

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

VOLUNTARY ASSISTED DYING BILL 2023

EXPLANATORY STATEMENT

**Dr Marisa Paterson MLA
Member for Murrumbidgee**

MAY 2024

VOLUNTARY ASSISTED DYING BILL 2023

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to private members amendments to the Government Amendments to the *Voluntary Assisted Dying Bill 2023*. It has been prepared to assist the reader of the amendments and to help inform public comment on a Consultation Draft prior to moving the amendments in the ACT Legislative Assembly. This explanatory statement does not form part of the amendments and has not been endorsed by the Assembly. The statement is to provide assistance to the reader of the amendments and is to be read in conjunction with the amendments. 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. A consultation draft for these amendments will be released and public consultation will be undertaken.

PURPOSE

The purpose of the amendments is to amend the Government Amendments to the *Voluntary Assisted Dying Bill 2023*. These amendments will align the Government Amendments with other amendments moved by Dr Marisa Paterson MLA.

BACKGROUND

On 31 October 2023, the Minister for Human Rights introduced the *Voluntary Assisted Dying Bill 2023* in the ACT Legislative Assembly. This Bill ensures that in certain circumstances and with the appropriate safeguards, it is lawful for a health practitioner to assist an eligible individual end their life.

On the same day, the Select Committee on VAD was established by the Assembly and the Bill was subsequently referred to the Committee.

The Committee received 83 written submissions and heard from 56 witnesses over 4 days. The Committee released their report on 29 February 2024. The Committee made 27 recommendations. In the Government Response tabled on 14 May 2024 by the Minister for Human Rights, they accepted, accepted in principle, or noted 25 of the 27 recommendations.

OVERVIEW OF THE AMENDMENTS

These amendments will amend the Government amendments to the *Voluntary Assisted Dying Bill 2023* to align the Government amendments with those amendments introduced by Dr Marisa Paterson MLA. The sections are as follows:

- Section 60 - possessing, preparing and supplying approved substances – approved suppliers and couriers
- Section 63 - Receiving and possessing approved substances—administering practitioner
- New section 64A - Giving approved substances to approved dispose If administration decision revoked – individual, contact person or other person.

CONSULTATION ON THE PROPOSED APPROACH

Significant consultation was undertaken with the public, key stakeholders, subject matter experts, and other Australian jurisdictions including through the YourSay website. Throughout the project feedback has been sought from a range of stakeholders including ACT Policing, ACT Human Rights Commission, ACT Courts and Tribunal, ACT Corrective Services, Access Canberra, Capital Health Network, ACT Law Society, ACT Bar Association, Aboriginal Legal Service NSW/ACT, Legal Aid ACT, the Aged and Community Care Providers Association, ACT Disability, Aged and Carer Advocacy Service, Australia, Health Care Consumers' Association, Carers ACT and Women With Disabilities ACT.

The Government has carefully considered each submission to the Committee. Further targeted consultation has been undertaken with the ACT Human Rights Commission, ACT Courts and Tribunal, ACT Health, Canberra Health Services, Marshall Perron, Doctors for Assisted Dying Choice, Professors White and Willmott, Dr Michael Chapman/VAD Australia and New Zealand, the Clem Jones Group, and Go Gentle Australia.

The amendments discussed in this explanatory statement are consequential to the Government amendments to the Bill.

CONSISTENCY WITH HUMAN RIGHTS

A discussion of the human rights engaged, promoted and limited by the Bill can be found in the revised explanatory statement for the Bill. During the development of the Government Amendments, due regard was given to their compatibility with human rights as set out in the Human Rights Act 2004 (ACT) (HRA).

An assessment of the Government amendments against section 28 of the HRA is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights engaged or limited

The ACT Government amendment explanatory statement does not recognise human rights engaged or limited by any of the below clauses. These private member amendments listed below are consequential.

CLAUSE NOTES

Clause 1 – Amendment 49 – Proposed new clause 60 (2) (a) and (b)

This clause will omit the proposed new clause 60 (2) (a) and (b) and substitute revised wording. Section 60 deals with possessing, preparing and supplying approved substances – approved suppliers and couriers.

This amendment outlines that if a self-administration decision is in effect, the individual or their contact person can be provided with the substance from an approved supplier following receipt of the prescription.

If a practitioner administration decision or attorney decision is in effect, the individuals administering practitioner can be provided with the substance from an approved supplier following receipt of the prescription.

Clause 2 – Amendment 56 – Proposed new clauses 63 (1) (a) and 63C (1) (a)

This amendment will insert 'or attorney decision' after 'practitioner administration decision' in clauses 63 (1) (a) and 63C (1) (a).

Clause 63 refers to Receiving and possessing approved substances—administering practitioner. These amendments will ensure that this section will apply if an attorney decision is in effect, in addition to a practitioner administration decision.

Clause 63C refers to Administering approved substances—administering practitioner. These amendments ensure this section will apply if an attorney decision is in effect, in addition to a practitioner administration decision.

Clause 3 – Amendment 56 – Proposed new clauses 63C (3) and (4)

This amendment will omit clauses 63C (3) and (4) in the Government amendments and substitute new wording.

The proposed new clause 63C (3) outlines exceptions to when a practitioner must not administer the substance to an individual. If an administration decision is in effect, the administering practitioner must be satisfied immediately before delivering the substance that the individual has decision-making capacity and is acting voluntarily and without coercion. If an attorney decision is in effect, the practitioner must have seen either an original copy, or certified original copy of the enduring power of attorney which authorises the VAD attorney to exercise power. The administering practitioner must also be satisfied that, immediately before delivering the substance, the individual does not have decision-making capacity. In both circumstances, the administering practitioner must also administer the substance in the presence of an eligible witness.

The proposed new clause 63C (4) covers the witness certificate which is required to be certified by the witness to administration. By written statement, they must certify that the approved substance was administered to the individual in the presence of a witness and, that if a practitioner administration decision is in effect, that the individual was acting voluntarily and without coercion.

Clause 4 – Amendment 58 – Proposed new clause 64A

This clause will omit the proposed new clause 64A and substitute it with revised wording. This section refers to giving approved substances to approved dispenser if administration decision revoked – individual, contact person or other person.

This section shall apply if either: an individual revoke a self-administration decision, or the individual's self-administration decision is taken as revoked under section 43A (5); and a relevant person is in possession of an approved substance, or any part of the approved substance at the time the decision is revoked.

The relevant person may possess the unused substance for the purpose mentioned in (b). They must give the unused substance to an approved dispenser as soon as practicable. This must occur no more than 14 days after the day the self-administration decision is revoked. Failure to do so carries a maximum penalty of 100 penalty units.

For this section, a relevant person shall be defined as the individual or their contact person (for (1)(a)(i)) or the individual's contact person, or any other person in possession of the unused substance (for (1)(a)(ii)).