

# CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

## Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2022

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# CONSULTATION DRAFT

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## **Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2022**

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### **A Bill for**

An Act about restricting certain medical treatment for people with a variation in sex characteristics, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2022*.

### 2 Commencement

This Act commences 12 months after its notification day.

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

### 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                      Objects and important concepts

### Division 2.1              Objects

#### 6                      Objects of Act

The objects of this Act are to—

- (a) protect the human rights of people with variations in sex characteristics; and
- (b) ensure that, whenever possible, a person with a variation in sex characteristics makes decisions about, and gives informed consent to, any restricted medical treatment; and
- (c) ensure that decisions made about restricted medical treatment being undertaken on a protected person are consistent with the principles mentioned in section 10; and
- (d) improve the public's understanding about variations in sex characteristics and the rights of people with a variation in sex characteristics.

### Division 2.2              Important concepts

#### 7                      Meaning of *restricted medical treatment*

For this Act, *restricted medical treatment*, in relation to a person with a variation in sex characteristics—

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



- (ii) a prescribed surgical or medical procedure or treatment (including the prescription or administration of a drug) that temporarily changes the sex characteristics of the person, or which makes changes to the person's sex characteristics; but
- (b) does not include—
  - (i) an urgent surgical or medical procedure or treatment undertaken on reasonable grounds to—
    - (A) save a 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 or distress; or
  - (ii) circumcision of the penis.

## **8 Who is a *protected person*?**

For this Act, a person is a *protected person* if the person—

- (a) has a variation in sex characteristics; and
- (b) does not have decision-making capacity.

## **9 When does a person have decision-making capacity?**

- (1) For this Act, a person has capacity to make a decision in relation to restricted medical treatment (*decision-making capacity*) if the person can, with assistance if needed—
  - (a) understand when a decision about restricted medical treatment for the person needs to be made; and
  - (b) understand the facts that relate to the decision; and
  - (c) understand the main choices available to the person in relation to the decision; and

- (d) weigh up the consequences of the main choices; and
  - (e) understand how the consequences affect the person; and
  - (f) on the basis of paragraphs (a) to (e), make the decision; and
  - (g) communicate the decision in whatever way the person can.
- (2) In considering a person's decision-making capacity under this Act, the following principles must be taken into account:
- (a) a person's decision-making capacity is particular to the decision that the person is to make;
  - (b) a person must be assumed to have decision-making capacity, unless it is established that the person does not have decision-making capacity;
  - (c) a person who does not have decision-making capacity must always be supported to make decisions about the person's treatment, care or support to the best of the person's ability;
  - (d) a person must not be treated as not having decision-making capacity unless all practicable steps to assist the person to make decisions have been taken;
  - (e) a person must not be treated as not having decision-making capacity only because—
    - (i) the person makes an unwise decision; or
    - (ii) subject to subsection (3), the person has impaired decision-making capacity under another territory law, or in relation to another decision;
  - (f) a person must not be treated as having decision-making capacity to consent to the provision of treatment only because the person complies with the provision of the treatment, care or support;

- (g) a person who moves between having and not having decision-making capacity must, if reasonably practicable, be given the opportunity to consider matters requiring a decision at a time when the person has decision-making capacity.

**Example—par (a)**

A child may have decision-making capacity about a particular proposed restricted medical treatment but may not understand the nature of other proposed treatment. The child will only have decision-making capacity for the particular treatment.

- (3) A person is taken to not have decision-making capacity in relation to restricted medical treatment if, under the *Guardianship and Management of Property Act 1991*—
  - (a) the ACAT has made an order under section 7 (2) that a guardian be appointed for the person, to give for the person, the consent required for the treatment; or
  - (b) a declaration under section 69 (2) is in force stating that the person is not competent to give the consent required for the treatment.

## **Part 3**                      **Restricted medical treatment**

### **Division 3.1**              **General principles applying to restricted medical treatment**

#### **10**                      **General principles for restricted medical treatment**

In making a medical treatment plan or undertaking restricted medical treatment in relation to a person, the following principles apply:

- (a) a person has a right to bodily and mental integrity, autonomy and self-determination irrespective of their sex characteristics;
  - (b) a variation in a person's sex characteristics must not be assumed to cause harm to the person;
  - (c) decisions about undertaking restricted medical treatment on a protected person should not be influenced by any of the following considerations:
    - (i) conforming with perceived norms of appearance or function;
    - (ii) reducing the risk of discrimination or stigmatisation;
    - (iii) financial considerations;
- Note*      Sex characteristics are a protected attribute under the *Discrimination Act 1991*.
- (d) to the greatest extent possible, a person with a variation in sex characteristics should make decisions about any restricted medical treatment;
  - (e) any view or wish expressed by a protected person in relation to their sex characteristics or proposed restricted medical treatment is the most important consideration;

- (f) whenever possible, decisions about undertaking restricted medical treatment on a child with a variation in sex characteristics should be deferred to allow the child to make decisions when they have decision-making capacity;
- (g) when deciding the most appropriate restricted medical treatment for a protected person, priority should be given to a treatment that leaves as many decisions about their sex characteristics as possible for the person to make if and when they have decision-making capacity;
- (h) a protected person should be assisted, as far as practicable, to take part in the decision-making about any restricted medical treatment.

## **Division 3.2                      General obligations in relation to restricted medical treatment**

### **11                      General obligations for restricted medical treatment**

- (1) A person undertaking restricted medical treatment on a person with a variation of sex characteristics—
  - (a) must ensure that all reasonable steps are taken to decide if the person is a protected person; and
  - (b) if the person is a protected person—may only do so in accordance with a medical treatment plan applying to the person; and
  - (c) if the person is not a protected person—must ensure the person has given informed consent to the treatment.

- (2) If restricted medical treatment is undertaken on a protected person in accordance with a general medical treatment plan, the person responsible for undertaking the treatment must—
- (a) tell the president of the expert panel that the treatment has been undertaken; and
  - (b) provide any information prescribed by regulation.

## **12 Requirements for informed consent**

- (1) For section 11 (1) (c), a person gives *informed consent* to restricted medical treatment if the person—
- (a) has been given sufficient information, including the required information, to make a decision about the treatment; and
  - (b) has been given reasonable assistance to understand the information about the treatment; and
  - (c) has been given a reasonable opportunity, including reasonable time, to make the decision; and
  - (d) has made the decision freely without undue pressure or coercion by another person; and
  - (e) has not withdrawn consent or otherwise indicated an intention to withdraw consent.
- (2) In this section:
- required information*** means—
- (a) accurate and objective information that the person can understand about—
    - (i) the nature of the person’s variation of sex characteristics including about how the person’s variation of sex characteristics is likely to affect the person; and

- (ii) the proposed restricted medical treatment including—
  - (A) the purpose of the treatment; and
  - (B) the method and likely duration of the treatment; and
  - (C) the common or likely risks, side effects or discomfort associated with the treatment; and
  - (D) the common or likely long term implications of the treatment for the person (for example, the likelihood future treatment will be required or that other future treatment options will be excluded because of the restricted medical treatment); and
- (iii) the likely advantages and disadvantages of deferring or not undertaking restricted medical treatment, including, if appropriate, information about other kinds of treatment (for example, psychosocial care); and
- (b) contact information for organisations that do one or both of the following:
  - (i) facilitate the sharing of knowledge and experience between people with variations in sex characteristics, and their families;
  - (ii) assist people with variations in sex characteristics to understand or meet their emotional or physical needs in relation to their variation in sex characteristics; and
- (c) anything else prescribed by regulation.

**13            Offence—restricted medical treatment of protected person not approved by medical treatment plan**

- (1) A person commits an offence if—
- (a) the person undertakes a restricted medical treatment on a protected person; and
  - (b) the restricted medical treatment is not approved by a medical treatment plan applying to the protected person.

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

- (2) For subsection (1), it does not matter if a person with power to give consent on behalf of the protected person consents to the restricted medical treatment.

**14            Offence—taking protected person from ACT for restricted medical treatment not approved by medical treatment plan**

- (1) A person commits an offence if—
- (a) the person takes a protected person outside of the ACT; and
  - (b) the protected person is taken for the purpose of restricted medical treatment being undertaken on the person; and
  - (c) the restricted medical treatment is not approved by a medical treatment plan applying to the protected person.

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

- (2) For subsection (1), it does not matter if a person with power to give consent on behalf of the protected person consents to the restricted medical treatment.



## **Part 4                      Medical treatment plans**

### **Division 4.1              General medical treatment plans**

#### **15              Draft general medical treatment plans**

- (1) The Minister may ask the president of the expert panel to appoint a committee to prepare a plan (a ***draft general medical treatment plan***) that provides for circumstances when restricted medical treatment may be undertaken on protected people.
- (2) The president of the expert panel must, if requested by the Minister, appoint a committee to prepare the draft general medical treatment plan.
- (3) The president of the expert panel may also, on the president's own initiative, appoint a committee to prepare a draft general medical treatment plan.

#### **16              Content of draft general medical treatment plan**

- (1) A draft general medical treatment plan may approve restricted medical treatment stated in the plan to be undertaken on a protected person if conditions stated in the plan are met.
- (2) A draft general medical treatment plan must—
  - (a) be consistent with the principles set out in section 10; and
  - (b) include any matter prescribed by regulation.

## **17 Preparation of draft general medical treatment plan**

- (1) In preparing a draft general medical treatment plan, the committee appointed under section 15 must consult each of the following in relation to the proposed draft plan:
  - (a) the Minister responsible for each of the following:
    - (i) this Act;
    - (ii) the *Health Act 1993*;
    - (iii) the *Human Rights Act 2004*;
  - (b) the children and young people commissioner;
  - (c) the health services commissioner;
  - (d) the public advocate;
  - (e) any other entity prescribed by regulation.
- (2) The committee may also consult any other entity with expertise relevant to the draft general medical treatment plan.

## **18 Public consultation**

- (1) If a committee prepares a draft general medical treatment plan, the committee must also prepare a notice about the draft plan (a ***consultation notice***).
- (2) A consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the committee about the draft general medical treatment plan; and

- (ii) submissions may be given to the committee only during the period starting on the day after the consultation notice is notified under the Legislation Act and ending 60 days later or on any later day stated in the notice (the ***consultation period***); and
- (b) include the draft plan.
- (3) A consultation notice is a notifiable instrument.
- (4) The committee must also give public notice of the consultation notice.
- (5) If the committee notifies a consultation notice for a draft general medical treatment plan—
  - (a) anyone may give a written submission to the committee about the draft plan; and
  - (b) the submission may be given to the committee only during the consultation period for the draft plan.
- (6) If the consultation period for a draft general medical treatment plan has ended, the committee must—
  - (a) consider any written submissions received during the consultation period; and
  - (b) decide to—
    - (i) make any revisions to the draft plan that the committee considers appropriate and prepare a final version of the plan; or
    - (ii) not prepare a final version of the plan.

**19 Final general medical treatment plan**

- (1) If a committee prepares a final version of a general medical treatment plan, the committee must give a notice, including the final version of the plan, to—
  - (a) the people mentioned in section 17 (1); and
  - (b) any person who made a written submission under section 18.
- (2) A notice is a notifiable instrument.

**Division 4.2 Individual medical treatment plans**

**20 Application for individual medical treatment plan**

- (1) The following people may apply to the president of the expert panel for a plan (an *individual medical treatment plan*) approving restricted medical treatment to be undertaken on a protected person:
  - (a) for a protected person who is a child—a person with parental responsibility for the child;
  - (b) for a protected person who is an adult with a guardian—the guardian;
  - (c) the ACAT.
- (2) The application must be in writing and include—
  - (a) for a protected person who is a child—the name and contact details (if known) for each person with parental responsibility for the protected person; and
  - (b) information about the protected person's variation in sex characteristics; and
  - (c) evidence showing the person does not have decision-making capacity; and

- (d) evidence showing that the plan to which the application relates is consistent with the principles set out in section 10; and
  - (e) anything else prescribed by regulation.
- (3) The president must give a copy of the application to the public advocate.

## **21 Committee to consider individual medical treatment plan**

- (1) As soon as practicable after receiving an application under section 20, the president of the expert panel must appoint a committee to consider the application.
- (2) The committee may ask the applicant for further stated information or documents in relation to the application.
- (3) The committee need not consider the application further until the required information or documents are provided.

## **22 Individual medical treatment plans**

- (1) After considering an application under section 20 in relation to a protected person, the committee must—
  - (a) make an individual medical treatment plan approving restricted medical treatment stated in the plan to be undertaken on the protected person; or
  - (b) refuse the application.
- (2) When making the individual medical treatment plan, the committee—
  - (a) must consult—
    - (i) the applicant; and
    - (ii) for a protected person who is a child—if it is practicable and reasonable to do so, any other person with parental responsibility for the protected person; and

- (iii) the protected person's medical treatment team; and
  - (iv) the public advocate; and
- (b) may consult any other entity with relevant expertise or knowledge of the protected person to assist in preparing the individual medical treatment plan.
- (3) In consulting an entity under subsection (2) (b), the committee must not, without the written consent of the applicant—
  - (a) identify the protected person; or
  - (b) disclose information that would allow the protected person's identity to be worked out.
- (4) The committee may only make an individual medical treatment plan in relation to a protected person if satisfied on reasonable grounds—
  - (a) making the individual medical treatment plan is consistent with the principles set out in section 10; and
  - (b) the protected person will receive adequate care and treatment under the individual medical treatment plan; and
  - (c) the protected person and their family is receiving, and has access to, necessary support for their emotional or physical needs.
- (5) The president must give a copy of the individual medical treatment plan to the applicant and the public advocate.

## **23 Content of individual medical treatment plan**

- (1) An individual medical treatment plan must state the following:
  - (a) the protected person's name and age;
  - (b) the names and contact details of people with power to give consent for the protected person;
  - (c) the particulars of the variation in the person's sex characteristics;

- (d) the particulars of the restricted medical treatment approved under the plan, including any requirements in relation to—
    - (i) the timing of the treatment; and
    - (ii) if more than 1 restricted medical treatment is approved—the order of the restricted medical treatments;
  - (e) a summary of any previous medical treatment the person has received in relation to the variation in the person's sex characteristics;
  - (f) the reasons why the restricted medical treatment is approved;
  - (g) a statement setting out why the committee considers the plan to be consistent with the principles set out in section 10, including the following:
    - (i) why the committee considers the person does not have decision-making capacity in relation to the restricted medical treatment;
    - (ii) why the restricted medical treatment cannot be deferred until the person has decision-making capacity;
    - (iii) whether the person expressed any view or wish in relation to their sex characteristics or the restricted medical treatment;
    - (iv) how the person was assisted to take part in the decision-making about the restricted medical treatment.
- (2) An individual medical treatment plan must include any matter prescribed by regulation.

## **Part 5                      Expert panel**

### **24                      Establishment of expert panel**

The Expert Panel is established.

### **25                      Function of expert panel**

- (1) The function of the expert panel is to promote the objects of this Act and give effect to the principles mentioned in section 10 by—
  - (a) making medical treatment plans consistent with the objects and principles; and
  - (b) encouraging the cooperation between health service providers and relevant people when considering treatment options for people with variation in sex characteristics; and
  - (c) advising the Minister about restricted medical treatments.
- (2) The expert panel's functions include anything else given to it under a territory law.

### **26                      Membership of expert panel**

- (1) The Minister must appoint the following members to the expert panel:
  - (a) a president;
  - (b) at least 1 person with expertise in each of the following categories:
    - (i) medicine;
    - (ii) ethics;
    - (iii) human rights;



- (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 a member of the expert panel, 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 experience or expertise necessary to exercise their functions under this Act; and
  - (b) for a member of the expert panel— the person has qualifications or experience in at least 1 of the categories mentioned in subsection (1) (b).
- (4) The Minister must ensure that at least 1 person appointed to the expert panel is a person with a variation in sex characteristics.
- (5) A regulation may prescribe other criteria for the appointment of a person as a member.
- (6) A member's conditions of appointment are the conditions stated in the instrument of appointment.

## **27 Ending appointments**

The Minister may end a member's appointment—

- (a) for misconduct; or
- (b) if the member is convicted, or found guilty, in Australia of an indictable offence; or

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

*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)).

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

## **28 Appointment of committee**

- (1) In appointing a committee for section 15 or section 21, the president of the expert panel must—
  - (a) appoint only 1 expert panel member from each category mentioned in section 26 (1) (b); and
  - (b) appoint any other person, or comply with any other requirement, prescribed by regulation; and
  - (c) comply with any guideline made under subsection (2).
- (2) The Minister may make guidelines about—
  - (a) deciding which panel members are appointed to a committee; and
  - (b) any other matter related to the exercise of the president's function under subsection (1).
- (3) A guideline is a notifiable instrument.

## **29 Operation of committee**

- (1) A matter to be decided by a committee about a medical treatment plan must—
  - (a) be considered by all committee members; and
  - (b) be supported by a majority of committee members.

- (2) The Minister may determine other requirements for how a committee—
  - (a) prepares and consults on a draft general medical treatment plan; and
  - (b) makes a general medical treatment plan; and
  - (c) makes an individual medical treatment plan; and
  - (d) exercises any other function under this Act.
- (3) A determination is a notifiable instrument.

### **30 Conduct of committee meetings**

- (1) A committee may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A committee must keep minutes of its meetings.

### **31 Expert panel annual report**

- (1) The expert panel must, for each financial year, prepare a report about the panel's operation during the year including—
  - (a) the number of applications made for individual medical treatment plans and the decisions made for the applications; and
  - (b) the number of individual medical treatment plans made in the year and each protected person's age, variation of sex characteristics and the date the plans started; and
  - (c) the number of general medical treatment plans made in the year and—
    - (i) whether the plan was made after a request from the Minister or on the president's own initiative; and
    - (ii) for a notice given under section 11 (2)—the protected person's age and variation of sex characteristics.

- (d) anything else prescribed by regulation.
- (2) The report must not include information that—
  - (a) identifies a protected person; or
  - (b) would allow a protected person's identity to be worked out.
- (3) The report must comply with any requirements prescribed by regulation for this section.
- (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.

### **32 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).

### **33 Restricted medical treatment records**

- (1) This section applies to a health record or territory record created in relation to restricted medical treatment being undertaken on a protected person.
- (2) Despite anything to the contrary in the *Health Records (Privacy and Access) Act 1997* or the *Territory Records Act 2002*, the record in relation to the protected person must be kept until the later of—
  - (a) the person's 45th birthday; or
  - (b) 20 years after the day the record is made.

(3) In this section:

***health record***—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

***territory record***, in relation to a protected person, means—

- (a) for a general medical treatment plan applying to the person—
  - (i) a notice given under section 11 (2); and
  - (ii) the plan; or
- (b) for an individual medical treatment plan applying to the person—
  - (i) the application under section 20 for the plan; and
  - (ii) the plan.

## Part 6 Notification and review of decisions

### 34 Definitions—pt 6

In this part:

*interested party*—see section 35.

*internally reviewable decision* means a decision—

- (a) to refuse an application to make an individual medical treatment plan approving restricted medical treatment under section 22 (1) (b); or
- (b) if an individual medical treatment plan is made—about any matter included or not included in the plan.

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

*reviewable decision* means a decision by the president under section 37 (1).

### 35 Internal review notices

If a committee of the expert panel makes an internally reviewable decision, the committee must give an internal review notice to the following (an *interested party*):

- (a) the person who applied for the individual medical treatment plan;
- (b) 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*.

**36 Applications for internal review**

- (1) An interested party may apply to the president for review of an internally reviewable decision.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the interested party's name and address; and
  - (c) set out the interested party's reasons for making the application.
- (3) The application 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.

**37 Review by president**

- (1) Within 28 days after the day the president receives the application to review the internally reviewable decision, the president must consider the application and—
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) revoke the decision and make a new decision.
- (2) If the decision is not varied or revoked within the 28-day period, the decision is taken to have been confirmed by the president.

**38 Reviewable decision notices**

If the president makes a reviewable decision, the president must give a reviewable decision notice to each interested party.

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

**39 Application for ACAT review**

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

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

**40 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 president for reconsideration in accordance with any direction or recommendation of the ACAT.



## **Part 7**                      **Miscellaneous**

### **41**              **Regulation-making power**

The Executive may make regulations for this Act.

## Dictionary

(see s 3)

*Note* The Legislation Act contains definitions relevant to this Act. For example:

- ACAT
- child
- children and young people commissioner
- health services commissioner
- may (see s 146)
- Minister (see s 162)
- must (see s 114)
- public advocate
- public notice.

***committee*** means a committee appointed under section 15 or section 20.

***decision-making capacity***—see section 9 (1).

***draft general medical treatment plan***—see section 15 (1).

***expert panel*** means the expert panel established under section 24.

***general medical treatment plan*** means a plan mentioned in section 19.

***individual medical treatment plan***—see section 20 (1).

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

***internally reviewable decision***, for part 6 (Notification and review of decisions)—see section 34.

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

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

***person with parental responsibility***, for a child, means a person who has parental responsibility for a child under the *Children and Young People Act 2008*, division 1.3.2.

***person with power to give consent***, on behalf of a protected person, means—

- (a) if the protected person is a child—a person with parental responsibility for the child; and
- (b) if the protected person has a guardian with the power to give consent to the restricted medical treatment under an ACAT order made under the *Guardianship and Management of Property Act 1991*, section 7 (2)—the guardian; and
- (c) if an ACAT declaration is in force under the *Guardianship and Management of Property Act 1991*, section 69 (2) that states that the protected person is not competent to give the consent to the restricted medical treatment—the ACAT.

***protected person***—see section 8.

***restricted medical treatment***, in relation to a person with a variation in sex characteristics—see section 7.

***reviewable decision***, for part 6 (Notification and review of decisions)—see section 34.

***sex characteristics***—

- (a) means a person’s physical features relating to sex; and
- (b) includes—
  - (i) genitalia and other sexual and reproductive parts of the person’s anatomy; and
  - (ii) the person’s chromosomes or hormones that are related to sex; and
  - (iii) secondary physical features emerging as a result of puberty.

*variation in sex characteristics* means a variation in sex characteristics (whether diagnosed or not) prescribed by regulation.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2022.

**2 Notification**

Notified under the Legislation Act on 2022.

**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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