

Variation in Sex Characteristics (Restricted Medical Treatment) Assessment Board Appointment 2023 (No 13)

Disallowable instrument DI 2023–330

made under the

Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023, Section 31 (Membership of assessment board).

EXPLANATORY STATEMENT

This instrument is one of 13 which make the inaugural appointments to the Restricted Medical Treatment Assessment Board (the board) under the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023*. Under section 31 of the Act, the Minister may make appointments to the statutory body. This appointment is for Megan Mitchell as the president of the board. Megan Mitchell is not an ACT public servant. The Standing Committee on Health and Community Wellbeing was consulted on this appointment.

The Act creates five categories of membership for the board, as well as an additional president (section 31(1)). The five categories are as follows:

- (i) human rights;
- (ii) medicine;
- (iii) ethics;
- (iv) variation in sex characteristics;
- (v) provision of psychosocial support.

It is for the Minister to be satisfied that each person appointed has qualifications or experience in the category for which they are appointed, and regulation may add additional prescriptions. The president must be eligible within the human rights category and must additionally have the qualities and experience necessary to exercise their functions as president under the Act. The Act requires that at least two individual people are appointed to the board in each category, separate to the president. This necessitates a board of at least 11 individuals (section 31).

The Minister is not prevented from appointing in excess of this number or from appointing members to more than one category. The Minister has appointed 13 individuals, each leaders in their respective fields, to the board and has appointed some of these to more than one category. Megan Mitchell is being appointed to the ethics and human rights categories.

Assessment committees formed by the president exercise the decision-making power under the Act to approve, conditionally or unconditionally, medical treatment that the Act otherwise prohibits (section 13). Internal review committees are formed by the president to internally review internally reviewable assessment committee decisions. Each assessment committee and internal review committee formed by the president from the members of the board must consist of one member within each category, and no member of the internal review committee may have sat on the assessment committee (section 12 and 38). By having a larger number than the minimum of 11 board members, the president has added flexibility in forming committees. In addition, the larger pool of relevant expertise will support the board in exercising its advisory function under section 30 of the Act.

The 13 appointments are for a mixture of three- and five-year terms. Megan Mitchell is being appointed for five years. Five years is the maximum period allowed for appointments under the Act (section 31). A nearly equal number of appointments of three years have been made to ensure that the board is periodically refreshed in line with best practice governance principles for statutory bodies.