to ensure better safety and quality of care for patients undergoing procedures that may pose a risk to health. It provides a legislative framework to govern Health Care Facilities in the ACT, including capturing accreditation requirements and incorporating recommendations made by the Hospitals Principal Committee (HPC) *Standardising Safety and Quality in Private Health Facilities*¹ report that was endorsed by the Australian Health Minister's Advisory Council in 2016. This Declaration revokes the public health risk activity declaration that was made for health care facilities in 2001 (the 2001 Declaration).

Provisions of this Declaration

This Declaration makes the operation of a health care facility a licensable public health risk activity. This Declaration updates the public health risk procedures that should be restricted to health care facilities due to their associated public health risks. It better aligns the ACT with other jurisdictions in restricting those procedures to health care facilities. This Declaration seeks the licencing of health care facilities, rather than a declared public health risk procedure.

This Declaration defines a health care facility as any premises where a declared public health risk procedure is performed or provides overnight inpatient services under the care of a registered medical professional. Declared public health risk procedures, are described in Schedule 1. These declared public health risk procedures broadly align

¹ Report to the Hospitals Principal Committee (May 2016, OOS6-07). *Standardising Safety and Quality in Private Health Facilities*¹ Greater consistency in the definition of Private Health Facility and the regulation of facilities that carry out cosmetic surgery.

with the HPC recommendations. A key change introduced by this Declaration is to restrict the availability of cosmetic procedures to health care facilities.

Declared non-licensable public health risk procedures, as described by Schedule 1 of this Declaration, were recommended for inclusion by the 2016 HPC report and were the subject of ACT stakeholder consultation in August 2020. Stakeholders supported restricting the public health risk procedures at Schedule 1 to health care facilities.

A Regulatory Impact Statement (RIS) of the regulation of public health risk procedures within health care facilities (including cosmetic procedures) was completed by KPMG in 2018-2019. The RIS recommended that the ACT adjust its regulatory approaches in line with the 2016 HPC report, better integrate with the Australian Health Service Safety and Quality Accreditation Scheme and improve regulatory transparency.

In line with recommendations of the RIS and 2016 HPC report, this instrument seeks to restrict the provision of defined cosmetic procedures to health care facilities as a public health risk procedure. The regulation of defined cosmetic procedures as a public health risk procedure is considered appropriate in view of the public and patient risks that are associated with these procedures such as system toxicity (using anaesthesia) and infection control. All Australian jurisdictions (other than the Northern Territory) have legislated restrictions on the provision of specific cosmetic procedures as recommended by the 2016 HPC report on public health grounds. This instrument does not impact any other public health risk procedure already restricted to health care facilities e.g. gastrointestinal endoscopy or chemotherapy.

Facilities that provide overnight inpatient services under the care of a registered medical professional has been included in this Declaration to ensure existing health services continue to be regulated.

This Declaration provides that health care facilities owned and operated by the ACT Government (public facilities) are not required to hold a public health risk activity license. Public facilities are still required to comply with any relevant Codes of Practice published under the *Public Health Act 1997* and may be subject to disciplinary actions and offences for failing to comply with a Code of Practice. They may also be inspected and regulated by the ACT Health Directorate and are accountable to the Minister for Health.

This Declaration specifically excludes residential aged care facilities, private residences, crisis accommodation, veterinary premises, patient transport services and facilities owned or operated by the Australian Government from the definition of a health care facility. These facilities are excluded because the public health risks posed by these facilities are considered to be adequately controlled by other laws of the Territory and Commonwealth. This exclusion is consistent with the 2001 Declaration, and it aligns with the regulatory arrangements of other Australian States and Territories.

Commencement

The changes to health care facility licencing outlined in this Declaration will commence six months after the date the instrument is notified.

Human Rights Considerations

Part 3 of the *Public Health Act 1997* includes offences for conducting a public health risk activity without a licence, or in contravention of a licence. There are no strict liability offences associated with this public health risk activity declaration. All current health care facility licence holders are corporations.

The operation of a health care facility requires the collection and storage of health records, which engages the right to individual privacy and reputation under the *Human Rights Act 2004*. This engagement is already addressed through other laws of the Territory and Commonwealth Government and this declaration is not considered to unduly infringe on an individual's human rights within the *Human Rights Act 2004*.

This Declaration, together with the Public Health (Health Care Facility) Code of Practice 2021 (No 1) (Code of Practice 2021), engages and supports the *Human Rights Act 2004* right to life under section 9. Together, this Declaration and the Code of Practice 2021 support an effective framework for health care facilities to maintain high standards of quality to ensure the safety of the community. They do this by achieving a stronger alignment with the Australian Health Service Safety and Quality Accreditation Scheme (the Scheme). Information about the Scheme is available on the Australian Commission on Safety and Quality in Health Care website at www.safetyandquality.com.au.