

Queensland Civil and Administrative Tribunal Amendment Regulation 2023

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Queensland Civil and Administrative Tribunal Amendment Regulation 2023* (Amendment Regulation) made under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

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.

Human Rights Issues

By promoting access to the review process for eligibility decisions under the VAD Act, the Amendment Regulation supports the effective operation of the voluntary assisted dying scheme. The voluntary assisted dying scheme established by the VAD Act promotes:

- the right to life (section 16 of the HR Act) by not forcing people to suicide earlier than they otherwise would in the absence of voluntary assisted dying;
- the right to privacy (section 25 of the HR Act) by upholding the dignity and autonomy of people to make choices about their own body, their life and their own death; and
- the right to liberty and security of the person (section 29 of the HR Act) by removing the requirement that people endure intolerable suffering.

Allowing review of decisions which affect a person's eligibility to access voluntary assisted dying helps promote these rights by ensuring that eligible persons are not prevented from accessing the scheme. The Amendment Regulation helps ensure that cost is not a barrier to seeking review of decisions affecting eligibility for voluntary assisted dying. I consider that the Amendment Regulation does not limit human rights.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it does not limit human rights.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
and Minister for the Prevention of Domestic
and Family Violence