

CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

Australian Capital Territory
Legislative Assembly

Voluntary Assisted Dying Bill 2023

Amendments to be moved by Marisa Paterson

1

Clause 10 (g)

Page 6, line 19—

after

the individual

insert

or their VAD attorney

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 other person who has a sufficient and genuine interest in the rights of the individual in relation to voluntary assisted dying.

3

Clause 37 (2)

Page 27, line 9—

after

the individual

insert

or their VAD attorney

4

Clause 37 (5) (a)

Page 27, line 26—

after

the individual

insert

or VAD attorney

5
Clause 37 (5) (c) and (8)
Page 28, lines 3 and 15—

after all mentions of
the individual
insert
or VAD attorney

6
Clause 38 heading
Page 28, line 18—

omit the heading, substitute

38 **Transfer request made by individual or VAD attorney**

7
Clause 38 (2)
Page 28, line 21—

omit clause 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*).

8
Clause 38 (3)
Page 28, lines 23, 25 and 28—

after all mentions of
the individual
insert
or VAD attorney

9

Clause 38 (5) (b)

Page 29, line 17—

after

the individual

insert

or VAD attorney

10

Proposed new clause 43A

Page 34, line 14—

insert

43A Administration decision—VAD attorney

- (1) This section applies if an individual does not have decision-making capacity in relation to voluntary assisted dying.
- (2) 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*).
- (3) 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.
- (4) The attorney decision takes effect when the VAD attorney gives the decision to the individual's coordinating practitioner.
- (5) 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.

(6) 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.

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

11

Clause 44 (1)

Page 34, line 16—

omit

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

substitute

a relevant practitioner

12

Proposed new clause 44 (1A)

Page 34, line 21—

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.

13
Clause 44 (2)
Page 34, line 22—

omit

the individual makes a request, the requested practitioner

substitute

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

14
Clause 44 (2) (b)
Page 34, line 26—

after

the individual

insert

or VAD attorney

15
Clause 44 (3) and (4)
Page 35, lines 1 and 13—

omit all mentions of

requested practitioner

substitute

relevant practitioner

16
Clause 44 (4)
Page 35, line 14—

after

tell the individual

insert

or VAD attorney

17

Clause 44 (5)

Page 35, line 16—

omit

requested practitioner

substitute

relevant practitioner

18

Clause 44 (5)

Page 35, line 19—

after

the individual

insert

or VAD attorney

19

Clause 44 (7)

Page 35, line 22—

omit clause 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.

20

Clause 44 (8)

Page 36, line 1—

omit

requested practitioner

substitute

relevant practitioner

21

Proposed new clause 44 (9)

Page 36, line 7—

insert

(9) In this section:

relevant practitioner means—

(a) the individual's coordinating practitioner; or

(b) another health practitioner.

22

Clause 46 (2)

Page 37, line 27—

after

the individual

insert

or their VAD attorney

23

Clause 46 (5) (a)

Page 38, lines 17 and 18—

after all mentions of

the individual

insert

or VAD attorney

24
Clause 46 (8)
Page 39, line 7—

after
the individual
insert
or VAD attorney

25
Clause 47 heading
Page 39, line 10—

omit the heading, substitute

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

26
Clause 47 (2)
Page 39, line 14—

omit clause 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*).

27
Clause 47 (3)
Page 39, lines 16, 18 and 21—

after all mentions of
the individual
insert
or VAD attorney

28

Clause 47 (5)

Page 40, lines 8 and 14—

after

the individual

insert

or VAD attorney

29

Clause 49 (1)

Page 41, line 16—

omit clause 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.

30

Clause 49 (2)

Page 41, line 21—

omit

an administration decision

substitute

a practitioner administration decision or self-administration decision

31

Clause 54 (1) and (2)

Page 44, line 14—

omit clause 54 (1) and (2), 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 a self-administration decision;
 - (iii) an individual’s self-administration decision is taken to be revoked under section 43A (5); and
 - (b) a contact person appointment is in effect for the individual when the administration decision is changed or revoked.
- (2) The contact person appointment is taken to end when the administration decision is changed or revoked.

32

Clause 58 (1) (a)

Page 46, line 11—

omit clause 58 (1) (a), substitute

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

33

Clause 58 (1) (c)

Page 46, line 14—

after

practitioner administration decision

insert

or attorney decision

34
Clause 58 (1) (d)
Page 46, line 16—

omit clause 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.

35
Clause 59 (1) (a)
Page 47, line 4—

omit clause 59 (1) (a), substitute

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

36
Clause 59 (1) (c)
Page 47, line 7—

after

practitioner administration decision

insert

or attorney decision

37

Clause 59 (1) (f)

Page 47, line 14—

before

the coordinating

insert

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

38

Proposed new clause 59 (1) (g)

Page 47, line 19—

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.

39

Clause 66 (1) (a)

Page 56, line 8—

after

practitioner administration decision

insert

or attorney decision

40

Proposed new clause 66 (1) (c) (ia)

Page 56, line 14—

insert

(ia) the individual’s practitioner administration decision is taken to be revoked under section 43A (5);

41
Clause 75 (1) (b)
Page 61, line 5—

omit clause 75 (1) (b), substitute

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

42
Clause 76 (3) (a) and (b)
Page 62, line 3—

omit clause 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

43
Clause 76 (3) (c)
Page 62, line 7—

before

that the administering

insert

for a practitioner administration decision—

44
Proposed new clause 76 (3) (ca)
Page 62, line 12—

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) is satisfied, immediately before administering the substance, that the individual did not have decision-making capacity in relation to voluntary assisted dying; and

45
Clause 79 heading
Page 64, line 1—

omit the heading, substitute

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

46
Proposed new clause 79 (2) (c)
Page 64, line 10—

insert

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

47
Clause 79 (3) to (5)
Page 64, lines 14, 16, 19 and 22—

omit all mentions of

coordinating practitioner or contact person

substitute

coordinating practitioner, contact person or VAD attorney

48
Clause 95 (2)
Page 73, line 12—

omit clause 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.

49
Schedule 3, part 3.5
Page 118, line 11—

omit part 3.5, substitute

Part 3.5 Powers of Attorney Act 2006

[3.7] 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.

[3.8] 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*.

50

Dictionary, definition of *administration decision*

Page 119, line 24—

omit the definition, substitute

administration decision means—

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

51

Dictionary, proposed new definition of *attorney decision*

Page 120, line 7—

insert

attorney decision—see section 43A (2).

52

Dictionary, proposed new definition of *enduring power of attorney*
Page 121, line 18—

insert

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

53

Dictionary, proposed new definition of *VAD attorney*
Page 123, line 10—

insert

VAD attorney for an individual—see section 12B.
