

Australian Capital Territory

Variation in Sex Characteristics (Restricted Medical Treatment) Declared Person Declaration 2023 (No 1)

Disallowable instrument DI2023–332

made under the

Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023, Section 11 - Application for approval of treatment plan

EXPLANATORY STATEMENT

INTRODUCTION

This declaration is made under Section 11 of the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023* (the Act).

Section 11(2)(a) of the Act provides that only a person declared by the Minister, by way of a disallowable instrument, may make an application for a general treatment plan. This declaration lists the types of persons who may make such an application.

BACKGROUND

Under the Act, except in urgent cases, restricted medical treatments can only be performed on a prescribed person with a variation in sex characteristics if there is either an individual treatment plan or a general treatment plan in place.

General treatment plans are plans approved by a committee of the Restricted Medical Treatment Assessment Board for a restricted medical treatment to be undertaken on a class of prescribed people (section 11(1)(a)). These could be, for example, all prescribed people with a particular variation in sex characteristics, or all prescribed people who have a variation in sex characteristics and are proposed to receive a particular type of restricted medical treatment. It is expected that these applications will usually occur for the more common variations in sex characteristics, and where there is a strong evidence base for treatment that should commence during childhood. It is expected that in most cases, general treatment plan applications will come from groups of health professionals or specialist associations, or from an association of people with variations in sex characteristics.

The reviewing and approving of general treatment plans (unlike individual treatment plans) requires a process of community consultation to be undertaken by the assessment committee (Division 3.3).

This instrument sets out the range of people who can apply for general treatment plans.

The instrument provides that the following people may apply for a general treatment plan:

1. anyone representing a specialist medical college, including a person representing a committee or subcommittee of a specialist medical college.
2. A health practitioner with qualifications in, or person representing an entity comprising scientists or health practitioners with qualifications in:
 - a. adolescent and young adult medicine;
 - b. clinical genetics;
 - c. general paediatrics;
 - d. neonatology;
 - e. paediatric endocrinology;
 - f. paediatric or adolescent gynaecology; or
 - g. paediatric urology.
3. A person providing psychological support, social work services, counselling, genetic counselling or support for psychosocial needs to people with a variation in their sex characteristics may also apply for a general treatment plan under section 11 (2)(a).
4. A person representing an entity undertaking advocacy for people with variations in sex characteristics or a statutory office holder with responsibilities related to children's rights and healthcare may also apply under this declaration.

In providing the above people the right to apply for a general treatment plan, this instrument ensures that people with relevant expertise in caring for people with a variation in sex characteristics can be engaged in a dialogue with the Restricted Medical Treatment Assessment Board through the application process with the aim to improve care for those with more relatively common variations in sex characteristics. It is intended that this dialogue will broaden understanding between the Assessment Board and those who care/advocate for people with a variation in sex characteristics.

CONSISTENCY WITH HUMAN RIGHTS

The Variation in Sex Characteristics Act engages the right to equality and non-discrimination, right to life, protection from torture and cruel, inhuman or degrading treatment, right to protection of the family and child, right to privacy, rights to fair trial and fair hearing, and rights in criminal proceedings. A detailed human rights assessment is included in the Explanatory Statement for the Variation in Sex Characteristics Bill.

This instrument prescribes the people who may apply for a general treatment plan. It does not affect the rights of people involved in the public consultation process for general treatment plans in division 3.3 of the Act.