

Provisions of the Voluntary Assisted Dying Bill 2021

Hearing – 13/12/2021

Questions on Notice

QUESTION 1 – page 11

Ms O'SHANNESY: When I say a review, it is a review with a small "r".

The Hon. GREG DONNELLY: Okay, a review with a small "r". If I understand your evidence correctly, that review has involved some or complete comparative analysis with the other jurisdictions in Australia that currently have legislation in place, excepting that only two are operational, namely Victoria and Western Australia. Have documents been produced in regards to that analysis?

Ms O'SHANNESY: No, there is just a table we have when we are comparing them. The other thing I think it is important to note—

The Hon. GREG DONNELLY: Sorry, without cutting you off, on notice could you provide a copy of that table to the Committee?

Ms O'SHANNESY: Yes.

ANSWER

A comparative table is attached.

QUESTION 2 – page 15-16

The Hon. ANTHONY D'ADAM: Is there specific guidance that Health provides in relation to making those kinds of capacity assessments?

Ms O'SHANNESY: I would have to defer on if there are sort of clinical protocols but, as I said, the New South Wales Consent Manual, which I think was only published two years, or one year, ago—sorry, COVID time—is a detail of all aspects of consent and it looks at different situations with consent. The fact that simply because someone has a disability does not mean that they do not have capacity to consent.

The Hon. ANTHONY D'ADAM: I am happy for you to take it on notice and perhaps if relevant extracts of the documents can be provided.

Ms O'SHANNESY: The document in question is publicly available on our website too, so it would be useful. It is a very big document and there is quite a bit dealing with capacity.

The Hon. ANTHONY D'ADAM: Yes, that would be appreciated. Also earlier, Dr Lyons, you referred to the guidance that has been provided around elder abuse. Perhaps you could also provide that guidance to the Committee.

Dr LYONS: Certainly.

ANSWER

The NSW Health Consent to Medical and Healthcare Treatment Manual is publicly available at: <https://www.health.nsw.gov.au/policies/manuals/Pages/consent-manual.aspx>.

The NSW Health policy on identifying and responding to abuse of older people is publicly available at: https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2020_001. An online training module is also available for NSW Health staff on the statewide learning platform.

QUESTION 3 – page 18

The Hon. SCOTT FARLOW: There was also a suggestion the other day that an amendment to the bill could be that such a substance be approved by the TGA to provide an additional safeguard. Do you see any impediment with such an amendment or any impracticality there?

Dr LYONS: Let me take it on notice, but my general comments would be that it is almost invariable that medications that we deliver in the healthcare system have been through that process. The only situation where they have not been through a formal TGA process is where they are the subject of clinical trials and are currently under research arrangements, and there are heavy safeguards around their use in that context as well.

The Hon. SCOTT FARLOW: Just on that point as well, can you take on notice as well what voluntary assisted dying substances have been approved by the TGA?

Dr LYONS: Certainly.

ANSWER

Therapeutic goods entered in the Australian Register of Therapeutic Goods can be lawfully supplied in Australia. In limited cases, there are exemptions from the requirement to be on the ARTG when the product is not available in Australia and needs to be imported into Australia, such as those medicines used in clinical trials or that are in short supply, and these are regulated under the Therapeutic Goods Administration's (TGA) Special Access Scheme.

Voluntary assisted dying substances for use in NSW would be identified in consultation with expert advisory groups during the framework's implementation period. Once identified, NSW Health would then work with the TGA to access the substances.

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VAD jurisdictional comparison table

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Status	Legislation commenced June 2019	Legislation commenced 1 July 2021	Passed in March 2021, assented April 2021, and due to commence 23 October 2022	Passed Parliament 24 June 2021 South Australia Health has commenced the development of the implementation plan, which is likely to take 18 to 24 months.	Passed QLD Parliament on 16 September 2021 and will come into effect on 1 January 2023.	The NSW VAD 2021 Bill passed the Lower House with amendments on 26 November 2021. The provisions of the Bill are currently under consideration by the Standing Committee on Law and Justice.
Administered by	Minister for Health	Minister for Health	Minister for Health	Act not yet committed to Minister	Minister for Health and Ambulance Services	TBC
Eligibility <i>Age</i>	18+	18+	18+	18+	18+	18+
<i>Australian citizen/permanent resident and ordinarily resident in State</i>	Yes - lived in Victoria for at least 12 months.	Yes – lived in WA for a period of at least 12 months	Yes – lived in Tas for a period of at least 12 months	Yes – lived in SA for a period of at least 12 months	Yes – lived in QLD for a period of at least 12 months, however Chief Executive may grant a residency exemption.	Yes – ordinarily resident in NSW but exemption available on application to the Board.
<i>Decision making capacity and acting voluntarily</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Advanced and progressive condition which is causing intolerable suffering</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Likelihood of death</i>	Condition must be expected to cause death within 6 months or 12 months in the case	Condition must be expected to cause death within 6 months or 12 months in the	Condition must be expected to cause death within 6 months or 12 months in the case of a	Condition must be expected to cause death within 6 months (exemption in the case of a neurodegenerative	Condition must be expected to cause death within 12 months.	Condition must be expected to cause death within 6 months or 12 months in the case of a

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	of a neurodegenerative condition.	case of a neurodegenerative condition.	neurodegenerative condition.	condition – death within 12 months).		neurodegenerative condition.
<i>Not eligible only because of disability or mental illness</i>	Yes	Yes	Yes	Yes	Yes	Yes
Who can raise voluntary assisted dying discussion	- Patient must raise voluntary assisted dying	- Health care worker cannot initiate discussion about voluntary assisted dying, however a medical practitioner or nurse practitioner can mention it if at the same time the nurse/practitioner also informs the person about treatment options and palliative care options available.	- Health care worker cannot initiate discussion about voluntary assisted dying, however a medical practitioner can mention it if at the same time the practitioner also informs the person about treatment options and palliative care options available and a registered health practitioner can mention it if at the same time they inform the person that a medical practitioner would be the most appropriate person to speak to.	- A registered health practitioner must not initiate discussion with patient about voluntary assisted dying but can provide information at patient's request.	- Health care worker cannot initiate discussion about voluntary assisted dying, however a medical practitioner or a nurse practitioner can mention it if at the same time the practitioner also informs the person about treatment options and palliative care options available.	- Health care worker cannot initiate discussion about voluntary assisted dying, however a medical practitioner can mention it if at the same time the practitioner also informs the person about treatment options and palliative care options available and the likely outcomes of those options, and a health care worker, other than a medical practitioner, can mention it if at the same time they also inform the person about palliative care and treatment options and instruct the person to discuss them with their medical practitioner.

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Framework for requests	<ul style="list-style-type: none"> - Must make two requests and a written declaration. 	<ul style="list-style-type: none"> - The person would have to make two verbal requests and one written request. - If it is not practicable for the requests to be in person, they may be made by audio-visual communication. 	<ul style="list-style-type: none"> - Must make a first request, a written request and a final request. Requests must each be at least 48 hours apart unless the person is likely to die within 7 days or likely to cease to have decision-making capacity within 48 hours. - Requests can be made by audio-visual link communication. 	<ul style="list-style-type: none"> - Must make two requests and a written declaration. 	<ul style="list-style-type: none"> - Must make three requests – one must be in writing. 	<ul style="list-style-type: none"> - Must make a first request, a written declaration and a final request. - Requests can be made by audio-visual communication.
Objection by medical practitioner	<ul style="list-style-type: none"> - Medical practitioner can conscientiously object within 7 days of first request. 	<ul style="list-style-type: none"> - Medical practitioner can conscientiously object within 2 business days of first request. 	<ul style="list-style-type: none"> - Medical practitioner can refuse request (including due to conscientious objection) within 7 days of first request. - Practitioner must notify Commissioner of request despite conscientious objection. 	<ul style="list-style-type: none"> - Medical practitioner can refuse request (including due to conscientious objection) within 7 days of first request. 	<ul style="list-style-type: none"> - Medical practitioner may refuse the request if they are not eligible to act as coordinating practitioner. If the refusal is due to conscientious objection, the refusal must be made immediately. If the refusal is for any other reason, within 2 business days of the request. 	<ul style="list-style-type: none"> - A practitioner must immediately refuse a request if they are not eligible to act as coordinating practitioner or in the case of conscientious objection. - If unavailable for some other reason the practitioner must notify the patient of the refusal within 2 business days.

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Assessments	- Two separate medical practitioners must assess eligibility.	- Two separate medical practitioners must assess eligibility.	- Two separate medical practitioners must assess eligibility.	- Two separate medical practitioners must assess eligibility.	- Two separate medical practitioners must assess eligibility.	- Two separate medical practitioners must assess eligibility.
Timing (designated period)	- Final request must be made at least 9 days after the first request.	- Final request must be made at least 9 days after the first request.	- Each request must each be at least 48 hours apart unless the person is likely to die within 7 days or likely to cease to have decision-making capacity within 48 hours.	- Final request must be made at least 9 days after the first request.	- Final request must be made at least 9 days after the first request.	- Final request must be made at least 5 days after the first request.
Administration of lethal medication	- Self-administration. - Patient may make an administration request that the coordinating medical practitioner administers the substance.	- Self-administration of lethal medication is permitted. - If the coordinating practitioner advises that self-administration is inappropriate because of the ability of the patient to self-administer, patient's concerns about self-administering or the method	- A person may request self-administration. - A medical practitioner or registered nurse can agree to be appointed as the person's administering health practitioner.	- Self-administration. - A person may make an administration request to the coordinating medical practitioner to administer the substance. Request can be made verbally, by gesture or other means of communication available to the person.	- Self-administration. - Patient may decide that the substance is to be administered by an administering practitioner (medical practitioner or a nurse practitioner) by making a practitioner administration decision.	- Self-administration. - Patient may decide that the substance is to be administered by an administering practitioner (medical practitioner or a nurse practitioner) by making a practitioner administration decision.

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		of administering, a patient can choose for a medical practitioner or a nurse practitioner (at least 2 years' experience) to administer the drug by making a practitioner administration decision.				
Voluntary assisted dying permit required?	<ul style="list-style-type: none"> - Medical practitioner must apply for voluntary assisted dying permit allowing the practitioner to prescribe and supply lethal medication to the person specified in the permit. - The Secretary must determine an application for a voluntary assisted dying permit. 	<ul style="list-style-type: none"> - Permit not required. - Must notify Board within 2 days of prescribing a voluntary assisted dying substance for a patient. 	<ul style="list-style-type: none"> - Permit not required. - Must notify Commission within 7 days following determination of final request. 	<ul style="list-style-type: none"> - Medical practitioner must apply for permit allowing the practitioner to prescribe and supply lethal medication to the person specified in the permit. - The Chief Executive must determine an application for a voluntary assisted dying permit. 	<ul style="list-style-type: none"> - Not required. - Within two days' of prescribing the substance, the practitioner must record the decision and submit to the Board. 	<ul style="list-style-type: none"> - The coordinating practitioner must apply to the Board for a prescribed substance authorisation for the patient. As soon as practicable, Board may approve and grant voluntary assisted dying substance authority. - The Board may refuse the request where it has not received all required documents or suspects requirements of the Act have not been met. Board must notify of refusal within 2 business days.

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<p>Review of decisions</p> <p>NB: Review provisions appear consistent in all jurisdictions</p> <p>The patient, agent of the patient, or anybody the reviewing body is satisfied has a special interest in the medical treatment and care of the patient may apply for a review of decisions relating to the patient's residency status and decision making capacity.</p>	<ul style="list-style-type: none"> - Review is by the Victorian Civil and Administrative Tribunal 	<ul style="list-style-type: none"> - Review applications are made to the State Administrative Tribunal. 	<ul style="list-style-type: none"> - Review applications made to the Voluntary Assisted Dying Commission. 	<ul style="list-style-type: none"> - Review applications are made to the South Australian Civil and Administrative Tribunal 	<ul style="list-style-type: none"> - Review applications are made to the Queensland Civil and Administrative Tribunal. 	<ul style="list-style-type: none"> - Review applications are made to the Supreme Court.
<p>Monitoring and review of scheme</p>	<ul style="list-style-type: none"> - Establishes the Voluntary Assisted Dying Review Board - Functions include monitoring the operation of the Act and reviewing the exercise of 	<ul style="list-style-type: none"> - Establishes the Voluntary Assisted Dying Board - Functions include monitoring the operation of the Act and reporting to the Minister on 	<ul style="list-style-type: none"> - Establishes the Voluntary Assisted Dying Commission. - In addition to review of decisions made under the Act, functions include monitoring the operation of the act, assisting persons in accessing voluntary 	<ul style="list-style-type: none"> - Establishes the Voluntary Assisted Dying Review Board. - Functions include monitoring the operation of the Act and reviewing the exercise of functions and powers, promoting compliance with the requirements of the 	<ul style="list-style-type: none"> - Establishes the Voluntary Assisted Dying Review Board. - Functions include monitoring the operation of the Act and reviewing the exercise of functions and powers, promoting 	<ul style="list-style-type: none"> - Establishes a Board. - In addition to issuing voluntary assisted dying substance authorisations, functions include monitoring the operation of the scheme, keeping a list of registered health practitioners who are willing to assist with

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	functions and powers, promoting compliance with the requirements of the Act, and providing reports to Parliament on the operation of the Act	matters relating to the operation of the Act.	assisted dying, maintaining a list of health professionals who have completed approved training and who are willing to perform functions under the Act.	Act, and providing reports to Parliament on the operation of the Act.	compliance with the requirements of the Act, and providing reports to Parliament on the operation of the Act.	voluntary assisted dying, and providing the Minister with information and reports relating to the operation of the Act.
Key offences	<ul style="list-style-type: none"> - Administration of voluntary assisted dying substance by coordinating medical practitioner other than in accordance with a practitioner administration permit (<i>imprisonment for life</i>) - Administration of voluntary assisted dying substance by another person when the substance has been dispensed under a self-administration permit 	<ul style="list-style-type: none"> - Unauthorised administration of prescribed substance (<i>imprisonment for life</i>) - Inducing self-administration of prescribed substance (<i>imprisonment for life</i>) - Inducing another person to request or access voluntary assisted dying (<i>7 years, 3 years and a fine of \$36,000 if summary conviction</i>) - Advertising Schedule 4 or 	<ul style="list-style-type: none"> - Inducing a person to request/access/self-administer voluntary assisted dying (<i>5 years, 200 penalty units</i>) - False representation of being authorised to communicate on behalf of a person who has communication difficulties (<i>5 years, 200 penalty units</i>) - Failure to return unused/remaining substance (<i>100 penalty units</i>) 	<ul style="list-style-type: none"> - Failure to comply with practitioner administration permit (<i>imprisonment for life</i>) - Administer voluntary assisted dying to another person (<i>imprisonment for life</i>) - Including a person to request voluntary assisted dying (<i>imprisonment 5 years</i>) - Induce self-administration of voluntary assisted dying substance (<i>imprisonment 5 years</i>) - Failure to return unused/remaining substance (<i>imprisonment 12 months</i>) - Failure to give copies of forms to the Board (<i>\$10,000</i>) 	<ul style="list-style-type: none"> - Unauthorised administration of voluntary assisted dying substance (<i>14 years imprisonment</i>) - Inducing a person to request or revoke request for voluntary assisted dying (<i>imprisonment 7 years</i>) - Inducing self-administration of voluntary assisted dying substance (<i>imprisonment 7 years</i>) 	<ul style="list-style-type: none"> - False or misleading information (<i>offence under the Crimes Act 1900</i>) - Cancellation of document presented as prescription (<i>imprisonment for 12 months</i>) - Failure for contact person to give unused or remaining substance to authorised disposer (<i>imprisonment for 12 months</i>) - A person must not record, use or disclose information obtained because of a function the person has under the Act (<i>imprisonment for 12 months</i>) - A person must not publish information about a proceeding

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	<p><i>(imprisonment for life)</i></p> <ul style="list-style-type: none"> - Inducing another person to request voluntary assisted dying, or induce self-administration of a voluntary assisted dying substance (<i>600 penalty units or 5 years</i>) - Falsifying forms or records, making false statements (<i>600 penalty units or 5 years</i>) - Failure to return unused or remaining voluntary assisted dying substance (<i>120 penalty units or 12 months</i>) 	<p>8 poison as voluntary assisted dying substance (<i>3 years and \$36,000</i>)</p> <ul style="list-style-type: none"> - Failure to provide unused/remaining substance to authorised disposer (<i>12 months imprisonment</i>) 				<p>before the Supreme Court that discloses personal information as specified in the Act (<i>imprisonment for 12 months</i>)</p>