

**2023**

**Legislative Assembly for the  
Australian Capital Territory**

**Amendments to the  
Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023**

**Supplementary Explanatory Statement**

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## **AMENDMENTS TO THE VARIATION IN SEX CHARACTERISTICS (RESTRICTED MEDICAL TREATMENT) BILL 2023**

This explanatory statement relates to the *Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### **Purpose**

The proposed amendments to the bill would be to better allow for the wishes of the parents (or a decision-maker as defined in the Bill), if the parents are not the applicant, to be appropriately considered in the assessment process for a treatment plan, alter the make up of the Restricted Medical Treatment Assessment Board to allow for a balanced representation between medical and non-medical members, and ensure the wellbeing of people with a variation in sex characteristics is protected in relation to restricted medical treatment.

### **Clause Notes**

#### **Proposed amendment to clause 6**

This amendment will amend the Objects of the Act to ensure the wellbeing of a person with a variation in sex characteristics in relation to restricted medical treatment is also protected, along with their protected rights.

#### **Proposed amendment to clause 14 (a)**

The amended clause 14 (a) allows the views of the parents of the prescribed person (in this case a child), to also be considered in determining if it is reasonably likely that the child would suffer any physical or psychological harm if the proposed treatment, or an alternative treatment was not undertaken.

It does not remove the requirement that any wishes the child has communicated in relation to their variation in sex characteristics are to be considered.

#### **Proposed amendment to clause 16 (d)**

The amended clause 16 (d) ensures that a child's decision-maker has been given, or had access to, the same appropriate support as the prescribed person (in the case of a child) to assist the prescribed person in understanding the information about:

- (i) the likely implications of the proposed treatment;
- (ii) the likelihood future treatment will be required or other future treatment options will be excluded if the proposed treatment is undertaken;

- (iii) alternative medical and non-medical options including support for the prescribed person's psychosocial needs;
- (iv) the likely risks and benefits of deferring or not undertaking the proposed treatment.

#### **Proposed new clause 16 (f)**

New clause 16 (f) will allow for the views of the child's decision-maker (parent or guardian) if the decision-maker is not the applicant, to be appropriately considered by the assessment committee in the assessment of an individual treatment plan.

#### **Proposed amendment to clause 23 (2) (a)**

This is a consequential amendment which amends clause 23 to include new clause 16 (f) in the approval of a general treatment plan.

#### **Proposed amendment to clause 31 (1) (b)**

New clause 31 (1) (b) details the membership of the Restricted Medical Treatment Assessment Board to include members with specific medical specialist qualifications and ensures the Board, and assessment committees, have 50 percent of members from a medical background.

#### **Human Rights**

These amendments promote Section 11 of the Human Rights Act 2004, the protection of the family and children, by ensuring that the views and wishes of the decision-makers (parents or guardians) are considered in the decision-making process for the treatment plan for their child.

These amendments do not remove any parts of the Bill which protect and promote the rights of prescribed persons.