LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH AND COMMUNITY WELLBEING
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Submission Cover Sheet

Inquiry into Abortion and reproductive choice in the ACT

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ACT Government

Government submission

to the Inquiry into abortion and reproductive choice in the ACT.

ACT Health Directorate

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MSI Australia clinic location ..... **Error! Bookmark not defined.**

Introduction

On 1 July 2022, the Standing Committee on Health and Community Wellbeing (the Committee) announced an Inquiry into abortion and reproductive choice in the ACT (the Inquiry). The Terms of Reference resolve to inquire and report on the following:

1. Accessibility of abortion and reproductive choice for people in the ACT, including abortion medication, and taking into consideration barriers for:
   a) non-English speakers;
   b) victims of domestic and family violence, including coercive control;
   c) people with a disability;
   d) young people and minors; and
   e) other vulnerable demographics.
2. Affordability of abortion and reproductive choice in the ACT, including:
   a) access to bulk billing general practitioners;
   b) indirect costs such as transport, leave from work, childcare; and
   c) options for low-income patients.
3. Legal protections for abortion rights in the ACT including:
   a) comparison with other Australian jurisdictions;
   b) interactions with non-ACT legislative instruments (e.g. with Commonwealth law);
   c) potential implications for In vitro fertilisation (IVF) providers; and
   d) effectiveness of exclusion zones around abortion facilities.
4. Access to information to support a variety of possible reproductive choices, including choosing to give birth; and
5. Any other related matters.

For the information of the Committee, this submission begins by providing an overview of abortion procedures and outlining policy alignment that demonstrates the ACT Government's commitment to ensuring equitable access to safe, legal and affordable abortion services.

An overview of abortion procedures

In Australia, estimates suggest that one in three women experience unintended pregnancy in their lifetime, with half of these being terminated.[1] Estimates also suggest an abortion rate of 17.3 per 1,000 women aged 15-44 years old in Australia for 2017-18.[2]

Abortion is a safe and common procedure of which there are two methods that a person can choose to access – medical and surgical abortions. Medical abortion involves the prescription, supply and administration of an abortifacient. This option is available to women and pregnant people up to nine weeks

[1] Abortion rates in Australia - Children by Choice [Internet]. Childrenbychoice.org.au. 2021 [cited 27 July 2022]. Available from: https://www.childrenbychoice.org.au/resources-statistics/papers-reports/abortion-rates-in-australia/
[2] Keogh, L.A., Gurrin, L.C., and Moore, P. (2021). Estimating the abortion rate in Australia from National Hospital Morbidity and Pharmaceutical Benefits Scheme data. Medical Journal of Australia 215 (8): 375-376

gestation and is a low-risk, non-surgical method. Medical abortion is a two-stage process that involves taking the prescribed medications Mifepristone and Misoprostol, which are sold together as MS-2 Step.

Surgical abortion is a surgical procedure that causes a pregnancy to end prematurely. This is a day surgery procedure that uses gentle suction to remove the contents of the uterus. The specific process of the surgery may vary depending on the gestation of the pregnancy.

There are several factors that may influence a person's choice in having either a medical or surgical abortion, such as: gestation, risks, symptom management, recovery time, medical advice, access, privacy and personal preference. Women and people who can become pregnant should be supported to make this decision and access their preferred method of abortion, based on what is best for them and their body.

Policy alignment

The ACT Government continues to prioritise the provision of high-quality healthcare when and where Canberrans need it. In the ACT, abortion was decriminalised in 2002 and is considered a health matter. In line with the below policy directives, the Government continues to improve access and affordability of abortions and is committed to ensuring that abortion remains legal.

In 2018, the Health (Improving Abortion Access) Amendment Bill 2018 was introduced to the Legislative Assembly with the broad intention of improving accessibility of abortions. At the time of passing this Bill, the then Minister for Health and Wellbeing, Meegan Fitzharris noted that "the Government's focus is on increasing accessibility for women and improving affordability. Both are fundamental."[3]

At a national level, maternal, sexual and reproductive health is a priority area under the *National Women's Health Strategy 2020-30*. Equitable access to pregnancy termination services is a key measure of success under this priority action area.

The *ACT Women's Plan 2016-2026* includes 'Equality – of opportunity, access, security and independence' as a key principle. Access and affordability of safe and legal abortion ensures equity amongst ACT women. This plan also stipulates that health and wellbeing is a priority area, with the need to:

> '… ensure that affordable and accessible gender and culturally sensitive health services are provided across the ACT. There is a need for services and initiatives which respond to the different requirements of women and men and recognise that some health issues are particularly influential for women's wellbeing, including contraception and reproductive health. Ensuring safe access to abortion and reproductive choice is an important aspect of women's physical and mental health. The ACT Women's Plan recognises that women's health and wellbeing is significantly impacted, if not determined, by access to resources outside a narrowly conceived health system.'

Ensuring that abortion is accessible and affordable also aligns with the ACT Wellbeing Framework and indicators, including access to health services and income inequality.

Accessibility of abortion and reproductive choice

Abortion services should be easily accessible to all who need and choose them, without stigmatisation or discrimination. Not being able to access an abortion when requested by a pregnant person can have a

[3] Legislative Assembly for the ACT: 2018 Week 10 Hansard (19 September), pp 3389-3855.

detrimental impact on a person's mental and physical health. There are socioeconomic consequences of completing an unwanted pregnancy, as compared with accessing an abortion, including being less likely to be employed full-time, more likely to experience poverty and more likely to rely on Government assistance payments.[4] Other consequences can include:

- ongoing economic hardship and financial insecurity;
- continuing forced connection with a violent partner;
- increased likelihood of sole parenting;
- negative impacts on child development;
- increased morbidity associated with childbirth; and
- chronic medical issues.[5]

In the ACT, abortions are predominantly undertaken in private clinics rather than through the public health system. Medical abortions up to nine weeks gestation are available through trained General Practitioners (GPs), telehealth providers or MSI Australia (formally Marie Stopes Australia). Abortifacients must be dispensed by certified pharmacists. Surgical abortions are available through MSI Australia up to 16 weeks gestation, and through Gynaecological Centres Australia (GCA) in Queanbeyan up to 14 weeks gestation. It is important to note that GCA must adhere to NSW legislative requirements.

If abortions were provided through public hospitals they would displace other elective surgery. The provision of abortions through dedicated services such as MSI Australia ensures that people can access abortions in an efficient manner with minimal interaction with the medical system and in doing so it reduces the barrier to access.

Canberra Health Services (CHS) also has a role to play in support of abortion services. In certain circumstances the Fetal Medicine Unit at the Centenary Hospital for Women and Children provides abortion services, including after 16 weeks gestation. These are provided in the case of fetal anomaly or severe maternal morbidity, and abortions beyond 20 weeks gestation require approval by a Termination Review Committee. Particular conditions are exempt from this review. Abortion for social or mental health issues is currently outside the scope of the Fetal Medicine Unit service. The Women's Health Service (WHS) at CHS can provide medical abortions to a small number of people experiencing vulnerability or disadvantage through their GP staff specialists. However, this model of care is a nurse practitioner led model and GPs are employed at 0.3 FTE, meaning there are times when a medical abortion cannot be provided within a clinically appropriate time due to lack of appointment availability.

Calvary Health Care ACT Ltd (Calvary) is engaged by the ACT to deliver public hospital and health services at Calvary Public Hospital Bruce (CPHB). The funding and provision of services is governed by the Calvary Network Agreement (CNA). Calvary and its health services are informed by the Code of Ethical Standards for Catholic Health and Aged Care Services in Australia.[6] This is recognised in the CNA. As a Catholic based

[4] Diana Greene Foster, M. Antonia Biggs, Lauren Ralph, Caitlin Gerdts, Sarah Roberts, M. Maria Glymour, "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States", *American Journal of Public Health* 108, no. 3 (March 1, 2018): pp. 407-413.
[5] ANSIRH. The harms of denying a woman a wanted abortion [Internet]. 2022 [cited 1 August 2022]. Available from: the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf (ansirh.org)
[6] Catholic Health Australia. Code of Ethical Standards. Available from: https://www.cha.org.au/wp-content/uploads/2021/06/Code-of-ethicsfullcopy.pdf

organisation, this code governs how women's health services are offered in Calvary facilities. It stipulates "Catholic facilities should not provide, or refer for, abortions, that is, procedures, treatments or medications whose primary purpose or sole immediate effect is to terminate the life of a foetus or of an embryo before or after implantation. Such procedures, treatments and medications are morally wrong because they involve the direct and deliberate killing of an innocent human life in the earliest stages of development."[6] However, Calvary clinicians do inform patients of other appropriate services for further information and advice where required, and provide emergency procedures needed to save the life of the pregnant person, their baby, or both.

The Government acknowledges that there is scope to improve the accessibility of abortion services in the ACT. There is reliance on a small number of practitioners and services to provide both medical and surgical abortions. There are currently no clear pathways available for individuals or clinicians to identify who provides abortion services, when and where they work, how to access these providers and which pharmacies are eligible to dispense abortifacients. There is also no clear information available for how to access an abortion for people with specific medical conditions or contraindications. Navigating this system is particularly challenging for people wanting to access medical abortions, due to the time limits on accessing this service. Finding and making a timely appointment with a suitable practitioner can be challenging and relies on a level of health literacy and understanding of the health system. This is even more difficult for people from a non-English speaking background.

To improve accessibility, the 2022-23 ACT Budget includes $4.6 million over four years to improve the accessibility and affordability of abortion services in the ACT. The measure will support the development of a communications package, including a public facing webpage, to improve navigation and access to abortion services in a time sensitive manner. The Budget also includes funding to remove out-of-pocket costs associated with both medical abortions and surgical abortions up to 16 weeks. The service providers receiving this funding will be expected to agree to their businesses being visible through the government's webpage and navigation tools. This will mean that people will be able to readily identify an abortion service provider and receive services at no cost, effectively addressing the navigation and access issues for the majority of people seeking abortions.

General Practitioners (GPs) also have a role to play in supporting access to abortion services. In keeping with an increased focus on telehealth, this form of consultation can also support consumers who might otherwise avoid or be hesitant to engage with abortion services in the ACT.

Medical practitioners wishing to prescribe MS-2 Step must be registered with, and certified by, MS Health – a not-for-profit pharmaceutical company. To become certified, practitioners must successfully complete training modules through MS Health and renew this certification every three years. Pharmacists must also undertake specific training through MS Health to dispense these medications.

In 2020, there were 600 GPs in the ACT.[7] As of 30 June 2022, there were 54 actively certified prescribers and 157 actively certified dispensers of MS-2 Step in the ACT.[8] Despite this, there are currently three GPs, and three specialist clinics, listed on HealthPathways as prescribers of MS 2-Step. GPs often choose not to promote or advertise themselves as abortion providers due to privacy and safety concerns. Sexual Health

[7] Australian Government Productivity Commission. Report on Government Services 2002. Table 10A.8 at 10 Primary and community health - Report on Government Services 2022 - Productivity Commission (pc.gov.au)
[8] MS Health 2022. July Update 2022, Melbourne, Australia: MSI Reproductive Choices. Available from: 06072022-MS-Health-July-2022-Update-1.pdf (mshealth.com.au)

and Family Planning ACT (SHFPACT) attempts to maintain an updated list of prescribers, however it reports that this is difficult. Some certified prescribers of MS 2-Step prescribe semi-regularly, and a further small number have completed training to become certified, but do not prescribe for a variety of reasons.

In the ACT, MSI Australia cannot offer surgical abortions for patients with comorbidities or who are at an increased risk, such as those with a high BMI; high anaesthetic risk; a bicornate or subseptate uterus. People requiring surgical abortions who do not fit criteria for local access need to travel to an interstate clinic. Access to later term abortions, that is, surgical abortions beyond 16 weeks gestation, is also restricted in the ACT as no private clinics offer this service. Therefore currently most people requiring a later term abortion are required to travel interstate, which adds to the cost of the procedure and has additional cost impacts for time off work, extra childcare, travel and accommodation. For later gestations, this may require an overnight stay as well as a more costly procedure.

People accessing later term abortions tend to be younger, come from lower socioeconomic backgrounds, and are more likely to experience domestic and family violence (DFV) and reproductive coercion.[9] Although later term abortions only account for approximately 2 per cent of total abortions[10], it is important to acknowledge that there are many reasons why someone may need to access a later term abortion. Reasons include:

- Diagnoses of fetal abnormalities;
- Unclear symptoms of pregnancy;
    - This could be due to contraception use, irregular menstrual cycles, lack of knowledge about pregnancy symptoms, other medical conditions, competing life stressors.
- Delayed access to earlier abortion care;
    - Resulting from financial barriers, low literacy, denial, delayed decision making, difficulty accessing appropriate information and services.
- Societal and systemic barriers.
    - For example, socioeconomic status, DFV, reproductive coercion, financial abuse, mental or physical health, changes to work or personal life, cultural or religious challenges.

For victims of DFV, coercive control encompasses a wide range of behaviours, and can include reproductive coercion. This may involve forcing a victim-survivor to become pregnant, denying them access to birth control, or demanding or denying an abortion. These behaviours reduce victim-survivors' reproductive autonomy and choice.

Victim-survivors facing intersectional barriers to support, including people with disability and non-English speakers, may be more vulnerable to reproductive coercion due to the perpetrator isolating them from their community and increased barriers to accessing support. Many victim-survivors are unaware that coercive control, in particular reproductive coercion, is a form of DFV and do not seek help or support for coercive behaviour.

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[9] Foster, D. and Kimport, K., 2013. Who Seeks Abortions at or After 20 Weeks?. *Perspectives on Sexual and Reproductive Health*, 45(4), pp.210-218. Available from: https://onlinelibrary.wiley.com/doi/full/10.1363/4521013

[10] South Australian Abortion Access Coalition. Understanding the need for late gestation abortion. 2019. Available from: SAAAC Fact Sheets 09_09_19.pdf (wordpress.com)

People experiencing and escaping DFV often face significant financial hardships, and the out-of-pocket cost of abortion makes it even more difficult to access and afford abortion. Additionally, those on temporary visas experiencing DFV are not eligible for Medicare and therefore face even greater financial barriers to accessing abortion services.

Affordability of abortion and reproductive choice

In the ACT, affordability of sexual health and reproductive services is an issue for many women and people who can become pregnant.[11] Currently, the most significant barrier to accessing abortions for people in the ACT is the out-of-pocket cost, disproportionately impacting more vulnerable cohorts who are socially or economically disadvantaged. While Medicare Benefits Schedule (MBS) rebates are available for abortion services, the rebates do not reflect the costs associated with providing this service, as services are primarily offered by private providers.[12] Some services may be covered by an individual's private health insurance; however, it is at the discretion of the individual if they wish to use this to pay for a service. Certain costs may be less for Healthcare Card holders.

The costs associated with accessing an abortion vary depending on Medicare eligibility, pregnancy gestation at the time of the abortion, the method of abortion and where the abortion is accessed. Costs encompass consultations, ultrasounds, medications and procedures. The cost of an abortion increases with gestation.

Medical abortions are available through GPs, who may choose to bulk bill for some services. The Commonwealth Government has funding and policy responsibility for primary care, including setting the MBS rebate amount for patients to see a GP, and the rebates for associated abortion services. The Medicare rebate for patient consultations in general practice has not been maintained with the consumer price index, despite rising practice costs, such as rent, staffing and administration. The ACT Government recognises that GPs are private businesses and cannot be forced to bulk bill, particularly when it has become financially unsustainable to do so. Many GP practices are mixed billing practices, meaning that they bulk bill some people with a concession card, or older and younger patients.

The ACT has Australia's lowest number of GPs per capita per jurisdiction, as well as the lowest overall rates of bulk billing for GP services in Australia.[13] Wholesale bulk billing is no longer a viable and sustainable business model for GPs in the ACT, with many practices having moved to charging increasing gap payments to remain open.

Accessing a medical abortion through a GP requires at least three consultations, the first of which may be undertaken with a patient's usual GP. Additional consultations are required in some cases, such as infection or retained products of conception. In some instances, GPs may provide this service without an out-of-pocket expense for the patient, however this may lead to a loss of income for the GP and an inability to cover their staffing and business costs incurred by providing the consultations.

[11] Women's Health Facts & Stats Canberra ACT | Women's Health Matters [Internet]. Women's Health Matters. 2021 [cited 2 August 2022]. Available from: https://www.womenshealthmatters.org.au/resources/facts-stats/
[12] Abortion and Medicare - Children by Choice [Internet]. Childrenbychoice.org.au. 2021 [cited 2 August 2022]. Available from: https://www.childrenbychoice.org.au/factsandfigures/abortionandmedicare
[13] Australian Government Productivity Commission. Report on Government Services 2002. Table 10A.30 at 10 Primary and community health - Report on Government Services 2022 - Productivity Commission (pc.gov.au)

The purpose of the three standard consultations required for a medical abortion are:

1. To establish the pregnancy (organising a blood test for B-hCG level and an ultrasound to ascertain the pregnancy as being intrauterine), and to discuss options;
2. Review clinical information and obtain consent for a medical abortion, if that is the choice, and organise a subsequent blood test for B-hCG 1-2 weeks following MS-2 Step; and
3. Review how the patient has gone, review the B-hCG and ensure there are no signs or suspicions of infection and other complications such as retained products of conception or ongoing pregnancy.

For someone without access to Medicare, the costs of abortions can be prohibitive. Costs incurred for medical abortions include MS-2 Step, other medications such as anti-emetics and analgesia if required, pathology tests, ultrasounds and medical appointments. On the Pharmaceutical Benefits Scheme (PBS), MS-2 Step costs $42.50. This price rises to $353.84 for those without access to the PBS. Out-of-pocket costs may be incurred for all these services and are significantly higher for those without access to Medicare. It is estimated that the cost of a medical abortion through a GP can be up to $200 including the cost of MS 2-Step, noting this could be higher depending on any gap fees for appointments and pathology. For people without a Medicare card, this cost is estimated to be around $1000.

The cost of a medical abortion through MSI Australia is $550, which includes pathology tests, ultrasounds and follow up appointments. Medical abortions using the MSI Australia telehealth service are $432, which includes the cost of MS 2-Step and postage. The cost of telehealth abortions does not include pathology or ultrasounds, however these may be bulk billed depending on the provider. Costs are lower for people with a Healthcare Card and significantly higher for people without access to Medicare.

Patients undergoing a medical abortion require an adult to be with them due to the risk of haemorrhage and the possibility of needing urgent medical care. Medical abortions are associated with side effects such as nausea, vomiting, cramping, bleeding, diarrhoea, fever, fatigue and malaise. While these generally subside within 24 hours, these side effects can impact a person's ability to undertake daily tasks such as caring for their children or going to work, potentially resulting in incidental costs or loss of income. Other indirect costs associated with medical abortions include:

- Potential travel for medical consultations and appointments;
    - There is an MBS item number which enables these consultations to be held via telehealth, however in some instances face to face consultations may be preferred, to ensure the patient's understanding.
- Travel and time away from work for blood tests, ultrasound and to access medications;
    - MS-2 Step may not be available at a nearby pharmacy, or there may be a waiting period for it to be in stock or for a credentialed pharmacist to be available to dispense the medication.
- Potential childcare requirements during appointments and while experiencing side effects or complications;
- Medication costs;
- Menstrual products for heavy bleeding; and
- Time off work to attend appointments and manage side effects.

For patients unable to access Medicare rebates, a surgical abortion is generally the most affordable option. Although the upfront payment for a surgical abortion through MSI Australia or GCA is significant, this encompasses the whole spectrum of abortion care including medications, aftercare and can include contraception insertion at the same time. The cost of a surgical abortion up to 14 weeks gestation in the ACT is $620 at MSI Australia and $550 at GCA, and abortions for 14 to 16 weeks gestation at MSI Australia is approximately $1250. Costs may be lower for people with a Healthcare Card, and significantly higher for people without access to Medicare. These prices are reflective of all required services of abortion care, such as diagnostic testing and anaesthesia.

Surgical abortions typically only require one appointment, and less time is required for recovery.[14] This means that people may return to work more quickly, reducing associated indirect costs. However, some indirect costs may still be incurred for surgical abortions, including:

- Travel time and time off work on the day of the procedure;
- Potential childcare requirements during this appointment;
- Costs associated with a support person required to transport the patient home from the clinic; and
- Travel, accommodation, childcare and time off work associated with interstate travel if accessing an abortion after 16 weeks gestation.

The costs involved in all aspects of abortion care are exponentially more when a person discovers their pregnancy at a later gestation, or is trying to save money to access care and inadvertently goes beyond gestation for local access. In extenuating circumstances, MSI Australia can cover the cost of an abortion for clients who meet specific financial hardship criteria through their choice fund. The choice fund uses philanthropic donations to cover costs, however due to reliance on donations, requests to access the 'choice fund' cannot always be granted.

ACT residents who need to travel interstate to receive medical treatment may be eligible for the ACT interstate patient travel assistance scheme (IPTAS). This includes abortion services that are not available publicly or privately within the ACT, such as abortions after 16 weeks gestation. People are eligible for the IPTAS if they have a Medicare card. Under this scheme, reimbursement can be sought for travel costs and commercial accommodation costs. A claim for reimbursement can be made up to six months after travelling, upon presentation of receipts or an itemised tax invoice. The ACT IPTAS is not a full reimbursement scheme. The scheme does not cover the cost for medical treatment.

The ACT Government 2022-23 budget commitment

Improving the affordability of abortions and addressing inequity in abortion access has long been a goal of the ACT Government. The 2022-23 ACT Budget commits more than $4.6 million over four years to improve the affordability of both medical and surgical abortions. This funding will remove out-of-pocket costs associated with abortions, making these free for ACT residents seeking an abortion up to 16 weeks. This funding will be implemented in line with ACT Government procurement process. The ACT Health

[14] Pregnancy, Birth & Baby. HealthDirect [internet]. 2021. Available from: https://www.pregnancybirthbaby.org.au/abortion-surgical-and-medical-options

Directorate (ACTHD) will consult with stakeholders to inform this process and ensure contracts are fit for purpose and meet the needs of the community.

This commitment upholds the rights of people to access affordable health care when and where they need it. Individuals will be supported to make a choice about having an abortion based on what is best for them, rather than being influenced by financial barriers. Access to affordable abortion services will mean that an abortion can occur in a time sensitive manner without being delayed due to an inability to pay. Improving the affordability of abortions may also encourage earlier access to abortion services, subsequently removing the increased costs associated with later gestations. This funding will significantly improve abortion access for pregnant people experiencing vulnerability, such as those on a low income.

Legal protections for abortion rights

ACT Legislation and history

In the ACT, abortion was decriminalised in 2002. Decriminalising abortion was an important ratification of women's rights and the ACT was one of the first jurisdictions to remove abortion from criminal law. The abolition of abortion as a crime was effected by the *Crimes (Abolition of Offence of Abortion) Act 2002*. The purpose of this Act was to make abortions safe, legal and more accessible, and to re-label abortion as a health issue rather than a criminal matter punishable as an offence.

Abortion is considered a health matter and as such, is now regulated under Part 6 of the *Health Act 1993*. This legislation encompasses:

- Division 6.1 Abortions – generally
    - Definitions;
    - Offence – unauthorised supply or administration of abortifacient;
    - Offence – unauthorised surgical abortion;
    - Surgical abortion to be carried out in an approved medical facility;
    - Approval of facilities;
    - Conscientious objection.
- Division 6.2 Patient privacy in protected areas
    - Definitions;
    - Declaration of a protected area;
    - Prohibited behaviour in or in relation to a protected area.

It is an offense for a person who is not a doctor to supply or administer an abortifacient. This does not apply to pharmacists who are supplying an abortifacient in accordance with a prescription, or a person assisting a pharmacist with this task. It is an offence for a person to carry out a surgical abortion if they are not a doctor. This does not apply to a person assisting a doctor.

People who have made the difficult decision to have an abortion have the right to access the required services without being forced to endure the judgement of others. On 22 March 2016, the *Health (Patient Privacy) Amendment Act 2015* commenced. The intention of this Act was to further minimise barriers to accessing abortions in the ACT by ensuring patient privacy through the implementation of protected areas,

commonly known as exclusion zones or safe access zones, outside approved abortion facilities. This was designed to protect people who are seeking an abortion from harassment, intimidation and prohibited behaviour, such as protests or capturing visual data, that may otherwise prevent a person from entering a facility or having an abortion.

Further changes were made to the *Health Act 1993* to improve access to abortions and promote a person's choice in determining where and how they access safe abortions. On 1 July 2019, the *Health (Improving Abortion Access) Amendment Bill 2018* commenced and provides different definitions for medical and surgical abortions. This removed the requirement for a medical abortion to be carried out in an approved facility, thus improving accessibility. These updates also allow specially trained GPs and telehealth services to prescribe abortifacients and specially trained pharmacists to dispense these medications.

The ACT is the only jurisdiction that does not legislate a gestational limit on when abortions can occur, nor does the ACT apply additional restraints to abortions performed after a particular gestation. This further promotes a person's right to choose to access an abortion. Despite this, there is currently no access to abortion services for gestations beyond 16 weeks in the ACT.

The *Human Rights Act 2004* (ACT) provides in section 9(2) that the right to life applies to a person from the time of birth. Accordingly, the protection of the right to life in the *Human Rights Act 2004* does not affect the interpretation of laws relating to abortion or reproductive choice.

Comparison with other Australian jurisdictions

The following table provides an overview of abortion legislation in other Australian jurisdictions. There is a lack of uniformity across jurisdictions, which may have implications for people who are required to travel interstate to access abortion care.

	ACT	NSW	VIC	QLD	SA	NT	TAS	WA
Legislation	Health Act 1993	Abortion Law Reform Act 2019	Abortion Law Reform Act 2008	Termination of Pregnancy Act 2018	Termination of Pregnancy Act 2021	Termination of Pregnancy Law Reform Act 2017	Reproductive Health (Access to Terminations) Act 2013	Health (Miscellaneous Provisions) Act 1911 and Criminal Code Act Compilation Act 1913
Gestational limit	Nil.	22 weeks	24 weeks	22 weeks	22 weeks and 6 days	24 weeks	16 weeks	20 weeks
Exclusion zones	50m	150m	150m	150m	150m	150m	150m	150m
Conscientious objection	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

Abortion is decriminalised	Yes	Yes	Yes	Yes	Yes	Yes	Yes	If certain criteria are met
Mandated provision of information about counselling	No	Yes	No	No	Yes	No	No	Yes
Mandated reporting or data collection	No	No	No	No	Yes	Yes	No	Yes

New South Wales

The *Abortion Law Reform Act 2019* permits abortions up to 22 weeks gestation performed by a medical practitioner. Abortions after 22 weeks gestation require the approval of two specialist medical practitioners who both consider there to be sufficient grounds for the abortion. Registered health practitioners can assist a medical practitioner with an abortion, including dispensing, supplying or administering an abortifacient. The *Public Health Act 2010* (NSW) establishes safe access zones around abortion centres. Abortion for the purpose of sex selection is opposed.

Victoria

The *Abortion Law Reform Act 2008* (Vic) permits abortions up to 24 weeks by a registered medical practitioner. An abortion after 24 weeks, requires agreement by two medical practitioners that is appropriate. A registered pharmacist or registered nurse can supply or administer abortifacients to people less than 24 weeks gestation or as directed by a medical practitioner. The *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015* (Vic) provides for safe access zones of 150 meters.

Queensland

The *Termination of Pregnancy Act 2018* (QLD) makes amendments to the Queensland Criminal Code and permits abortions up to 22 weeks gestation if performed by a medical practitioner. Abortions are permitted after 22 weeks if a second medical practitioner is consulted and considers that the abortion should be performed. Registered health practitioners may assist with an abortion. This Act legislates safe access zones of 150 meters.

South Australia

The *Termination of Pregnancy Act 2021* (SA) removed abortion from the criminal law and permits abortions up to 22 weeks 6 days gestation by a medical practitioner. Abortions are permitted after this time if two medical practitioners consider that the abortion is necessary and medically appropriate. In making this decision, practitioners must have regard to seven mandatory considerations. Any other registered health practitioner can provide a medical abortion if they are authorised to prescribe abortifacients. Prior to an

abortion at any gestation, patients must be provided with information about access to counselling. Abortion for the purpose of sex selection is prohibited.

This legislation requires an annual report to be prepared, containing information about services provided in relation to abortion. Required data includes the age of the pregnant person and the gestational age of the foetus at the time of abortion. The *Health Care (Safe Access) Amendment Act 2020* made amendments to the *Health Care Act 2008* to legislate safe access zones of 150 meters.

Northern Territory

The *Termination of Pregnancy Law Reform Act 2017* (NT) guarantees access to abortion services and removed termination of pregnancy from the *Criminal Code* (NT). Abortions can be provided by a medical practitioner up to 24 weeks gestation. Authorised health practitioners including Aboriginal and Torres Strait Islander health practitioners, midwives, nurses and pharmacists, may assist in providing abortions up to 14 weeks gestation if directed by a medical practitioner. Beyond 24 weeks, two medical practitioners need to consider that an abortion is appropriate. This Act legislations safe access zones of 150 meters. Medical practitioners must provide information about abortions to the Chief Health Officer.

Tasmania

The *Reproductive Health (Access to Terminations) Act 2013* (Tas) made it lawful for abortions up to 16 weeks gestation to be provided by a medical practitioner. After this period, the consent of two medical practitioners is required. At least one of these practitioners must specialise in obstetrics or gynaecology. Tasmania has a 150m prohibited or safe access zone around clinics which provide abortion.

Western Australia

The *Criminal Code* (WA) was amended in 1998 to allow for abortion only by a medical practitioner and as justified under the *Health (Miscellaneous Provisions) Act 1911* (WA). Under this Act, abortion is available up to 20 weeks gestation. Abortions after 20 weeks are permitted if "2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure".

Additional restrictions are placed on people under 16 years of age. They must be provided the opportunity to undertake counselling and their custodial parents must be informed. The Children's Court can be involved if necessary. Conscientious objection is not explicably legislated, however the Act notes that there is no duty to participate in an abortion. Abortions must be reported to the Chief Health Officer. The *Public Health Amendment (Safe Access Zones) Act 2021* (WA) legislates safe access zones of 150 meters.

Interactions with non-ACT legislative instruments

Although abortion is regulated by states and territories, the Commonwealth government is responsible for the MBS and PBS. Medicare rebates through the MBS are available for some abortion services, and MS-2 Step has been listed on the PBS since 2013. Medical abortion is also nationally regulated through the Therapeutic Goods Administration (TGA). There is a Risk Management Plan (RMP) with the TGA which sets out a strategy for the safe use of abortifacients. The RMP currently specifies that only medical practitioners

can prescribe abortifacient medications and sets out the certification process for practitioners and pharmacists who wish to prescribe and dispense MS-2 Step in Australia.

There is currently no provision for Nurse Practitioners to prescribe MS-2Step. However, reforms are under consideration at both the Territory and Commonwealth-level. Expanding Nurse Practitioners' prescribing rights and access to MBS and PBS (for diagnostic imaging and medication respectively) would support additional access to medical abortions.

Abortion legislation in the ACT is compliant with the *International Covenant on Civil and Political Rights*, in particular:

- Article 6 (right to life);
- Article 7 (no one shall be subjected to torture, or inhumane, degrading treatment);
- Article 23 (family as a fundamental group unit of society and entitled to protection); and
- Article 24 (protection of child).

These rights are included in sections 8-11 of the *Human Rights Act 2004* (ACT). Unlike the United States of America (USA), Australia is signatory to the *Convention on the Elimination of All Forms of Discrimination Against Women* and must comply with other UN Conventions. This includes compliance with:

i) the Convention on the Elimination of All Forms of Discrimination Against Women;
ii) the Convention on Civil and Political Rights including the right to equality and non-discrimination on the basis of gender and the right to not be subjected to cruel, inhumane or degrading treatment; and
iii) the Convention on Economic, Cultural and Social Rights, which contains the right to access health care.

The Office of the United Nations High Commissioner for Human Rights determined that "denying access to health services that only women require is discrimination and can constitute gender-based violence, torture and inhumane treatment."[15] This has been tested and confirmed in the Irish cases of *Amanda Mellet v Ireland* and *Siobhan Whelan v Ireland,* where the strict ban on abortions, except for when a woman's life was at risk, was determined to subject women to cruel, inhumane, and degrading treatment. Both Mellet and Whelan were required to travel to foreign countries to have an abortion, despite fatal foetal impairments being identified. The UN Committee found that in both matters, Ireland had violated Articles 7, 17 and 26 of the International Covenant on Civil and Political Rights (CCPR). Australia is a signatory to the CCPR and as such, this case would apply to Australian law if State and Territory laws were reversed, especially in Australian jurisdictions that have enacted domestic human rights laws such as the ACT.

[15] United Nation Human Rights Office of the High Commissioner. Abortion. 2020. Available from: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf

Potential implications for IVF providers

There are currently no potential implications for IVF providers. In the ACT, the use of human embryos created by Assisted Reproductive Technology (which encompasses IVF), or other means, is regulated under part 3 of the *Human Cloning and Embryo Research Act 2004*.

Following the overturning of *Roe v Wade*, several states across the USA are implementing abortion bans from the time of fertilization. There is a risk that this could implicate embryos created through IVF processes, including how embryos are stored, used and discarded. This is not applicable in the current Australian landscape. The ACT Government is committed to ensuring that abortion remains legal.

Effectiveness of exclusion zones

In the ACT, the Minister for Health must declare a protected area, or exclusion zone, around approved medical facilities. An approved medical facility is one that has been approved to undertake surgical abortions. Additionally, locations where an abortifacient is prescribed, supplied or administered can apply to have a protected area declared around their facility, further strengthening protection from protesters.

In making this declaration, the Minister must be satisfied that the area declared is:

a) Not less than 50 meters at any point from the protected facility; and

b) Sufficient to ensure the privacy and unimpeded access for anyone entering, trying to enter or leaving the protected facility; but

c) Is no bigger than necessary to ensure that outcome.

The ACT is the only jurisdiction in which the protected area is not 150 meters. While 50 meters is the legislated requirement, this can be expanded if necessary. There is currently one protected area in the ACT, 1 Moore Street in Civic. A 50-meter parameter is sufficient to ensure privacy and unimpeded access to this facility and eliminates lines of sight to both the front and back entrances of this location.

The parameters for a privacy zone in the ACT were developed in consultation with key stakeholders, such as the ACT Human Rights Commission and ACT Policing, to ensure the right balance between protecting the right to access safe and legal health care and the rights of protesters was achieved.

The effectiveness of protected areas around abortion facilities in the ACT has not been evaluated. However, a recent leading judgment in the High Court case of *Clubb v Edwards [2019] HCA 11 (Clubb)* affirmed the implementation of exclusion zones around abortion facilities as reasonable, despite the limit it places on the right to freedom of expression and on the constitutional right to protest and communicate politically in the Australian Constitution. This limit on rights is assessed as a reasonable and proportionate measure to protect equal access to the services provided by abortion clinics.

Access to information to support a variety of possible reproductive choices

All individuals should have autonomy over their reproductive choices. Easy to understand information regarding abortion, family planning, contraception, sexual health, childbirth, foster care and adoption should be readily available. Women and people who can become pregnant have the right to make a

decision about their pregnancy, whether that be abortion or continuing with a pregnancy. Some may wish to discuss this with a counsellor or other non-judgemental and nonaligned independent person.

Long term mental health impacts may be associated with both choosing to have an abortion, and choosing to continue to carry and give birth to an unplanned pregnancy, particularly if a person is coerced into a particular action and not allowed agency in their own decision. It is imperative that people can access timely and affordable counselling to facilitate this decision making, however this can often be challenging. Since early 2020, the COVID-19 pandemic has resulted in greater demand on counselling and mental health services.

In the ACT, non-directive pregnancy counselling services are available to support people experiencing an unplanned pregnancy and facilitate this decision-making process. Non-directive counselling is a confidential service that provides respectful, non-judgemental and unbiased information about available options, in response to an individual's needs.

SHFPACT is funded by the ACT Government to provide free, client-centred, non-directive counselling services for people experiencing unplanned pregnancy. This service is provided by experienced sexual and reproductive health nurses who have undertaken additional training in counselling. SHFPACT can provide referrals to external counsellors as needed. The Junction Youth Health Service receives ACT Government funding to provide integrated primary health care services, including family planning and sexual health services, to young people aged 12 to 25. These services are provided in a non-judgemental and non-directional manner. Through MSI Australia, specially trained counsellors provide free, non-directive pregnancy counselling over the phone. Free interpreting services are available for this service through the Translating and Interpreting Service (TIS National).

GPs are often the first point of contact for reproductive health services and can be a good source of support, with some GPs having undertaken additional training to provide non-directive pregnancy counselling. MBS rebates are available for up to three non-directive pregnancy support counselling services per patient, per pregnancy. MBS rebates are available through GPs, private psychologists, social workers and mental health nurses who are registered with Medicare and have undertaken additional training in non-directive pregnancy counselling. However, individuals may be faced with out-of-pocket costs if accessing counselling through these providers. As with all private health and primary care services, fees are charged at the discretion of the practitioner and may require a gap payment.

A vast array of information and resources about reproductive choice and making a decision about an unplanned pregnancy is also available on the internet. The following trusted organisations provide this information, noting this list is not exhaustive:

- ACT Health Directorate;
- Women's Health Matters;
- SHFPACT;
- MSI Australia;
- Pregnancy, Birth and Baby as operated by Healthdirect Australia; and
- Children by Choice.

Navigating this online information requires a high level of health literacy. Unfortunately, there are a number of Australian and international organisations and websites that claim to provide non-directive counselling and information to facilitate an informed choice, but are in fact anti-choice and provide intentionally misleading information about abortion.

If a pregnant person has decided they do not want to, or simply cannot, continue their pregnancy, the information they require is that about the options of surgical and medical abortions, and how to access their preferred choice. The ACT Government has committed funding in the 2022-23 financial year to develop clear communication materials, including a public facing webpage, to improve the provision of information about abortion and reproductive choice and to assist people in accessing abortion services in a time sensitive manner.

Any other related matters

There are currently no national data nor ACT data on the provision of abortions at any gestation and there is paucity of data nationwide. This data cannot be extracted from 'standard' data collection systems as it is not coded, and there is no requirement for this to be collected or reported on in the ACT. Legislation in South Australia, Western Australia and the Northern Territory require the collection of certain data. Improved availability of data could better inform policy, planning and decision making around service provision. This would enable abortion care to be better included in standard health service planning.

Improved access to contraceptive care would likely have an impact on the numbers of abortions sought in the ACT. However, it is important to note that all contraception has failure rates and not everyone will have a contraceptive option that works for them for a variety of reasons such as contraindications, side effects and acceptability. The use of Long Acting Reversable Contraceptives (LARCs) has been shown to reduce unintended pregnancy and abortion rates, subsequently reducing demand on abortion services. Funding for the provision of LARCs at the time of abortion has been included in the 2022-23 ACT Budget.

Misoprostol, a medication which forms one part of MS-2 Step, can be used in the medical management of a miscarriage. The communications package funded in the 2022-23 ACT Budget will include information relevant to people requiring access to Misoprostol for miscarriage management.