

2023

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Chief Minister)

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

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(As presented)

(Chief Minister)

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

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## A Bill for

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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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

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

12 **3 Dictionary**

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

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

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

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

25 **4 Notes**

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

1   **5           Offences against Act—application of Criminal Code etc**

2           Other legislation applies in relation to offences against this Act.

3           *Note 1   Criminal Code*

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

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

10          *Note 2   Penalty units*

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

- 1 **Part 2** **Object and important concepts**
- 2 **6** **Object of Act**
- 3 The object of this Act is to protect rights of people with a variation in  
4 sex characteristics in relation to restricted medical treatment.
- 5 **7** **Meaning of *variation in sex characteristics***
- 6 (1) In this Act:
- 7 ***variation in sex characteristics***—
- 8 (a) means a congenital condition that involves atypical sex  
9 characteristics; and
- 10 (b) includes a condition prescribed by regulation; but
- 11 (c) does not include a condition prescribed by regulation not to be a  
12 variation in sex characteristics.
- 13 (2) In this section:
- 14 ***sex characteristics***—
- 15 (a) means a person’s chromosomal, gonadal or anatomical sex; and
- 16 (b) includes—
- 17 (i) the person’s hormones that are related to sex; and
- 18 (ii) the sexual and reproductive parts of the person’s anatomy;  
19 and
- 20 (iii) the person’s secondary physical features emerging as a  
21 result of puberty.



1     **8            Meaning of *restricted medical treatment***

2           (1) In this Act:

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

5                     (a) a surgical or medical procedure or treatment (including the  
6                     prescription or administration of a drug) that permanently  
7                     changes the person's sex characteristics, or which makes  
8                     changes to the person's sex characteristics that are only  
9                     reversible with a further medical procedure or treatment;

10                    (b) a prescribed surgical or medical procedure or treatment  
11                    (including the prescription or administration of a drug) that  
12                    temporarily changes the person's sex characteristics.

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

15           (3) In this section:

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

17     **9            Meaning of *prescribed person***

18           In this Act:

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

21                     (a) has a variation in sex characteristics; and

22                     (b) either—

23                         (i) is an adult subject to a guardianship order that applies to  
24                         the medical treatment; or

25                         (ii) is a child who does not have decision-making capacity in  
26                         relation to the medical treatment.

1 **Part 3** **Assessment of treatment plans**

2 **Division 3.1** **Applying for approval of treatment**  
3 **plans**

4 **10** **Requirement for treatment plans to be approved**

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

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

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

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

16 **11** **Application for approval of treatment plan**

- 17 (1) A person may apply to the assessment board for approval of a  
18 treatment plan for—

- 19 (a) a class of prescribed people (a *general treatment plan*); or  
20 (b) an individual prescribed person (an *individual treatment plan*).

- 21 (2) A person may only apply for approval of a treatment plan if—

22 (a) for a general treatment plan—they are a person declared by the  
23 Minister; or

24 (b) for an individual treatment plan—they are—

- 25 (i) a decision-maker for the prescribed person; or

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

- 1     **Division 3.2                    Assessment of treatment plans**
- 2     **12                    Assessment committee**
- 3            (1) As soon as practicable, and not more than 14 days after receiving an  
4            application, the president must appoint 1 assessment board member  
5            from each category mentioned in section 31 (1) (b) to a committee  
6            (an *assessment committee*) to decide the application.
- 7            (2) The president may appoint themselves to the committee for the  
8            category mentioned in section 31 (1) (b) (i).
- 9            (3) A regulation may prescribe requirements about the appointment of  
10           assessment board members to an assessment committee.
- 11    **13                    Assessment criteria—general and individual treatment**  
12    **plans**
- 13            (1) An assessment committee may only approve a proposed treatment  
14            plan if there is sufficient evidence that—
- 15                    (a) the prescribed people to whom the plan applies would be  
16                    reasonably likely to suffer significant physical or psychological  
17                    harm (the *primary harm*) if the proposed treatment or an  
18                    alternative treatment option were not undertaken; and
- 19                    (b) alternative treatment options have been sufficiently considered;  
20                    and
- 21                    (c) the proposed treatment is no more restrictive of the ability to  
22                    make a decision about a prescribed person’s sex characteristics  
23                    in the future than any alternative treatment option.
- 24            (2) For this section, an *alternative treatment option* to a proposed  
25            treatment is a medical or non-medical treatment or procedure,  
26            including delayed treatment or procedure, which, taking into account  
27            the primary harm and any associated harm of the proposed and  
28            alternative treatment options, is as effective as the proposed  
29            treatment.

1 (3) In this section:

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

5 **Examples**

6 1 physical side effects

7 2 psychological harm to the prescribed person because they are required to be  
8 away from family for extended periods to have the treatment

9 **14 Assessment of significant harm—children**

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

14 (a) for an individual treatment plan—must consider any wishes the  
15 child has communicated in relation to their variation in sex  
16 characteristics; and

17 (b) must disregard any evidence that the treatment needs to be  
18 undertaken to reduce discrimination or stigmatisation or a  
19 perceived risk of discrimination or stigmatisation.

20 **15 Assessment of significant harm—adult subject to**  
21 **guardianship order**

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

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

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

6 **16 Assessment criteria—individual treatment plans**

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

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

- 1 (c) that, taking into account the prescribed person’s cognitive  
2 ability, the prescribed person has been given, or had access to,  
3 appropriate support to assist the prescribed person in  
4 understanding the information mentioned in paragraph (b); and
- 5 (d) that each decision-maker for the prescribed person has been  
6 given, or had access to, the things mentioned in paragraph (b);  
7 and
- 8 (e) that, taking into account the prescribed person’s cognitive  
9 ability—
- 10 (i) the prescribed person has received appropriate support to  
11 participate in decision-making about the treatment plan and  
12 to communicate their wishes freely; and
- 13 (ii) any wishes the prescribed person has communicated in  
14 relation to the proposed treatment or their variation in sex  
15 characteristics have been appropriately considered.
- 16 *Note* If a general treatment plan is approved, it is a condition of the plan that  
17 the person undertaking the restricted medical treatment on a prescribed  
18 person ensures that the matters mentioned in pars (a) to (e) are satisfied  
19 (see s 23 (2) (a)).

20 **17 Ministerial guidelines**

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

- 1     **18           Operation of assessment committee**
- 2           (1) An assessment committee may conduct an assessment of an
- 3           application in the way it considers appropriate, including informing
- 4           itself in any way it considers appropriate in the circumstances.
- 5           **Examples—other ways of informing itself**
- 6           1     relying on expertise of a committee member to research a matter
- 7           2     relying on information provided in relation to an earlier application
- 8           3     with the consent of the decision-maker for a prescribed person, talking directly
- 9           to the prescribed person
- 10          *Note*     Section 20 sets out requirements for the provision to the applicant of
- 11          information obtained or relied upon by the committee under this
- 12          subsection and s (2).
- 13          (2) Without limiting subsection (1), an assessment committee may
- 14          consult, in writing, any of the following in relation to an application:
- 15           (a) a health professional or health professional body not involved in
- 16           the treatment of the prescribed person;
- 17           (b) a quality assurance committee approved under the *Health*
- 18           *Act 1993*, section 27;
- 19           (c) an entity representing, or providing support to, people with a
- 20           variation in sex characteristics;
- 21           (d) the public advocate;
- 22           (e) for an application in relation to a child—the children and young
- 23           people commissioner;
- 24           (f) any other person prescribed by regulation.
- 25          (3) However, the committee must not, without the written consent of a
- 26          decision-maker—
- 27           (a) identify the prescribed person; or
- 28           (b) disclose information that would allow the prescribed person’s
- 29           identity to be worked out.



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

3 (5) In this section:

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

7 **Examples**

8 psychologist, social worker, genetic counsellor

9 **19 Request for more information**

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

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

15 **20 Applicant to be given any other information obtained by  
16 committee**

17 (1) This section applies to—

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

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

22 (c) any submissions received under section 22.

23 (2) The committee must give the applicant—

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

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

1 **Division 3.3** **Assessment of general treatment**  
2 **plans**

3 **21** **Public consultation**

4 (1) After receiving an application in relation to a general treatment plan,  
5 the assessment committee must conduct public consultation about the  
6 application and give a notice about the consultation (a *consultation*  
7 *notice*).

8 (2) A consultation notice must—

9 (a) state that—

10 (i) anyone may give a written submission to the assessment  
11 committee about the general treatment plan; and

12 (ii) submissions may be given to the assessment committee  
13 only during the period starting on the day after the  
14 consultation notice is notified under the [Legislation Act](#)  
15 and ending on a stated day, being a day at least 30 days  
16 after the day it is notified (the *consultation period*); and

17 (b) include the general treatment plan and any relevant supporting  
18 information included in the application for the plan.

19 (3) A consultation notice is a notifiable instrument.

20 (4) The assessment committee must also—

21 (a) publish the consultation notice on an ACT government website;  
22 and

23 (b) give the consultation notice to the relevant entities.

24 (5) The following must not be included in the consultation notice:

25 (a) information that identifies a prescribed person or a  
26 decision-maker for a prescribed person;

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

15 **22 Public consultation submissions**

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

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

10   **23           Deciding the application—general treatment plan**

- 11           (1) After the end of the consultation period mentioned in section 21 (2),
- 12           the assessment committee must—
- 13               (a) consider any written submissions received during the
- 14               consultation period; and
- 15               (b) either—
- 16                     (i) approve the application; or
- 17                     (ii) refuse the application.

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

- 19           (2) An approval is subject to—
- 20               (a) a condition that the matters mentioned in section 16 (a) to (e) are
- 21               satisfied before the restricted medical treatment is undertaken on
- 22               a prescribed person; and
- 23               (b) any other condition the assessment committee considers
- 24               appropriate.

- 1 (3) The assessment committee must give a copy of its decision under  
2 subsection (1) and the reasons for it to—
- 3 (a) the applicant; and  
4 (b) each relevant entity.
- 5 (4) An approval under this section—  
6 (a) is a notifiable instrument; and  
7 (b) expires 5 years after the day it commences.
- 8 *Note* An approval may be extended under s 25 (2) (a).
- 9 (5) In this section:  
10 *relevant entities*—see section 21 (6).

11 **Division 3.4** **General treatment plans—other**  
12 **matters**

13 **24** **Review of approved general treatment plan**

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

1 (4) If the assessment committee revokes the approval of a treatment plan,  
2 the committee must state the day, not less than 6 months after the day  
3 the decision is made, that the revocation takes effect.

4 (5) A revocation under subsection (2) is a notifiable instrument.

5 **25 Expiry of approved general treatment plan**

6 (1) At least 6 months before the approval of a general treatment plan  
7 expires (the *expiring treatment plan*), the president must—

8 (a) take reasonable steps to tell the person who applied for the  
9 approval, in writing, that—

10 (i) the approval will expire on the stated expiry date; and

11 (ii) the person may apply under section 11 for a subsequent  
12 approval of the treatment plan; and

13 (b) give notice on an ACT government website that the approval  
14 will expire on the stated expiry date.

15 (2) If an application made under section 11 in relation to a general  
16 treatment plan (a *new treatment plan*) substantially corresponds to  
17 the expiring treatment plan before the plan expires—

18 (a) the expiring treatment plan is extended until the application for  
19 approval of the new treatment plan is finally decided; and

20 (b) the president must give written notice on an ACT government  
21 website that the expiring treatment plan has been extended under  
22 paragraph (a).

23 (3) A notice under subsection (2) (b) is a notifiable instrument.

- 1 (4) In this section:  
2 *finally decided*—an application is *finally decided* if—  
3 (a) the application is approved; or  
4 (b) if the application is approved subject to a condition or is  
5 refused—  
6 (i) no application for review has been made under section 41;  
7 or  
8 (ii) if an application for review has been made under  
9 section 41—the review has been finalised.

10 **Division 3.5** **Assessment of individual treatment**  
11 **plans**

12 **26** **Deciding the application—individual treatment plan**

- 13 (1) The assessment committee for an application for an individual  
14 treatment plan must—  
15 (a) approve the application; or  
16 (b) refuse the application.  
17 *Note* An application must be decided in accordance with s 13 and s 16.  
18 (2) An approval may be given subject to conditions.  
19 (3) The assessment committee must give a copy of its decision under  
20 subsection (1) and the reasons for it to—  
21 (a) the applicant; and  
22 (b) if the applicant is not the decision-maker for the prescribed  
23 person—each decision-maker; and  
24 (c) the public advocate.

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



1 **Part 4** **Offences**

2 **27** **Offence—undertaking restricted medical treatment**  
3 **without approval**

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

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

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

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

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

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

- 1 **28 Offence—arrange or authorise unapproved restricted**  
2 **medical treatment**
- 3 (1) A person commits an offence if—
- 4 (a) the person—
- 5 (i) takes a prescribed person outside the ACT for the purpose  
6 of having restricted medical treatment undertaken on the  
7 prescribed person; or
- 8 (ii) otherwise arranges for restricted medical treatment to be  
9 undertaken on the prescribed person; and
- 10 (b) the person knows that if the restricted medical treatment were  
11 undertaken on the prescribed person in the ACT it would be an  
12 offence against section 27.
- 13 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
14 both.
- 15 (2) A decision-maker for a prescribed person commits an offence if the  
16 person—
- 17 (a) consents to restricted medical treatment being undertaken on the  
18 prescribed person; and
- 19 (b) knows that if the restricted medical treatment were undertaken  
20 on the prescribed person in the ACT it would be an offence  
21 against section 27.
- 22 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
23 both.
- 24 (3) For subsection (1), it does not matter if—
- 25 (a) a decision-maker for the prescribed person consents to the  
26 restricted medical treatment; or

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

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

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

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

10 (b) was undertaken in the ACT or elsewhere.

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

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

1 **Part 5** **Restricted Medical Treatment**  
2 **Assessment Board**

3 **29** **Establishment of Restricted Medical Treatment**  
4 **Assessment Board**

5 The Restricted Medical Treatment Assessment Board is established.

6 **30** **Functions of assessment board**

7 The functions of the assessment board are—

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

15 **31** **Membership of assessment board**

16 (1) The Minister must appoint to the assessment board—

- 17 (a) a president; and  
18 (b) at least 2 members for each of the following categories:  
19 (i) human rights;  
20 (ii) medicine;  
21 (iii) ethics;  
22 (iv) variation in sex characteristics;  
23 (v) provision of psychosocial support.

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

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

19 **32 Ending appointments**

20 The Minister may end a member’s appointment—

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

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

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

6 **33 Arrangements for staff and facilities**

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

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

12 **34 Consultants for assessment committees**

13 (1) The president may engage consultants to assist an assessment  
14 committee in the exercise of the its functions.

15 (2) Consultants are to be engaged on terms decided by the president.

16 (3) However, this section does not give the president a power to enter  
17 into a contract of employment.

1 **Part 6** **Notification and review of**  
2 **decisions**

3 **35** **Definitions—pt 6**

4 In this part:

5 *interested party*—see section 36.

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

8 (a) to refuse to consider an application further under section 19 (2);  
9 or

10 (b) for an application in relation to a general treatment plan—

11 (i) to refuse the application under section 23 (1) (b) (ii); or

12 (ii) to impose a condition on an approval under  
13 section 23 (2) (b); or

14 (c) for an application in relation to an individual treatment plan—

15 (i) to refuse the application under section 26 (1) (b); or

16 (ii) to impose a condition on an approval under section 26 (2);  
17 or

18 (d) to revoke a general treatment plan under section 24 (2).

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

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

1   **36**           **Internal review notices**

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

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

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

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

13   **37**           **Application for internal review**

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



1   **38           Appointment of internal review committee**

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

14   **39           Decision of internal review committee**

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

1     **40           Reviewable decision notices**

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

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

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

10    **41           Application for ACAT review**

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

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

15    **42           Review by ACAT**

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

18           (a) confirm the decision; or

19           (b) remit the matter to the internal review committee for  
20           reconsideration in accordance with any direction or  
21           recommendation of the ACAT.

1 **Part 7** **Miscellaneous**

2 **43 Reporting treatment in relation to sex characteristics**

3 (1) Within 3 months after starting reportable treatment in relation to a  
4 prescribed person, the doctor who was responsible for the treatment  
5 must—

6 (a) tell the president, in writing, that the treatment has been  
7 undertaken; and

8 (b) provide the following information:

9 (i) if the treatment was undertaken under a treatment plan—  
10 details of the plan;

11 (ii) the prescribed person's age;

12 (iii) the prescribed person's variation in sex characteristics;

13 (iv) anything else prescribed by regulation.

14 (2) In this section:

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

17 *reportable treatment* means—

18 (a) restricted medical treatment under a treatment plan; and

19 (b) urgent restricted medical treatment; and

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

5 **Example—par (c)**

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

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

14 **44 Assessment board annual report**

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

- 1 (e) for each reportable treatment—
- 2 (i) the prescribed person’s age; and
- 3 (ii) the prescribed person’s variation in sex characteristics; and
- 4 (f) anything else prescribed by regulation.
- 5 (2) The report must not include information that—
- 6 (a) identifies a prescribed person or a decision-maker for the
- 7 prescribed person; or
- 8 (b) would allow a prescribed person’s identity, or the identity of a
- 9 decision-maker for the prescribed person, to be worked out.
- 10 (3) The report must comply with any requirements prescribed by
- 11 regulation.
- 12 (4) The report must—
- 13 (a) be given to the Minister not later than 3 months after the end of
- 14 the financial year; and
- 15 (b) be published on an ACT government website as soon as
- 16 practicable after being given to the Minister.

17 **45 Restricted medical treatment records**

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

- 1 (3) In this section:
- 2 *health record*—see the *Health Records (Privacy and Access)*  
3 *Act 1997*, dictionary.
- 4 *relevant record*—
- 5 (a) means a health record; and
- 6 (b) includes—
- 7 (i) an approval for a treatment plan; and
- 8 (ii) an application for an internal review under section 37 and  
9 the internally reviewable decision; and
- 10 (iii) an application for a review by the ACAT under section 41  
11 and the decision under section 42; and
- 12 (iv) a report under section 43.

13 **46 Regulation-making power**

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

1 **47 Review of Act**

2 (1) The Minister must, as soon as practicable after the end of this Act's  
3 2nd year of operation—

4 (a) review the operation and effectiveness of the Act; and

5 (b) present a report of the review to the Legislative Assembly.

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

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

1 **Part 8 Consequential amendment**

2 **48 Guardianship and Management of Property Act 1991**  
3 **Section 70 (1), new note**

4 *insert*

5 *Note* If a prescribed medical procedure is restricted medical treatment under  
6 the *Variation in Sex Characteristics (Restricted Medical Treatment)*  
7 *Act 2023*, the procedure may only be undertaken in accordance with a  
8 treatment plan approved under that Act (see that Act, s 10 and s 27).



# 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).

- 1            **guardianship order** means an ACAT order under the *Guardianship*  
2            *and Management of Property Act 1991*, section 7 (2).
- 3            **individual treatment plan**—see section 11 (1) (b).
- 4            **interested party**, for part 6 (Notification and review of decisions)—  
5            see section 36.
- 6            **internally reviewable decision**, for part 6 (Notification and review of  
7            decisions)—see section 35.
- 8            **internal review committee**—see section 38(1).
- 9            **internal review notice**, for part 6 (Notification and review of  
10            decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*,  
11            section 67B (1).
- 12           **prescribed person**, in relation to restricted medical treatment—see  
13           section 9.
- 14           **president** means the person appointed as president of the assessment  
15           board under section 31 (1) (a).
- 16           **restricted medical treatment**, in relation to a person who has a  
17           variation in sex characteristics—see section 8.
- 18           **reviewable decision**, for part 6 (Notification and review of  
19           decisions)—see section 35.
- 20           **treatment plan** means a general treatment plan or an individual  
21           treatment plan.
- 22           **urgent restricted medical treatment** means restricted medical  
23           treatment required to be undertaken urgently to—
- 24           (a) save a prescribed person’s life; or
- 25           (b) prevent serious damage to the person’s health; or
- 26           (c) prevent the person from suffering or continuing to suffer  
27           significant pain.
- 28           **variation in sex characteristics**—see section 7 (1).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 22 March 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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