

LEGISLATIVE ASSEMBLY

VOLUNTARY ASSISTED DYING BILL 2017

(Amendments and New Clauses to be moved by Mr Clark)

1. Clause 3, after line 21 insert—

"associated medical practitioner, in relation to another registered medical practitioner, means a registered medical practitioner who—

- (a) provides health services at or for the same health facility or entity as the other practitioner; or
- (b) provides health services in partnership with the other practitioner;"

2. Clause 3, page 9, after line 26 insert—

"() For the purposes of the definition of *associated medical practitioner*, two registered medical practitioners are not associated medical practitioners only because both practitioners provide health services at or for the same denominational hospital, multi purpose service, private hospital, public health service or public hospital, each within the meaning of the **Health Services Act 1988**."

3. Clause 8, after line 14 insert—

"() A registered health practitioner must not—

- (a) have, on premises at which the practitioner provides health services or professional care services, material relating to voluntary assisted dying that is visible to, or accessible by, a person who has not initiated a discussion about voluntary assisted dying; or
- (b) provide material relating to voluntary assisted dying to a person who has not initiated a discussion about voluntary assisted dying; or
- (c) advertise, in material published or otherwise made available to the general public by the practitioner, that the practitioner is willing to assist a person to access voluntary assisted dying."

4. Clause 8, line 15 after "(1)" and insert "or (2)".

5. Clause 8, line 19 after "(1)" and insert "or (2)".

6. Clause 10, after line 13 insert—

"() The co-ordinating medical practitioner and the consulting medical practitioner must not be associated medical practitioners."

7. Clause 10, lines 14 to 24, omit all words and expressions on these lines and insert—

"() Either the co-ordinating medical practitioner or each consulting medical practitioner must—

- (a) have held a fellowship with a specialist medical college, in a relevant speciality within that college, for at least 5 years; and
 - (b) have had relevant specialist training and have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed."
- 8. Clause 13, page 18, line 26 to page 19, line 6 omit all words and expressions on these lines and insert—
 - "(b) refuses the first request."
- 9. Clause 14, line 21 omit "record." and insert "record; and".
- 10. Clause 14, after line 21 insert—
 - "() notify each registered medical practitioner who is currently treating the person, and each registered medical practitioner who has treated the person in the preceding 3 months, of the request and acceptance of the request."
- 11. Clause 18, page 21, line 7, after "referred" insert ", including any diagnosis that the specialist registered medical practitioner has made as to whether the person's disease, illness or medical condition meets the requirements of section 9(1)(d)".
- 12. Clause 18, page 21, after line 7 insert—
 - "() Subsection (2) does not apply to a co-ordinating medical practitioner who meets the requirements of section 10(3)."
- 13. Clause 19, line 11, after "practitioner" insert "has diagnosed the person with a disease, illness or medical condition that meets the requirements of section 9(1)(d) and".
- 14. Clause 19, line 13, before "eligibility" insert "other".
- 15. Clause 23, page 24, after line 6 insert—
 - "() The registered medical practitioner must refuse the referral if the practitioner and the co-ordinating medical practitioner are associated medical practitioners."
- 16. Clause 23, page 24, lines 7 to 26, omit all words and expressions on these lines and insert—
 - "() Subject to subsection (5), the registered medical practitioner must refuse the referral if the practitioner—
 - (a) has not held a fellowship with a specialist medical college, in a relevant speciality within that college, for at least 5 years; or
 - (b) has not had relevant specialist training or does not have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed.
 - () Subsection (4) does not apply if the co-ordinating medical practitioner—

- (a) has held a fellowship with a specialist medical college, in a relevant speciality within that college, for at least 5 years; and
 - (b) has had relevant specialist training and has relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed."
- 17. Clause 27, page 26, line 11, after "referred" insert ", including any diagnosis that the specialist registered medical practitioner has made as to whether the person's disease, illness or medical condition meets the requirements of section 9(1)(d)".
- 18. Clause 27, page 26, after line 11 insert—
 - "() Subsection (2) does not apply to a consulting medical practitioner who meets the requirements of section 10(3).".
- 19. Clause 28, line 15, after "practitioner" insert "has diagnosed the person with a disease, illness or medical condition that meets the requirements of section 9(1)(d) and".
- 20. Clause 28, line 17, before "eligibility" insert "other".
- 21. Clause 34, after line 18 insert—
 - "(iii) has been given the information required by this Act and understands that information; and".
- 22. Clause 45, page 38, line 33 and page 39, line 1 omit "an order made by VCAT" and insert "that section 73 applies on a determination being made by VCAT under section 72(b),(d) or (f)".
- 23. Clause 45, page 39, line 3 after "pharmacy" insert "or in the case that an application to VCAT is withdrawn under section 71 or the permit is cancelled in accordance with section 52(c)".
- 24. Clause 45, page 39, line 10 omit "pharmacy." and insert "pharmacy; and".
- 25. Clause 45, page 39, after line 10 insert—
 - "() in the case that an application is made under section 68(1) and the person is the subject of the decision to be reviewed by VCAT, the contact person specified in the permit—
 - (i) to possess and store the voluntary assisted dying substance (if any) that has been dispensed to the person; and
 - (ii) to carry and transport the voluntary assisted dying substance to the co-ordinating medical practitioner."
- 28. Clause 47, page 41, line 8 omit "enduring." and insert "enduring; and".
- 29. Clause 47, page 41, after line 8 insert—
 - "() the person in requesting access to voluntary assisted dying is acting voluntarily and without coercion."
- 30. Clause 48, page 42, line 30 omit "enduring." and insert "enduring; and".

- 31 Clause 48, page 42, after line 30 insert—
"() the person in requesting access to voluntary assisted dying is acting voluntarily and without coercion."
- 32 Clause 49, page 43, lines 9 to 13, omit all words and expressions on these lines and insert—
"() The Secretary must refuse to issue a voluntary assisted dying permit unless the Secretary is satisfied the request and assessment process has been completed as required by this Act."
- 33 Clause 52, page 44, line 21 omit "form." and insert "form; or".
- 34 Clause 52, page 44, after line 21 insert—
"(c) on the person who is the subject of the permit being—
(i) the subject of a guardianship order within the meaning of the **Guardianship and Administration Act 1986**; or
(ii) the subject of a medical treatment decision made by a medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**."
- 35 Clause 64, page 50, after line 15 insert—
"() the person in requesting access to voluntary assisted dying is acting voluntarily and without coercion; and".
36. Clause 65, line 6 omit "must be".
37. 37Clause 65, line 7 before "aged" insert "must be".
- 38 Clause 65, line 8 before "independent" insert "must be".
39. Clause 65, line 11 omit "administered." and insert "administered; and".
40. Clause 65, after line 11 insert—
"() must not know or believe that the witness—
(i) is a beneficiary under a will of the person to whom the voluntary assisted dying substance is to be administered; or
(ii) may otherwise benefit financially or in any other material way from the death of that person; and
() must not be an owner of, or responsible for the day-to-day operation of, any health facility at which the person to whom the voluntary assisted dying substance is to be administered is being treated or resides; and
() must not be directly involved in providing health services or professional care services to the person to whom the voluntary assisted dying substance is to be administered."
41. Heading to clause 68, after "**VCAT**" insert "**or for an order by VCAT**".
42. Clause 68, page 54, line 12 after "dying;" insert "or".

43. Clause 68, page 54, after line 12 insert—
 "(iii) is or is not acting voluntarily and without coercion in relation to voluntary assisted dying;".
43. Clause 68, page 54, line 20 after "dying;" insert "or".
44. Clause 68, page 54, after line 20 insert—
 "(iii) is or is not acting voluntarily and without coercion in relation to voluntary assisted dying;".
45. Clause 68, page 54, after line 26 insert—
 "() a decision of the co-ordinating medical practitioner under section 47(3)(c) or 48(3)(d) that the person is or is not acting voluntarily and without coercion in relation to voluntary assisted dying;".
46. Clause 68, page 54, lines 27 to 30, omit all words and expressions on these lines and insert—
 "() a decision of the co-ordinating medical practitioner under section 64(5) that the person—
 (i) has or does not have decision-making capacity in relation to voluntary assisted dying; or
 (ii) is or is not acting voluntarily and without coercion in relation to voluntary assisted dying.
 (2) An eligible person may apply to VCAT for an order for a matter in relation to a person being induced by the dishonesty or undue influence of another person—
 (a) to make a request for access to voluntary assisted dying; or
 (b) to self-administer a voluntary assisted dying substance dispensed in accordance with a self-administration permit."
47. Clause 68, page 55, line 4, after "subsection (1)" insert "or a matter referred to in subsection (2)".
48. Clause 68, page 55, line 14 after "subsection (1)" insert "or an order in relation to a matter under subsection (2)".
49. Clause 68, page 55, line 15 after "the decision" insert "or the matter".
50. Clause 68, page 55, line 16 after "the decision" insert "or an order for the matter".
51. Clause 68, page 55, line 17 after "the review" insert "or the order".
52. Clause 69, page 55, line 20, after "a person" insert "or under section 68(2) for an order in respect of a matter".
53. Clause 70, line 34, after "person" insert "or under section 68(2) for an order in respect of a matter".

54. Clause 71, after line 28 insert—
- "() An application for the review of a decision under section 68(1) is taken to be withdrawn if—
- (a) the person who is the subject of the decision, is the subject of a guardianship order within the meaning of the **Guardianship and Administration Act 1986**; or
 - (b) a medical treatment decision maker is making medical treatment decisions within the meaning of the **Medical Treatment Planning and Decisions Act 2016** in respect of the person who is the subject of the decision."

55. Clause 72, page 57, line 5 omit "dying." and insert "dying; or".

56. Clause 72, page 57, after line 5 insert—

"() a person is acting voluntarily and without coercion in relation to voluntary assisted dying; or

() a person is not acting voluntarily and without coercion in relation to voluntary assisted dying."

57. Clause 73, page 57, after line 19 insert—

"() The co-ordinating medical practitioner for a person may refuse to resume any first assessment in relation to the person or to continue to perform the role of co-ordinating medical practitioner if—

 - (a) an application under section 68(1) was made for review of a decision of the consulting medical practitioner that the person was not acting voluntarily and without coercion in relation to voluntary assisted dying; and
 - (b) VCAT determines that the person was acting voluntarily and without coercion in relation to voluntary assisted dying."

58. Clause 73, page 57, after line 30 insert—

"() A consulting medical practitioner for a person may refuse to resume any consulting assessment that was not completed in relation to the person before the application was made if—

 - (a) an application under section 68(1) was made for review of a decision of the consulting medical practitioner that the person was not acting voluntarily and without coercion in relation to voluntary assisted dying; and
 - (b) VCAT determines that the person was acting voluntarily and without coercion in relation to voluntary assisted dying."

59. Clause 73, page 57, line 32, after "subsection (1)" insert "or (2)".

60. Clause 73, page 58, line 2, after "subsection (2)" insert "or (4)".

61. Clause 79, after line 17 insert—

"() For the purposes of subsection (1)—

assist or facilitate does not include the administration of a substance for the purposes of causing death."

62. Clause 112, line 9 after "**2004**" insert "at a level of Grade 6 or equivalent, or a higher level".
63. Heading to clause 113, omit "may" and insert "must".
64. Clause 113, line 13 omit "may" and insert "must".
65. Clause 113, line 24 omit "coercion." and insert "coercion;".
66. Clause 113, after line 24 insert—

"() current awareness of outcomes achievable by best practice palliative care."
67. Clause 113, after line 24 insert—

"() the prescribing and administration of voluntary assisted dying substances."

NEW CLAUSES

68. Insert the following New Clause to follow clause 70—

"AA Lodging of dispensed voluntary assisted dying substance with coordinating medical practitioner

If an application is made to VCAT under section 68(1), the person who is the subject of the decision to be reviewed or the person's contact person must, if a voluntary assisted dying substance has been supplied, give the voluntary assisted dying substance to the person's co-ordinating medical practitioner."

69. Insert the following New Clause to follow clause 72—

"BB Cancellation of practitioner administration permit, unfilled prescription, return of voluntary assisted dying substance on certain VCAT determination

On VCAT determining a proceeding for the review of a decision and making a determination under section 72(b), (d) or (f)—

- (a) any practitioner administration permit issued in respect of the person who was the subject of the decision is cancelled; and
- (b) any unfilled prescription under a self-administration permit in respect of the person is cancelled; and
- (c) any voluntary assisted dying substance in the possession of the person must be returned to a pharmacist at the dispensing pharmacy in accordance with an authorisation under section 45(b) or (d)."

70. 93. Insert the following New Clause to follow clause 73—

"CC VCAT orders in relation to person being induced by dishonesty and undue influence of another person

On an application under section 68(2) or on its own motion in any hearing before it, VCAT may make an order that a person is being or is not being induced by the dishonesty or undue influence of another person—

- (a) to make a request for access to voluntary assisted dying; or
- (b) to self-administer a voluntary assisted dying substance dispensed in accordance with a self-administration permit."

71. Insert the following New Clause to follow clause 90—

"DD Offence to make available material about, or advertise, voluntary assisted dying

"A registered health practitioner, or the owner of, or a person responsible for the day-to-day operation of, a health facility must not—

- (a) have, on premises at which the practitioner provides health services or professional care services, or on the premises of the health facility, as the case requires, material relating to voluntary assisted dying that is visible to, or accessible by, a person who has not initiated a discussion about voluntary assisted dying; or
- (b) provide material relating to voluntary assisted dying to a person who has not initiated a discussion about voluntary assisted dying; or
- (c) advertise, in material published or otherwise made available to the general public, that the practitioner or the health facility is willing to assist a person to access voluntary assisted dying.

Penalty: 120 penalty units or 12 months imprisonment or both."

AMENDMENTS TO SCHEDULE

72. Form 1 in Schedule 1, page 97, after line 11 insert—

"Date on which, and names of, registered medical practitioners who were advised of the first request and acceptance of the request:".

73. Form 3 in Schedule 1, page 105, after line 10 insert—

"I have been advised of the following matters:

- (a) my diagnosis and prognosis;
- (b) the treatment options available to me and the likely outcomes of that treatment;
- (c) palliative care options available to me and the likely outcomes of that care;
- (d) the potential risks of taking a poison or controlled substance or a drug of dependence likely to be prescribed under this Act for the purposes of causing my death;
- (e) that the expected outcome of taking a poison or controlled substance or a drug of dependence referred to in paragraph (d) is death;
- (f) that I am able decide at any time not to continue the request and assessment process."

74. Form 5 in Schedule 1, page 116, after line 5 insert—
- "Are the co-ordinating medical practitioner and the consulting medical practitioner associated medical practitioners?
- ☐No
- ☐Yes—you must not certify the request and assessment process."
75. Form 5 in Schedule 1, page 116, line 7, omit "have" and insert "hold a fellowship with a specialist medical college, in a relevant speciality within that college and have relevant specialist training and".
76. Form 5 in Schedule 1, page 116 after line 8 insert—
- "Has the co-ordinating medical practitioner or consulting medical practitioner held the fellowship with a specialist medical college, in a relevant speciality within that college, for at least 5 years?"
76. Form 5 in Schedule 1, page 116, lines 14 to 21, omit all words and expressions on these lines.