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

TENTH ASSEMBLY

HEALTH LEGISLATION AMENDMENT BILL 2024

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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MINISTER FOR HEALTH
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HEALTH LEGISLATION AMENDMENT BILL 2024

The Bill **is not** 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*.

This supplementary explanatory statement relates to a government amendment to the Health Legislation Amendment Bill 2024 (the Bill). It has been prepared to assist the reader of the government amendment and to help inform debate on the amendment. It does not form part of the Bill or government amendment and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill and government amendment. It is not, and is not meant to be, a comprehensive description of the Bill or government amendment.

OVERVIEW OF THE GOVERNMENT AMENDMENT

The Bill is an omnibus bill which amends a range of legislation under the health portfolio. The government amendment addressed in this supplementary explanatory statement amends the *Assisted Reproductive Technology Act 2024* (ART Act).

CONSULTATION ON THE PROPOSED APPROACH

Targeted consultation within Government agencies was undertaken for the government amendment.

SUMMARY OF AMENDMENT

The amendment to the ART Act is minor and technical and clarifies the transitional provision at section 131 of the ART Act to clarify the intended operation of the provision. The purpose of the government amendment is to address a technical issue which was discovered during implementation of the transitional arrangements in the Territory's ART Act.

The policy intent of the transitional provision is to allow individuals and couples who became pregnant (or conceived) prior to the commencement of the legislation, to be able to complete their families without being subject to many of the obligations introduced by the ART Act.

As currently drafted, section 131(1) of the ART Act applies where a person has conceived as a result of ART treatment. However, there is an inconsistency in the language at section 131(2) which refers to '...the person who gave birth to the child, or their domestic partner'. This wording may result in an unintended exclusion from the transitional provision of individuals who became pregnant as a result of ART treatment, but who have not given birth to a child (such as in the case of stillbirth or

miscarriage). The government amendment will resolve this issue for families affected.

The government amendment amends section 131, to remove references to a “child”, and replaces the language throughout the section to “becomes pregnant”. This will ensure that the transitional arrangements apply to a person who becomes pregnant following ART treatment, whether or not “a child” is ultimately born alive as a result of that ART treatment (i.e. including where the pregnancy ends in miscarriage or stillbirth).

The government amendment is consistent with the transitional provisions in NSW and Queensland.

CLIMATE IMPACT

The government amendment is of a minor and technical nature, and does not substantively change the policy intent of the ART Act, and therefore no climate impacts are anticipated for the government amendment.

CONSISTENCY WITH HUMAN RIGHTS

The government amendment to the Bill does not have human rights impacts.

CLAUSE NOTES

Amendment 1

Proposed new clause 4A

This clause substitutes the section 131 of the ART Act to remove references to a “child” and “birth” so as to ensure that the transitional arrangements apply to any person (or their domestic partner) who became pregnant as a result of ART treatment before the end of the transitional period.

In particular, the amendments are intended to ensure that each paragraph of section 131 of the ART Act applies in circumstances where a person became pregnant as a result of ART treatment within the relevant period, irrespective of whether a child was or is born as a result of that pregnancy (for example in the circumstances where a pregnancy resulted in a stillbirth or miscarriage).

The substitution of section 131 is not otherwise intended to affect the operation of the section.