



Australian Capital Territory

# **Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023**

**A2023-23**

**Republication No 1**

**Effective: 23 December 2023 – 17 September 2024**

Republication date: 23 December 2023

Act not amended

Not all provisions are in force: see last endnote

## About this republication

### The republished law

This is a republication of the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 23 December 2023. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023

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Australian Capital Territory

# Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023

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An Act to protect rights of people with a variation in sex characteristics in relation to certain medical treatment, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023*.

### 2 Commencement

- (1) This Act (other than section 10 and part 4) commences 6 months after its notification day.

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

- (2) Section 10 and part 4 commence 18 months after this Act's notification day.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*internal review notice*—see the [ACT Civil and Administrative Tribunal Act 2008](#), section 67B (1).' means that the term 'internal review notice' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.



## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Object and important concepts

### 6 Object of Act

The object of this Act is to protect rights and ensure the wellbeing of people with a variation in sex characteristics in relation to restricted medical treatment.

### 7 Meaning of *variation in sex characteristics*

(1) In this Act:

*variation in sex characteristics*—

- (a) means a congenital condition that involves atypical sex characteristics; and
- (b) includes a condition prescribed by regulation; but
- (c) does not include a condition prescribed by regulation not to be a variation in sex characteristics.

(2) In this section:

*sex characteristics*—

- (a) means a person's chromosomal, gonadal or anatomical sex; and
- (b) includes—
  - (i) the person's hormones that are related to sex; and
  - (ii) the sexual and reproductive parts of the person's anatomy; and
  - (iii) the person's secondary physical features emerging as a result of puberty.

## 8 **Meaning of *restricted medical treatment***

(1) In this Act:

*restricted medical treatment*, in relation to a person who has a variation in sex characteristics, means the following:

- (a) a surgical or medical procedure or treatment (including the prescription or administration of a drug) that permanently changes the person's sex characteristics, or which makes changes to the person's sex characteristics that are only reversible with a further medical procedure or treatment;
- (b) a prescribed surgical or medical procedure or treatment (including the prescription or administration of a drug) that temporarily changes the person's sex characteristics.

(2) However, *restricted medical treatment* does not include circumcision of the penis.

(3) In this section:

*sex characteristics*—see section 7 (2).

## 9 **Meaning of *prescribed person***

In this Act:

*prescribed person*, in relation to restricted medical treatment, means a person who—

- (a) has a variation in sex characteristics; and
- (b) either—
  - (i) is an adult subject to a guardianship order that applies to the medical treatment; or
  - (ii) is a child who does not have decision-making capacity in relation to the medical treatment.

## Part 3 Assessment of treatment plans

### Division 3.1 Applying for approval of treatment plans

#### **U** 10 Requirement for treatment plans to be approved

- (1) A person may only undertake restricted medical treatment on a prescribed person in accordance with an approved treatment plan and any condition applying to the plan.

*Note 1* It is an offence under pt 4 to undertake restricted medical treatment on a prescribed person other than in accordance with an approved treatment plan.

*Note 2* If the prescribed person is an adult and the restricted medical treatment is a prescribed medical procedure under the *Guardianship and Management of Property Act 1991*, consent to the treatment from the ACAT is also required (see that [Act](#), s 70).

- (2) Subsection (1) does not apply to urgent restricted medical treatment.

#### 11 Application for approval of treatment plan

- (1) A person may apply to the assessment board for approval of a treatment plan for—
- (a) a class of prescribed people (a *general treatment plan*); or
  - (b) an individual prescribed person (an *individual treatment plan*).
- (2) A person may only apply for approval of a treatment plan if—
- (a) for a general treatment plan—they are a person declared by the Minister; or
  - (b) for an individual treatment plan—they are—
    - (i) a decision-maker for the prescribed person; or

- (ii) a health practitioner for the prescribed person; or
  - (iii) a person prescribed by regulation.
- (3) The application must—
  - (a) state the name and contact details of the applicant; and
  - (b) include the proposed treatment plan; and
  - (c) set out the reasons why the treatment plan is proposed, including evidence addressing the assessment criteria mentioned in—
    - (i) section 13; and
    - (ii) for an individual treatment plan—section 16; and
  - (d) for an individual treatment plan—
    - (i) state the prescribed person’s name and age; and
    - (ii) state the name and contact details for each decision-maker for the prescribed person; and
    - (iii) include a summary of any previous treatment, including restricted medical treatment, the person has received in relation to their variation in sex characteristics; and
  - (e) anything else prescribed by regulation.
- (4) The president must give a copy of the application to the public advocate.
- (5) A declaration by the Minister under subsection (2) (a) is a disallowable instrument.

## Division 3.2 Assessment of treatment plans

### 12 Assessment committee

- (1) As soon as practicable, and not more than 14 days after receiving an application, the president must appoint 1 assessment board member from each category mentioned in section 31 (1) (b) to a committee (an *assessment committee*) to decide the application.
- (2) The president may appoint themselves to the committee for the category mentioned in section 31 (1) (b) (i).
- (3) A regulation may prescribe requirements about the appointment of assessment board members to an assessment committee.

### 13 Assessment criteria—general and individual treatment plans

- (1) An assessment committee may only approve a proposed treatment plan if there is sufficient evidence that—
  - (a) the prescribed people to whom the plan applies would be reasonably likely to suffer significant physical or psychological harm (the *primary harm*) if the proposed treatment or an alternative treatment option were not undertaken; and
  - (b) alternative treatment options have been sufficiently considered; and
  - (c) the proposed treatment is no more restrictive of the ability to make a decision about a prescribed person’s sex characteristics in the future than any alternative treatment option.
- (2) For this section, an *alternative treatment option* to a proposed treatment is a medical or non-medical treatment or procedure, including delayed treatment or procedure, which, taking into account the primary harm and any associated harm of the proposed and alternative treatment options, is as effective as the proposed treatment.

(3) In this section:

*associated harm*, of a treatment of a prescribed person, means any physical or psychological harm that the prescribed person would be reasonably likely to suffer if the treatment were undertaken.

**Examples**

- 1 physical side effects
- 2 psychological harm to the prescribed person because they are required to be away from family for extended periods to have the treatment

*sex characteristics*—see section 7 (2).

#### **14 Assessment of significant harm—children**

For section 13 (1) (a), in considering if it is reasonably likely that a prescribed person who is a child would suffer significant harm if the proposed treatment or an alternative treatment option were not undertaken, the assessment committee—

- (a) for an individual treatment plan—must consider any wishes the child has communicated in relation to their variation in sex characteristics; and
- (b) must disregard any evidence that the treatment needs to be undertaken to reduce discrimination or stigmatisation or a perceived risk of discrimination or stigmatisation.

#### **15 Assessment of significant harm—adult subject to guardianship order**

For section 13 (1) (a), in considering if it is reasonably likely that a prescribed person who is an adult would suffer significant harm if the proposed treatment or an alternative treatment option were not undertaken, the assessment committee—

- (a) for an individual treatment plan—must consider any wishes the prescribed person has communicated in relation to their variation in sex characteristics; and

- (b) unless the person has communicated a wish to have the proposed treatment or an alternative treatment option undertaken—must disregard any evidence that the treatment needs to be undertaken to reduce discrimination or stigmatisation or a perceived risk of discrimination or stigmatisation.

## **16 Assessment criteria—individual treatment plans**

In addition to section 13, an assessment committee may only approve an individual treatment plan if there is sufficient evidence provided to the committee by the applicant—

- (a) for a treatment plan for a child—that, taking into account the child’s cognitive ability, reasonable steps have been taken in assessing that the child does not have decision-making capacity in relation to the proposed treatment; and
- (b) that, taking into account the prescribed person’s cognitive ability, the prescribed person has been given or had access to sufficient information about the following:
  - (i) the likely implications of the proposed treatment;
  - (ii) the likelihood future treatment will be required or other future treatment options will be excluded if the proposed treatment is undertaken;
  - (iii) alternative medical and non-medical options including support for the prescribed person’s psychosocial needs;
  - (iv) the likely risks and benefits of deferring or not undertaking the proposed treatment; and



- (c) that, taking into account the prescribed person's cognitive ability, the prescribed person has been given, or had access to, appropriate support to assist the prescribed person in understanding the information mentioned in paragraph (b); and
- (d) that each decision-maker for the prescribed person has been given, or had access to, the things mentioned in paragraph (b); and
- (e) that, taking into account the prescribed person's cognitive ability—
  - (i) the prescribed person has received appropriate support to participate in decision-making about the treatment plan and to communicate their wishes freely; and
  - (ii) any wishes the prescribed person has communicated in relation to the proposed treatment or their variation in sex characteristics have been appropriately considered.

*Note* If a general treatment plan is approved, it is a condition of the plan that the person undertaking the restricted medical treatment on a prescribed person ensures that the matters mentioned in pars (a) to (e) are satisfied (see s 23 (2) (a)).

## **17 Ministerial guidelines**

- (1) The Minister may make guidelines about—
  - (a) the matters that an assessment committee must or may consider under sections 13 to 16; and
  - (b) other guidance to assist an assessment committee or internal review committee to exercise their functions under this Act.
- (2) A guideline is a disallowable instrument.

## 18 Operation of assessment committee

- (1) An assessment committee may conduct an assessment of an application in the way it considers appropriate, including informing itself in any way it considers appropriate in the circumstances.

### Examples—other ways of informing itself

- 1 relying on expertise of a committee member to research a matter
- 2 relying on information provided in relation to an earlier application
- 3 with the consent of the decision-maker for a prescribed person, talking directly to the prescribed person

*Note* Section 20 sets out requirements for the provision to the applicant of information obtained or relied upon by the committee under this subsection and s (2).

- (2) Without limiting subsection (1), an assessment committee may consult, in writing, any of the following in relation to an application:
- (a) a health professional or health professional body not involved in the treatment of the prescribed person;
  - (b) a quality assurance committee approved under the *Health Act 1993*, section 27;
  - (c) an entity representing, or providing support to, people with a variation in sex characteristics;
  - (d) the public advocate;
  - (e) for an application in relation to a child—the children and young people commissioner;
  - (f) any other person prescribed by regulation.
- (3) However, the committee must not, without the written consent of a decision-maker—
- (a) identify the prescribed person; or
  - (b) disclose information that would allow the prescribed person's identity to be worked out.

(4) A regulation may prescribe additional requirements about the operation of an assessment committee.

(5) In this section:

*health professional* means a health practitioner or other person who provides treatment, care or support to people with a variation in sex characteristics.

**Examples**

psychologist, social worker, genetic counsellor

**19 Request for more information**

(1) An assessment committee may, in writing, request an applicant to give the committee information that the committee reasonably needs to decide the application.

(2) The committee may refuse to consider the application further if the information is not provided within the period stated in the request.

**20 Applicant to be given any other information obtained by committee**

(1) This section applies to—

(a) any information relied upon by an assessment committee under section 18 (1); and

(b) any information obtained by an assessment committee through consultation under section 18 (2); and

(c) any submissions received under section 22.

(2) The committee must give the applicant—

(a) a copy of the information or submission; and

(b) a reasonable period of time in which to consider the information and make any changes to their application.

## Division 3.3 Assessment of general treatment plans

### 21 Public consultation

- (1) After receiving an application in relation to a general treatment plan, the assessment committee must conduct public consultation about the application and give a notice about the consultation (a *consultation notice*).
- (2) A consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the assessment committee about the general treatment plan; and
    - (ii) submissions may be given to the assessment committee only during the period starting on the day after the consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 30 days after the day it is notified (the *consultation period*); and
  - (b) include the general treatment plan and any relevant supporting information included in the application for the plan.
- (3) A consultation notice is a notifiable instrument.
- (4) The assessment committee must also—
  - (a) publish the consultation notice on an ACT government website; and
  - (b) give the consultation notice to the relevant entities.
- (5) The following must not be included in the consultation notice:
  - (a) information that identifies a prescribed person or a decision-maker for a prescribed person;

- (b) information that would allow the person's or decision-maker's identity to be worked out;
  - (c) any information prescribed by regulation.
- (6) In this section:
- relevant entities* means the following:
- (a) the chief health officer;
  - (b) the Minister responsible for each of the following:
    - (i) this Act;
    - (ii) the *Health Act 1993*;
    - (iii) the *Human Rights Act 2004*;
  - (c) the children and young people commissioner;
  - (d) the health services commissioner;
  - (e) the public advocate;
  - (f) any other entity prescribed by regulation.

## **22 Public consultation submissions**

- (1) If the assessment committee gives a consultation notice under section 21—
  - (a) anyone may give a written submission to the committee about the general treatment plan; and
  - (b) the submission may be given to the committee only during the consultation period.
- (2) If any submissions are received during the consultation period, the assessment committee must publish the submissions on an ACT government website.

- (3) The following must not be published under subsection (2):
- (a) unless the assessment committee is satisfied that it is the prescribed person's will and preference—
    - (i) information that identifies the prescribed person; or
    - (ii) information that would allow the prescribed person's identity to be worked out;
  - (b) any information the assessment committee considers to be sensitive or prejudicial to an individual;
  - (c) any information prescribed by regulation.

## **23 Deciding the application—general treatment plan**

- (1) After the end of the consultation period mentioned in section 21 (2), the assessment committee must—
- (a) consider any written submissions received during the consultation period; and
  - (b) either—
    - (i) approve the application; or
    - (ii) refuse the application.
- Note* An application must be decided in accordance with s 13.
- (2) An approval is subject to—
- (a) a condition that the matters mentioned in section 16 (a) to (e) are satisfied before the restricted medical treatment is undertaken on a prescribed person; and
  - (b) any other condition the assessment committee considers appropriate.

- (3) The assessment committee must give a copy of its decision under subsection (1) and the reasons for it to—
  - (a) the applicant; and
  - (b) each relevant entity.
- (4) An approval under this section—
  - (a) is a notifiable instrument; and
  - (b) expires 5 years after the day it commences.

*Note* An approval may be extended under s 25 (2) (a).

- (5) In this section:

*relevant entities*—see section 21 (6).

## **Division 3.4                    General treatment plans—other matters**

### **24                    Review of approved general treatment plan**

- (1) The president may, at any time, establish an assessment committee to review the general treatment plan.
- (2) If the assessment committee is no longer satisfied there is sufficient evidence to satisfy the matters mentioned in section 13, the committee must revoke the general treatment plan.
- (3) The following provisions apply in relation to a review of a general treatment plan, as if the review were an assessment of an application:
  - (a) section 18 (Operation of assessment committee);
  - (b) as far as is reasonably practicable—section 20 (Applicant to be given any other information obtained by committee);
  - (c) section 21 (Public consultation);
  - (d) section 22 (Public consultation submissions).

- (4) If the assessment committee revokes the approval of a treatment plan, the committee must state the day, not less than 6 months after the day the decision is made, that the revocation takes effect.
- (5) A revocation under subsection (2) is a notifiable instrument.

## **25 Expiry of approved general treatment plan**

- (1) At least 6 months before the approval of a general treatment plan expires (the *expiring treatment plan*), the president must—
  - (a) take reasonable steps to tell the person who applied for the approval, in writing, that—
    - (i) the approval will expire on the stated expiry date; and
    - (ii) the person may apply under section 11 for a subsequent approval of the treatment plan; and
  - (b) give notice on an ACT government website that the approval will expire on the stated expiry date.
- (2) If an application made under section 11 in relation to a general treatment plan (a *new treatment plan*) substantially corresponds to the expiring treatment plan before the plan expires—
  - (a) the expiring treatment plan is extended until the application for approval of the new treatment plan is finally decided; and
  - (b) the president must give written notice on an ACT government website that the expiring treatment plan has been extended under paragraph (a).
- (3) A notice under subsection (2) (b) is a notifiable instrument.



(4) In this section:

*finally decided*—an application is *finally decided* if—

- (a) the application is approved; or
- (b) if the application is approved subject to a condition or is refused—
  - (i) no application for review has been made under section 41; or
  - (ii) if an application for review has been made under section 41—the review has been finalised.

## **Division 3.5                      Assessment of individual treatment plans**

### **26                      Deciding the application—individual treatment plan**

(1) The assessment committee for an application for an individual treatment plan must—

- (a) approve the application; or
- (b) refuse the application.

*Note*      An application must be decided in accordance with s 13 and s 16.

(2) An approval may be given subject to conditions.

(3) The assessment committee must give a copy of its decision under subsection (1) and the reasons for it to—

- (a) the applicant; and
- (b) if the applicant is not the decision-maker for the prescribed person—each decision-maker; and
- (c) the public advocate.

- (4) An approval under this section expires on the day stated in the decision, being a day not later than 3 years after the day it is given.

## **U** Part 4                      **Offences**

### **U** 27                      **Offence—undertaking restricted medical treatment without approval**

- (1) A person commits an offence if—
- (a) the person undertakes a restricted medical treatment on a prescribed person; and
  - (b) the restricted medical treatment is not undertaken in accordance with an approved treatment plan or any condition applying to the plan.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) For subsection (1), it does not matter if—
- (a) a decision-maker for the prescribed person consents to the restricted medical treatment; or
  - (b) for a prescribed person who is an adult—the ACAT consents to the restricted medical treatment under the *Guardianship and Management of Property Act 1991*, section 70.

*Note* If the prescribed person is an adult, restricted medical treatment may also be a prescribed medical procedure under the *Guardianship and Management of Property Act 1991*.

- (3) Subsection (1) does not apply to urgent restricted medical treatment.

*Note* The defendant has an evidential burden in relation to the matter mentioned in s (3) (see *Criminal Code*, s 58).

**U 28 Offence—arrange or authorise unapproved restricted medical treatment**

- (1) A person commits an offence if—
- (a) the person—
    - (i) takes a prescribed person outside the ACT for the purpose of having restricted medical treatment undertaken on the prescribed person; or
    - (ii) otherwise arranges for restricted medical treatment to be undertaken on the prescribed person; and
  - (b) the person knows that if the restricted medical treatment were undertaken on the prescribed person in the ACT it would be an offence against section 27.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A decision-maker for a prescribed person commits an offence if the person—
- (a) consents to restricted medical treatment being undertaken on the prescribed person; and
  - (b) knows that if the restricted medical treatment were undertaken on the prescribed person in the ACT it would be an offence against section 27.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) For subsection (1), it does not matter if—
- (a) a decision-maker for the prescribed person consents to the restricted medical treatment; or

(b) for a prescribed person who is an adult—the ACAT consents to the restricted medical treatment under the *Guardianship and Management of Property Act 1991*, section 70.

*Note* If the prescribed person is an adult, restricted medical treatment may also be a prescribed medical procedure under the *Guardianship and Management of Property Act 1991*.

(4) For subsections (1) and (2), it does not matter if the restricted medical treatment—

(a) was not undertaken on the prescribed person; or

(b) was undertaken in the ACT or elsewhere.

(5) Subsections (1) and (2) do not apply to urgent restricted medical treatment.

*Note* The defendant has an evidential burden in relation to the matter mentioned in s (5) (see *Criminal Code*, s 58).

## **Part 5 Restricted Medical Treatment Assessment Board**

### **29 Establishment of Restricted Medical Treatment Assessment Board**

The Restricted Medical Treatment Assessment Board is established.

### **30 Functions of assessment board**

The functions of the assessment board are—

- (a) as members of assessment committees—to assess applications in relation to treatment plans and review treatment plans; and
- (b) to advise the Minister about, and make recommendations on, which variations in sex characteristics should be covered by this Act; and
- (c) any other function given to the assessment board under this Act or another territory law.

### **31 Membership of assessment board**

- (1) The Minister must appoint to the assessment board—
  - (a) a president; and
  - (b) at least 2 members for each of the following categories:
    - (i) human rights;
    - (ii) medicine;
    - (iii) ethics;
    - (iv) variation in sex characteristics;
    - (v) provision of psychosocial support.

*Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) Before appointing a person to be the president or another member of the assessment board, the Minister must consult the Ministers responsible for the *Health Act 1993* and the *Human Rights Act 2004*.
- (3) In appointing a person under this section the Minister must be satisfied—
  - (a) for the president—the person has the qualities and experience necessary to exercise their functions under this Act, including as an assessment committee or internal review committee member in the category mentioned in subsection (1) (b) (i); and
  - (b) for other members—the person has qualifications or experience in the category for which they are appointed.
- (4) The Minister must ensure that at least 1 person appointed to the assessment board is a person with a variation in sex characteristics.
- (5) An appointment must be for a period of not longer than 5 years.
- (6) A regulation may prescribe other criteria for the appointment of a person as a member.
- (7) A member's conditions of appointment are the conditions stated in the instrument of appointment.

## **32 Ending appointments**

The Minister may end a member's appointment—

- (a) for misconduct; or
- (b) if the member is convicted, or found guilty, of an indictable offence; or
- (c) if the member is convicted, or found guilty, of an offence that, if it had been committed in the ACT, would be an indictable offence; or

(d) if the member is unable to exercise the member's functions under this Act.

*Note* A conviction does not include a spent conviction or an extinguished conviction (see *Spent Convictions Act 2000*, s 16 (c) (i) and s 19H (1) (c) (i)).

### 33 Arrangements for staff and facilities

The president may arrange with the head of service to use the services of a public servant or territory facilities.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

### 34 Consultants for assessment committees

- (1) The president may engage consultants to assist an assessment committee in the exercise of the its functions.
- (2) Consultants are to be engaged on terms decided by the president.
- (3) However, this section does not give the president a power to enter into a contract of employment.



## Part 6 Notification and review of decisions

### 35 Definitions—pt 6

In this part:

*interested party*—see section 36.

*internally reviewable decision* means a decision made by an assessment committee—

- (a) to refuse to consider an application further under section 19 (2);  
or
- (b) for an application in relation to a general treatment plan—
  - (i) to refuse the application under section 23 (1) (b) (ii); or
  - (ii) to impose a condition on an approval under section 23 (2) (b); or
- (c) for an application in relation to an individual treatment plan—
  - (i) to refuse the application under section 26 (1) (b); or
  - (ii) to impose a condition on an approval under section 26 (2);  
or
- (d) to revoke a general treatment plan under section 24 (2).

*internal review notice*—see the [ACT Civil and Administrative Tribunal Act 2008](#), section 67B (1).

*reviewable decision* means a decision by an internal review committee under section 39 (1).

**36 Internal review notices**

If an assessment committee makes an internally reviewable decision in relation to an application, the committee must give an internal review notice to the following (an *interested party*):

- (a) the applicant;
- (b) each decision-maker for the prescribed person;
- (c) the public advocate.

*Note 1* The committee must also take reasonable steps to give an internal review notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67B).

*Note 2* The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

**37 Application for internal review**

- (1) An interested party may apply, in writing, to the president for review of an internally reviewable decision.
- (2) The application for internal review must—
  - (a) state the name and contact details of the interested party; and
  - (b) set out the interested party's reasons for making the application.
- (3) The application for internal review must be given to the president within 28 days after the day the interested party is given the internal review notice for the decision.
- (4) The making of an application for review of an internally reviewable decision does not affect the operation of the decision.

**38 Appointment of internal review committee**

- (1) As soon as practicable, and not more than 14 days after receiving an application to review the internally reviewable decision, the president must appoint 1 assessment board member from each category mentioned in section 31 (1) (b) to a committee (an *internal review committee*) to undertake the internal review.
- (2) The president may appoint themselves to the committee for the category mentioned in section 31 (1) (b) (i).
- (3) The president must not appoint an assessment board member who was allocated to the assessment committee that made the internally reviewable decision.
- (4) A regulation may prescribe requirements for the appointment of assessment board members to an internal review committee.

**39 Decision of internal review committee**

- (1) The internal review committee must review the internally reviewable decision and make a decision as soon as is reasonably practicable, and within 28 days, after the first meeting of the committee.
- (2) The internal review committee must—
  - (a) confirm the internally reviewable decision; or
  - (b) vary the internally reviewable decision; or
  - (c) set aside the internally reviewable decision and substitute another decision that the committee considers appropriate.
- (3) If the reviewable decision is not varied or set aside within the 28-day period, the decision is taken to have been confirmed by the internal review committee.

#### **40 Reviewable decision notices**

If an internal review committee makes a reviewable decision, the committee must give a reviewable decision notice to each interested party.

*Note 1* The committee must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

#### **41 Application for ACAT review**

An interested party may apply to the ACAT for review of a reviewable decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

#### **42 Review by ACAT**

If the ACAT receives an application to review a reviewable decision, the ACAT must consider the application and—

- (a) confirm the decision; or
- (b) remit the matter to the internal review committee for reconsideration in accordance with any direction or recommendation of the ACAT.

## Part 7                      Miscellaneous

### 43                      Reporting treatment in relation to sex characteristics

- (1) Within 3 months after starting reportable treatment in relation to a prescribed person, the doctor who was responsible for the treatment must—
- (a) tell the president, in writing, that the treatment has been undertaken; and
  - (b) provide the following information:
    - (i) if the treatment was undertaken under a treatment plan— details of the plan;
    - (ii) the prescribed person’s age;
    - (iii) the prescribed person’s variation in sex characteristics;
    - (iv) anything else prescribed by regulation.

- (2) In this section:

***excluded condition*** means a condition prescribed for section 7 (1), definition of ***variation in sex characteristics***, paragraph (c).

***reportable treatment*** means—

- (a) restricted medical treatment under a treatment plan; and
- (b) urgent restricted medical treatment; and

- (c) if an excluded condition is prescribed for this paragraph—a surgical or medical procedure or treatment in relation to the condition that would be restricted medical treatment if the condition were not an excluded condition.

**Example—par (c)**

ABC syndrome (hypothetical) is a variation in sex characteristics excluded under s 7 (1), def *variation in sex characteristics*, par (c). Treatment of a prescribed person for ABC syndrome is, therefore, not restricted medical treatment under s 8. ABC syndrome is prescribed for par (c) above, which means treatment described in the definition of *restricted medical treatment* in s 8 in relation to that condition is subject to the reporting requirements under this section and s 44.

**44 Assessment board annual report**

- (1) The president must, for each financial year, prepare a report about the assessment board's operation during the year including—
- (a) the number of applications made in relation to individual treatment plans and the decisions made for the applications; and
  - (b) for each individual treatment plan approved in the year—
    - (i) the prescribed person's age; and
    - (ii) the prescribed person's variation in sex characteristics; and
    - (iii) the date the plan was approved; and
  - (c) the number of general treatment plans approved in the year and a description of each plan; and
  - (d) the number of reportable treatments reported under section 43; and
  - (e) for each reportable treatment—
    - (i) the prescribed person's age; and
    - (ii) the prescribed person's variation in sex characteristics; and

- (f) anything else prescribed by regulation.
- (2) The report must not include information that—
  - (a) identifies a prescribed person or a decision-maker for the prescribed person; or
  - (b) would allow a prescribed person’s identity, or the identity of a decision-maker for the prescribed person, to be worked out.
- (3) The report must comply with any requirements prescribed by regulation.
- (4) The report must—
  - (a) be given to the Minister not later than 3 months after the end of the financial year; and
  - (b) be published on an ACT government website as soon as practicable after being given to the Minister.

#### **45 Restricted medical treatment records**

- (1) This section applies to a relevant record created in relation to restricted medical treatment or urgent restricted medical treatment undertaken on a prescribed person.
- (2) Despite anything to the contrary in the *Health Records (Privacy and Access) Act 1997* or the *Territory Records Act 2002*, the relevant record must be kept until the later of—
  - (a) the prescribed person’s 45th birthday; or
  - (b) 7 years after the day the record is made.
- (3) In this section:  
*health record*—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

***relevant record***—

- (a) means a health record; and
- (b) includes—
  - (i) an approval for a treatment plan; and
  - (ii) an application for an internal review under section 37 and the internally reviewable decision; and
  - (iii) an application for a review by the ACAT under section 41 and the decision under section 42; and
  - (iv) a report under section 43.

**46 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) The Executive must consult the following people before making a regulation for section 7, definition of ***variation in sex characteristics***:
  - (a) the president;
  - (b) the chief health officer;
  - (c) the Minister responsible for each of the following:
    - (i) the *Health Act 1993*;
    - (ii) the *Human Rights Act 2004*;
  - (d) the children and young people commissioner;
  - (e) the health services commissioner;
  - (f) the public advocate.



**47 Review of Act**

- (1) The Minister must, as soon as practicable after the end of this Act's 2nd year of operation—
  - (a) review the operation and effectiveness of the Act; and
  - (b) present a report of the review to the Legislative Assembly.

*Note* A reference to an Act includes a reference to any regulation or other statutory instrument made or in force under the Act (see [Legislation Act](#), s 104).

- (2) This section expires 6 years after the day it commences.

## Dictionary

(see s 3)

*Note* The [Legislation Act](#) contains definitions relevant to this Act. For example:

- ACAT
- adult
- chief health officer
- child
- children and young people commissioner
- doctor
- health practitioner
- health services commissioner
- Minister (see s 162)
- public advocate.

***application*** means an application for approval of a treatment plan under section 11.

***approved treatment plan*** means a treatment plan approved under section 23 (1) (b) (i) or section 26 (1) (a).

***assessment board*** means the Restricted Medical Treatment Assessment Board established under section 29.

***assessment committee***—see section 12 (1).

***consultation notice***—see section 21 (1).

***consultation period***—see section 21 (2) (a) (ii).

***decision-maker***, for a prescribed person, means—

- (a) for a child—a person who has parental responsibility for the child under the [Children and Young People Act 2008](#), division 1.3.2; and
- (b) for an adult subject to a guardianship order—the guardian.

***general treatment plan***—see section 11 (1) (a).

**guardianship order** means an ACAT order under the *Guardianship and Management of Property Act 1991*, section 7 (2).

**individual treatment plan**—see section 11 (1) (b).

**interested party**, for part 6 (Notification and review of decisions)—see section 36.

**internally reviewable decision**, for part 6 (Notification and review of decisions)—see section 35.

**internal review committee**—see section 38(1).

**internal review notice**, for part 6 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

**prescribed person**, in relation to restricted medical treatment—see section 9.

**president** means the person appointed as president of the assessment board under section 31 (1) (a).

**restricted medical treatment**, in relation to a person who has a variation in sex characteristics—see section 8.

**reviewable decision**, for part 6 (Notification and review of decisions)—see section 35.

**treatment plan** means a general treatment plan or an individual treatment plan.

**urgent restricted medical treatment** means restricted medical treatment required to be undertaken urgently to—

- (a) save a prescribed person's life; or
- (b) prevent serious damage to the person's health; or
- (c) prevent the person from suffering or continuing to suffer significant pain.

**variation in sex characteristics**—see section 7 (1).

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 A2023-23**

notified LR 23 June 2023

s 1, s 2 commenced 23 June 2023 (LA s 75 (1))

s 10, pt 4 awaiting commencement

remainder commenced 23 December 2023 (s 2 (1))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Review of Act

s 47 exp 23 December 2029 (s 47 (2))

#### Consequential amendment

pt 8 hdg om LA s 89 (3)

#### Guardianship and Management of Property Act 1991

s 48 om LA s 89 (3)

### 5 Uncommenced provisions

Section 10 and Part 4 (sections 27 and 28) were uncommenced at the republication date but have been included in this republication with the symbol U immediately before the provision headings.

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