

EXPOSURE DRAFT

Mr Shane Rattenbury

(Prepared by Parliamentary Counsel's Office)

Health (Patient Privacy) Amendment Bill 2015

A Bill for

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 (Patient Privacy) Amendment Act 2015*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Health Act 1993*.

4 New division 6.1 heading

insert

Division 6.1 Abortions—generally

5 New division 6.2

insert

Division 6.2 Patient privacy in protected areas

85 Definitions—div 6.2

(1) In this division:

approved medical facility means a medical facility approved under section 83.

prohibited behaviour, in a protected area around an approved medical facility, means any of the following:

- (a) the harassment, hindering, intimidation, interference with, threatening or obstruction of another person in the protected period that is intended to stop the person from—
 - (i) entering the approved medical facility; or
 - (ii) having or providing an abortion in the approved medical facility;
- (b) an act that—
 - (i) can be seen or heard by a person in the protected period; and
 - (ii) is intended to stop a person from—
 - (A) entering the approved medical facility; or
 - (B) having or providing an abortion in the approved medical facility;
- (c) a protest, by any means, in the protected period in relation to the provision of abortions in the approved medical facility;
- (d) the intentional capturing of visual data of a person who is entering, trying to enter or who has left an approved medical facility without the person's consent.

protected area means an area declared under section 86.

- (2) For this section, ***protected period***, in relation to an approved medical facility, means the period between 8 am and 6 pm on each day the facility is open or any other period declared by the Minister.

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- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

86 Declaration of protected area

- (1) The Minister must declare an area around an approved medical facility to be a protected area.
- (2) In making the declaration, the Minister must be satisfied that the area declared is—
- (a) sufficient to ensure the privacy and unimpeded access for anyone entering, trying to enter or leaving an approved medical facility; but
 - (b) no bigger than reasonably necessary to ensure that outcome.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

87 Prohibited behaviour in or in relation to protected area

- (1) A person commits an offence if the person—
- (a) is in a protected area; and
 - (b) engages in prohibited behaviour.

Maximum penalty: 25 penalty units.

- (2) A person commits an offence if—
- (a) the person publishes captured visual data of another person (the *recorded person*) who is entering or trying to enter, or who has left, an approved medical facility; and
 - (b) the recorded person did not consent to the publication.

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

- (3) This section does not apply to the capture of visual data, or the publication of captured data, by a law enforcement officer acting reasonably in the exercise of the officer's functions.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) In this section:

capture visual data—a person *captures visual data* of another person if the person captures moving or still images of the other person by a camera or any other means in such a way that—

- (a) a recording is made of the images; or
- (b) the images are capable of being transmitted in real time with or without retention or storage in a physical or electronic form; or
- (c) the images are otherwise capable of being distributed.

law enforcement officer means—

- (a) a police officer; or
- (b) a member of the staff of the Australian Crime Commission established under the [Australian Crime Commission Act 2002](#) (Cwlth), section 7.

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publish, captured visual data—

- (a) means communicate or distribute visual data in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the visual data; and
- (b) includes—
 - (i) entering into an agreement or arrangement to do a thing mentioned in paragraph (a); and
 - (ii) attempting to do a thing mentioned in paragraph (a) or subparagraph (i).

6 Dictionary, note 2

insert

- police officer

7 Dictionary, new definitions

insert

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

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

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

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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