



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON VOLUNTARY ASSISTED DYING BILL

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Submission Cover Sheet

Inquiry into the Voluntary Assisted Dying Bill 2023

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The Voluntary Assisted Dying Committee
ACT Legislative Assembly
GPO Box 1020, Canberra, ACT 2601

Responses to the Voluntary Assisted Dying Bill 2023

This submission has been developed by the National Seniors Australia (NSA), ACT Policy Advisory Group (ACT PAG) based on consultations with NSA branch members based in the Australian Capital Territory (ACT).

On 23 April 2023, NSA ACT PAG responded to the ACT Government's discussion paper on Voluntary Assisted Dying (VAD). That response represented the consensus view of our ACT Branch membership. This view was after consideration of surveys and group discussions among ACT branch members concerning the need for VAD provisions and the possible nature of such provisions.

The NSA branch members commend the ACT Government for developing legislation to provide access to provisions for VAD in the ACT. We strongly endorse the implementation of such provisions as soon as practicable. We have noted the contents of the *Voluntary Assisted Dying Bill 2023* and your informative *Explanatory Statement and Human Rights Compatibility Statement*.

Our branch membership strongly supports access to VAD for people who meet all the eligibility requirements specified in the Bill. However, we regard eligibility requirements as too restrictive as they would only allow access to VAD for people with a terminal illness. This would prevent access to VAD for people whose current and likely future suffering also merits access to VAD.

In addition, we regard the requirement that a person must have decision-making capacity throughout the whole of the assessment and administration process as too restrictive.

People who do not have a terminal illness shouldn't be precluded from access to VAD

It is indicated in the *Explanatory Statement* for the Bill that design of the legislation for the ACT was "informed" by the "Australian model" for VAD. In our April submission we noted the legislation for VAD in states would restrict access to VAD so it is available only to people with very limited time to live. It is gratifying to note the government has determined there should not be a "time left to live" restriction and the Bill does not include any "time left to live" criterion in its listing of eligibility requirements. We strongly endorse the government's decision to not include such a requirement.

However, in some other respects, it appears the government's considerations have been overly influenced by very restrictive eligibility requirements that are or will be implemented in Australian States.

In our April submission we proposed that in contrast to the restrictive legislation in the states, the VAD legislation for the ACT must meet the needs of three types of people:

- (a) those who are *in extremis* - having a terminal illness and only a short time left to live;
- (b) those who are not terminally ill or do not have a short time to live, but who have an intolerable serious physical or psychological condition; and
- (c) those of an advanced age who do not have a terminal illness or a serious condition, but whose quality of life is intolerable.

Our concern is the Bill's requirement that the person must have a condition that is "advanced", "progressive", and "expected to cause the person's death" would preclude access to provisions for VAD by many people referred to in the paragraphs (b) and (c) above. Those three restrictive eligibility criteria would preclude from consideration, eligibility of a person who has an intolerable serious condition or quality of life but whose condition/s are not worsening and/or whose conditions may not be ones that would cause death.

Some people who have lost decision-making capacity should be considered for access to VAD

We are also concerned about the Bill's eligibility requirement that the person must have decision-making capacity at all stages of the request, assessment and substance administration processes.

In our April submission, we proposed if a person does not have decision-making capacity, they should not be precluded from access to provisions for VAD providing these preconditions are satisfied:

- (i) the desire to access VAD was stated in an advance care plan or other legally recognised document that was formally registered prior to them losing capacity;
- (ii) while they no longer have decision-making capacity, they continue to consistently and repeatedly express their desire to undertake VAD.

We note the government has considered such an approach and intends to consider permitting access to VAD for such people once ACT's VAD system has been in operation for three years. This would mean a delay of access to VAD for such people of possibly eight years.

Conclusions

Based on the information from past surveys and group discussions amongst our branch membership, our membership regards the Bill's eligibility requirements as too restrictive. They would deny access to VAD for many aged people who should have a right to a peaceful death through VAD.

Proposals

On behalf of the ACT branch membership of National Seniors Australia, we propose:

1. In place of the restrictive criteria of the patient's condition being "advanced", "progressive", and "are expected to cause the person's death", there should be these less restrictive "relevant conditions" reflected in the legislation:
 - a) the person is experiencing intolerable suffering that cannot be relieved to an extent and in a way that is acceptable to them; and
 - b) the intolerable suffering is a consequence of a terminal illness (that is – a condition that is advanced, progressive and is expected to cause the person's death), or an intolerable serious physical or psychological health condition, or in the case of person of advanced age (e.g., 80+), an intolerable quality of life.
2. In place of requirements in the legislation that state that a person seeking access to VAD must have decision-making capacity throughout the assessment and implementation processes, the legislation should indicate that if a person does not currently have decision-making capacity or ceases to have that capacity, they should not be precluded from access to provisions for VAD providing that these preconditions are satisfied:
 - a) the desire to access VAD was stated in a registered advance care plan or other legally recognised document that was formally registered prior to them losing that capacity; and
 - b) while they no longer have decision-making capacity, they continue to consistently and repeatedly express their desire to undertake VAD.

The ACT branch membership of NSA comprises approximately 250 adults aged 50 plus. While this is a small proportion of aged persons in the ACT, we are confident our views regarding access to VAD would be shared by many older people in the ACT.

Yours Sincerely

Dr Bill Donovan
Chair
ACT Policy Advisory Group, National Seniors Australia