



2 July 2021

PRIVATE AND CONFIDENTIAL

Mr Aaron Harper MP
Chair
Health and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Email sent to: hec@parliament.qld.gov.au

Dear Mr Harper

Voluntary Assisted Dying Bill 2021

The Office of the Health Ombudsman (OHO) has provided two previous submissions in relation to *voluntary assisted dying* (VAD). On 23 April 2019, the OHO provided a submission to the *Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying* of the then Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee. On 1 December 2020 the OHO provided a submission to the Queensland Law Reform Commission.

A consistent theme of the OHO's submissions related to the issue of the regulation and complaints management frameworks that may be applicable to VAD. This submission deals only with this issue.

In our 23 April 2019 submission it was stated:

...should the Government resolve to undertake reforms to allow voluntary assisted dying, consideration would need to be given to the system of regulation that will apply to it. Registered health practitioners that may be engaged in this area are likely to come within the jurisdiction of the OHO and AHPRA. Therefore, practitioners' conduct and performance could be regulated to some extent within the existing framework. Whether the OHO would have broader jurisdiction over services in this space will depend on whether the practice constitutes a health service.

In our 1 December 2020 submission it was stated:

It is noted that Voluntary Assisted Dying Act 2019 (WA) provides for an amendment to the definition of 'health service' in the Health and Disability Services (Complaints) Act 1995 (WA) to include voluntary assisted dying. The Health Ombudsman Act 2013 defines a 'health service' at section 7 as:

*(1) A **health service** is a service that is, or purports to be, a service for maintaining, improving, restoring or managing people's health and wellbeing...*

Should it be the government's intention that the OHO have jurisdiction to deal with organisations and unregistered health practitioners acting in this area, then to remove doubt, it would be beneficial to amend the Health Ombudsman Act 2013, in a similar manner to Western Australia, to specify that voluntary assisted dying is a health service.

Turning now to the *Voluntary Assisted Dying Bill 2021* and the issue of regulation and complaints management, the OHO makes the following observations:

1. To the extent that registered health practitioners are involved in the scheme (including a *coordinating practitioner, consulting practitioner, administering practitioner, authorised supplier*) the existing regulatory and complaints management scheme applicable to registered health practitioners would apply. It is the OHO's position that relevant provisions of the Health Practitioner Regulation National Law (Queensland) and the *Health Ombudsman Act 2013* (HO Act) would have application to the conduct and performance of registered health practitioners in this space.
2. The OHO considers that it would have jurisdiction to deal with the conduct of an unregistered health providers (individuals) who breach clause 7 of the Bill by initiating discussions about voluntary assisted dying, where a reasonable belief can be formed that the practitioner poses a serious risk to persons and action is necessary to protect public health or safety. Whether the conduct of the unregistered health practitioner reaches this threshold would depend on the individual circumstances of each case. Further, it is noted that OHO's jurisdiction may not extend to some *personal care service* providers (as defined in Schedule 1), who are not providing a health service.
3. With the exception of the above comments, whether the OHO has jurisdiction to deal with the conduct and performance of unregistered providers and entities mentioned in various parts of the Bill is not clear. The uncertainty in this area relates to the definition of a health service under the HO Act. As is mentioned above, section 7 of the HO Act states:

*(1) A **health service** is a service that is, or purports to be, a service for maintaining, improving, restoring or managing people's health and wellbeing...*

Whether a service that ends a person's life under the VAD scheme amounts to a health service is a moot point. While there exist competing arguments, one line of argument open is that ending a person's life is not consistent with *maintaining, improving, restoring or managing* a person's health and wellbeing.

Presumably, the uncertainty in this space resulted in an amendment to the definition of a 'health service' in the *Health and Disability Services (Complaints) Act 1995*(WA) to include voluntary assisted dying (as is mentioned above).

Three examples involving either individual unregistered providers or entities in the Bill are detailed below:

- (a) Clause 156 provides for the establishment and approval of *official voluntary assisted dying care navigator services*. As these are approved by the chief executive, complaints about these services could be directed to the chief executive. However, as it is not clear that these services would meet the definition of a health service, the OHO's jurisdiction to receive and manage complaints may be questionable.
- (b) The Bill provides for such roles as a *witness* (Part 3, Division 4), an *agent* (Part 4, Division 1) and a *contact person* (Part 4, Division 2). While it may be envisaged that these roles may be performed informally by family members or friends, it may also be possible that they are undertaken by a service provider. The comments above at (a) would also apply to complaints about such service providers.
- (c) Part 6, Division 2 deals with participation of entities and their responsibilities under the Bill in relation to, among other things, the provision of information and the allowing of access. Facilities listed in the Bill, such as a public or private hospital, hospice or nursing home, may meet the definition of a *health service organisation* under the HO Act. However, whether actions that they do or do not take in relation to VAD amount to health service provision again is unclear and raises jurisdictional issues should the OHO receive a complaint about these actions.

If it is intended that the OHO have jurisdiction in relation to any of the matters raised in (a) to (c), then it is recommended that greater clarity be provided in the Bill.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line that tapers to the right.

Andrew Brown
Health Ombudsman