

# VOLUNTARY ASSISTED DYING ACT 2017 Authorised version as at 1 July 2018 SUMMARY

## PART 1. PRELIMINARY

### 1. Purposes

- (a) To provide for and regulate access to voluntary assisted dying (VAD).
- (b) To establish the Voluntary Assisted Review Board (the Board).
- (c) To make consequential amendments to the Births, deaths & Marriages Registrations Act 1996, the Coroners Act 2008 and Drugs, Poisons & Controlled Substances Act 1981 and other Acts.

### 2. Commencement 19 June 2019

### 3. Definitions

#### **Decision making capacity** (See also 9. Eligibility criteria, mental illness and disability)

A person has decision making in relation to voluntary assisted dying when the person is able to –

- Understand the information relevant to the decision relating to VAD and the effect of the decision. (Understand the explanation means given in a way that is appropriate to the person's circumstances).
- Retain that information to the extent necessary to make the decision
- Use or weigh that information as part of the process of making that decision
- Communicate the decision & the person's views and needs as to the decision in some way. Including by speech, gestures or other means. Practical and appropriate support may include e.g. using technology that alleviates the effects of a person's disability.
- Assessment of this ability must be made at a time and in an environment in which the person's decision making capacity can be most accurately assessed.

### 5. Principles

- A person exercising power or performing a function or duty...must have regard to the following principles
- Every human life has equal value.
- A person's autonomy should be respected
- A person has the right to be supported in making informed decisions about medical treatment and should be given, in a manner the person understands, information about medical treatment options including comfort and palliative care
- Every person should be given quality care to minimise suffering & maximise the person's quality of life.
- A therapeutic relationship with the health practitioner should be supported and maintained
- Individuals should be openly encouraged to openly discuss death and dying. An individual's preferences and values should be encouraged and promoted.
- Individuals should be supported in discussions about treatment and care preferences.
- Individuals are entitled to genuine choices regarding their treatment and care.
- There is a need to protect individuals who may be subject to abuse
- All persons, including health practitioners, have the right to be shown respect for their culture, beliefs, values and personal characteristics.

### 6. When may a person access voluntary assisted dying? See also 9. Who is eligible Note all the criteria.

- (a) The person has made a first request.
- (b) The person has been assessed as eligible (See 9.) by the co-ordinating medical practitioner (MP) and the consulting MP.
- (c) The person has made a written declaration.
- (d) The person has made a final request to the MP.

(e) The person has appointed a contact person.

(f) The co-ordinating MP has certified in a final review form the request and review process has been completed.

(g) The person is the subject of a VAD permit.

**7. Conscientious objection of registered health practitioners** NB has the right to refuse to provide information &/or participate in the process

**8. Voluntary assisted dying is not to be initiated by the registered medical practitioner** See PART 8 Offences

## **PART 2 CRITERIA FOR ACCESS TO VOLUNTARY ASSISTED DYING**

### **9. Eligibility criteria for access to voluntary assisted dying**

- The person must be 18 years or more
- Be an Australian citizen or permanent resident, at the time of making the first request be ordinarily resident in Victoria for at least 12 months
- Have decision making capacity in relation to VAD
- Be diagnosed with a disease, illness or medical condition that is incurable, advanced, progressive and is expected to cause death within weeks or months, not exceeding 6 months, [and] is causing suffering to the person that cannot be relieved in a manner that the person considers to be tolerable. [In the case of] a person [who is] diagnosed with a disease, illness or medical condition that is neurodegenerative this period may be modified.

NB A person is not eligible...because the person is diagnosed with a mental illness, within the meaning of the Mental Health Act 2014

NB. A person is not eligible ... only because the person has a disability within the meaning of section 3(1) the Disability Act 2006.

## **PART 3 REQUESTING ACCESS TO VAD AND ASSESSMENT OF ELIGIBILITY**

### **10. Minimum requirements for the co-ordinating medical practitioner and consulting medical practitioners**

Must hold a fellowship with a specialist medical college or be a vocationally registered GP. Either the co-ordinating MP or each consulting medical practitioner must have practised as a registered MP for at least 5 years after completing a fellowship or vocational registration. Either the co-ordinating MP or the consulting MP must have relevant expertise & experience in the disease, illness or medical condition expected to cause death.

### **11. Person may make a first request to a MP for access to VAD**

This has to be clear and unambiguous.

Made [only] by the person [him or herself].

### **12. There is no obligation to continue after making the first request.**

### **13. The appropriately qualified, MP must [formally] accept or reject the first request within 7 days.**

### **14. MP who accepts the request must record the request.**

**15. 16. and 17 This MP becomes the co-ordinating medical practitioner** [and determines whether or not the person meets the eligibility requirements].

### **18. Referral to a specialist opinion**

If the co-ordinating MP is unable to determine if the person has the capacity to make a decision re VAD then the person must be referred to a registered health practitioner who has appropriate skills and training.

If the co-ordinating MP determines that the person has a neurodegenerative disease the MP must refer the person to a specialist registered MP who has appropriate training and skills [etc.]  
If the specialist MP determines the person with the neurodegenerative meets the disease and time(line) criteria as set out in **9. (d)** the MP must provide a report to the co-ordinating MP who must accept the determination.

**19. Information to be provided if the co-ordinating MP assesses the person as meeting the eligibility criteria**

1. The person must be informed regarding:

- The person's diagnosis and prognosis
- Treatment options and likely outcomes
- Palliative care options
- Potential risks of taking a poison or controlled substance for the purposes of causing death and that the expected outcome of such an action is death.
- That the person may discontinue the request and assessment process at any stage
- If their normal MP is someone else then they should inform that MP of their decision.

2. The MP, with the person's consent, should take all reasonable steps to explain to a member of the family:

- All relevant clinical guidelines.
- A plan in respect of the self- administration of a VAD substance for the purpose of causing death.

**20. Outcomes of the first assessment**

- The process only continues if the co-ordinating MP assesses the person as eligible for VAD if the person meets all the eligibility criteria, understands the information set out in 19. above.
- The person is acting voluntarily and without coercion.
- The person's request is enduring.

**21. Recording and notification of the outcome of the first assessment**

Person must be notified of the MP's assessment and within 7 days MP must notify the Board of the assessment.

**22. Referral for a consulting assessment is mandatory if the person is assessed as eligible for access to VAD**

**23.24 25 26 27. The registered MP to whom the referral is made must respond within 7 days.** This MP then becomes the consulting MP. This MP must seek further specialist opinion if they are unable to make a decision.

**28. Information to be provided if the consulting MP assesses the person as meeting all the eligibility criteria** See 19. 1.

**29. Outcomes of consulting assessment** See 20. Above.

**30. Recording and notification of outcome** See 20, above- person, consulting MP and Board to be notified.

**31. Consulting MP may refer person for further consulting** See 18, above.

**32. Co-ordinating MP may transfer their role at the request of the person or on their own initiative.**

**33. Process for transfer of the co-ordinating MP role**

The role may be transferred to the consulting MP if that MP has assessed the person as eligible & accepts the role. This must be done within 7 days.

**34. Person assessed as eligible for access to VAD may make a written declaration**

1. If they have been assessed as eligible by the co-ordinating MP and the consulting MP.
2. The written declaration must specify that the person makes the declaration voluntarily and without coercion & understands the nature and effect of the declaration and **be signed by them in the presence of 2 witnesses**, (only one of whom can be a family member,) and the co-ordinating MP. There is provision for another person (over 18) signing on behalf of the person and for interpreters. Signing must be done in the presence of the person.

**35. Witness to making of a written declaration See also 65.** Criteria include:

- A witness is aged 18 years or more,
- Not judged ineligible because the witness is: a beneficiary under the will or may benefit financially;
- owns, or is responsible for, day to day running of a health facility used by the patient;
- Directly involved in providing health or professional care services
- Not more than one witness can be a family member.

**36. Certification of the witness See criteria for 20. & 34 above**

And that the request has been signed in the presence of the co-ordinating MP.

**37. Person may make a final request**

If a written declaration has been made. It must be made to the co-ordinating MP by the person, personally. The final request may be made verbally, by gesture or other means of communication.

**38. Final request to be made a certain time after the first request and consulting assessment**

At least 9 days after the first request and at least one day after the consulting assessment UNLESS the co-ordinating MP

considers the person's death is likely to occur before the specified time period. This assessment concurring with that of the consulting MP.

**39. 40. Contact person See 45.(c) other responsibilities regarding disposal and return of VAD substance to the pharmacist)**

The applicant must appoint a person who is 18 years or more as the contact person on the contact person appointment form.

This person must agree to be the contact person. The appointment is made in front of another person.

**41.& 42. Final Review by the co-ordinating MP on receipt of final request.**

This includes; a review of all forms, reports and written declarations.

Completion of the final review form and certification that the request and assessment process has been completed as required by the Act and providing the Board with a copy of the form within 7 days.

**43. Co-ordinating MP may apply for a VAD permit on certification of request & assessment process on final review.**

**44. No obligation for a person to continue after certification of request and assessment process on final review.**

## **PART 4 – VOLUNTARY ASSISTED DYING PERMITS**

### **45. What is authorised by a self- administered permit?**

- The co-ordinating MP to prescribe and supply the VAD substance specified in the permit to the person that is able to be self- administered and is of a sufficient dose to cause death.
- The person to obtain, store, use and self-administer the VAD substance within 15 days of the person's death the specified contact person to return any unused substance to a pharmacist at the dispensing pharmacy.

### **46. What is authorised by a practitioner administration permit? See also 20.**

- This authorises the co-ordinating MP to administer a VAD substance for the purpose of causing death.
- This only if the MP has received an administrative request in the presence of a witness and the witness is present for the administration of the substance.
- This only applies if the person is physically incapable of self- administration at the time of making the administration request has decision making capacity in relation to VAD,
- Is acting voluntarily and without coercion and the request is enduring.

### **47. Application for self- administration permit**

The co-ordinating MP may apply to the **Secretary** [Department of Health and Human Services] for a self- administration Permit if the person satisfies the eligibility criteria.

The application must be on the prescribed form, identify the person, specify the substance [of sufficient dosage] to effect death, specify the contact person and supply a copy of the final review form & all forms specified in 41. 1. (a).

### **48. Application for practitioner administration permit**

In addition to criteria for 47 above, the co-ordinating MP must be satisfied that the person cannot self-administer.

### **49. Secretary to determine application for a VAD permit as set out in 47. & 48.**

Secretary may refuse an application e.g. if the Secretary is not satisfied that the request process has met the requirements of the Act.

The Secretary must notify the co-ordinating MP in writing as soon as practicable of the decision and the Board within 7 days.

### **50. Operation of voluntary assisted dying permit**

A VAD permit comes into force on the day specified in the permit.

### **51. The Secretary may amend the permit**

If: there is an administrative error or minor defect, at the request of the co-ordinating MP, at the Secretary's discretion.

The co-ordinating MP and the Board must be notified in writing of any amendment made.

### **52. Cancellation of self-administration permit**

Occurs on the cancellation of any unfulfilled prescription by the co-ordinating MP

When a **pharmacist** gives the Board a substance disposal form.

## **Division 3 – Later physical incapacity of a person to self-administer VAD substance**

### **53. A person may request the co-ordinating MP to apply for a practitioner administration permit**

If the person is the subject of a self-administration permit and they have lost the capacity to self-administer.

**54. & 55. Destruction of unfilled prescription by co-ordinating MP & substance to be returned to the pharmacy**

MP must immediately destroy this as soon as there is a request specified in 53 above.

**56. A co-ordinating MP may apply for a practitioner administration permit if the self-administration permit is cancelled.**

**PART 5 – ACCESSING VOLUNTARY ASSISTED DYING AND DEATH**

**Division 1-prescribing, dispensing or disposing of VAD substance**

**57. Information to be given on prescribing a VAD substance**

The co-ordinating MP before prescribing a VAD substance must: inform the person how to self-administer, that the person is under no obligation to obtain the substance & may at any time return the unfilled prescription to the MP, and that the person is not under any obligation to administer the VAD substance.

If the VAD substance is retained it must be stored in a locked box. Any unfilled prescription must be returned to the co-ord. MP. Any unused substance must be returned by the person or the contact person to the pharmacist at the dispensing pharmacy.

**58. Information to be given by the pharmacist dispensing a prescribed VAD substance**

This includes: information on how to self-administer, storage requirements, that there is no obligation to self-administer, and that any unused VAD substance must be returned to the dispensing pharmacist by the person or contact person.

**59. 60. 61.62. 63. Obligations regarding disposal & reporting for the pharmacist, (written report to the Board within 7 days).**

**Division 2-Administration request and administration of VAD substance**

**64. Person may make an administrative request for the co-ordinating MP to administer the VAD substance. See 9. Above eligibility criteria**

And the person understands the VAD substance is to be administered immediately after the making of the request.

The request is made by the person, must be made in the presence of a witness, and can be made verbally, by gesture or other means of communication.

The co-ordinating MP must refuse to accept the person's administrative request if they are not satisfied that any of the requirements are not met.

**65. Obligations of the witness to the administration request and administration of VAD substance**

See also 35.

Must certify in writing that the person had decision making capacity, there was no coercion, the request was enduring and that the co-ordinating MP administered the substance.

**66. Certification by the co-ordinating MP following administration of VAD substance**

MP must certify in writing the same criteria as in 65. Above & and within 7 days give the Board a copy of the MP form.

**Division 3-Notification of cause of death**

**67. Notification of disease, illness, or medical condition of person to the Registrar and Coroner**

A registered medical practitioner must notify the Registrar and Coroner that the deceased person's death was the subject of a VAD permit, self-administration permit or practitioner administration permit.

## **PART 6 -REVIEW BY VCAT**

### **68. 69. 70. 71. 72. Application for review of certain decisions by VCAT, withdrawal of application, powers of VCAT, consequences, and notice requirements.**

The person may apply to VCAT regarding decisions made by the co-ordinating MP or the consulting MP regarding residency, decision making capacity in relation to VAD.

The principal registrar of VCAT must give notice of the application and any determination to: the co-ordinating MP, the Secretary and the Board.

## **PART 7-NOTIFICATIONS AND PROTECTIONS FROM LIABILITY**

### **Division 1. Notifications to the Australian Health Practitioner Regulation Agency**

#### **75. 76. 77. Mandatory notification by a registered health practitioner, employer, voluntary notification by persons**

Where one of the above believes, on reasonable grounds, that a registered health practitioner is offering to provide or attempting to provide access to VAD in a manner that is not...in accordance with the Act.

**78. to 82.** Protection from liability for persons making notification.

## **PART 8- OFFENCES 83. TO 91**

### **Offences include:**

- A co-ordinating MP who knowingly administers the VAD substance other than and as authorised by, and in accordance with, the permit. Consequences include up to life imprisonment.
- To induce another person to request VAD.
- To falsify a record.

## **PART 9-VOLUNTARY ASSISTED DYING REVIEW BOARD**

### **92. ESTABLISHMENT**

#### **93. Function and Powers**

- To monitor matters related to VAD, to review the exercise of any function or power.
- To provide reports to each House of Parliament on operations of the Act and recommendations for improvement.
- To promote compliance with the Act by providing information to registered health practitioners and the community
- \*To refer issues to Chief Commissioner of Police, Registrar, Secretary, State Coroner, Australian Health Practitioner Regulation Agency.
- \*Promote continuous improvement in the quality & safety to those who exercise any function or power under the Act
- \*To consult and engage with: the Victorian community, relevant groups or organisations, government departments and agencies, registered health practitioners.
- \*To provide advice to the Minister or Secretary.

### **Division 3- Membership and procedures Division 4- request for information Division 5-Reports 94. To 112.**

The Minister appoints members, the Chair and Deputy Chair, initially for 6 years, then for 3 year terms. Timelines for persons contacting the Board are either as soon as practical or within 7 days. The Board will make Reports for every 6 month period. Not more than 3 months after the end of the financial year make an Annual report on the operation of the Act, and must provide an annual report to the Clerk of each House of Parliament

## **PART 10 GENERAL**

### **116. Five year review**

The Minister must require a review of the first 4 years in the fifth year of the operation.

### **117. Board to record, retain and make public statistical information**

## **PART 11 CONSEQUENTIAL AMENDMENTS**

To: Births Deaths and Marriages Act 1996, Coroner's Act 2008, Drugs, poisons and Controlled Substances Act 1981, Health Records Act 2001, Medical Treatment, Planning and Decisions Act 2016, Pharmacy Regulation Act 2010