

4 April 2023

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Submitted via the online portal: <https://yoursayconversations.act.gov.au/voluntary-assisted-dying-in-ACT>

Dear Voluntary assisted dying policy team

Submission to the ACT Government consultation on Voluntary Assisted Dying

The Australian Psychological Society (APS) welcomes the opportunity to respond to the ACT Government consultation on voluntary assisted dying. We commend the ACT Government for identifying and consulting about critical issues, especially those impacting health professionals involved in the implementation of voluntary assisted dying.

The APS is the peak professional body for psychologists in Australia, representing over 28,000 members nationally. Working to improve the lives of all Australians is the core business of the APS and we advocate on behalf of our members and the community for reforms that will enhance wellbeing and promote the autonomy and dignity of people, including those at the end of life. The APS neither supports nor opposes voluntary assisted dying. As noted in our previous submissions to voluntary assisted dying consultations in other jurisdictions¹⁻⁴, the APS advocates for:

- Legal processes characterised by care, compassion and decision-making over time,
- Equity of access and choice for all Australians to available end-of-life care options, including the highest quality palliative care and legal voluntary assisted dying, should they wish to access it, and
- Systems and processes that enable a multidisciplinary approach to end-of-life care and support health professionals to work to their full scope of practice.

The APS notes the ACT Government's analysis in the consultation Discussion Paper about how other Australian states have approached voluntary assisted dying legislation to date. We strongly support efforts towards cross-jurisdictional consistency for voluntary assisted dying legislation. This will provide clarity for the community, people seeking access to voluntary assisted dying and health professionals and other workers who may be involved with implementation processes. Cross-jurisdictional consistency is particularly important for people who live and work close to and across borders.

Our comments about matters raised in the consultation Discussion Paper follow. If any further information is required from the APS, please contact me on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Kind regards,

Dr Zena Burgess, FAPS FAICD
Chief Executive Officer

APS responses to the ACT Government Voluntary Assisted Dying Consultation

1. Eligibility criteria – Who should have access to voluntary assisted dying?

The Discussion Paper (p. 8) outlines the ACT Government's position to pursue a voluntary assisted dying eligibility model consistent with other Australian jurisdictions - that is, voluntary assisted dying is an option for those approaching death because of an advanced and progressive condition, illness or disease.

The APS strongly supports efforts towards cross-jurisdictional consistency for voluntary assisted dying legislation and have responded below to some of the questions asked in the Discussion Paper about decision-making capacity and voluntary assisted dying.

Decision-making capacity and ensuring voluntary, non-coerced decision-making

As noted in the Discussion Paper (p. 10), all Australian states require a person to have decision-making capacity throughout the entire voluntary assisted dying process. Thus, a person with an eligible condition that impairs their decision-making capacity may not be eligible to access voluntary assisted dying. People seeking voluntary assisted dying must also make their decision voluntarily and without coercion from family members, carers and health professionals.

Decision-making capacity is a complex medicolegal area, and the seriousness of the consequences associated with voluntary assisted dying decision-making adds further complexity. Psychologists are one of the key professions called upon to conduct decision-making capacity assessments. Psychologists' training and skills include administering and interpreting evidence-informed assessments of cognition and behaviour to determine the impact of health conditions, developmental considerations and undue influence on decision-making.

The APS agrees that decision-making capacity is essential throughout the voluntary assisted dying process. We highlight, however, that having a disability (e.g., cognitive or communication impairment), disease (e.g., Alzheimer's disease) or a mental illness (e.g., depression), or being less than 18 years of age, does not automatically render the person incapable of making an informed decision and should not automatically negate their right to voluntary assisted dying.

The APS also notes that voluntary assisted dying decisions may be influenced by various factors, including the opinions of others and calls for the legislation to make clear the safeguards to minimise the risk of coercion throughout the voluntary assisted dying process, for example:

- Enabling people to make decisions in private or in ways that ensure that they do not feel unduly pressured by the opinions of others,
- Requiring the person requesting voluntary assisted dying to make multiple requests to access assisted dying,
- Imposing a 'cooling off' period between first and final requests,
- Requiring voluntary assisted dying written or verbal requests to be witnessed by an independent witness, and/or
- Seeking the opinion of a specialist health professional, such as a psychologist, when necessary to ascertain decision-making capacity, including whether the person requesting voluntary assisted dying is acting voluntarily.

The APS position is that there should be a presumption of rationality for the person seeking to access voluntary assisted dying. To be consistent with other legislation (particularly in the ACT) and human rights approaches, we also advocate for an appropriate supported decision-making framework. We acknowledge supported decision making for voluntary assisted dying can be particularly contentious and difficult, including for the decision supporter, thus requiring a careful balance (see ⁵). Where decision-making capacity is in question due to a condition or developmental considerations or there are concerns about potential coercion, we advocate for an expedited assessment of decision-making capacity by a suitably qualified health professional, such as a psychologist.

2. The process for request and assessment - What process should a person follow to access voluntary assisted dying?

The Discussion Paper (p. 14) identifies the importance of an eligible person having access to a safe and effective process for accessing voluntary assisted dying, if they choose to do so, and that the person and their family, carers and friends should also be supported to navigate the voluntary assisted dying process during what is often a difficult time.

The APS strongly advocates for voluntary assisted dying access processes that are no more complex than they need to be, first and foremost for people seeking access to lawful voluntary assisted dying, and for health professionals involved in the process.

We offer the following comments about some of the matters raised in the Discussion Paper about the process for accessing voluntary assisted dying.

Seeking another opinion

As noted in the Discussion Paper (p. 14), voluntary assisted dying laws in each Australian state provide for a staged process for a person to formally request access to assisted dying, and to have their eligibility assessed by at least two qualified registered medical practitioners (also known as doctors and specialists) in their roles as coordinating and consulting health professionals. If the coordinating or consulting health professional cannot assess a person's eligibility for voluntary assisted dying, they can seek another opinion from a health professional, who must also meet eligibility requirements.

The APS calls for voluntary assisted dying legislation that is clear about the situations requiring decision-making capacity assessment, the timeframes for assessment and the skills and competencies required of assessors who may be called on to provide a determination of decision-making capacity. Psychologists are health professionals who are well-placed to conduct decision-making capacity assessments and support coordinating and consulting medical practitioners to determine a person's eligibility for voluntary assisted dying. The APS calls for a legislative approach and ensuing systems that enable psychologists to be involved in decision-making capacity assessments for voluntary assisted dying and provide support to coordinating and consulting health professionals during the process of determining a person's eligibility for assisted dying.

The Discussion Paper asks whether a coordinating health professional or consulting health professional should also be able to seek guidance from an external oversight body if it is difficult for the health professional to determine whether a person meets voluntary assisted dying eligibility criteria. The APS position is that should such oversight bodies be established; they must offer efficient and timely responses to coordinating and consulting health practitioners' requests for guidance about a person's decision-making capacity so as not to hinder a person's rights to request voluntary assisted dying. We also strongly advocate for such an oversight body to include psychologists given their expertise in decision-making capacity assessments.

Finding the right health professionals and Care Navigator Service

As noted in the Discussion Paper (p. 16), a Care Navigator Service has been established in Australian states that have legislated for voluntary assisted dying, to support people considering this option as well as health professionals and their family, carers and friends. Care Navigators are especially critical in helping to connect people who may find it difficult to locate medical practitioners willing and qualified to be their coordinating or consulting health professionals for the purpose of gaining access to voluntary assisted dying, an issue that has been reported in some Australian states.

Dying people may be at the limit of their mental, physical and economic resources and find it difficult to locate another health practitioner supporting voluntary assisted dying. This is particularly true for individuals in aged care or palliative care facilities, where patients are entirely dependent on visiting medical practitioners and health professionals.

The APS strongly advocates for patient-centred and coordinated Care Navigator services to assist patients and their families, carers and friends during all stages of the voluntary assisted dying process. It is essential that all people considering voluntary assisted dying, and their family, carers and friends, and health professionals are aware of how to connect with the Care Navigator services in their jurisdiction.

The APS calls for strategies that safeguard access to voluntary assisted dying information and the Care Navigator service, for example:

- Make clear the responsibilities of health professionals to provide information to people seeking access to assisted dying, including how to access their jurisdictions' voluntary assisted dying Care Navigator service.
- Community messaging about voluntary assisted dying and the Care Navigator service, ensuring communications are accessible to people from diverse social, economic, cultural and language groups, and made readily available in the key contexts where people may be seeking end-of-life care (e.g., GP and health clinics, aged care and palliative care facilities).

3. The role of health professionals

As described in the Discussion Paper (p. 21), health professionals have been integral to the implementation of voluntary assisted dying in other Australian jurisdictions.

Psychologists already contribute to the provision of quality end-of-life care in many ways, which necessarily extends to matters associated with voluntary assisted dying in the jurisdictions where it is legislated, for example, psychologists can:

- Provide psychological treatment and support to people at the end of life at various points in their voluntary assisted dying journey (e.g., decision-making, request, access to voluntary assisted dying).
- Provide support and education to families, carers and friends of people at the end of life at various points in the voluntary assisted dying journey (e.g., when their loved one requests to access to voluntary assisted dying, post-voluntary assisted dying bereavement).
- Conduct decision-making capacity assessments and support to medical practitioners around voluntary assisted dying eligibility decisions.
- Provide tailored training, debriefing and bereavement support for health professionals and other key workforces (e.g., end-of-life care navigators, care workers) who work in or are impacted by voluntary assisted dying implementation.
- Contribute to policy and program development and clinical governance structures that support quality end-of-life care decision-making and oversight.
- Provide research-based insights that inform the implementation of quality care for people at the end of life, their families, carers and friends.

We offer the following comments about some of the matters raised in the Discussion Paper about the role of health professionals and voluntary assisted dying.

Restrictions on health professionals initiating a discussion about voluntary assisted dying

As noted in the Discussion Paper (pp. 23-24), every Australian state regulates when voluntary assisted dying can be discussed, which health professionals can do this and in what circumstances. Breaches can result in a charge of professional misconduct.

Regarding which health professionals can initiate conversations about voluntary assisted dying, the Australian states exclude non-medical and allied health professionals, such as psychologists, and restrict this role to medical practitioners and registered nurses and/or enrolled nurses. The exception is in NSW where all allied health professionals and enrolled nurses can initiate discussions if other essential information is provided to the person, including that they should discuss voluntary assisted dying with a medical practitioner⁶.

The APS position is that the prohibition of a non-medical health care professionals, in our case a psychologist, from initiating a discussion about voluntary assisted dying with a person is reasonable on the grounds that voluntary assisted dying is fundamentally a medical option to be discussed in the context of all medical treatment options, including palliative care. This ensures a patient can be fully informed of all medical options available.

Non-medical health care workers are not in a position to provide this context or information. The other advantage of the prohibition for non-medical health professionals to initiate a voluntary assisted dying discussion is consistency with most other jurisdictions which would simplify professional practice and training.

The APS notes with some concern that it appears that in some Australian states that the carer workforce are permitted to, or are not prohibited from, initiating discussions about voluntary assisted dying. As the carer workforce engages with some of the most vulnerable people in our society (e.g., people in aged care, people with a disability), we strongly advocate for clarity and the incorporation of necessary safe guards within the legislation for this workforce and the people they provide care to⁷.

Regarding health professionals providing information about voluntary assisted dying if requested by a person, the APS commends provisions in the legislation of other jurisdictions which allow such discussions to take place on the patient's request. We note, however, reports of non-medical health practitioner uncertainty if a person's request for information about end-of-life treatment options is specific enough for them to provide information about voluntary assisted dying according to the legislation in their jurisdiction⁸. The APS calls for clarity on this matter. We also highlight the critical role for the Government in ensuring initial and ongoing training is provided for all health professionals, including non-medical health professionals and other key workforces (e.g., the care workforce) so they are aware of and supported to enact their obligations under the legislation.

Health professional conscientious objection

All Australian states align with health professionals' codes and recognise, to varying extents, that a health professional may choose to conscientiously object to being involved in a voluntary assisted dying request, assessment, and administration processes (Discussion Paper, p. 25-26).

No state, however, requires a health professional to disclose their conscientious objection to voluntary assisted dying to a person seeking access to assisted dying, but some mandate actions health professionals must take after conscientiously objecting. It is noted in the Discussion Paper that current ACT laws require health professionals to disclose their conscientious objection to a person who requests abortion healthcare as a possible precedent to also requiring disclosure of professionals' conscientious objective to voluntary assisted dying.

The APS appreciates the complexities in balancing the human rights to freedom of religion, conscience and belief with the human rights of others to access voluntary assisted dying. The APS strongly supports psychologists' and other health professionals' right to conscientious objection, as enshrined in professional codes of conduct and the voluntary assisted dying legislative approaches across Australian states.

The APS does not support or oppose the position that health professionals who conscientiously object be required to declare their objection or non-participation in voluntary assisted dying processes. However, we call for strong measures that safeguard the rights of people seeking support and access to voluntary assisted dying, irrespective of the requirement to disclose conscientious objection, for example by requiring health professionals to provide timely access to voluntary assisted dying information and supports and refer on should they conscientiously object to or not wish to participate.

We note that should the requirement for health professionals to disclose their conscientious objection be adopted in the ACT, this would be misaligned with other Australian states with potential to cause uncertainty and confusion for people seeking access to voluntary assisted dying and health professionals working across jurisdictions.

4. The role of health services

We offer the following comments about some of the matters raised in the Discussion Paper about the role of health services and voluntary assisted dying.

Palliative care

The APS agrees with the position in the Discussion Paper (p. 28) that voluntary assisted dying is not an alternative to effective palliative care. Access to voluntary assisted dying is about hastening death at the end-of-life. Palliative care does not seek to either hasten or postpone death and is focused on the quality of life for a person who is rapidly approaching death and identifies and treats symptoms which may be physical, emotional, spiritual or social⁹.

The APS is a strong advocate for choice and access to the full range of high-quality end-of-life care and support options, including palliative care and voluntary assisted dying in jurisdictions where it is legislated. We have welcomed recent government commitments and increased investment needed to reform end-of-life and palliative care in many Australian jurisdictions, including the ACT^{10–12}. We call on the ACT and all jurisdictions to continue the investment in end of life and palliative care and work towards opportunities to align evidenced-informed approaches across jurisdictions.

Health services that decline to facilitate voluntary assisted dying

The APS supports equity of access to all end-of-life choices, including voluntary assisted dying where it is legislated - irrespective of where a person is located, be that in a metropolitan, regional or rural area or residing in their home, health service, palliative care service or residential aged or disability care service.

The APS is especially concerned that people living in institutional care in the ACT may be the most vulnerable in relation to equity of access to legal voluntary assisted dying, particularly when institutions may have strong objections to the provision of voluntary assisted dying on faith or other grounds. We call for particular attention to be given within ACT voluntary assisted dying legislation to mechanisms that ensure people in these contexts:

- have appropriate access to relevant and independent voluntary assisted dying information and services, and
- can access legal voluntary assisted dying services if they choose with clear and timely pathways available should the context they reside in or receive support and services from decline to facilitate voluntary assisted dying.

5. Other issues

Health equity considerations. The adequacy of health care is likely to play an important role in a person's decision-making, such that a request for voluntary assisted dying may follow a failure of one or more parts of the health system to provide adequate care. Such requests may be made in the context of serious social inequities and access to resources such as basic medical care. The APS advocates for addressing social and environmental factors that may influence requests for voluntary assisted dying and impact on its implementation.

Indigenous perspectives. There is limited research and inquiry about what voluntary assisted dying reforms mean for end-of-life care for Aboriginal and Torres Strait Islander peoples. One recent analysis of the voluntary assisted dying law reform processes in Victoria and Western Australia highlighted disparate views towards voluntary assisted dying from different Indigenous organisations with a caution against universalising Indigenous perspectives about voluntary assisted dying¹³. The APS calls for active, meaningful and continuous engagement with Aboriginal and Torres Strait Islander peoples about voluntary assisted dying laws including the implications and needed safeguards to ensure culturally appropriate end-of-life care for individuals, families and communities that respects Indigenous knowledges, traditions and end-of life practices, as well as personal agency.

Culturally and linguistically diverse perspectives. There is also a plurality of views across other culturally and linguistically diverse (CALD) groups. The APS calls for active, meaningful and continuous engagement with CALD groups about voluntary assisted dying laws including the implications and needed safeguards, particularly in relation to culturally appropriate assessments of decision-making capacity, providing support for decision-making and ensuring that there is no undue influence. It is important to ensure that engagement and information about voluntary assisted dying is available in languages other than English. Likewise, people who may have limited English proficiency or literacy should be provided with appropriate supports through the voluntary assisted dying process, such as high-quality interpreter services.

Access to a capable and skilled workforce. Implementation of any voluntary assisted dying scheme needs to consider the existing and future capacity of an appropriately skilled workforce to meet the needs of people approaching the end of life. High quality training, supervision and psychological support is essential for health professionals and other workers who may be involved in voluntary assisted dying implementation (e.g., the care workforce), noting that it should not be left up to professions and workers to simply adapt. The APS calls on the ACT Government to help support, train and prepare the workforce, in close collaboration with professional bodies, and to ensure sufficient lead time before the implementation of voluntary assisted dying legislation.

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to this and previous voluntary assisted dying-related submissions.

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