Doctors for Assisted Dying Choice

respecting rational patient end-of-life choices

SUBMISSION TO QUEENSLAND PARLIAMENTARY HEALTH AND ENVIRONMENT COMMITTEE

INQUIRY INTO THE VOLUNTARY ASSISTED DYING BILL 2021

DOCTORS FOR ASSISTED DYING CHOICE

Introduction

Doctors For Assisted Dying Choice (DADC - http://drs4assisteddyingchoice.org) strongly endorses the draft legislation that would govern voluntary assisted dying (VAD) in Queensland, as developed by the Queensland Law Reform Commission (QLRC), and tabled in parliament by the Premier on 25 May 2021.

The legislation would allow people to choose the manner of their dying, and avoid the suffering that the unlawfulness of VAD has brought about for a number of citizens.

DADC strongly commends the political process that has led to the draft legislation being developed and tabled. It reflects the democratic process in action, with numerous contributions to both the initial parliamentary committee inquiry and the subsequent QLRC drafting process from Queensland citizens and institutions.

DADC is confident that the forthcoming parliamentary vote will see the enactment of legislation that reflects the longstanding, strong community support for VAD.

We make the following observations and comments in regard to selected aspects of the Bill.

Eligibility for VAD

DADC endorses all of the VAD Bill's eligibility criteria for access to VAD.

- DADC especially supports the provision that the disease, illness or condition **expected to cause death within 12 months** (VAD Bill s10 (1) (a) (ii)). This is an acceptable compromise between the unreasonably short 6 month period for most conditions as in Victoria, and the more open ended "expectation or anticipation of suffering" type provision, which could be held to be an inadequate safeguard. It is also important that it applies to all otherwise eligible conditions, unlike the 12 month exception for neurological conditions from the general 6 month rule as in Victoria, given that this distinction does not track any meaningful difference in trajectories and symptoms between general and neurological categories of disease.
- DADC also endorses the VAD Bill's definition of **decision-making capacity** (VAD Bill s11), which is consistent with the definition in other relevant Queensland Acts.

- DADC also endorses the **residence requirements** that provide for a reasonable flexibility in relation to family situations and geographical proximity/connection to Queensland (VAD Bill s12).

Eligibility/qualifications of medical practitioners

DADC endorses the VAD Bill's approach to eligibility to participate in VAD for doctors and nurses (VAD Bill s82, s83).

- The provisions will help to maximise the efficiency of access to and provision of VAD, especially in a dispersed state such as Queensland where nurse practitioners at times will be required to fulfil the role of administering practitioner.
- The omission of a requirement that any of the involved practitioners must be a **specialist** in the disease the patient is suffering from is consistent with the needs of a dispersed state, with the acknowledged skills and qualifications of the doctors and nurses as described, and with the fact that specialist information will already be available from the patient's history and be available via further consultation, if required.
- The provision for **overseas trained specialists** to act as the coordinating or consulting practitioner reflects the reality of the Queensland medical workforce and its disposition, and is endorsed by DADC.

DADC urges that no further requirements than those indicated in the Bill be introduced, in order to ensure efficient operation of the legislation.

Ability of doctors (and nurses where required) to initiate discussion of VAD with patients

DADC strongly endorses the VAD Bill's approach, enabling doctors and nurses to initiate discussions with patients about VAD, in the context of providing comprehensive information about all end-of-life options relevant to the patient (VAD Bill s7). Lawful VAD should not be singled out as an exception to normal medical practice, where doctors and nurses routinely raise options for patients' consideration, upon which they depend. The wording of the Bill is consistent with this purpose of doctors providing information on all relevant options in the circumstances contemplated by the Bill.

Distinction between VAD and assisted suicide

DADC endorses the Bill's distinction between dying from VAD and dying by suicide (VAD Bill s8). This distinction is clear, from both a common sense point of view and a medical perspective. The medical and allied health professions are strongly committed to preventing suicides that are motivated by mental illness. Death as a result of VAD that complies with the eligibility and other criteria as set out in the Bill, is not something that there is any medical or social justification for preventing. The distinction is reflected in and upheld by the Bill's stipulation that death in accordance with the Act will be the result of the disease, illness or medical condition from which the person suffered, and that this should be reflected in the death certificate (s81).

Issue of clash of state VAD legislation with Commonwealth law on carriage services

Telehealth consultations are now a commonplace in ordinary medical care. In a dispersed state such as Queensland, it will be extremely difficult or impossible for some patients and doctors to communicate face-to-face in the circumstances of VAD contemplated by the Bill. We endorse the positions taken by the QLRC in relation to the possibility that the *Criminal*

Code Act 1995 (Cth) ss 474.29 (A) and (B) pertaining to "Offences relating to use of carriage service for suicide related material", may impede access of some of these patients and doctors to a lawful service.

This position is supported by the distinction as discussed above between VAD and suicide, and the fact that deaths via VAD will not be recorded as suicide. We also support the observations and recommendations of the QLRC that the Commonwealth legislation was introduced prior to any VAD legislation, that Queensland and other states with VAD legislation raise the matter of amending the Commonwealth law with Commonwealth government members, and that the Commonwealth DPP issue prosecutorial guidelines that remove any risk of prosecution of health practitioners acting in accordance with state VAD legislation. (See Queensland Law Reform Commission. A legal framework for voluntary assisted dying. Report No 79. Report Summary. May 2021. p56.)

Conscientious objection by individuals and entities

Individuals: DADC endorses the right of individual health practitioners to conscientiously object to VAD and refuse to participate in providing VAD. DADC also commends the legislation for requiring that objecting practitioners must provide information to patients seeking it, about alternative practitioners or services, or official VAD navigator services. This is a fair compromise between allowing for individual conscientious objection, but also for efficient accessibility, without obstruction, to VAD as a lawful health service. We also encourage legislators to qualify the wording of s84(2)(a) to require practitioners to immediately inform requesting patients that they object to facilitating VAD. Furthermore, we encourage legislators to qualify the wording of s84(2)(b) to require that objecting practitioners must provide the information about service providers, services, and/or the VAD navigator service, without undue delay, eg within 24 hours of the patient's request. Alternatively, this additional requirement could be included in Regulations in relation to the VAD Act.

Entities: DADC also endorses the approach of the VAD Bill to "Participation by entities" regarding information and access to VAD (VAD Bill ss86-98). The requirements regarding those individuals who are "permanent residents" of the designated facilities, places them at one with those people who can avail themselves of VAD and who reside in their own homes. This is an important provision that supports equity between citizens in relation to a lawful health service.

Self-administration or practitioner administration

DADC endorses the approach of the Bill to administration of the VAD substance (s50), providing for self-administration or practitioner administration, with the former being the default position, but appropriate flexibility in relation to patient concerns. The section is worded to both provide choice to the patient but also to maintain the role of the doctor as information provider and supporter.

Shortened period between first and final request

DADC endorses the flexibility contained in the Bill (s43) that allows for a relaxation on the 9-day minimum designated period between the first and final request for VAD. We agree with the rationale underpinning this flexibility, in terms of deterioration in the patient's clinical condition or the threatened loss of decision-making capacity. This will prevent the loss of

access to VAD by people who have clearly satisfied the eligibility requirements, but for subsequent clinical changes.

Witness to second request

DADC commends the Bill for the balance brought to the VAD process through not allowing the coordinating and consulting practitioners to be witnesses to the second request for VAD by the person. This will ensure and be seen to ensure that, while it would be unlikely, undue influence by practitioners on the person's decision-making cannot occur.

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