

# VOLUNTARY ASSISTED DYING BILL 2023

## SUPPLEMENTARY EXPLANATORY STATEMENT

[https://www.legislation.act.gov.au/b/db\\_68609/](https://www.legislation.act.gov.au/b/db_68609/)

June 4, 2024

*Below is the quote from Hansard explaining how 'advanced' is to be interpreted. The Explanatory Statement has the purpose of explaining how the words in the Bill are to be interpreted. These amendments were tabled by Minister Tara Cheyne on June 4.*

### Re: Advanced

Like other Australian jurisdictions, VAD will only be an option for a person with at least one condition that is 'advanced, progressive, and expected to cause the person's death'. It is intended that an 'advanced' condition refers to a period of serious illness when functioning and quality of life decline, and treatments (other than for the primary purpose of pain relief) have lost any beneficial impact. It is not the intent that the definition of 'advanced' be limited to the final days, weeks or months of life. A person may be considered to be eligible for VAD, even if it is uncertain whether their relevant conditions will cause death within the next 12 months.

Under new clause 11 (2A) an individual's relevant conditions are advanced if:

1. (a) the individual's functioning and quality of life— (i) have declined or are declining; and
2. (b) any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact; and
3. (c) the individual is approaching the end of their life.

The meaning of approaching the end of life is clarified further in proposed new clause 11 (3A).

### Clause 4 Proposed new clause 11 (3A) and (3B)

This clause introduces clause 11 (3A) which defines the meaning of 'treatment' in relation to clause 11 (2A) (b) which provides that 'any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact'.

It is important that treatments people are receiving for their condition which are for the purposes of relieving symptoms or pain or distress do not make them ineligible for VAD. New clause 11 (2A) (b) provides that an individual's relevant conditions are advanced if any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact.

It is not the intention that a 'treatment' primarily for the purpose of relieving a symptom of the condition or any pain or distress caused by the condition is included in this definition.

For example, the pain caused by advanced cancer can be treated by palliative radiotherapy or chemotherapy to help manage symptoms. These treatments aim primarily to improve quality of life and alleviate suffering, rather than to have any effect in curing the disease. Accordingly, receiving such treatment does not make the person ineligible for VAD.

This clause introduces clause 11 (3B) to provide further clarification on the meaning of 'approaching the end of life' within the context of 'advanced' in relation to eligibility to access VAD. Clause 11(3B) is not intended to limit the circumstances where an individual can be taken to be "approaching end of life" and is not intended to introduce a fixed timeframe to death to determine an individual's eligibility for VAD. There may be instances where an individual's timeframe to death is unclear, unpredictable or where the person's prognosis has a range of possible outcomes. A person may be considered to be approaching the end of life, even if it is uncertain whether their relevant conditions will cause death within the next 12 months. Clause (3B) is not intended to exclude an individual who might be expected to live for more than 12 months where the individual has been assessed as approaching the end of their life in all of the circumstances, and in light of their particular conditions(s), by their assessing health practitioners.

Clinical trajectories of advanced life limiting illnesses, such as cancer and neurodegenerative diseases, can be unpredictable. In some circumstances, individuals may have an expected prognosis of 12 months or more, however, the prognosis may change very quickly due to complications and uncertainties common in advanced illness.

The intent of the Government's approach is to avoid the many challenges for practitioners, individuals and their families, friends and carers that arise from the strict 6 to 12-month timeframe to death requirement imposed in other Australian jurisdictions. At the same time, the proposed framework seeks to ensure that VAD remains an end-of-life choice to end intolerable suffering for an individual whose terminal, progressive condition is advanced and is expected to cause their death.

Importantly, a person must meet all eligibility criteria to access VAD, including suffering intolerably in relation to the relevant condition/s and have decision-making capacity in relation to VAD.

#### **Clause 5 Clause 11 (4), definition of advanced**

This clause omits the definition of 'advanced' as this been relocated to new clause 11 (2A).

#### **Clause 6 Clause 11 (4), definition of disability**

This clause changes the definition of disability to the definition of disability used in the *Disability Services Act 1991* (ACT).