General Enquiries and Client Service
P [redacted]

Claims and Legal Services
P [redacted]

Postal Address
[redacted]

30 June 2021

Mr Aaron Harper MP
Chair, Health and Environment Committee
Queensland Parliament

Via email - hec@parliament.qld.gov.au

Dear Chair

MIGA submission – Qld Voluntary Assisted Dying Bill 2021

As a medical defence organisation and professional indemnity insurer, MIGA appreciates the opportunity to provide a submission to the Committee's inquiry into the Voluntary Assisted Dying Bill 2021 (**the VAD bill**).

It follows MIGA's detailed submission to the Queensland Law Reform Commission's review of a legal framework for voluntary assisted dying (**VAD**) and its contributions to consultations on the design of VAD regimes elsewhere in Australia.

Summary - MIGA position

MIGA takes no position on the introduction of VAD. It is an issue for the Queensland Government, medical and other healthcare professions, and the community.

Its contributions to VAD consultations are directed to the practical implications, particularly from medico-legal / regulatory perspectives, of such regimes, both for doctors and other health professionals who choose to participate, and those who choose not to participate.

As indicated to the QLRC review, a Queensland VAD regime needs

- Clarity of obligations and expectations on doctors and other healthcare practitioners
- Broad consistency with other Australian VAD regimes where possible and appropriate
- Clear provisions for conscientious objection consistent with those operating generally in healthcare
- Appropriate protections for
    - Doctors and other health professionals
    - Vulnerable persons, including around undue influence, duress and elder abuse
- Comprehensive professional guidelines, education and training for the healthcare sector
- Any complaints being handled within existing mechanisms
- An appropriate transition period between regime finalisation and commencement.

Voluntary Assisted Dying Bill

The VAD bill addresses many of the issues raised by MIGA in the QLRC review, including

- Doctor eligibility to be part of a voluntary assisted dying process, including training on the regime
- What is required of doctors, other health professionals and health facilities who have a conscientious objection to voluntary assisted dying
- Clarification of what may be discussed with patients
- Assessing patient capacity
- Clearer definition of eligibility criteria
- Appropriate scope to seek specialist opinions

- Eligible witnesses for voluntary assisted dying requests
- Identifiable waiting periods
- Use of interpreters
- Arrangements for administering the voluntary assisted dying substance
- Roles of an oversight body and the Coroner
- Queensland Civil and Administrative Tribunal review jurisdiction
- Avoiding presumptions of adverse disciplinary findings for doctors and other health professionals acting in good faith.

The QLRC also acknowledged concerns MIGA raised around doctors being responsible for assessing the residency aspect of eligibility criteria. It identified the need for guidance on this issue to assist the profession.

Need to extend good faith protections to disciplinary processes

It is imperative to have appropriate protections in place for doctors and other health professionals who participate in (or to decline to participate in) VAD processes.

MIGA is concerned that the proposed protections for practitioners in Part 10 of the VAD bill are too narrow, particularly for adverse disciplinary findings and actions.

Unlike other Australian VAD regimes the VAD bill protections apply only to criminal and civil liability.

The QLRC's opposition to extending protections to disciplinary proceedings is based on its view that the health practitioner disciplinary framework "*should be left to operate on its own terms*" and need for "*strong oversight of the scheme*", allowing the Health Ombudsman and National Boards to deal with complaints and concerns about practice, conduct and systemic issues (paras 17.157-17.159).

In MIGA's view the protections in place against disciplinary findings / action in the existing Victorian VAD regime, the soon to commence Western Australian regime and the recently passed South Australian and Tasmanian VAD Acts do not weaken regime oversight, nor do they preclude adverse disciplinary findings and action in appropriate circumstances.

For example s 114 of the *Voluntary Assisted Dying Act 2019* (WA) provides that acts done by a person in good faith, with reasonable care and skill, and with a reasonable belief they are acting in accordance with the Act, are not to be regarded as

- Breaches of professional ethics or standards
- Breaches of any principles of conduct applicable to the person's conduct
- Unprofessional conduct – defined under s 5 of the *Health Practitioner Regulation National Law* as conduct of a lesser standard than that which might be reasonably be expected by the public or professional peers
- Professional misconduct – defined under s 5 of the National Law as including
    - Unprofessional conduct that is substantially below reasonably expected standards of practitioners with equivalent training and experience
    - Conduct inconsistent with being a fit and proper person to be registered in the profession.

Australian VAD regimes are new and complex. They are inherently controversial within the healthcare profession and the community. They impose significant obligations on doctors and other health professionals. There are likely to be 'grey areas' and scope for legitimate difference amongst the profession. In those circumstances protections against adverse disciplinary findings and actions are needed to ensure that reasonable, good faith actions and legitimate differences do not lead to disciplinary processes.

The three 'control' mechanisms of good faith, reasonable belief, and reasonable care and skill mean that conduct objectively considered to be a breach of professional ethics, standards or conduct principles, or constituting unprofessional conduct or professional misconduct, is most unlikely to be protected by s 114 of the Western Australian Act (or its equivalent provisions elsewhere).

Other Australian provisions against disciplinary findings or action provide no protection against intentional breaches, reckless or negligent conduct. These are the types of conduct appropriately dealt with by disciplinary processes.

Good faith attempts to do the right thing in a complex system where there is legitimate scope for reasonable differences are not a disciplinary issue. They could only be an educative issue.

Necessary changes to professional standards, education and training are best dealt with via review of broader experiences in multiple matters, not individual disciplinary matters.

There is no reason why doctors and other health professionals in Queensland should receive lesser protections than do their colleagues elsewhere in Australia.

Protections for practitioners under a Queensland VAD regime should be extended to include disciplinary or administrative sanctions, findings and / or other action, and breaches of professional ethics, standards, principles of conduct or etiquette, making those protections equivalent to those in place elsewhere in Australia.

Next steps

If you have any questions or would like to discuss, please let me know.

Yours sincerely

Timothy Bowen
Manager – Advocacy & Legal Services

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