

**Australian Capital Territory
Legislative Assembly**

Voluntary Assisted Dying Bill 2023

Amendments to be moved by Marisa Paterson

1

Clause 2

Page 2, line 4—

omit clause 2, substitute

2

Commencement

- (1) This Act (other than schedule 4) commences on 3 November 2025.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Schedule 4 (Other amendments—VAD attorneys) commences on 3 November 2026.

2

Part 13

Page 112, line 1—

omit part 13, substitute

Part 13

**Consequential and other
amendments**

160 Legislation amended—sch 3 and sch 4

This Act amends the legislation mentioned in schedules 3 and 4.

insert

Schedule 4 Other amendments— VAD attorneys

(see pt 13)

Part 4.1 Voluntary Assisted Dying Act 2023

[4.1] Section 10 (g)

after

the individual

insert

or their VAD attorney

[4.2] New part 2A

insert

Part 2A VAD attorneys

12A Meaning of *enduring power of attorney*

In this Act:

enduring power of attorney—see the *Powers of Attorney Act 2006*, section 8.

12B Meaning of *VAD attorney*

- (1) For this Act, a person is a *VAD attorney* for an individual if—
 - (a) the VAD attorney is an attorney under an enduring power of attorney that has become operative for the individual; and

(b) the enduring power of attorney expressly authorises the attorney to exercise power in relation to the individual accessing voluntary assisted dying if the individual has impaired decision-making capacity.

(2) In this section:

attorney—see the *Powers of Attorney Act 2006*, section 6.

impaired decision-making capacity, in relation to an individual—see the *Powers of Attorney Act*, section 9 (2).

12C When VAD attorney may exercise power under Act

An individual's VAD attorney may exercise a power under this Act only if—

- (a) the individual's coordinating practitioner has prepared a final assessment report for the individual under section 36 (2); and
- (b) the VAD attorney is authorised to exercise the power under the *Powers of Attorney Act 2006* and the individual's enduring power of attorney; and
- (c) a doctor is satisfied that the individual does not have, and is not reasonably likely to regain, decision-making capacity in relation to voluntary assisted dying.

12D VAD attorney may seek ACAT opinion or advice

(1) The ACAT must, on application by a VAD attorney or an affected person, give an opinion or advice about whether the VAD attorney is authorised to exercise a power under this Act.

(2) In this section:

affected person, in relation to an individual's VAD attorney exercising a power under this Act, means any person who has a sufficient and genuine interest in the rights of the individual in relation to voluntary assisted dying.

12E Hearing and deciding applications for opinion or advice

If the ACAT receives an application for an opinion or advice under section 12D, the ACAT must—

- (a) if the ACAT decides to hold a hearing—set a date for the hearing of the application that is as soon as practicable, but not later than 2 days after the day the application is received; and
- (b) decide the application as soon as practicable.

[4.3] Section 37 (2)

after

the individual

insert

or their VAD attorney

[4.4] Section 37 (5) and (8)

after

the individual

insert

or VAD attorney

[4.5] Section 38 heading

substitute

38 Transfer request made by individual or VAD attorney

[4.6] Section 38 (2)

substitute

- (2) The individual or their VAD attorney may ask another health practitioner to become the individual’s coordinating practitioner (a *transfer request*).

[4.7] Section 38 (3) and (5)

after

the individual

insert

or VAD attorney

[4.8] Section 42 heading

substitute

42 Making administration decision—individual

[4.9] Section 43 heading

substitute

43 Changing administration decision—individual

[4.10] New section 43A

insert

43A Making administration decision—VAD attorney

- (1) The individual's VAD attorney may tell the individual's coordinating practitioner that the VAD attorney has decided that an approved substance will be administered to the individual by a health practitioner (an *attorney decision*).

Note See s 12C for when an individual's VAD attorney may exercise a power under this Act.

- (2) An attorney decision must be—
 - (a) made in writing; and
 - (b) made in consultation with, and on the advice of, the individual's coordinating practitioner; and
 - (c) given to the individual's coordinating practitioner.
- (3) The attorney decision takes effect when the VAD attorney gives the decision to the individual's coordinating practitioner.

- (4) If the individual has a practitioner administration decision or self-administration decision in effect, the practitioner administration decision or self-administration decision is taken to be revoked when the attorney decision takes effect.
- (5) If the individual's coordinating practitioner receives an attorney decision, the coordinating practitioner must—
 - (a) record the decision in the individual's health record; and
 - (b) give the board written notice of the decision within 4 business days after the day the coordinating practitioner receives the decision.

Maximum penalty: 20 penalty units.

- (6) An offence against this section is a strict liability offence.

[4.11] Section 44 (1)

omit

their coordinating practitioner or another health practitioner
(the *requested practitioner*)

substitute

a relevant practitioner

[4.12] New section 44 (1A)

insert

- (1A) An individual's VAD attorney may ask a relevant practitioner to act as the individual's administering practitioner if the VAD attorney has made an attorney decision.

Note See s 12C for when an individual's VAD attorney may exercise a power under this Act.

[4.13] Section 44 (2)

omit

the individual makes a request, the requested practitioner

substitute

the individual or their VAD attorney makes a request, the relevant practitioner

[4.14] Section 44 (2) (b)

after

the individual

insert

or VAD attorney

[4.15] Section 44 (3)

omit

requested practitioner

substitute

relevant practitioner

[4.16] Section 44 (4) and (5)

substitute

- (4) The relevant practitioner becomes the administering practitioner for the individual when they tell the individual or VAD attorney that they agree to act as the individual's administering practitioner.
- (5) If the relevant practitioner agrees to act as the individual's administering practitioner, the practitioner must give the board written notice of their decision within 4 business days after the day they tell the individual or VAD attorney about the decision.

Maximum penalty: 20 penalty units.

[4.17] Section 44 (7)

substitute

- (7) If the relevant practitioner refuses to act as the individual's administering practitioner, the practitioner must—
- (a) tell the individual or VAD attorney that other health practitioners may be able to assist with the request; and
 - (b) give the individual or VAD attorney information about—
 - (i) another health practitioner who they believe is likely to be able to assist the individual with the request; or
 - (ii) the approved care navigator service.

[4.18] Section 44 (8)

omit

requested practitioner

substitute

relevant practitioner

[4.19] New section 44 (9)

insert

- (9) In this section:
- relevant practitioner*** means—
- (a) the individual's coordinating practitioner; or
 - (b) another health practitioner.

[4.20] Section 46 (2)

after

the individual

insert

or their VAD attorney

[4.21] Section 46 (5) (a) and (8)

after

the individual

insert

or VAD attorney

[4.22] Section 47 heading

substitute

47 Transfer of administering practitioner functions—transfer request made by individual or VAD attorney

[4.23] Section 47 (2)

substitute

- (2) The individual or their VAD attorney may ask another health practitioner to become the individual's administering practitioner (a *transfer request*).

[4.24] Section 47 (3) and (5)

after

the individual

insert

or VAD attorney

[4.25] Section 49 (1)

substitute

- (1) A person commits an offence if the person, dishonestly or by coercion, induces—
- (a) an individual into making a practitioner administration decision or self-administration decision; or
 - (b) an individual's VAD attorney into making an attorney decision.
- Maximum penalty: imprisonment for 7 years.

[4.26] Section 49 (2)

omit

an administration decision

substitute

a practitioner administration decision or self-administration decision

[4.27] Section 54 (1)

substitute

- (1) This section applies if—
 - (a) any of the following apply:
 - (i) an individual changes their administration decision under section 43 (1) (a);
 - (ii) an individual revokes their self-administration decision;
 - (iii) an individual’s self-administration decision is taken to be revoked under section 43A (4); and
 - (b) a contact person appointment is in effect for the individual when the administration decision is changed or revoked.

[4.28] Section 58 (1) (a)

substitute

- (a) an administration decision is in effect for an individual; and

[4.29] Section 58 (1) (c)

after

practitioner administration decision

insert

or attorney decision

[4.30] Section 58 (1) (d)

substitute

- (d) if the individual has a practitioner administration decision or self-administration decision in effect—the individual’s coordinating practitioner has given the individual any information prescribed by regulation; and
- (e) if the individual has an attorney decision in effect—the individual’s coordinating practitioner has given the individual’s VAD attorney any information prescribed by regulation.

[4.31] Section 59 (1) (a)

substitute

- (a) an administration decision is in effect for an individual; and

[4.32] Section 59 (1) (c)

after

practitioner administration decision

insert

or attorney decision

[4.33] Section 59 (1) (f)

before

the coordinating

insert

if the individual has a practitioner administration decision or self-administration decision in effect—

[4.34] New section 59 (1) (g)

insert

- (g) if the individual has an attorney decision in effect—the individual’s coordinating practitioner has seen the original enduring power of attorney, or a certified copy of the original enduring power of attorney, that authorises the VAD attorney to exercise power in relation to the individual accessing voluntary assisted dying.

[4.35] Section 60 (2) (a) and (b)

substitute

- (a) if a self-administration decision is in effect for an individual—the individual or their contact person; or
- (b) if a practitioner administration decision or attorney decision is in effect for an individual—the individual’s administering practitioner.

[4.36] Sections 63 (1) (a) and 63C (1) (a)

after

practitioner administration decision

insert

or attorney decision

[4.37] Section 63C (3) and (4)

substitute

- (3) However, the individual’s administering practitioner must not administer the approved substance to the individual unless—
 - (a) if a practitioner administration decision is in effect for the individual—the administering practitioner is satisfied, immediately before administering the substance, that the individual—
 - (i) has decision-making capacity in relation to voluntary assisted dying; and

- (ii) is acting voluntarily and without coercion; and
 - (b) if an attorney decision is in effect for the individual—the administering practitioner—
 - (i) has seen the original enduring power of attorney, or a certified copy of the original enduring power of attorney, that authorises the VAD attorney to exercise power in relation to the individual accessing voluntary assisted dying; and
 - (ii) has seen the original attorney decision or a certified copy of the original attorney decision; and
 - (iii) is satisfied, immediately before administering the substance, that the individual—
 - (A) does not have decision-making capacity in relation to voluntary assisted dying; and
 - (B) has not communicated in whatever way they can to the administering practitioner, or another person in the presence of the administering practitioner, that the individual does not currently want to access voluntary assisted dying; and
- Examples—communicating in whatever way the individual can**
- 1 words, sounds or gestures
 - 2 augmentative and alternative communication including using sign language, a computer or other device
- (c) the administering practitioner administers the substance in the presence of an eligible witness.
 - (4) The witness to the administration of the approved substance must certify by written statement (a *witness certificate*) that—
 - (a) the approved substance was administered to the individual in the presence of the witness; and
 - (b) if a practitioner administration decision is in effect for the individual—the individual appeared to be acting voluntarily and without coercion; and

- (c) if an attorney decision is in effect for the individual—the individual did not appear to have communicated to the administering practitioner, or another person in the presence of the administering practitioner, that they did not want to access voluntary assisted dying.

[4.38] Section 64A

substitute

64A Giving approved substances to approved disposer if self-administration decision revoked—individual, contact person or other person

- (1) This section applies if—
 - (a) either—
 - (i) an individual revokes their self-administration decision; or
 - (ii) an individual’s self-administration decision is taken to be revoked under section 43A (4); and
 - (b) a relevant person is in possession of an approved substance, or any part of an approved substance, when the self-administration decision is revoked (the *unused substance*).
- (2) The relevant person—
 - (a) may possess the unused substance for the purpose mentioned in paragraph (b); and
 - (b) must give the unused substance to an approved disposer as soon as practicable, but not later than 14 days after the day the self-administration decision is revoked.

Maximum penalty (paragraph (b)): 100 penalty units.

- (3) In this section:

relevant person means—

- (a) for subsection (1) (a) (i)—the individual or their contact person; and

- (b) for subsection (1) (a) (ii)—the individual’s contact person or any other person in possession of the unused substance when the individual’s self-administration decision is taken to be revoked.

[4.39] Section 66 (1) (a)

after

practitioner administration decision

insert

or attorney decision

[4.40] New section 66 (1) (c) (ia)

insert

- (ia) the individual’s practitioner administration decision is taken to be revoked under section 43A (4);

[4.41] Section 75 (1) (b)

substitute

- (b) a practitioner administration decision or attorney decision is in effect for the individual when they die; and

[4.42] Section 76 (3) (a) and (b)

substitute

- (a) that a practitioner administration decision or attorney decision was in effect for the individual when the approved substance was administered to the individual; and

[4.43] Section 76 (3) (c)

before

that the administering

insert

for a practitioner administration decision—

[4.44] New section 76 (3) (ca)

insert

- (ca) for an attorney decision—that the administering practitioner—
- (i) had seen the original enduring power of attorney, or a certified copy of the original enduring power of attorney, that authorises the VAD attorney to exercise power in relation to the individual accessing voluntary assisted dying; and
 - (ii) had seen the original attorney decision or a certified copy of the original attorney decision; and
 - (iii) is satisfied, immediately before administering the substance, that the individual—
 - (A) did not have decision-making capacity in relation to voluntary assisted dying; and
 - (B) had not communicated to the administering practitioner, or another person in the presence of the administering practitioner, that they did not want to access voluntary assisted dying; and

[4.45] Section 79 heading

substitute

79 Board may request information from coordinating practitioner, contact person or VAD attorney

[4.46] New section 79 (2) (c)

insert

- (c) if the individual had an attorney decision in effect when they died—the individual’s VAD attorney.

[4.47] Section 79 (3) to (5)

omit

coordinating practitioner or contact person

substitute

coordinating practitioner, contact person or VAD attorney

[4.48] Section 95 heading

substitute

95 Giving individual and VAD attorney contact details for approved care navigator service

[4.49] Section 95 (2)

substitute

- (2) Within 2 business days after the day the health practitioner or health service provider refuses to do the thing, they must give the following people, in writing, the contact details for the approved care navigator service:
- (a) in any case—the individual;
 - (b) if the health practitioner or health service provider believes on reasonable grounds that the individual has a VAD attorney—the VAD attorney.

Maximum penalty: 20 penalty units.

[4.50] Dictionary, definition of *administration decision*

substitute

administration decision means—

- (a) a practitioner administration decision; or
- (b) a self-administration decision; or
- (c) an attorney decision.

[4.51] Dictionary, new definitions

insert

attorney decision—see section 43A (1).

enduring power of attorney—see the *Powers of Attorney Act 2006*, section 8.

VAD attorney for an individual—see section 12B.

Part 4.2 Powers of Attorney Act 2006

[4.52] New section 23 (2)

after the note, insert

- (2) If an enduring power of attorney includes an express authorisation in relation to voluntary assisted dying, the attorney must tell the principal if they have a conscientious objection to voluntary assisted dying before accepting the appointment.

[4.53] Section 37 (1) (da)

omit

[4.54] New section 41AA

in division 4.3.2, insert

41AA Express authority to exercise power in relation to voluntary assisted dying

- (1) An enduring power of attorney may expressly authorise an attorney to exercise a power in relation to the principal accessing voluntary assisted dying if the principal has impaired decision-making capacity.
- (2) An attorney must not exercise a power in relation to the principal accessing voluntary assisted dying other than in accordance with the *Voluntary Assisted Dying Act 2023*.