
From: Karen Appleby
Sent: Wednesday, 22 December 2021 1:03 PM
To: Law
Subject: Re: Provisions of the Voluntary Assisted Dying Bill 2021 - Post-hearing responses - 13 December 2021

Hello Madeline,

We have no changes to the transcript.

Find below our response to the QoN.

The Hon. GREG DONNELLY: On point number 3, can I just go down three paragraphs, where it states: Patients may also be prescribed medications capable of impairing capacity. These are obviously reflections from geriatricians who have been around the block and seen the way in which our elderly, particularly the old infirm ones in particular, are treated by people, even as close as family members. It says there in the next sentence: There is no requirement in the Bill for the Coordinating or Consulting practitioners to have expertise in capacity assessment. In other words, the bill provides for capacity assessment but there is no requirement in the bill that the individual undertaking the capacity assessment in fact has that expertise to undertake capacity assessment.

Ms LAWSON: My understanding was that there was, and that people would be trained in capacity assessment.

The Hon. GREG DONNELLY: The geriatricians are saying there is no requirements—

Ms LAWSON: But I think they are wrong. I think there is the requirement in the bill as it stands at the moment for people to be trained in capacity assessment.

The Hon. GREG DONNELLY: Can I invite you to take that question on notice?

Ms LAWSON: Certainly, but I think you should also go back to them and ask them to review their understanding of the bill.

COTA NSW response to question on notice:

COTA NSW contends that the bill handles decision-making capacity appropriately and that there is no risk that older people or anyone else seeking VAD will be assessed as having decision-making capacity if they do not have it.

The requirement for an assessment about decision making capacity is clear and it is part of the eligibility criteria.

There isn't an explicit statement in the Bill that the 2 doctors must have "expertise" in capacity assessment. However:

- Doctors are required to obtain informed consent for all medical treatments, and it is part of their usual practice to assess capacity including ensuring patients have decision-making capacity to make serious decisions about their healthcare that could result in death. They have been trained to do this as part of their medical degree and the bill would only let very experienced doctors practice as coordinating and consulting practitioners.
- The Bill requires a doctor who can't decide about capacity to refer to another practitioner who has "appropriate skills and training" to do so.
- The required training for VAD doctors in Victoria (and elsewhere) includes a module on assessing capacity and it is expected that the same will apply in NSW. Under section 180 of the NSW bill, the Health Secretary can approve training, information, and resources to help medical practitioners assess whether a patient meets the eligibility criteria, for which decision-making is one.
- The submission from the College of Psychiatrists explicitly stated that they consulted and provided resources for the Victorian training program and recommended "similarly assiduous training" in NSW. They also supported the definition of "decision making capacity" in clause 6 of the NSW Bill.

Thanks and regards,

Karen Appleby

Manager Policy and Campaigns

Council on the Ageing NSW

T: 1800 449 102 | W: www.cotansw.com.au