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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

HEALTH (IMPROVED ABORTION ACCESS) AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
RACHEL STEPHEN-SMITH MLA
MINISTER FOR HEALTH
APRIL 2024**

HEALTH (IMPROVED ABORTION ACCESS) AMENDMENT BILL 2024

This Explanatory Statement relates to the *Health (Improved Abortion Access) Amendment Bill 2024* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to inform its debate. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. Provisions are not to be taken as an authoritative guide to the meaning of the provision, which is a task of court interpretation.

OVERVIEW OF THE BILL

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

The Bill will progress two key amendments to the *Health Act 1993* (Health Act) to improve access to abortions in the ACT. The Bill will allow additional types of health practitioners to supply or administer an abortifacient. The Bill will also insert a requirement for health practitioners who refuse to prescribe, supply or administer an abortifacient, or refuse to carry out or assist in carrying out a surgical abortion, because of a conscientious objection, to transfer the person's care or give the person information about how to locate or contact a provider of the service.

The ACT Government has long recognised that all individuals should have autonomy over their reproductive health. Reproductive rights and reproductive justice are central to this Bill which improves accessibility by aligning with Commonwealth standards of best practice, and addressing barriers identified in the 2023 report on the inquiry into abortion and reproductive choice in the ACT, undertaken by the ACT Legislative Assembly's Standing Committee on Health and Wellbeing.

Improving accessibility by broadening categories of practitioners

Medical abortions are primarily administered orally through the abortifacient drugs Mifepristone and Misoprostol, commonly known as the prescription medication MS-2 Step. MS-2 Step is a safe, effective and non-surgical option that is available to women and pregnant people up to nine weeks gestation of an intrauterine pregnancy.

In July 2023, the Therapeutic Goods Administration (TGA) removed certain restrictions on the prescription of MS-2 Step. These changes allow the prescription of MS-2 Step by any regulated healthcare practitioner with the appropriate qualifications and training. Previously, only doctors who had completed additional training to become registered prescribers were authorised to prescribe MS-2 Step.

Section 81 of the Health Act currently prohibits the supply or administration of an abortifacient where the person is not a doctor. The result of this is that notwithstanding

the TGA changes, the supply and administration of abortifacients in the ACT remained limited to doctors.

To align with the TGA changes, the Bill will exclude nurse practitioners, and any additional people prescribed by regulation, from the prohibition under section 81 of the Health Act (in addition to doctors who are already excluded from the offence). At the same time, a new health regulation will be put in place, to exclude authorised midwives from the prohibition at section 81. This will permit a broader range of health practitioners (i.e. doctors, nurse practitioners and authorised midwives) to prescribe abortifacients, including MS-2 Step, in the ACT.

The power to exclude further categories of people from the offence in section 81 of the Health Act will allow flexibility to incorporate additional categories of providers later if required and will allow the ACT Government to be more responsive to community needs for access to reproductive healthcare over time. It is necessary to have power to exclude further categories by regulation to ensure that the legislation can keep pace with medical advancements, further TGA changes, as well as changes to the regulation and scope of practice of relevant health professionals.

Improving accessibility by requiring conscientious objectors to refer

In April 2023, the Legislative Assembly's Standing Committee on Health and Wellbeing (Standing Committee) tabled its report on the Inquiry into abortion and reproductive choice in the ACT (the Report). The Report made 18 recommendations to improve the affordability of and access to abortion. In the Report, the Standing Committee considered that a lack of abortion services, combined with a lack of information, meant that a doctor or nurse exercising their right to conscientious objection had a greater impact on a person's ability to access abortion services than would be the case if these services were more prevalent and information more readily available. The Standing Committee recommended legislative reform to introduce a requirement for conscientious objectors to refer clients to an equivalent service.

The right of a doctor or nurse not to carry out or assist with a medical or surgical abortion on religious or other conscientious grounds is currently protected under section 84A of the Health Act. The Bill will align the protection of conscientious objection with the amendments to section 81 of the Health Act and introduce new obligations on a conscientious objector, which are in line with other states and territories in Australia.

The Bill provides that if an authorised person refuses to carry out or assist with a medical or surgical abortion on religious or other conscientious grounds, the practitioner is required to, immediately after refusing:

- give information to the individual on how to locate or contact another practitioner or medical facility who the refusing practitioner reasonably believes can provide the abortion service and would not refuse to provide the abortion service because of a conscientious objection; or

- transfer the individual's care to another practitioner or medical facility who the refusing practitioner reasonably believes can provide the abortion service and would not refuse to provide the abortion service because of a conscientious objection.

The Bill provides these two options for conscientious objectors which facilitate more timely abortion access and are aligned with the approaches in Queensland and Western Australia. The proposed amendments mitigate the risks of on-referral, where a person is referred from practitioner to practitioner seeking assistance for an abortion. On-referrals to one or more practitioners who may not have a conscientious objection but cannot provide the requested service is time-consuming and may prohibit a person from accessing timely abortion services. This has the potential to have a major impact on a client seeking such time-sensitive healthcare and is a key barrier this Bill seeks to address.

The Bill does not permit a practitioner exercising their conscientious objection to be able to transfer a person's care without that person's consent. Instead, the practitioner would be required to operate within the usual practices in line with Principles 9 and 10 of the *Health Records (Privacy and Access) Act 1997* (Health Records Act), which provides that a practitioner cannot use a person's personal health information without their consent.

The new obligation under the Bill for a practitioner exercising their conscientious objection to either provide information or transfer care does not give the practitioner additional powers to disclose information that they ordinarily would not be permitted to share under the Health Records Act.

Under the Bill, where a person does not consent to the transfer of their care, the practitioner exercising their conscientious objection may instead provide the person information on how to locate or contact another practitioner or medical facility.

CONSULTATION ON THE PROPOSED APPROACH

A range of clinical, medicolegal, professional education groups and national health practitioner boards were consulted in development of this Bill on a targeted basis.

Stakeholders who represent specific health professionals with an interest in prescribing rights and professional conduct were consulted, including General Practitioner groups and nursing and midwifery groups. Feedback was received from the Australian College of Midwives, the Australian Medical Association ACT, and GP practices through the GP Liaison Unit network and Capital Health Network. Internal consultation with ACT Government stakeholders includes the Maternity in Focus policy team, Office of the Chief Nursing and Midwifery Officer, the Nursing and Midwifery Advisors, Office of the Chief Health Officer, the Chief Pharmacist, GP Liaison Unit, Academic Unit of General Practice, and Canberra Health Services.

The exclusion of nurse practitioners from the prohibition in section 81 of the Health Act will support work led by the Office of the Chief Nursing and Midwifery Officer to allow nurse practitioners to work to their full scope of practice in the ACT. Additionally, the exclusion of authorised midwives from the prohibition, through a new health regulation, will support several midwifery initiatives for midwives to work to their full scope of practice in the future at both the Commonwealth and Territory level.

Mandatory referral by conscientious objectors is currently legislated in all other States and Territories in various forms, except for the ACT. Therefore, introducing a new requirement for a person exercising conscientious objection to refer to another provider will bring the ACT legislation into line with all other states and territories.

CLIMATE IMPACT

There are no climate impacts anticipated under the Bill.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due consideration was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (ACT) (**Human Rights Act**). As a human rights jurisdiction, the protection of human rights is at the forefront of decision-making in the ACT.

An assessment of the Bill against section 28 of the Human Rights Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights Engaged

The Bill engages the following sections of the Human Rights Act:

- Section 8 – Right to recognition and equality before the law (*promoted*)
- Section 9 – Right to life (*promoted*)
- Section 12 – Right to privacy and reputation (*promoted*)
- Section 14 – Right to freedom of thought, conscience, religion and belief (*limited*)
- Section 16 – Right to freedom of expression (*limited*)
- Section 18 – Right to liberty and security of person (*engaged*)

Section 18(1) of the Human Rights Act recognises that everyone has the right to liberty and security of person. The amendment to section 81 of the Health Act engages the right to liberty because that offence carries a maximum penalty of imprisonment for 5 years. Currently, the offence at section 81 of the Health Act makes it an offence for anyone who is not a doctor to supply or administer an abortifacient. The new amendment will exclude certain other health practitioners, including nurse practitioners, and any additional people prescribed by regulation from the offence, such as authorised midwives. This increases the number and kinds of practitioners who are excluded from the offence and from the imprisonment penalty attached.

Rights Promoted

Section 8 – Right to recognition and equality before the law (*promoted*)

Section 8 of the Human Rights Act provides that all people are entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination. The right to recognition and equality before the law ensures that laws will be applied in the same manner to all those who may be subject to them. Discrimination can include discrimination based on sex or other status, for example the status of a woman or person who is (or can become) pregnant.

Both section 82 and section 84A of the Health Act promote the right to recognition and equality before the law for women and people who are pregnant. Abortion is a routine and essential part of primary health services. Reproductive services such as medical and surgical abortions have been considered a healthcare matter since abortion was

decriminalised in 2002. The Bill will advance autonomy and choice for pregnant people and further improve the wellbeing and dignity of persons accessing reproductive healthcare.

In light of the amendments made by the TGA to the requirements for prescribing MS-2 Step, continuing to limit the supply and administration of abortifacients to only doctors may have a discriminatory impact on women, and people who have a uterus. This is because only women and people who have a uterus are affected by the limits on the access to abortion services.

In addition, including an obligation on conscientious objectors to refer an individual seeking an abortion service to another practitioner or medical facility will assist in relieving the undue stress or burden an individual may experience if their provider has a conscientious objection. This in turn allows for improved access to essential health services and helps to remove the discriminatory burden on individuals seeking reproductive services, on the basis of sex and status of pregnancy.

Overall, the proposed amendments of the Bill will promote the right to recognition and equality before the law by increasing accessibility and navigation of both types of abortion and bring access to medical and surgical abortions into greater alignment with other types of healthcare.

Section 9 – Right to life (*promoted*)

The right to life is outlined in section 9 of the Human Rights Act and provides that everyone has a right to life and no one may be arbitrarily deprived of life. In some circumstances, the right to life requires the government to take appropriate measures to safeguard life, including protecting citizens and considering their right to life when making decisions that may affect an individual's life expectancy. This right applies from the time of birth, meaning that procedures to terminate a pregnancy do not contravene the right to life under section 9 of the Human Rights Act.

The right to life is relevant to the issue of receiving the appropriate healthcare in a timely manner, which is inclusive of reproductive healthcare. While a large number of abortions in the ACT are elective, meaning pregnant people decide to end a pregnancy for social, personal or medical reasons, some abortions are required to preserve the life of the pregnant person. Even though maternity care and healthcare is provided to a high standard by qualified healthcare professionals in Australia, this does not remove all risk in bringing a pregnancy to term. A high-risk pregnancy means there is a greater chance of issues occurring during pregnancy which impact a person's life.

In some events, a medical or surgical abortion is a life-saving procedure, and without the requisite medicine or surgery, death of the pregnant person may occur. By expanding the range of practitioners that can provide medical terminations, the Bill will allow pregnant people living in the ACT to have increased access to reproductive healthcare services at an earlier stage, without facing excessive barriers of cost, distance, or escalation to travelling interstate. In other words, access to medical

terminations provides preventative care. The proposed amendments which make accessibility and navigation to abortion more readily available therefore promote the right to life.

Section 12 – Right to privacy and reputation (*promoted*)

Section 12 of the Human Rights Act outlines the right to privacy and reputation. It states that all have the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have their reputation unlawfully attacked. This right encompasses the idea that individuals have a separate area of autonomous development, interaction and liberty free from excessive government intervention and/or unsolicited intrusion by other individuals.

The Bill promotes the right to privacy and reputation for women and pregnant people who require or elect to have an abortion. The Bill will permit a broader range of health practitioners to provide abortifacients and improve the accessibility of abortions, which promotes the woman, girl or pregnant person's personal autonomy and private life. The Bill promotes the right by supporting individuals to make choices about their own body and life.

The right to privacy includes physical, psychological and bodily integrity, which are better supported with improved access to abortion services. An unwanted pregnancy greatly and irreversibly impacts a person's bodily integrity, family home, and family life. Given the socio-political implications of having an abortion and given that an individual's right to expressing conscientious objection is protected, the ability to have an accessible abortion, and to be able to easily navigate to providers of abortion services, preserves a person's privacy and reputation.

Rights Limited

Section 14 – Right to freedom of thought, conscience, religion and belief

Section 16 – Right to freedom of expression

Both the right to freedom of thought, conscience, religion and belief and the right to freedom of expression may be limited in the Bill by the new obligations for health practitioners exercising their right to conscientious objection to provide information about how to locate a provider or to refer directly to another provider.

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Section 14 – Right to freedom of thought, conscience, religion and belief

Section 14 of the Human Rights Act stipulates that everyone has the right to freedom of thought, conscience and religion. This right broadly protects the freedom to have or adopt a religion of choice, and the freedom to demonstrate religion or belief in worship, observance, practice and teaching, whether in public or private.

Under section 84A of the Health Act, the right of a doctor or nurse to express a conscientious objection to abortion on religious or other conscientious grounds, or any other grounds is protected. Currently, the only obligation a doctor or nurse has in relation to exercising this right is to tell the person requesting the abortion that they refuse because of a conscientious objection. There is no further duty beyond informing the client.

Clause 8 of the Bill will introduce a new requirement for a conscientious objector, to minimise the barriers to accessing abortion services. In the event an authorised person refuses to carry out a medical or surgical abortion on religious or other grounds, the authorised person is required to either transfer the individual seeking an abortion to the care of a provider who the authorised person reasonably believes can provide the requested service and would not refuse to do so because of a conscientious objection, or give information to the individual seeking an abortion on how to locate or contact a provider who the authorised person reasonably believes can provide the requested service and would not refuse to do so because of a conscientious objection. Some conscientious objectors may consider that the act of referring or directing an individual seeking an abortion service to a provider who can provide the abortion service (and thereby facilitating the access of that individual to an abortion service) would be contrary to their religious or conscientious belief (and therefore limits their right to freedom of thought, conscience and religion). However, the ability of a practitioner to refuse to themselves prescribe, supply or administer abortifacients, or assist in or carry out a surgical abortion continues to be protected.

Section 16 – Right to freedom of expression

Section 16 of the Human Rights Act stipulates that everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, and the right to hold opinions without interference.

Conscientious objectors have the right to hold certain views on abortion and to express these views freely. The Health Act currently recognises that health practitioners may conscientiously object to providing abortion services. The right to freedom of expression is promoted by allowing health practitioners to act consistently with their personal beliefs and inform clients about their conscientious objection.

However, the right to freedom of expression is engaged by clause 8 of the Bill which inserts a requirement for a conscientious objector to refer a person seeking an abortion to another service. Health practitioners who conscientiously object will be required to take certain actions tied to their holding of a view or opinion. Their expression of that opinion, which includes withholding information or refusing service provision, will be impacted.

2. Legitimate purpose (s 28(2)(b))

The legitimate purpose of clause 8 of the Bill is to improve accessibility to abortion services in general and to ensure an individual has access to abortion services if they

choose to, irrespective of the moral, ethical and religious beliefs of their health practitioners and health service providers.

Women, girls and people with a uterus are entitled to receive the reproductive healthcare and primary healthcare they require to live full, healthy and autonomous lives. Seeking abortion as part of reproductive healthcare should be as transparent, respectful and timely as receiving any other kind of healthcare without improper barriers, coercion or discrimination.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Accessibility of abortion remains an issue in the ACT.¹ A limited number of abortion providers and barriers to navigating services is compounded when a practitioner exercises their right to conscientious objection.

Conscientious objection has a greater impact on a person's ability to access an abortion than would be the case if services were more prevalent and information more readily available. Further, conscientious objection has a greater impact on individuals seeking access to abortion services, given the sensitive nature of the timing of abortion services, and the significant impact a delay in accessing services can have upon a woman, girl or pregnant person.

Access to abortion services in the ACT is guided by various clinical factors, including gestation period, which impacts the decision or options to pursue a preferred type of abortion. The time-sensitive nature of abortions makes timely access of particular concern: medical abortions must be performed in the early stages of pregnancy up to 63 days gestation, or nine weeks. Surgical abortions can usually only be performed in the first trimester up to 112 days gestation, or sixteen weeks.

At the time of the Bill, for a woman, girl or pregnant person beyond sixteen weeks gestation who is seeking an abortion, it is currently very difficult and dependent on hospital capacity in the ACT to provide care. A person over sixteen weeks gestation may be required to travel interstate to seek services elsewhere. Therefore, timeliness of care is a critical issue in seeking this type of healthcare. Conscientious objection poses a significant barrier if the burden is placed on clients to seek alternative services without guidance. Symptoms of pregnancy can be subtle or manifest differently for individuals; it is not uncommon to discover pregnancy after several weeks. Abortions in the ACT largely take place in private clinics that may not advertise their abortion services due to privacy and safety reasons, because of conscientious objection in the community. This increases the difficulty for individuals endeavouring to navigate information networks for clinics offering abortion services. As such, accessing an

¹ Standing Committee into Health and Wellbeing, Report on the Inquiry into abortion and reproductive choice in the ACT, Legislative Assembly for the ACT, April 2023, <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/2208554/Report-10-Inquiry-into-abortion-and-reproductive-choice-in-the-ACT.pdf>.

abortion in the ACT may require a disproportionate level of health literacy, system navigation and persistence compared with other types of health treatments.

The ACT Human Rights Commission has previously stated that, “it is important to recall that a pregnant person can be experiencing high levels of distress at the point of seeking relevant information about available abortion services. Requiring a person in such circumstances to navigate a secret network of providers and prescribers, stigma and discrimination, financial and cultural barriers to access a universally available health procedure reflects an additional undue burden.”²

Health practitioners who provide primary care are often the first point of contact through which women, girls or pregnant people can be informed about their options when pregnant. Accordingly, if a health practitioner was not required to provide relevant information, or transfer care, where they have a conscientious objection, this could result in a woman or pregnant person being unable to access care entirely or being unable to access care within clinically appropriate timeframes – which would interfere with the policy intent of the Bill. Clause 8 of the Bill will ensure that even where their health provider has a conscientious objection, a woman, girl or pregnant person will receive the information necessary to allow them to access reproductive care in a timely manner.

In other words, the exercise of conscientious objection has a consequential impact on the health and lives of those seeking a specific treatment. The approach taken in the Bill is to limit that consequential impact by ensuring that the necessary information to abortion services is provided, in a timely manner. This will help ensure women, girls and pregnant people have access to abortion services irrespective of the moral, ethical and religious beliefs of their health practitioners. This in turn helps to ensure that the health system does not operate in a way that shifts the burden of managing the consequences of religious or other objections onto the patient or client.

4. Proportionality (s 28(2)(e))

The Bill balances the rights of those objecting on conscientious grounds with those who seek an abortion on a sensitive timeframe, so that the protected right of conscientious objection will not occur at the expense of the person seeking healthcare.

Clause 8 of the Bill only limits the right of freedom of expression and the right of freedom of thought, religion and belief to the extent that the act of referral of an individual to another practitioner or medical facility, or the provision of information about another practitioner or medical facility who can provide care, might be considered contrary to that practitioner's beliefs.

² ACT Human Rights Commission. Submission 49: Submission to the ACT Legislative Assembly Standing Committee on Health and Community Wellbeing's Inquiry into abortion and reproductive choice in the ACT [Internet]. 2022 [cited 2023, Jan 23]. Submission 49. Available from: [Submission-49-ACT-Human-Rights-Association.pdf](#)

Referring to another practitioner or facility may mean providing the relevant information of other available providers to the woman or pregnant person or transferring the care of the person to another health practitioner (or medical facility) entirely. The decision of whether to provide relevant information, or transfer care is entirely at the discretion of the conscientious objector. The Bill maintains that a health practitioner who conscientiously objects to abortion will not be required to conduct or assist in an abortion (medical or surgical).

The Bill therefore only limits the right of a conscientious objector to the extent that it is necessary to mitigate the consequential impact of the exercise of a conscientious objection, and the undue burden that can have on pregnant people seeking to access universally available healthcare. Therefore, the approach presents the least restrictive means reasonably available to achieve the objective. It preserves the protected right to conscientious objection, imposing only a duty for a health practitioner to refer to another service or provide information about how to locate an alternative provider.

Clause 8 of the Bill provides that the obligation on a practitioner to tell a person seeking an abortion service that the practitioner refuses to provide the service because of a conscientious objection and the obligation to either give information or refer the person to another provider must occur immediately after a practitioner refuses to provide the abortion service. This is to ensure that the refusing practitioner's conscientious objection does not result in unreasonable or onerous delays on a person seeking reproductive healthcare. As outlined above, the time-critical nature of abortions exacerbates the need for timely access to care for people seeking abortions.

Likewise, continuing with no additional duty to refer would make the ACT the only jurisdiction in Australia without additional obligations attached to a conscientious objection. All States and Territories in Australia have legislation requiring conscientious objectors to provide either a referral, relevant information, or to transfer care to another provider for abortion services. With the commencement of this Bill, the ACT will align with best practice at the national level.

This approach is also consistent with accepted clinical and professional requirements in relation to the delivery of healthcare services more generally. For example, the *Good medical practice: a code of conduct for doctors in Australia*, issued by the Medical Board of Australia (Code), describes the expectations of doctors registered to practice in Australia.³ The Code provides that although doctors are not required to directly participate in treatments that they conscientiously object to, that objection should not impede access to treatments that are legal. Under the Code, a doctor's beliefs should not deny patients access to medical care. Consistency with existing professional standards demonstrates that clause 8 of the Bill is well suited to achieving its objectives. Clause 8 of the Bill only applies to a certain category of professionals:

³ Australian Health Practitioner Regulation Agency, 'Good medical practice: a code of conduct for doctors in Australia' October 2020, <[Medical Board of Australia - Good medical practice: a code of conduct for doctors in Australia](#)>.

health practitioners who must uphold certain duties in a professional context. Outside of a professional duty of care in a health role, ACT residents continue to be entitled to express their conscientious objection.

This Bill seeks to achieve greater accessibility and navigation of abortion services, whilst balancing the rights of health practitioners to conscientiously object with the rights of those seeking abortion services. The ability of women, girls and pregnant people to access universal reproductive healthcare is the key objective this Bill is working towards.

Health (Improved Abortion Access) Amendment Bill 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Health (Improved Abortion Access) Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This is a technical clause and provides that the title of the Act will be the *Health (Improved Abortion Access) Amendment Act 2024* (the Act).

Clause 2 Commencement

This clause provides the commencement date of the Act, which is the day after its notification day, for all provisions other than clause 4.

Clause 4 commences on this Act's notification day. This is to allow the Health Regulation 2024 to commence simultaneously with the Act.

Clause 3 Legislation amended

This clause identifies that the Act amends the *Health Act 1993* (Health Act).

Clause 4 New Health Regulation – sch 1

This clause makes the provisions in schedule 1 a regulation made under section 196 of the Health Act from the date of commencement. The clause sets out technical details of the nature of the regulation.

Clause 5 Offence—unauthorised supply or administration of abortifacient - Section 81(1)(c)

This clause expands the list of persons excluded from the offence under section 81 of the Health Act. It provides that the following people are excluded from the offence: a doctor, a nurse practitioner, and a person prescribed by regulation. Authorised midwives will also be excluded from the offence under section 81 of the Health Act through regulation (see new Schedule 1 of the Act).

The intention of this clause is to exclude additional categories of practitioners from the offence under section 81 of the Health Act. This will allow a broader category of practitioners to supply and administer abortifacients, in line with the Therapeutic Goods Administration's announcement that it would allow any healthcare practitioner with the appropriate qualifications and training to prescribe MS-2 Step.

The intention of including a power to exclude further categories of people from the offence in section 81 of the Health Act by way of regulation is to future-proof the provision so that additional health practitioners can be incorporated later if required. This will allow the ACT Government to be more responsive to community needs for access to reproductive healthcare.

Clause 6 Conscientious objection – Section 84A (1)

This clause inserts a new defined term “abortion service”, to support the other amendments to section 84A. This clause also reframes the existing provision for clarity but does not change the meaning of the provision.

Clause 7 Section 84A (3)

This clause replaces existing wording in section 84A of the Health Act with the defined term “abortion service” (see clause 6). It does not change the meaning of the provision and its primary purpose is to reduce the length of the provision for improved clarity.

Clause 8 Section 84A(4) and (5)

This clause provides for new obligations on a person exercising a conscientious objection (refusing practitioner). It provides that if a person refuses to provide an abortion service because of a conscientious objection, they must immediately after refusing do the following:

- (a) tell the person requesting the abortion service (requesting person) that they refuse to provide the service because of their conscientious objection; and
- (b) either:
 - (i) give the requesting person information about how to locate or contact a health practitioner or a medical facility who the refusing practitioner reasonably believes can provide the abortion service and who the refusing practitioner reasonably believes would not refuse to do so because of a conscientious objection; or
 - (ii) transfer the requesting person’s care to a health practitioner or medical facility who the refusing practitioner reasonably believes can provide the abortion service and who the refusing practitioner reasonably believes would not refuse to do so because of a conscientious objection.

This clause also expands the definition of “authorised person” in section 84A of the Health Act to include a doctor, nurse, nurse practitioner, and a person prescribed by regulation under section 81(3)(c) of the Health Act. The intention of this clause is to ensure that all practitioners who can provide an abortion service can also exercise their right to conscientious objection. This clause is necessary for consistency with other amendments under the Act, specifically the expansion of the kinds of practitioners excluded from the section 81 offence of the Health Act (see clause 5).

Clause 9 Regulation-making power - New section 196 (2)

This clause inserts new subsection (2) that a regulation may apply, adopt or incorporate a law or instrument as in force from time to time.

With the rapidity of social and clinical expectations and developments in the reproductive health space, there may be occasions where a law or instrument as in force from time to time needs to be applied, adopted or incorporated into the regulations. It is noted that the notification requirements in section 47(5) & (6) of the *Legislation Act 2001* have not been disapplied.

The types of instruments expected to be incorporated in a regulation could be other relevant laws, regulations, and industry-specific guides issued by professional bodies, including those which govern health practitioners. These documents would already be publicly available and published online.

Allowing relevant instruments to be incorporated, applied or adopted would also support consistent standards of practice in the reproductive health space across Australia. Where regulations were to refer to accreditation requirements or other legal obligations of a health practitioner, incorporating that instrument “from time to time” would also help ensure consistency between the various legal and regulatory frameworks.

Clause 10 Medicines, Poisons and Therapeutic Goods Regulation 2008 - Schedule 1, part 1.5, item 2, column 3, paragraph (d)

This clause corrects a cross-reference in the Medicines, Poisons and Therapeutic Goods Regulation 2008 to the *National Health Act 1953* (Cth) (National Health Act).

Schedule 1 New Health Regulation

Clause 1 Name of regulation

This is a technical clause and provides that the name of the regulation is the *Health Regulation 2024*.

Clause 2 Authorised midwife not prohibited from supplying or administering abortifacient—Act, s 81 (1) (c) (iii)

This clause prescribes an authorised midwife for the purposes of section 81 of the Health Act. It excludes authorised midwives from the offence of supplying or administering an abortifacient under section 81 of the Health Act. For this section, an “authorised midwife” is defined by reference to s 84 of the National Health Act.

This clause also disapplies the notification requirements in section 47(6) of the *Legislation Act 2001* for the National Health Act. The National Health Act is publicly accessible and available on the Federal Register of Legislation. The National Health Act is referenced in this clause for the specific purpose of defining an “authorised midwife”. It is generally expected that a midwife would have knowledge of the standards and practices of the professional services they offer and would be certain of whether they qualified as an “authorised midwife” under the National Health Act before supplying or administering an abortifacient.