

Queensland Civil and Administrative Tribunal Amendment Regulation 2023

Explanatory notes for SL 2023 No. 114

made under the

Queensland Civil and Administrative Tribunal Act 2009

General Outline

Short Title

Queensland Civil and Administrative Tribunal Amendment Regulation 2023 (Amendment Regulation)

Authorising law

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act)

Policy objectives and the reasons for them

The *Voluntary Assisted Dying Act 2021* (VAD Act) commenced on 1 January 2023, establishing a legal framework for voluntary assisted dying in Queensland, allowing eligible people who are suffering and dying to choose the timing and circumstances of their death.

The framework sets out the eligibility criteria for accessing voluntary assisted dying, the request and assessment process that must be followed, qualification and training requirements for participating practitioners, and matters to support the operation of the scheme.

To access voluntary assisted dying, a person must undergo a request and assessment process that includes making three separate requests for voluntary assisted dying, and eligibility assessments by (at least) two independent medical practitioners (the coordinating practitioner and the consulting practitioner). A final review must also be undertaken by the coordinating practitioner to confirm the request and assessment process has been completed correctly, and that the person making the request has decision-making capacity in relation to voluntary assisted dying and is acting voluntarily and without coercion.

Section 102 of the VAD Act provides that an eligible person for a reviewable decision may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the decision. Section 99 of the VAD Act provides for the decisions that are reviewable by QCAT including:

- a decision of a coordinating practitioner in a first assessment relating to whether the person meets the residency requirements, has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion;

- a decision of a consulting practitioner in a consulting assessment relating to whether the person meets the residency requirements, has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion; and
- a decision of a coordinating practitioner in a final review of whether the person has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion.

The VAD Act does not address the issue of QCAT application and copying fees. As such, section 38 of the QCAT Act and section 8 of the *Queensland Civil and Administrative Tribunal Regulation 2019* (QCAT Regulation) applies, meaning a standard fee of 358 fee units must be charged for applications for review made under the VAD Act.

The Amendment Regulation amends schedule 2, part 1 of the QCAT Regulation to exempt voluntary assisted dying matters from QCAT application and copying fees.

This change is consistent with the position in Victoria and Western Australia where voluntary assisted dying legislation has commenced and application fees are not payable for reviewable decisions.

Achievement of policy objectives

The Amendment Regulation will amend the QCAT Regulation to exempt reviewable decisions under the VAD Act from QCAT fees.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

QCAT provides access to justice services and is essential to community justice, safety and wellbeing. Removing fees for voluntary assisted dying matters will increase access to its services.

Consistency with fundamental legislative principles

No potential inconsistencies with fundamental legislative principles have been identified.

Consultation

QCAT was consulted and supports the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) was consulted and advised that no further regulatory impact analysis is required under the *Queensland Government Guide to Better Regulation* as the amendments are unlikely to add significantly to the burden of regulation or result in significant adverse impacts.