Health Safeguards for People Born with Variations in Sex Characteristics Bill 2025

Introduction Print

EXPLANATORY MEMORANDUM

Clause Notes

Part 1—Preliminary

Clause 1 sets out the main purposes of the Bill, being to provide support for the making of decisions about certain medical treatment for persons who have an innate variation in sex characteristics and to make consequential amendments to other Acts.

The Bill gives effect to the Government's commitment in *(i) Am Equal: Future Directions for Victoria's Intersex Community* to improve the treatment and care of people who have an innate variation in sex characteristics. The Bill provides for oversight of, and support for, decisions regarding certain medical treatment in relation to innate variations in sex characteristics, in particular for people who do not have the capacity to consent to such treatment. The Bill's purpose is to ensure that decisions about certain medical treatment are deferred until a person is able to give informed consent for themselves or, where that is not possible, are subject to rigorous, independent oversight.

Clause 2 is the commencement provision. The provisions of the Bill will come into operation on a day or days to be proclaimed, or on 1 December 2028 if not proclaimed earlier. This period of up to 3 years is required to allow—

- staged implementation of the scheme, including establishing the Panel; and

- preparation and approval of general treatment plans; and
- development of guidance materials; and
- education for health services, practitioners and affected communities.

This implementation period is intended to ensure that persons who provide restricted medical treatment or support to persons who have an innate variation in sex characteristics and the community are adequately prepared for the new scheme before the safeguards, offence and reporting provisions commence.

Clause 3 defines necessary terms for the purposes of the Bill.

Key terms include—

- ***applicable person*** which is defined to mean a person who has an innate variation in sex characteristics;
- ***applicable provider*** which is defined to mean a person or body that employs or otherwise engages a registered medical practitioner to provide restricted medical treatment, or a registered medical practitioner who provides restricted medical treatment. Applicable providers are required under clause 54 to report annually to the Panel on any restricted medical treatment they provide;
- ***approved treatment plan*** which is defined to include the 2 types of treatment plans that can be approved by the Panel, being individual treatment plans and general treatment plans. Individual or general treatment plans approved by the Panel have the effect of authorising the provision of restricted medical treatment to a protected person that would otherwise be prohibited under clause 7 of the Bill. Approved treatment plans are not required to authorise treatment for applicable persons who are not protected persons;
- ***general treatment plan*** which is defined to mean a plan for the treatment of a class of protected person using restricted medical treatment. A general treatment plan will have the effect of authorising specified restricted medical treatment for a class of protected person so that the approved treatment can proceed with no additional Panel approvals;

- ***individual treatment plan*** which is defined to mean a plan for the treatment of a protected person using restricted medical treatment. An individual treatment plan will have the effect of approving specific restricted medical treatment for a single protected person.
  The definition is broad to ensure that the term is not limited to specific conditions;

- ***innate variation in sex characteristics*** which is defined to mean a congenital condition that, irrespective of the aetiology, involves atypical sex characteristics of the person. This definition does not require that the aetiology of the atypical sex characteristic has been formally confirmed;

- ***Panel*** which is defined to mean the Restricted Medical Treatment Oversight Panel established under clause 15 of the Bill. ***Assessment committees*** are appointed from members of the Panel whenever a decision whether or not to approve a treatment plan is to be made under Part 6 of the Bill. If a decision of the assessment committee is to be internally reviewed, this is done by a newly constituted committee called an ***internal review committee*** under Part 8 of the Bill;

- ***restricted medical treatment*** which is defined as medical treatment that permanently changes an applicable person's sex characteristics or makes changes that are only reversible by further medical treatment. ***Medical treatment*** includes a surgical procedure and the prescription or administration of a drug.
  The regulations may prescribe treatment that is not to be restricted medical treatment. The definition also allows for additional treatments that change an applicable person's sex characteristics to be prescribed by regulation to be restricted medical treatment, even if the treatment does not permanently or irreversibly change the sex characteristics of an applicable person. This provides flexibility to respond to emerging clinical practices or risks;

- ***sex characteristics*** which has the same meaning as in the **Equal Opportunity Act 2010**. The **Equal Opportunity Act 2010** defines this term to mean a person's physical features relating to sex, including—
    - genitalia and other sexual and reproductive parts of the person's anatomy; and
    - the person's chromosomes, genes, hormones, and secondary physical features that emerge as a result of puberty.

Clause 4 defines ***protected person*** for the purposes of the Bill to mean an applicable person to whom a registered medical practitioner proposes to provide restricted medical treatment and whom the practitioner determines does not have decision making capacity in relation to that restricted medical treatment. This may include children who do not have decision making capacity and adults with a disability which affects their cognitive ability (for example, an adult subject to a guardianship order under the **Guardianship and Administration Act 2019)**. This definition is central to the scheme, as it determines the additional safeguards and oversights that apply when an applicable person does not have decision making capacity.

Clause 5 establishes the framework for determining whether a person has capacity to give informed consent to particular restricted medical treatment. The test is functional and decision-specific, requiring the assessment of whether the person can understand, retain and use or weigh relevant information, as well as communicate their decision. The clause also sets out factors that must be considered when making the assessment, including that capacity is specific to the particular decision, may change over time, and should not be assumed absent due to age, appearance, behaviour or condition (including any disability). The clause requires consideration of whether appropriate supports (including psychosocial or peer supports) could enable the person to make their own decision. This approach is intended to maximise autonomy of applicable persons and ensure that capacity assessments are robust and consistent.

If an applicable person is assessed as not having decision making capacity in respect of proposed restricted medical treatment, that person will be a protected person and restricted medical treatment can only be provided if authorised by an approved treatment plan or if the treatment is urgent restricted medical treatment. If an applicable person is assessed as having capacity to consent to the proposed restricted medical treatment, the Bill imposes safeguards to ensure the provision of that treatment occurs in circumstances where the applicable person has had access to appropriate information and a reasonable opportunity to make an informed decision about the proposed restricted medical treatment.

Clause 6 sets out the interpretive principles that guide the operation of the Bill. These include—

- bodily integrity—recognising the right to autonomy and bodily integrity, and the potential for restricted medical treatment to seriously infringe on these rights if provided without informed consent; and
- children's agency—affirming the right of children to express their views and have them given appropriate weight, and recognising that children's ability to consent increases with age and maturity; and
- precaution—emphasising that, where safe, restricted medical treatment for children who cannot fully understand its nature and consequences should be deferred until they can make their own decisions; and
- medical necessity—acknowledging that urgent treatment may be required to protect a person's rights to life and health, or to save a person's life, prevent serious damage to a person's health, or relieve or prevent significant pain or distress; and
- independent oversight—emphasising the need for effective independent oversight of decisions about whether to provide restricted medical treatment, given the risks involved.

These principles inform the interpretation of all provisions in the Bill.

Part 2—Prohibition and exceptions

Clause 7 creates a criminal offence for a person who knowingly or recklessly provides restricted medical treatment to a protected person without authorisation under the Bill. The offence is intended to deter unauthorised and potentially harmful interventions on applicable persons who lack capacity to give informed consent to the relevant restricted medical treatment. The maximum penalty is 2 years' imprisonment or 240 penalty units. The offence will apply even if a medical treatment decision maker for the person consents to the restricted medical treatment. The clause is central to the scheme's protective purpose, ensuring that restricted medical treatment is only provided to protected persons where there is either urgent necessity or independent approval by the Panel for that treatment.

Clause 8 provides an exception to the offence in clause 7 where restricted medical treatment is provided by a registered medical practitioner who reasonably believes that the treatment is urgently necessary to save an applicable person's life, prevent serious damage to their health, or relieve or prevent significant pain or distress. The practitioner must form a reasonable belief that the statutory criteria for urgent restricted medical treatment in subclause (1)(b) are met. The clause expressly excludes pain or distress arising from discrimination or stigmatisation as a basis for urgency, to prevent misuse of the exception. This clause ensures that urgent medical needs can be addressed without delay and without the requirement to comply with the informed consent safeguards, while maintaining the integrity of the scheme.

Clause 9 provides a further exception to the offence in clause 7 where the restricted medical treatment is provided by a registered medical practitioner in accordance with an approved individual or general treatment plan. These plans must be approved by the Panel following a rigorous assessment process set out in Part 6, ensuring that treatment is only authorised where the Panel is satisfied that the matters in clause 35 have been satisfied and all applicable safeguards have been met.

Part 3—Determining capacity and seeking informed consent

Clause 10 requires a registered medical practitioner to assess an applicable person's capacity to give informed consent to the treatment before providing any restricted medical treatment.
The assessment must be conducted in accordance with the statutory test in clause 5. This clause ensures that each applicable person's autonomy is respected and that the additional safeguards for protected persons are only triggered where genuinely required. Restricted medical treatment can be given to an applicable person who has been assessed as having the capacity to give informed consent without a treatment plan being approved by the Panel. The registered medical practitioner must still obtain such applicable person's informed consent to the restricted medical treatment before providing that treatment.

Clause 11 sets out the safeguards that must be met when a registered medical practitioner is seeking informed consent for restricted medical treatment from an applicable person or, if the applicable person is a protected person, from at least one medical treatment decision maker for that person.

Subclause (1) requires a registered medical practitioner to seek and obtain informed consent to restricted medical treatment from either the applicable person (if they have decision making capacity) or, if the person is a protected person, from at least one medical treatment decision maker for that person.

Subclause (2) requires that, when seeking consent, the practitioner must provide specified information and ensure the applicable person or decision maker has a reasonable opportunity to decide whether to consent. A protected person must also be given a reasonable opportunity to communicate the person's wishes regarding treatment, if the person is able to communicate.

Subclause (3) lists the information that must be provided to applicable persons (with decision making capacity) and both protected persons and medical treatment decision makers for protected persons, including details about the innate variation in sex characteristics relevant to the treatment, the proposed treatment, risks, alternatives, and consequences of treatment or non-treatment.

Subclause (4) specifies what constitutes a reasonable opportunity for a medical treatment decision maker to decide whether to consent to the treatment. This includes allowing a reasonable time to consider the decision; a reasonable opportunity to discuss the decision with the practitioner, a peer support worker, a psychosocial support worker, a registered psychologist or a mental health and wellbeing professional; access to appropriate supports; and the chance to obtain other advice or assistance.

Subclause (5) requires that, for a protected person, the practitioner must ensure the person is given a reasonable opportunity to communicate their wishes regarding the treatment, if they are able to and wish to do so. This includes providing reasonable time to consider the treatment, opportunities for discussion (including with support persons and without parents or guardians present), and supports to help the person express their wishes, if any. The intention is to ensure support is provided to make the information accessible to the protected person consistent with their cognitive abilities and to support their participation in the decision making.

Subclause (6) sets out what constitutes a reasonable opportunity for an applicable person (who has decision making capacity) to decide whether to consent. This includes providing a reasonable time to consider the decision, opportunities for discussion (including with support persons and without parents or guardians present), and appropriate supports and opportunities to obtain advice or assistance.

The safeguards in this clause are designed to ensure that consent to restricted medical treatment is fully informed and freely given, and to ensure that applicable persons (who have decision making capacity), or medical treatment decision makers and protected persons themselves, are given meaningful opportunities, time, and support to consider and communicate about the proposed treatment, with a focus on supported decision making and respect for the applicable person's wishes.

Applicable persons who have the capacity to give informed consent can consent to restricted medical treatment as they can do for any other medical treatment. The safeguards in this clause are intended to ensure that an applicable person is provided with the opportunity to give fully informed consent.

Part 4—The Secretary

Clause 12 confers functions and powers on the Secretary, including to monitor the provision of restricted medical treatment and enforce compliance with the Bill and any regulations. The Secretary is responsible for overseeing the operation of the scheme, investigating alleged non-compliance, and supporting the integrity of the safeguards. The Secretary may also consult with the Panel regarding compliance matters.

The Secretary may delegate any power, duty or function under the Bill in accordance with section 19 of the **Public Health and Wellbeing Act 2008**.

Clause 13 authorises the Secretary to request information or a document from a person (other than an applicable person or a parent, guardian or carer of an applicable person) where the Secretary reasonably believes the information or document is necessary to determine compliance with the Bill or whether an offence has been committed. The clause is intended to facilitate effective oversight and investigation of potential breaches. It authorises a person to comply with a notice and provides that a registered health practitioner who complies with a request from the Secretary does not breach professional etiquette or ethics or any other code of conduct or engage in unprofessional conduct merely by complying with the notice.

Clause 14 authorises the Secretary to disclose information obtained in the performance of functions under the Bill to specified persons bodies, including the Australian Health Practitioner Regulation Agency, the Public Advocate, the Commission for Children and Young People, the Director of Public Prosecutions, the Chief Commissioner of Police, and any other person or body prescribed by regulation. This enables appropriate action to be taken where necessary.

Part 5—Restricted Medical Treatment Oversight Panel

Clause 15 establishes the Restricted Medical Treatment Oversight Panel as an independent statutory body.

This clause specifies the composition of the Panel, requiring that it consist of a Chair, a Deputy Chair, and ordinary Panel members. The clause further requires that, for each of the relevant fields specified in clause 19(3)—relating to lived

experience, registered medical practitioners, human rights and ethics, current mental health and wellbeing professionals, and health law—there must be at least 2 ordinary Panel members with appropriate qualifications or experience in that field. This ensures that the Panel's decision making is informed by a broad range of expertise and perspectives, including of persons with lived experience of an innate variation in sex characteristics.

Clause 16 lists the functions and powers of the Panel.

The Panel is responsible for providing expert, multidisciplinary oversight of decisions about restricted medical treatment for protected persons, ensuring that such decisions are made in accordance with the Bill's safeguards.

The functions and powers of the Panel include determining, by means of appointed committees, applications and proposals for approval of a treatment plan; providing recommendations to the Secretary about the operation of the Bill and care, support and outcomes for applicable persons; developing guidance for applicable persons, persons who provide restricted medical treatment or support to applicable persons, parents, guardians and carers of applicable persons; and collecting and analysing information about restricted medical treatments. The Panel may also perform any other functions conferred on the Panel by the Bill or regulations. This includes determining proposals for amendment to, or revocation of, approved general treatment plans.

Clause 17 provides for the appointment of the Chair of the Panel by the Governor in Council on the recommendation of the Minister. The Minister must be satisfied that the appointee has the necessary qualifications and experience to perform the role and meets any prescribed criteria.

Clause 18 provides for the appointment of the Deputy Chair of the Panel by the Governor in Council on the recommendation of the Minister. The Minister must be satisfied that the appointee has the necessary qualifications and experience to perform the role and meets any prescribed criteria.

Clause 19 provides for the appointment of ordinary members of the Panel by the Governor in Council on the recommendation of the Minister. The clause requires that the Panel's membership collectively covers specified fields, including lived experience of

an innate variation in sex characteristics, specialist registered medical practitioners, human rights and ethics, current mental health and wellbeing professionals, and health law. At least 2 members must be appointed from each field to ensure a multidisciplinary and representative approach.

Clause 20 provides that the office of a Panel member becomes vacant following the resignation or removal of the member from office.

Clause 21 provides for the appointment of an acting Chair of the Panel.

Clause 22 provides for the appointment of an acting Deputy Chair of the Panel.

Clause 23 provides for the appointment of acting ordinary Panel members.

Clause 24 provides that a Panel member or acting Panel member who is a member of an assessment committee or internal review committee may continue to serve on that committee for the purpose of completing a matter even if they cease to hold office as a Panel member or acting Panel member (other than if they are removed from office or their appointment is revoked). This ensures continuity and finalisation of ongoing applications, proposals and reviews.

Clause 25 provides that acts or decisions of the Panel are not invalidated by vacancies in membership, defects or irregularities in appointment, or the fact that the circumstances for an acting Panel member's appointment had not arisen or had ceased. This ensures the ongoing validity of Panel decisions and the stability of the scheme.

Clause 26 sets out the grounds for removal of a Panel member by the Governor in Council on the recommendation of the Minister. Grounds for removal include misconduct, conviction of an indictable offence, and inability to perform the Panel member's duties. This clause ensures the integrity of the Panel.

Clause 27 provides that Panel members are not personally liable for anything done or omitted to be done in good faith in the reasonable belief that the act or omission was in the exercise of their powers or the discharge of their duties under the Bill as a Panel member. This protection extends to cover acting Panel members and persons who continue to be members of an assessment committee or an internal review committee in the

circumstances described in clause 24. Any such liability attaches instead to the State. This protection supports the independent performance of the Panel's functions.

Part 6—Approval of treatment plans

Division 1—Assessment committees

Clause 28 requires the Chair of the Panel to appoint an assessment committee as soon as possible after receiving an application or proposal for approval of a general treatment plan or an application for approval of an individual treatment plan. The Chair must appoint to an assessment committee Panel members who collectively have appropriate qualifications or experience in all the relevant fields in clause 19(3), as well as the Chair or the Deputy Chair. The Panel members appointed from the fields of lived experience and provision of health care as a registered medical practitioner must have experience that is relevant to the treatment plan being considered, to the extent possible.

If an application is clinically urgent, the Chair must act expeditiously to appoint the assessment committee. Circumstances that are clinically urgent may be prescribed by the regulations.

This clause ensures that each application or proposal is considered by a multidisciplinary committee with appropriate expertise to consider the treatment plan in a timely manner.

Clause 29 provides that the function of an assessment committee is to consider and determine applications or proposals for approval of general or individual treatment plans and proposals for amendment or revocation of approved treatment plans. The committee must assess the application or proposal against the statutory criteria and procedural requirements set out in the Bill.

Division 2—Application or proposal for approval of treatment plan

Clause 30 specifies the persons or bodies who may apply for approval of a general or individual treatment plan. For general treatment plans, clause 30(1) provides that applications may be made by a registered medical practitioner; a person who has an innate variation in sex characteristics (whether or not the person seeks

to rely on the plan for their own treatment); a person or body representing or supporting people who have an innate variation in sex characteristics; a parent, guardian or other family member of a person who has an innate variation in sex characteristics; or a person prescribed by regulation. Clause 30(2) provides that Panel members may propose general treatment plans for approval in specified circumstances.

This clause ensures broad access to the treatment plan approval process for general treatment plans and allows the Panel to proactively address common treatment scenarios through proposals for approval of general treatment plans.

For individual treatment plans, clause 30(3) provides that applications for approval may be made by a registered medical practitioner or a prescribed person.

Clause 30(4) provides that at least one medical treatment decision maker for a protected person must give prior consent to an application for approval of an individual treatment plan that applies to the person.

Clause 31 sets out the requirements for applications and proposals for approval of general and individual treatment plans. Clause 31 provides that all applications and proposals must be in writing and must include the applicant's or proposer's details, the proposed treatment plan and the basis on which the treatment plan is proposed, including evidence addressing each of the matters of which the assessment committee must be satisfied under clause 35(1). Clause 31(d)) provides that, for individual treatment plans, the application must also include the age of the protected person, a summary of previous treatment provided and details of informed consent to the treatment from at least one medical treatment decision maker for the protected person.

This clause ensures that assessment committees have sufficient information to make informed decisions and assess compliance with the safeguards under the Bill.

Division 3—Approval of and process for approving treatment plans

Clause 32 empowers an assessment committee to determine whether or not to approve an application or proposal for approval of a treatment plan.

Clause 33 provides that approvals of treatment plans may be subject to conditions. The intention of this clause is to provide the Panel with the flexibility to impose conditions, including to address the unique matters raised by each treatment plan.

Clause 34 requires an assessment committee to give written notice of its decision and reasons for the decision. For general treatment plans, clause 34(1) requires that notice be provided to the applicant or proposer and other relevant parties, including the Secretary, the Minister, the Commission for Children and Young People (for general treatment plans that apply to children), and the Public Advocate (for general treatment plans that apply to adults who do not have the capacity to give informed consent). These persons or bodies have functions under other legislation that may be relevant to the general treatment plan.

Clause 34(2) provides that the notice must also inform the persons or bodies who receive the notice of the processes to seek review under Parts 8 and 9 of the Bill.

For individual treatment plans, clause 34(3) requires notice of the decision and reasons for the decision to be given to the protected person, the applicant and each medical treatment decision maker for the protected person. The notice must explain the decision in a way that assists the protected person and each medical treatment decision maker to understand the decision.

Clause 35 sets out the matters that must be satisfied for approval of any treatment plan. Under clause 35(1), the assessment committee must be satisfied that there is sufficient evidence that the protected person or persons would suffer significant physical or psychological harm if the proposed treatment were not provided and that there is no alternative treatment option available that is as effective in preventing the harm and less restrictive of their ability to make decisions about their sex characteristics in the future.

The purpose of this provision is to place as few restrictions as appropriate on the ability of a protected person to make future decisions about the person's sex characteristics.

This provision is also intended to ensure that other treatment options have been considered so that the assessment committee can be satisfied future options of the protected person have been

kept open as far as possible, while also satisfactorily preventing the significant harm.

Clause 35(2) prohibits the committee from considering evidence that treatment is needed to reduce discrimination or stigmatisation or future psychological harm due to discrimination or stigmatisation. The intention is that a treatment plan cannot be approved when the only evidence offered in support of the proposed treatment is that it is to reduce discrimination or stigmatisation or a perceived risk of discrimination or stigmatisation at the time of the application or proposal or in the future. Evidence of current experience of psychological harm as it relates to other aspects of a protected person's life or their body is relevant and can be considered.

Clause 36 imposes additional requirements for the approval of general treatment plans. The assessment committee must publish a notice of its appointment to consider the general treatment plan on the Department's Internet site and provide notice to relevant entities, including the Secretary, the Minister, the Commission for Children and Young People (for plans affecting children), and the Public Advocate (for plans affecting adults who do not have the capacity to give informed consent to restricted medical treatment). The notice must invite written submissions during a period of at least 30 days. The committee must consider all submissions made during the submission period before making a decision whether or not to approve a general treatment plan. This process ensures transparency, community engagement, and robust scrutiny of general treatment plans. The purpose is to ensure that when one person or body proposes a general treatment plan for approval, all people with an interest and expertise have the opportunity to review it and comment on it.

Clause 37 imposes additional requirements for the approval of individual treatment plans. The assessment committee must be satisfied that reasonable steps have been taken by the registered medical practitioner to assess whether the person is a protected person in respect of the treatment in the plan. The assessment committee must also be satisfied that the protected person has been given or had access to adequate information and appropriate supports in accordance with clauses 10 and 11, and that any wishes the protected person has communicated have been appropriately considered. These requirements are designed to ensure the protected person's views and interests are considered in the

decision making process. The assessment committee must also ensure that each medical treatment decision maker for the protected person has been given or has had access to adequate information and assistance in accordance with clauses 10 and 11. The applicant is responsible for providing the evidence of these matters to the assessment committee and ensuring the requirements in clauses 10 and 11 have been complied with. The assessment committee is not responsible for taking the steps required under clauses 10 and 11.

Clause 38 empowers an assessment committee to inform itself in any way it considers appropriate in assessing a treatment plan for approval, including by relying on expertise of Panel members, by relying on information provided in relation to earlier assessments of other treatment plans, consulting with relevant persons or bodies and having a relevant person or body assess the person. This is intended to allow the assessment committee to have appropriate flexibility to adapt each assessment to the circumstances of the application or proposal and appropriately inform itself about the specific matters of each application or proposal.

Clause 38(3) requires that the assessment committee seek advice from an independent expert relevant person or body to ensure expertise relevant to the particular innate variation in sex characteristics being considered informs decision making. An expert relevant person or body means a person or body who provides treatment, care or support to persons who have an innate variation in sex characteristics and has expertise or lived experience in relation to the particular innate variation. Clause 38(4) provides that if there is no expert relevant person or body that is available, the assessment committee is not required to comply with this requirement. This is intended to ensure that a decision of the assessment committee is not unduly delayed and does not prevent the assessment committee from approving a treatment plan in a timely manner.

Clause 38(5) provides that consultation with experts or obtaining advice from experts should be on a de-identified basis unless disclosing identifying information is required. Clause 38(6) provides that if an assessment of the protected person is required or identifying information is required to be disclosed, the consent of a medical treatment decision maker for the person must be obtained.

This clause ensures that decisions are informed by the best available expertise while protecting privacy.

Clause 39 requires the assessment committee to provide the applicant or proposer with any information obtained from expert relevant persons or bodies or in relation to an earlier assessment of a treatment plan, and to give the applicant or proposer a reasonable period to consider the information and make any changes to their application or proposal. The applicant for an individual treatment plan must give the information that it receives to the protected person to whom the plan relates and each of their medical treatment decision makers.

This ensures procedural fairness and transparency in the decision making process.

Clause 40 empowers the assessment committee to request further information from the applicant or proposer if necessary to decide whether to approve the treatment plan. If the requested information is not provided, the committee may refuse to consider the application further. This ensures that the committee has all relevant information before making a decision.

Division 4—Amendment or revocation of approved plans

Clause 41 empowers an assessment committee to amend or revoke an approved general treatment plan where an amendment or revocation is proposed by a Panel member. Clause 41(2) provides that an amendment to, or revocation of, an approved general treatment plan may be proposed by a Panel member if they consider that the plan no longer satisfies the requirements in clause 35, there is new evidence available in relation to the treatment covered by the plan or another general treatment plan is approved for the same or similar treatment. The purpose of this clause is to ensure that approved general treatment plans can be amended or revoked to respond to emerging clinical practices or risks, ensuring ongoing appropriateness and safety of approved general treatment plans.

Clause 41(3) provides that the process and requirements for approving a general treatment plan on a proposal under clause 30 will apply to a proposal for an amendment or revocation of an approved general treatment plan.

Clause 41(4) provides that the assessment committee must specify when the amendment to, or revocation of, an approved general treatment plan will take effect, which must not be any later than 6 months after the decision to amend or revoke the plan. This is intended to provide time for a registered medical practitioner to plan for change to care of the kind that was previously covered by the approved general treatment plan before it was amended or revoked. This could include seeking approval of a new individual treatment plan or making an application for approval of a different general treatment plan.

Part 7—Operation of approved treatment plans

Clause 42 provides that approved general treatment plans expire on the earlier of the date specified in the plan or 5 years after approval. Approved individual treatment plans expire on the earlier of the date specified in the plan or 3 years after approval. Clause 42(3) provides that if treatment has commenced under an approved general treatment plan before its expiry, the registered medical practitioner remains authorised to complete the treatment under that plan. This ensures that approved treatment plans are time-limited and allows for periodic review, while protecting continuity of care for ongoing treatments.

Clause 43 provides that restricted medical treatment must not be commenced under an approved treatment plan until the period for seeking internal and external review has expired, or any review has been finally determined in favour of approving the plan. This ensures that persons or bodies who may be affected by a decision in relation to a treatment plan have a genuine opportunity to challenge approval decisions before restricted medical treatment is provided.

Part 8—Internal review of approval decisions for treatment plans

Division 1—Internal review committees

Clause 44 requires the Chair of the Panel to appoint an internal review committee for an application for internal review of an approval decision that is differently constituted from the original assessment committee that considered the plan and does not include any Panel member that proposed the treatment plan for approval. The Chair must appoint Panel members who collectively have appropriate qualifications or experience in all

the relevant fields in clause 19(3), as well as the Chair or the Deputy Chair.

Clause 45 provides that the function of an internal review committee is to conduct an internal merits review of an approval decision in relation to which an application for internal review has been made.

Division 2—Application for internal review

Clause 46 specifies who may apply for internal review of an approval decision. For general treatment plans, clause 46(1) provides that this includes the applicant or proposer of the plan under Part 6, the Commission for Children and Young People (if the plan affects children), the Public Advocate (if the plan affects adults), and other affected persons, such as a parent, guardian or other family member of a person who has an innate variation in sex characteristics. For individual treatment plans, clause 46(2) provides that this includes the protected person, the registered medical practitioner of the protected person and the Commission for Children and Young People or the Public Advocate, if either of these bodies is acting on behalf of the protected person or their medical treatment decision maker.

Clause 47 provides that applications for internal review must be made within 14 days of the applicant or proposer receiving notice of the assessment committee's decision and must include the name of the person or body applying for internal review, the decision to be reviewed, and reasons for seeking review.

Division 3—Internal review of approval decision about a treatment plan

Clause 48 provides that the internal review committee must confirm, vary or set aside the original decision within 28 days of its appointment. If the internal review committee does not make a decision within this time, the approval decision is taken to be confirmed.

Clause 49 requires the internal review committee to provide written reasons and notice of its review decision to specified persons or bodies. For general treatment plans, clause 49(1) provides that this includes the applicant for the internal review and the applicant for approval or the proposer of approval of the plan and all other

persons or bodies that were provided with notice of the original assessment committee's appointment to consider that general treatment plan under clause 36(2)(a). For individual treatment plans, clause 49(2) provides that this includes the applicant for the internal review, the protected person (if it is developmentally appropriate for the person to be given that information), each medical treatment decision maker for the protected person and other persons or bodies who could have applied for internal review of the approval decision under clause 46(2).

Clause 49(3) provides that a notice given under this clause must inform the relevant persons or bodies of any right to seek review under Part 9. If the notice is given to a protected person, the notice must also provide information about the role the Public Advocate may take in supporting the protected person by providing advice about or representation in any review by VCAT, and that the protected person may seek that advice or representation with assistance from the internal review committee under clause 50.

Clause 50 enables the protected person who receives a notice of a decision of an internal review committee under clause 49 to ask the internal review committee, on the protected person's behalf, to request the Public Advocate to advise the protected person about any review by VCAT that may be applied for or to represent the person in such a review. This clause supports a protected person to participate in the VCAT review process.

Clause 51 sets out the process for internal reviews. The internal review committee must provide notice of the committee's appointment to the persons or bodies listed in clause 36(2)(a) (for general treatment plans) or clause 46(2) (for individual treatment plans). The notice must provide the opportunity for the persons or bodies who receive the notice to make submissions in relation to the internal review. The notice must allow written submissions to be made to the committee during a period of not less than 14 days for a general treatment plan and not more than 7 days for an individual treatment plan. The committee must consider all submissions received in the relevant period before making a review decision. Further requirements for the process of internal reviews may be prescribed by the regulations.

Part 9—External review by VCAT

Clause 52 provides that any person or body that receives notice of an internal review committee decision may apply to VCAT for external review of that decision. This ensures access to independent, external merits review of decisions of the Panel under the Bill.

Clause 53 provides that applications for review by VCAT must be made within 14 days of receiving notice of the internal review committee's decision or, if the person requests a statement of reasons for the decision under the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the statement of reasons is given to the person or the person is informed that a statement of reasons will not be given. This timeframe balances the need for timely resolution of decisions about treatment plans with access to review.

The amendments in Part 12 of the Bill vary Parts 3 and 4 of the **Victorian Civil and Administrative Tribunal Act 1998** to ensure urgent listing of reviews, clarify party status, permit professional representation, protect confidentiality, and regulate access to documents for VCAT reviews of decisions of internal review committees.

Part 10—Reporting requirements

Clause 54 requires each applicable provider (such as a hospital or an independent registered medical practitioner) who provides restricted medical treatment to prepare and submit an annual de-identified report to the Panel on any restricted medical treatment provided to applicable persons during the financial year and the basis on which the treatment was provided, whether it was urgent or in accordance with an approved general treatment plan or an approved individual treatment plan.

The report must be submitted within the prescribed period or, if no period is prescribed, as soon as practicable after the end of the financial year and must include the prescribed information.

Information that would tend to incriminate an applicable provider who is a natural person does not need to be included in a report from the applicable provider.

Reports and copies of or extracts from reports provided by applicable providers are not admissible as evidence in proceedings for an offence against the Bill. This is intended to ensure that applicable providers are not deterred from compliance with the reporting obligations due to fear that the reported information will be directly used to prosecute a registered medical practitioner.

The Panel must submit the report of an applicable provider to the Secretary within 30 days of receiving the report.

This reporting obligation supports the monitoring, transparency, and systemic oversight of restricted medical treatment. The reporting to the Panel is also intended to allow the Panel to collect, monitor and analyse data for various purposes, including to inform and improve the performance of its functions and to inform its recommendations to the Secretary about the care, support and outcomes for applicable persons.

Clause 55 requires the Chair of the Panel to prepare and submit an annual report on the operation of the Panel, including the number of applications and proposals for approval of treatment plans received during the financial year, the outcomes for those applications or proposals, details of general and individual treatment plans that were approved, and other information about reported treatment.

The report must be submitted to the Secretary within the prescribed period and must be published on the Department's Internet site, subject to privacy safeguards to prevent identification of applicable persons and their registered medical practitioners and medical treatment decision makers for protected persons.

This reporting obligation ensures public accountability and transparency and allows the Secretary to have regulatory oversight of restricted medical treatment.

Part 11—General

Clause 56 requires the Minister to cause a review of the operation of the Bill to be conducted during the one-year review period (between the fifth and sixth anniversaries of the commencement of this clause). The review must address the operations of the Panel, compliance with obligations under the Bill, advancement

of the Bill's purposes, and the operation of any regulations and any amendments required to those regulations.

The Minister may request the Secretary or a Panel member to provide de-identified information relevant to the conduct of the review.

The report of the review must be tabled in each House of the Parliament, ensuring ongoing scrutiny of the scheme.

Clause 57 contains the regulation making power, allowing the Governor in Council to make regulations for or with respect to matters regarding assessment committees, to the extent provided under clause 57(1)(a), and any other matter or thing required or permitted by the Bill to be prescribed or necessary to be prescribed to give effect to the Bill.

The regulations may be of general or limited application, differ according to circumstances, confer discretionary authority or impose a duty, and incorporate external documents by reference.

This provides flexibility to address emerging issues and support the effective operation of the scheme.

Clause 58 provides transitional arrangements that apply for a period of 12 months or a later prescribed period from the commencement of the offence provision in clause 7. The transitional arrangements allow registered medical practitioners to continue providing restricted medical treatment during the transitional period to persons who commenced receiving the treatment before clause 7 commenced or if the treatment is prescribed or is part of a prescribed course of treatments.

This ensures that existing patients are not disadvantaged or subject to treatment delays as a result of the new scheme.

Part 12—Amendment of the Victorian Civil and Administrative Tribunal Act 1998

Clause 59 inserts new Part 9A in Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to vary the general procedure for VCAT proceedings for VCAT's review of internal review committee decisions under the Bill.

New clause 38A inserts relevant definitions.

New clause 38B requires the Chair and the Deputy Chair of the Panel to be served with notice of applications to VCAT for review of an internal review committee decision under clause 48 of the Bill.

New clause 38C requires VCAT to consider the need to determine an application that relates to an individual treatment plan as quickly as possible so that any treatment may be provided in a timely manner.

New clause 38D provides that protected persons and their medical treatment decision makers are parties to proceedings for review of decisions in relation to individual treatment plans under clause 48 of the Bill, and allows the Commission for Children and Young People (if the decision relates to any person under 18 years of age) and the Public Advocate (if the decision relates to any person of or over 18 years of age) to be joined as parties to such a proceeding.

New clause 38E permits the parties to be represented by a professional advocate in the proceeding.

New clause 38F prohibits publication or broadcasting of identifying information about parties to a proceeding or any registered medical practitioner who is not a party to the proceeding, unless VCAT orders otherwise after deciding that it would be in the public interest to do so.

New clause 38G allows applications to be made to VCAT to restrict access to documents lodged in relation to proceedings.

New clause 38H provides for the stay of the decision that is the subject of a proceeding until the matter is finally concluded.

Clause 60 provides for the repeal of Part 12 of the Bill on the first anniversary of its commencement.