

2024

**Legislative Assembly for the
Australian Capital Territory**

**Amendments to the
Voluntary Assisted Dying Bill 2023**

Supplementary Explanatory Statement

Presented by

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Amendments to the voluntary assisted dying bill 2023

This explanatory statement relates to the Voluntary Assisted dying 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 amend the Voluntary Assisted Dying bill 2023 to remove strict liability offences. Strict liability is best described as a legislative means of removing the ability for a court to determine a breach of the law by investigating fault or criminal intent.

At the committee inquiry into the bill it was noted that this form of liability is used in scenarios where the legislation is dealing with professionals who ought to be across the law and would be reasonably expected to have knowledge of it, and so strict liability would apply to any breach and that there would be no requirement to review intent and regardless of fault.

This amendment removes strict liability from Voluntary Assisted Dying bill 2023 due to a view that professionals dealing with this legislation, even with extensive training, are primarily health professionals first and should not be considered well versed in legal verse nor legislative obligations.

It is also noted that the proposed VAD scheme proposed under the Bill is complex and it is not unreasonable to foresee that there would be inadvertent or unintentional breaches or mistakes made in its processes by otherwise well intentioned and dedicated people. These should not be then subject to liability for crimes. Criminal intent matters.

Given this bill provides for a review of the legislation the need to put in strict liability at the commencement of the bill is overreach. If evidence exists of deliberate breaches or circumnavigating of VAD processes, then it can be reviewed and investigated at the review phase, and a recommendation made to introduce strict liability at that point.

By removing strict liability there is a further burden of proof before a successful prosecution can be brought under the act and inadvertent or accidental breaches of the act will be unsuccessful in prosecution as they would be unable to establish fault or criminal intent.

This bill is about harm reduction. Strict liability provisions risk doing harm to those who otherwise would be considered innocent.

Clause Notes

Clause 18 (3)

Removes strict liability from failing to notify the individual and board about outcome of first assessment

Clause 22 (3)

Removes strict liability from notifying board about decision to accept or refuse to accept referral

Clause 25 (3)

Removes strict liability from notifying individual, coordinating practitioner and board about coming of consulting assessment

Clause 30 (2)

Removes strict liability from notifying the board about second request

Clause 34 (2)

Removes strict liability from notifying the board about final request

Clause 36 (5)

Removes strict liability from notifying individual and board about outcome of final assessment

Clause 37 (6)

Removes strict liability from a transfer request made by a coordinating practitioner

Clause 38 (6)

Removes strict liability from a transfer request made by an individual

Clause 42 (5)

Removes strict liability from the making of an administrative decision

Clause 43 (5)

Removes strict liability from the changing of an administrative decision

Clause 44 (6)

Removes strict liability from provisions relating to asking someone to be an administering practitioner

Clause 45 (5)

Removes strict liability from the revocation of an administrative decision

Clause 46 (6)

Removes strict liability from the transfer of administering practitioner functions

Clause 47 (6)

Removes strict liability from the transfer of administering practitioner functions when request made by individual

Clause 51 (7)

Removes strict liability from the appointment of a contact person

Clause 53 (5)

Removes strict liability from the ending of contact person appointment

Clause 58 (5)

Removes strict liability from prescribing approved substances – first prescription

Clause 59 (5)

Removes strict liability from prescribing approved substances – subsequent prescription

Clause 60 (6)

Removes strict liability from possessing, preparing and supplying approved substances – approved suppliers

Clause 61 (5)

Removes strict liability from receiving, possessing, preparing and administering approved substances – individuals and other people

Clause 62 (4)

Removes strict liability from giving approved substances to administering practitioner after change of administration decision – for individuals

Clause 63 (7)

Removes strict liability from receiving, possessing and administering approved substances – administering practitioner

Clause 64 (6)

Removes strict liability from giving, receiving and possessing approved substances – change in contact person

Clause 68 (4)

Removes strict liability from disposal of approved substances by approved disposer

Clause 74 (3)

Removes strict liability from coordinating practitioner to notify board and director-general about death

Clause 75 (3)

Removes strict liability from administering practitioner to notify board, coordinating practitioner and director-general about death

Clause 76 (5)

Removes strict liability from the processes around an administration certificate

Clause 78 (3)

Removes strict liability from Health practitioner to notify board about death

Clause 79 (6)

Removes strict liability from Board may request information from coordinating practitioner or contact person

Clause 95 (3)

Removes strict liability from giving individual contact details for approved car navigator service

Clause 99 (3)

Removes strict liability from giving individual contact details for approved care navigator service

Clause 101 (6)

Removes strict liability from facilitating transfer of individual

Clause 103 (4)

Removes strict liability from a facility operator must have a policy about VAD

Clause 146 (3)

Removes strict liability from coordinating practitioner must give copy of ACAT decision to board