

**Period Products (Access) Bill 2022**  
**Revised Explanatory Statement**

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## Introduction

This revised explanatory statement relates to the *Period Products (Access) Bill 2022* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## Background

Period poverty is more pervasive in the ACT community than is commonly realised and the impacts of period poverty are significant. Not being able to access sanitary products and hygiene facilities leaves people feeling stressed and ashamed and will often lead to their withdrawal from regular activities until their period is over. This can mean withdrawing from school classes, work, or social activities at the detriment to the person menstruating.

The reasons a person experiences period poverty can be complex and result from one or a combination of more than one contributing factor. The experience of period poverty can be short term in nature for example because of a crisis event which is then resolved or sustained over a longer term for example because of ongoing financial hardship or cultural practices that create shame and stigma preventing people accessing the products, facilities, or information they need to manage their period.

## Overview

The *Period Products and Facilities (Access) Bill 2022* is a bill to reduce and prevent period poverty in the ACT by, providing free access to period products at “suitable places”, and by providing information on menstruation and menstrual hygiene and by improving access to toilet facilities.

The Bill defines what constitutes period poverty and sets out a framework for the provision of period products at “suitable places” across the ACT. The Bill establishes a process for designating “suitable places” and for community partners to join as a “suitable place”. The Bill outlines requirements for the provision of period products in ACT Government schools and other learning institutions. The Bill outlines requirements for the provision of toilet and hygiene facilities by the ACT Government and Territory Funded entities. The Bill establishes the requirement for information regarding menstruation and menstrual hygiene to be made available to the community.

It is intended that period products and facilities provided under the Bill are supplied in a way or ways that respect and uphold the dignity of the person accessing them.

## **Consultation Undertaken**

A consultation draft of the *Period Products and Facilities (Access) Bill 2022*, in its former version the *Period Products (Access) Bill 2022*, was released for public consultation on Wednesday 15 December 2021.

Extensive consultation was undertaken with community members, not for profit organisations, Union members and their representatives and others. This consultation resulted in many changes which has led to the Bill being developed to the form it is currently in for introduction.

An inquiry by the Standing Committee on Health and Community Wellbeing Committee provided further opportunity for public consultation and parliamentary scrutiny. The Standing Committee on Justice and Community Safety Committee (Legislative Scrutiny Role) provided comment on the Bill. Further amendments to the Bill, a supplementary explanatory statement for the proposed amendments and this revised explanatory statement have been proposed following feedback from these processes.

## **Human Rights Compatibility**

The Bill engages human rights compatibility considerations.

### **Rights Promoted**

The Bill promotes the rights of those who menstruate to education, work and from discrimination at work as per sections 27A and 27B of the *Human Rights Act 2004*.

The Bill will reduce instances where one's right to education is impeded upon due to being unable to manage one's period properly while in an educational setting.

The Bill will reduce instances where one's right to work is impeded upon due to being unable to manage one's period properly while in an employment setting.

The Bill will reduce discrimination against those who menstruate at work by ensuring equal access to adequate bathroom and sanitary facilities.

### **Rights Limited**

The very act of asking a person to identify as requiring period products or access to facilities could be considered a breach of privacy as it is requiring the person to identify their personal circumstances. The Bill could therefore be considered to limit the privacy of people accessing period products and facilities therefore engaging section 12 of the Human Rights Act 2004.

## **Proportionality**

The objective of the Bill is to provide period products and facilities to those who need them so that there is no reason a person would have to withdraw from their regular activities to manage their period.

While providing products and facilities for people experiencing period poverty promotes several rights regarding participation in society it could also result in people having their right to privacy limited through the disclosure of their circumstance or personal information.

To minimise the potential for rights to be limited the design of the scheme has been very conscious to limit the need for disclosure of personal information or circumstance to access the products and facilities covered by the Bill.

By making products available at suitable places across the ACT people will be able to access the products simply by attending the physical site of the suitable place. Given these sites are places of regular activity e.g., a public library, there is no reason for people accessing them to be singled out to gain entry or identified as only accessing that place to get products. In addition, there is no requirement under the provisions of the Bill that anyone accessing products from a suitable place provide personal information or meet a specified criteria to access those products.

The inclusion of community partners as suitable places provides an additional avenue for respectfully accessing the scheme as people already in contact with the service will have existing trusted relationships through which they can raise their needs. Providing access in this way minimises the need to approach a service or government authority that is unknown to people accessing the scheme.

While suitable places will be required to have access guidelines these are intended to provide guidance on the implementation of the scheme at each suitable place. The provisions of the Bill do not require any criteria or test for individuals accessing the scheme to be developed as part of the accessibility guidelines as this would be against the intent of the Bill and the function of the guidelines.

Reporting workplace facilities which do not meet the requirements of the Bill is another area where individuals could have their privacy impinged by default of having to make the report. To provide for sensitive and confidential ways to make the report the Bill provides for a union representative or a representative of the Work Health and Safety Committee to make the report so that the need for individuals to disclose of personal information or circumstances is minimised.

Ultimately the Bill promotes and upholds several human rights by enabling the full participation of people who menstruate in society. While considerations of privacy are required, these can be mitigated so that any limitation of peoples right to privacy is minimised to an extent that the impact of the scheme does not out way the benefit.

## Outline of the Provisions of the Bill

### PART 1 PRELIMINARY

#### Clause 1      **Name of Act**

This clause sets out the name of the Act.

#### Clause 2      **Commencement**

This clause sets out that the Act commences on a day fixed by the Minister by written notice within 6 months of notification.

#### Clause 3      **Dictionary**

This clause states that the dictionary at the end of the Bill is, once enacted, part of the Act.

#### Clause 4      **Notes**

This clause states that a note included in the Bill is explanatory and, once enacted, is not part of the Act.

#### Clause 5      **Object of Act**

This clause sets out the objects of the Act. The main objective of the Bill being to reduce or prevent period poverty in the ACT. It is intended to achieve the objective of reducing and preventing period poverty in the ACT by providing free access to period products, improving access to toilets, hand washing facilities and sanitary waste facilities and providing information regarding menstruation and menstrual hygiene.

#### Clause 6      **Meaning of *period poverty***

This clause defines the term *period poverty* for the Bill.

### PART 2 ACCESS TO PERIOD PRODUCTS

#### Division 2.1      **Access in the community**

#### Clause 7      **Suitable places for accessing period products**

This clause sets out the requirement for the Minister to maintain a list of places where period products are made available for people experiencing period poverty. This list is referred to as the suitable places list. Under this clause the suitable places list must identify places across a range of geographical locations to ensure access is achieved

across the whole of the ACT. The suitable places list is a notifiable instrument to provide transparency to the program and an authoritative source detailing where products can be accessed.

In making the products available at places on the suitable places list the Bill creates an easily accessed opt-in mechanism for people experiencing period poverty to access products across a range of geographical places as required without needing to demonstrate compliance with any specific criteria. The approach is intended to overcome the shame and stigma that occurs when means testing or other show cause processes are required which can create a barrier and prevent people experiencing period poverty from accessing the scheme.

#### **Clause 8            Access to period products at suitable places**

This clause sets out a requirement for the Director-General to ensure period products are made available free of charge at each suitable place identified under the requirements of Clause 7.

This clause also requires the Director-General and responsible entities must comply with the access arrangements set out in clause 9 for each suitable place.

#### **Clause 9            Access arrangements – suitable places**

This clause sets out a requirement for the Director-General to create access arrangements for all places on the suitable places list. The access arrangements must be made in writing and provide for how a person can access products and the products available at the place. Providing for access arrangements in this way allows for flexibility to tailor requirements to the specific characteristics of various locations and user groups.

It should be noted the Bill allows for a range of products to be provided however it is not intended that every type of product is provided at every suitable place. For example, reusable products and period underwear would not need to be provided in every library bathroom, however schools or community service providers who are more likely to have user groups with ongoing needs could under their access guidelines make arrangements for students or clients to access these should a request for reusable products be made.

By placing the arrangements in writing the Director-General and the responsible entity for the suitable place have clear guidance on their obligations under the Bill and requirements for meeting those obligations.

The access arrangements are intended to respond to the practicalities of providing products at suitable places and are not intended to introduce a criteria or test that determines eligibility of individuals to access the scheme.

#### **Clause 10      Approved suitable places**

This clause allows for an approval process under which entities who provide services to people who are or are likely to be experiencing period poverty to be included as a place on the suitable places list.

#### **Clause 11      Approval guidelines**

This clause requires the Director-General make guidelines which sets out the process for applying for and approving entities under clause 10 to be included as a suitable place on the suitable places list. This clause also requires the guidelines to be a notifiable instrument. The purpose of the guidelines under this clause is to provide a clear and consistent process for entities applying to be included on the suitable places list.

### **Division 2.2      Access for students**

#### **Clause 12      Access to period products on education provider premises**

This clause sets out that education providers must make period products available for students on their premises and adhere to the applicable access arrangements. The definition of education provider is set out in the dictionary and seeks to encompass all education providers from primary school through to tertiary education. Education providers are included in their own section of the Bill due to the increased likelihood for students at all levels of education to experience period poverty as well as the unique nature of education premises and associated legislative and governance arrangements.

#### **Clause 13      Access arrangements – government schools**

This clause sets out the requirement for the Director-General administering the *Education Act 2004* to make access arrangements for students at government schools to access period products on government school premises. This section is included to make it clear that even though the government schools are included in the Bill through a provision other than the suitable places list access arrangements are still required. The requirements and intentions of access arrangements under this clause are consistent with those for the access arrangements for places on the suitable places list as outlined in clause 9.

#### **Clause 14      Access arrangements – other education provider premises**

This clause sets out the requirement for an education provider other than a government school to make access arrangements for students at their premises to access period products on those premises. This section is included to make it clear that even though the other education providers are included in the Bill through a provision other than the suitable places list access arrangements are still required. The requirements and intentions of access arrangements under this clause are consistent with those for the access arrangements for places on the suitable places list as outlined in clause 9.

## **PART 3 WORKPLACE ACCESS TO FACILITIES**

### **Clause 15 Definitions – pt 3**

This clause sets out the definitions of *territory-funded work* and *workplace* for the purposes of this part.

### **Clause 16 Workplace access to facilities**

This clause sets out a requirement that all workplaces funded through contractual or other methods by the ACT Government, including ACTPS workplaces, must provide access to appropriate facilities for management of one's period including toilets, handwashing facilities and sanitary waste facilities.

Additionally, this clause sets out that the access must respect the dignity of the person and be consistent with appropriate guidelines set out at clause 19.

### **Clause 17 Reporting lack of access by public employees**

This clause outlines a complaint mechanism that can be used by ACTPS employees in the case that conditions set out for workplaces in clause 16 are not adequately provided in an ACTPS workplace.

A public servant can make a report, or a representative of the public servant or an appropriate person can make a report to the appropriate Director-General to resolve the issue. An employee of a Territory instrumentality, or their representative or appropriate person, can make a report to the person in charge of their employment to resolve the issue.

## **PART 4 INFORMATION AND GUIDELINES**

### **Clause 18 Information about menstruation**

This clause requires the Director-General to provide publicly available information about menstruation including publishing this information online. The information provided under this clause must be provided in English and languages other than English. This information must also be provided in appropriate ways for different age groups.

Providing current and authoritative information regarding menstruation overcomes misunderstanding about menstruation and the stigma that is created from ignorance or misunderstanding. In addition, having access to appropriate and up to date information about the safe and healthy management of menstruation supports better hygiene practices and prevents serious medial impacts arising from poor, incorrect or outdated hygiene practices.

While education providers teach sexual health education under the National Curriculum there is an acknowledgement that information for people outside the education system



is also needed. It is intended the information provided under this clause is for the broader ACT community. Teachers may use the information to assist with their education delivery however it is not a requirement under the Bill for them to do so.

**Clause 19      Access guidelines**

This clause sets out that the Director-General may make access guidelines in addition to those outlined in other clauses of the Bill about how to comply with an obligation under this Act. This clause also sets out what the Director-General needs to include in an access guideline which is published in order to guide entities with adhering to the requirements of those entities when undertaking ACT Government funded work as per clause 16. These guidelines will be industry or sector specific and will be a notifiable instrument.

**PART 5 MISCELLANEOUS**

**Clause 20      Report on operation of Act**

This clause requires that a statement about the operation of the Act and information about reports made about workplace access to facilities for public employees, under clause 17, be included in an agencies annual report.

**Clause 21      Review of operation of Act**

This clause notes that the Minister must review the Act ever 3 years and make a report about this review to the Legislative Assembly.

**Clause 22      Regulation making power**

The Executive may make regulations for this Bill.

**DICTIONARY**

The dictionary defines terms used in the Bill.