
c2021-168O
*--Other (Mr Henskens)

LEGISLATIVE ASSEMBLY

Voluntary Assisted Dying Bill 2021

First print

Proposed amendments

- No. 1 **Decision-making capacity**
Page 3, clause 6(2), lines 21–26. Omit all words on those lines.
- No. 2 **Decision-making capacity—balance of probabilities**
Page 7, clause 16(1)(d)(ii), line 37. Insert “based on appropriate evidence having regard to the gravity of the consequences of the assessment” after “balance of probabilities”.
- No. 3 **Eligibility criteria—psychiatric conditions**
Page 7, clause 16(1). Insert after line 42—
 (da) the person’s request for voluntary assisted dying is not the result of a psychiatric condition, including a psychiatric condition consequent on the diagnosis of a disease, illness or medical condition referred to in paragraph (d),
 Example— depression consequent on the diagnosis of a terminal illness
- No. 4 **Eligibility to act as coordinating practitioner or consulting practitioner**
Page 9, clause 18(a)(ii), line 10. Omit “or”. Insert “and”.
- No. 5 **Eligibility to act as coordinating practitioner or consulting practitioner**
Page 9, clause 18(a)(iii), lines 11 and 12. Omit all words on those lines.
- No. 6 **Assessment of life expectancy**
Page 11, clause 25. Insert after line 24—
 (2A) In deciding whether the patient has a condition referred to in section 16(1)(d)(ii)(A) or (B), the coordinating practitioner’s decision about whether the patient’s disease, illness or medical condition will cause death within the period referred to in that provision must—
 (a) have a basis in medical science, and
 (b) be recorded in the patient’s medical record, including the basis on which the coordinating practitioner made the decision.
- No. 7 **Referral to another medical practitioner for opinion—balance of probabilities**
Page 11, clause 26(3)(a)(ii), line 38. Insert “based on appropriate evidence having regard to the gravity of the consequences of the assessment” after “balance of probabilities”.

-
- No. 8 **Requirement to act in accordance with decision of other medical practitioner**
Page 12, clause 26(4), line 4. Omit “may”. Insert instead “must”.
- No. 9 **Requirement to act in accordance with decision of other medical practitioner**
Page 12, clause 26(4), line 5. Insert “, unless there is a compelling reason not to do so” after “made”.
- No. 10 **Requirement for opinion—consequential amendment**
Page 12, clause 27(1), line 22. Insert “1” after “Note”.
- No. 11 **Requirement for opinion**
Page 12, clause 27(1). Insert after line 22—
Note 2. See also section 144B for circumstances in which the coordinating practitioner must refer patient to a psychiatrist, other registered health practitioner or other person under this section.
- No. 12 **Requirement to act in accordance with decision of psychiatrist etc**
Page 12, clause 27(3), line 34. Omit “may”. Insert instead “must”.
- No. 13 **Requirement to act in accordance with decision of psychiatrist etc**
Page 12, clause 27(3), line 36. Insert “, unless there is a compelling reason not to do so” after “made”.
- No. 14 **Referral for consulting assessment**
Page 15, clause 31, line 25. Insert “nominated by the Board under section 144C” after “another medical practitioner”.
- No. 15 **Referral for further consulting assessment**
Page 15, clause 32(1), line 30. Omit “, 42”.
- No. 16 **Consulting practitioner**
Page 15, clause 32, lines 32–40. Omit all words on those lines. Insert instead—
(2) The medical practitioner may decide to refuse the referral if the practitioner is unable to perform the duties of a consulting practitioner because of unavailability or another reason.
- No. 17 **Palliative care specialists**
Page 16, clause 36(2). Insert after line 34—
(aa) review the information given to the patient under section 28(1)(c) and provide additional information to the patient the consulting practitioner considers appropriate, and
- No. 18 **Assessment of life expectancy**
Page 16, clause 36. Insert after line 36—
(2A) In deciding whether the patient has a condition referred to in section 16(1)(d)(ii)(A) or (B), the consulting practitioner’s decision about whether the patient’s disease, illness or medical condition will cause death within the period referred to in that provision must—
(a) have a basis in medical science, and
(b) be recorded in the patient’s medical record, including the basis on which the coordinating practitioner made the decision.

-
- No. 19 **Referral to another medical practitioner for opinion—balance of probabilities**
Page 17, clause 37(3)(a)(ii), line 11. Insert “based on appropriate evidence having regard to the gravity of the consequences of the assessment” after “balance of probabilities”.
- No. 20 **Requirement to act in accordance with decision of other medical practitioner**
Page 17, clause 37(4), line 20. Omit “may”. Insert instead “must”.
- No. 21 **Requirement to act in accordance with decision of other medical practitioner**
Page 17, clause 37(4), line 21. Insert “, unless there is a compelling reason not to do so” after “made”.
- No. 22 **Referral for opinion—consequential amendment**
Page 17, clause 38(1), line 38. Insert “1” after “Note”.
- No. 23 **Referral for opinion**
Page 17, clause 38(1). Insert after line 38—
Note 2. See also section 144B for circumstances in which the coordinating practitioner must refer patient to a psychiatrist, other registered health practitioner or other person under this section.
- No. 24 **Requirement to act in accordance with decision of psychiatrist etc**
Page 18, clause 38(3), line 4. Omit “may”. Insert instead “must”.
- No. 25 **Requirement to act in accordance with decision of psychiatrist etc**
Page 18, clause 38(3), line 6. Insert “, unless there is a compelling reason not to do so” after “made”.
- No. 26 **Referral for further consulting assessment**
Page 19, clause 42, lines 23–26. Omit all words on those lines.
- No. 27 **Referral for further consulting assessment** (Only to be moved if amendment no 26 fails and amendment no 46 succeeds)
Page 19, clause 42, line 26. Insert “, nominated by the Board,” after “medical practitioner”.
- No. 28 **Final request**
Page 21, clause 49(2)(a), line 36. Insert “reasonable” before “opinion”.
- No. 29 **Cooling off period**
Page 26, clause 59. Insert after line 39—
(3A) The coordinating practitioner may not prescribe a voluntary assisted dying substance under subsection (2) until at least 48 hours after the patient made the patient’s final request under section 48.
- No. 30 **Cooling off period**
Page 27, clause 60. Insert after line 24—
(3A) The coordinating practitioner may not prescribe a voluntary assisted dying substance under subsection (2) before the day that is at least 48 hours after the patient made the patient’s final request under section 48.
- No. 31 **Review by Supreme Court—Definitions**
Page 51, line 4, clause 108. Insert “, for a decision under this Act,” before “means”.
-

-
- No. 32 **Review by Supreme Court—Definitions**
Page 51, line 5, clause 108. Omit “a decision referred to in section 109(1)(a)–(d)”. Insert instead “the decision”.
- No. 33 **Review by Supreme Court**
Pages 51 and 52, lines 20–46 on page 51 and lines 1–4 on page 52, clause 109. Omit all words on those lines. Insert instead—
- 109 Application for review of decisions by Supreme Court**
- An eligible applicant for a decision may apply to the Supreme Court for a review of the decision.
- No. 34 **Review by Supreme Court**
Pages 52–54, lines 28–43 on page 52, lines 1–47 on page 53 and lines 1–20 on page 54, clauses 113–115. Omit all words on those lines.
- No. 35 **Review by Supreme Court**
Page 54, line 22, clause 116. Omit “, under section 114(2)(a) or (4)(a),”.
- No. 36 **Review by Supreme Court**
Page 54, lines 28–32, clause 117. Omit all words on those lines. Insert instead—
- 117 Hearings of Supreme Court**
- The Supreme Court may, on application of a party to a proceeding for a review application or the Court’s own initiative—
- (a) order that a hearing in relation to the application be held in private if the Court considers it appropriate in the public interest or the interests of justice, and
- (b) make any other order the Court considers appropriate in relation to the hearing, including who may be present at the hearing.
- No. 37 **Review by Supreme Court**
Pages 54 and 55, lines 45 and 46 on page 54 and lines 1–5 on page 55, clause 118(2). Omit all words on those lines.
- No. 38 **Review by Supreme Court**
Page 55, line 42, clause 121. Omit “**to exclude personal information**”.
- No. 39 **Review by Supreme Court**
Page 56, line 2, clause 121. Insert “, unless the Court considers the disclosure is in the public interest or the interests of justice” after “following”.
- No. 40 **Review by Supreme Court**
Page 56, clause 121. Insert after line 16—
- (2A) The Supreme Court may, on application by a party to a proceeding in relation to a review application or on the Court’s own initiative, make any other order about the following that the Court considers appropriate in the public interest or in the interests of justice—
- (a) the publication of a decision,
- (b) the reasons for a decision,
- (c) another matter in relation to a review application or a proceeding in relation to a review application.

No. 41 **Review by Supreme Court**

Page 59, clause 131. Insert after line 16—

- (1A) Subsection (1) does not apply to the extent the publication is in accordance with an order of the Supreme Court under section 121(2A).

Note. Under section 121(2A), the Supreme Court may make an order in relation to publication if the Court considers it appropriate in the public interest or in the interests of justice.

No. 42 **Who may commence proceedings**

Page 60, line 17, clause 134. Insert “or with the approval of” after “by”.

No. 43 **Who may commence proceedings**

Page 60, lines 18 and 19, clause 134(a) and (b). Omit all words on those lines. Insert instead—

- (a) the Director of Public Prosecutions, or
(b) the Commissioner of Police.

No. 44 **Time limit for prosecution of offence**

Page 60, clause 135, lines 20–31. Omit all words on those lines. Insert instead—

135 Certain offences to be dealt with on indictment

- (1) Proceedings for an offence under this Act, other than section 123, 124, 125 or 127, must be commenced within 5 years after the offence is alleged to have been committed.
(2) Proceedings for an offence under section 123, 124, 125 or 127 may be commenced at any time.

No. 45 **Risk of coercion register**

Page 64, Part 10. Insert after line 27—

Division 2A Risk of coercion register

144A Risk of coercion register

- (1) The Board must keep a register (a *risk of coercion register*) for the purposes of this section.
(2) The Board must promptly record in the risk of coercion register details about each notification received by the Board, under this section, that—
(a) a person is, or may be, at risk of coercion to access voluntary assisted dying because the person is a vulnerable person, or
(b) a person is, or may be, coercing another person to access voluntary assisted dying.
(3) Without limiting subsection (2)(a), a person may be at risk of coercion because the person is—
(a) subject to pressure or duress, or
(b) lacking decision-making capacity.
(4) A relevant person may notify the Board if, at any time, the relevant person becomes aware a circumstance referred to in subsection (2) or (3) exists.
(5) A notification under subsection (4) must be in writing.
(6) In this section—
relevant person means—
(a) a registered health practitioner, or

-
- (b) another person who provides health services, or
 - (c) another person who is otherwise employed or engaged to provide care at a health care establishment within the meaning of section 88, or
 - (d) a person who—
 - (i) provides a relevant service, within the meaning of section 88, at a relevant entity, or
 - (ii) is employed or otherwise engaged to provide a relevant service at a relevant entity within the meaning of section 88, or
 - (e) a person who provides home care within the meaning of the *Aged Care Act 1997* of the Commonwealth, or
 - (f) an NDIS worker within the meaning of the *National Disability Insurance Scheme (Worker Checks) Act 2018*, or
 - (g) another person prescribed by the regulations.

144B Requirement to make inquiries

- (1) Before a coordinating practitioner or a consulting practitioner for a patient makes a decision about the patient under this Act or the Board grants a voluntary assisted dying authority in relation to a patient, the practitioner or Board must—
 - (a) inspect the risk of coercion register to determine whether a notification has been made under section 144A to the Board about the patient, and
 - (b) if a notification has been made—
 - (i) for a coordinating practitioner or consulting practitioner—
 - (A) consult with any medical practitioner or other registered health practitioner or health professional who provides treatment or care to the patient, and
 - (B) consult any person who has made a notification recorded in the risk of coercion register to obtain further details about the nature of the person’s concerns, and
 - (C) take additional reasonable steps to assess whether the person is eligible for access to voluntary assisted dying, or
 - (ii) for the Board—ensure the coordinating practitioner and consulting practitioner have taken reasonable steps under subparagraph (i) and, if appropriate, refer the matter to an appropriate person or body under section 142(1)(f).
- (2) Without limiting subsection (1)(b)(i), the coordinating practitioner or consulting practitioner—
 - (a) must consult with any medical practitioners the coordinating practitioner or consulting practitioner is aware are treating the patient about the circumstances of the patient’s request, including—
 - (i) the patient’s social circumstances, and
 - (ii) the disease, illness or medical condition the patient has that is advanced, progressive and will cause death, and
 - (b) may refer the patient to a psychiatrist, another registered practitioner or another person under section 27(2) or 38(2).

No. 46 **Board nomination of consulting practitioners**

Page 64, Part 10. Insert before line 28—

Division 2B Board's role to nominate consulting practitioners

144C Board to nominate consulting practitioners

- (1) This section applies if the Board is—
 - (a) given a first assessment report form, or
 - (b) given a consulting assessment form for a patient that indicates the patient is ineligible for voluntary assisted dying.
- (2) The Board must nominate a medical practitioner from the list kept under section 142(1)(b) as the consulting practitioner for the patient.
- (3) In nominating a medical practitioner as the consulting practitioner for the patient, the Board must ensure that, to the extent practicable—
 - (a) the practitioner—
 - (i) is independent of the patient and the patient's coordinating practitioner, and
 - (ii) does not have a conflict of interest, whether actual or perceived, with the patient's coordinating practitioner, and
 - (b) the person appointed as the consulting practitioner for the patient is randomly rotated to prevent the same consulting practitioner—
 - (i) having consecutive appointments as the consulting practitioner, or
 - (ii) working with the same coordinating practitioner on a regular basis.
- (4) Subject to subsection (3), in nominating a medical practitioner as the consulting practitioner for the patient the Board should have regard to the following—
 - (a) the nature of the patient's disease, illness or medical condition,
 - (b) the relevance of any specialty held by the medical practitioner and other members of the panel,
 - (c) the proximity of the geographic location of the medical practitioner to the patient.

No. 47 **Consulting practitioner**

Page 73, clause 181(6). Insert after line 33—

- (aa) advise the Board the original practitioner has asked another medical practitioner to accept a transfer of the role of coordinating practitioner to another medical practitioner and the other medical practitioner has refused the transfer of the role, and

No. 48 **Consulting practitioner**

Page 73, clause 181(6)(a), line 34. Insert "nominated by the Board under section 144C" after "another medical practitioner".

No. 49 **Consulting practitioner**

Page 78, Schedule 1, line 23. Omit "accepts a referral". Insert instead "is nominated by the Board under Part 10, Division 2B".