Committee Secretary,
Health and Environment Committee
Parliament House
George Street
Brisbane, Qld, 4000

01/07/2021

Dear Dr Jacqui Dewar,

Re: Inquiry into the Voluntary Assisted Dying Bill 2021 (Qld)

*Authors: Andrew Calabro and Daniel Calabro

I INTRODUCTION

The Queensland Parliament introduced new draft legislation in May 2021 regarding voluntary assisted dying.[1] The Parliament referred the Bill to the Health and Environment Committee on 25 May 2021 for inquiry.[2] The Bill is intended to create a framework for voluntary assisted dying within the State.[3]

The authors wish to commend the Queensland Parliament, the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee and the Queensland Law Reform Commission on the extensive work that has occurred to develop a novel legislative scheme in Queensland. The authors wish to thank the Health and Environment Committee for the opportunity to provide feedback as part of the Committee's inquiry. The authors make the following submission to the Health and Environment Committee for consideration.

II METHODOLOGY

The authors reviewed the documents tabled by the Hon. Annastacia Palaszczuk as part of introducing the Bill to Parliament. These included: Voluntary Assisted Dying Bill 2021 (Qld), Explanatory Notes on the Bill and the Statement of Compatibility with Human Rights relating to the Bill. The record of proceedings of Parliamentary debates on 25 May 2021 regarding voluntary assisted dying was also reviewed. The authors also performed research for relevant cases and secondary materials in support of their submission.

---

* Andrew Calabro B.Pharm AACPA MPS is a pharmacist and law student;
Daniel Calabro B.Pharm AACPA MPS is a pharmacist and law student.

[1] Voluntary Assisted Dying Bill 2021 (Qld).
[2] Queensland, *Parliamentary Debates*, Legislative Assembly, 25 May 2021, 1516.
[3] Explanatory Notes, Voluntary Assisted Dying Bill 2021 (Qld) 1 ('Explanatory Notes').

III ACKNOWLEDGEMENT

The views expressed in this submission are the personal views of the authors. Both authors contributed equally to this submission.

IV ISSUES CONCERNING FUNDAMENTAL LEGISLATIVE PRINCIPLES

A Consistency with rights and liabilities: s 4(2)(a) *Legislative Standards Act 1992* (Qld)

The citizenship and residency requirements raise issues about access to voluntary assisted dying as a medical intervention. The right to access healthcare is universal. The principle of equality means that all people should have access to voluntary assisted dying regardless of citizenship or residency. Restricting access to an Australian citizen, permanent resident or a person ordinarily resident in Queensland breaches this fundamental principle.

1 *Statelessness and voluntary assisted dying*

The issue of statelessness warrants consideration. Statelessness is an issue that arises in the Australian context, most notably in relation to refugees.[4] However, the issue also affects indigenous Australians through a lack of registration of births.[5] The authors note that consideration does not appear to have been given to the impact of the Bill on Aboriginal and Torres Strait Islander persons.

Regarding the position of indigenous Australians, the problem of statelessness would prevent access to voluntary assisted dying. Consequently, there is the potential for an inequality of access between indigenous and non-indigenous Australians. It is worth noting that the case of *Love v Commonwealth*[6] suggests a third category of citizenship: 'non-citizen and non-alien'. However, it would be unreasonable to require an Aboriginal and Torres Strait Islander person with a life-limiting illness to rely on such a principle to access voluntary assisted dying.

In the migration context, the case of *Al-Kateb v Godwin*[7] provides authority for the proposition that a stateless person may be detained indefinitely. It is therefore possible that a person in indefinite detention may be diagnosed with a disease that is 'advanced, progressive and will cause death.' However, due to a lack of citizenship, such a person would be ineligible to access voluntary assisted dying in any Australian State.

[4] Christopher Richter, 'Statelessness in Australian refugee law: the (renewed) case for complementary protection' (2005) 24 *University of Queensland Law Journal* 545, 546.
[5] Willem van Genugten, Anna Meijknecht and Bas Rombouts, 'Stateless indigenous people(s): the right to a nationality, including their own' (2014) 19 *Tilburg Law Review* 98, 103.
[6] (2020) 375 ALR 597.
[7] (2004) 219 CLR 562.

2 *Residency requirements*

The inclusion of 'residency' provisions in cls 10(1)(e), (f) imposes an unnecessary administrative burden on a person with a life-limiting illness. This is highlighted in the case *NTJ v NTJ (Human Rights)*[8]. The facts of the case clearly illustrate an unnecessary delay in accessing voluntary assisted dying in circumstances where a medical practitioner assessed a person eligible. The mere fact that a tribunal process was required to determine the residency of a person is contrary to the object of the legislation. Therefore, voluntary assisted dying legislation should not contain residency requirements.

It is also worth noting comments made by the Queensland Law Reform Commission regarding the need for residency requirements.[9] The Commission's comments highlight the irrelevancy of residency requirements as greater access to voluntary assisted dying is permitted in multiple jurisdictions.[10] As noted in the Explanatory Notes, three jurisdictions have enacted legislation in the field of voluntary assisted dying.[11] One State is currently considering proposed legislation.[12] If the Voluntary Assisted Dying Bill 2021 (Qld) becomes law, a regulatory framework to access voluntary assisted dying will exist in four States; and potentially a fifth State in the near future. Therefore, it is argued that voluntary assisted dying is already universally available in Australia. Consequently, the need for residency requirements is irrelevant. Clauses 10(1)(e), (f) should be omitted.

3 *Initiating discussions about voluntary assisted dying*

A prohibition on health professionals initiating a discussion about voluntary assisted dying in cl 7 is inconsistent with the stated objectives. The aim of the legislation is to provide access to voluntary assisted dying.[13] However, a person cannot access the scheme if they do not know that it exists. Knowledge of the existence of voluntary assisted dying is likely to be limited if a person has low levels of health literacy.[14] Consequently, there is a potential issue regarding inequality of access.

A fundamental principle of healthcare is the right to make an informed decision about one's own medical care. This involves receiving information about different options available for a life-limiting illness, such as palliative care and voluntary assisted dying. Therefore, a person who is diagnosed with a life-limiting illness and only informed about palliative care cannot be said to have made a fully informed decision. In such circumstances, a person would be denied a right of autonomy to choose voluntary assisted dying. It should be noted that despite Victorian legislation distinguishing between initiating a discussion and providing information, access is still limited by knowledge of existence of the scheme.[15] A person will not know to ask for information about something they do not know exists. Therefore, the

---

[8] [2020] VCAT 547.
[9] Explanatory Notes (n 3) 19.
[10] Queensland Law Reform Commission, *A Legal Framework for Voluntary Assisted Dying* (Report No 79, May 2021) 165.
[11] Explanatory Notes (n 3) 67.
[12] Ibid 68.
[13] Voluntary Assisted Dying Bill 2021 (Qld) preamble, cl 3(a).
[14] Lindy Willmott et al, 'Restricting conversations about voluntary assisted dying: implications for clinical practice' (2020) 10(1) *British Medical Journal Supportive and Palliative Care* 105, 111 ('Restricting conversations').
[15] See *Voluntary Assisted Dying Act 2017* (Vic) ss 8(1), (2).

legislation should not include a prohibition on initiating a discussion about voluntary assisted dying.

Another issue for consideration is the regulatory impact of a prohibition in cl 7 that is imposed on an industry. The healthcare industry is already heavily regulated. This was noted in the Explanatory Notes to the *Medicines and Poisons Act 2019* (Qld).[16] Furthermore, there is evidence that a prohibition may be inconsistent with current regulatory practices. Willmott et al stated in a recent article:

> *'To the authors' knowledge, no other law imposes a restriction on a doctor discussing with a patient a lawful treatment option that the doctor, in his or her professional view, believes is an option that the patient may wish to consider.'* [17]

The authors argue that adequate safeguards are already in place to 'protect vulnerable persons from coercion and exploitation'.[18] Voluntary assisted dying can only be accessed by a person making a voluntary request.[19] It is also an offence to induce a person to request access to voluntary assisted dying.[20] These provisions highlight that a request for voluntary assisted dying must be voluntary and free from inducement. Therefore, the manner in which a person acquires knowledge about the existence of voluntary assisted dying is immaterial. All that matters is the person makes a voluntary request which is free from inducement.

V OTHER ISSUES FOR CONSIDERATION

A Timeframes

Stipulating a defined timeframe as part of the eligibility criteria in cl 10(1)(a) raises several issues. Firstly, a timeframe is an arbitrary number. It does not accurately reflect the prognosis of a medical condition. Secondly, it restricts the professional autonomy of a medical practitioner in performing an eligibility assessment. A medical practitioner is the person who is appropriately qualified to determine a prognosis. The Parliament should therefore refrain from legislating an arbitrary timeframe. Thirdly, an arbitrary timeframe unnecessarily restricts an individual's right of autonomy. A person who would otherwise be eligible but for an arbitrary time limit would be prevented from accessing voluntary assisted dying. This would be inconsistent with the main object of voluntary assisted dying legislation: access to the scheme. Fourthly, it is worth noting that medical practitioners have been reported to overestimate a timeframe for death.[21] Therefore, a person may be ineligible for voluntary assisted dying and experience intolerable suffering due to a cautious overestimation that falls outside an arbitrary timeframe. Consequently, neither a minimum nor a maximum timeframe should be included in the eligibility criteria.

---

[16] See Explanatory Notes, Medicines and Poisons Bill 2019 (Qld) 1.
[17] Willmott 'Restricting conversations' (n 14) 112.
[18] Voluntary Assisted Dying Bill 2021 (Qld) cl 3(c)(ii).
[19] Ibid cl 10(1)(c).
[20] Ibid cl 141.
[21] Bregje Onwuteaka-Philipsen, Lindy Willmott and Ben White, 'Regulating voluntary assisted dying in Australia: some insights from the Netherlands' (2019) 211(10) *Medical Journal of Australia* 438, 438.

B The role of other health professionals: pharmacists

The role of a pharmacist warrants consideration. Pharmacists are considered experts in medicines.[22] Given the fact that voluntary assisted dying involves the use of a medicine to cause death, pharmacists—as experts in medicines—must be actively involved. The Pharmaceutical Society of Australia states that a pharmacist uses their skills, knowledge and expertise to ensure that:

> *'medicines are used safely, effectively and judiciously. This includes the custody, preparation, dispensing and provision of medicines, together with systems and information to assure quality of use.'*[23]

The use of any medicine poses a risk. In the context of voluntary assisted dying, there is evidence that complications do occur.[24] Potential complications may include difficulty swallowing a liquid, tablet or capsule, vomiting post-administration of the substance and failing to complete the prescribed course.[25] Pharmacists are appropriately placed within the healthcare system to provide expert advice and information on the use of a voluntary assisted dying substance. Pharmacists also have an important role to play in the return of unused or unwanted medicines.[26] This is especially important in the context of a voluntary assisted dying substance. Therefore, pharmacists must be involved in any voluntary assisted dying scheme.

1 Storage of a voluntary assisted dying substance

The authors seek clarity on cl 70(2)(d). Authorised suppliers such as pharmacists are required to inform persons of the storage requirements '*when supplying* the voluntary assisted dying substance'.[27] The Bill authorises subordinate legislation making power regarding storage requirements.[28] The Explanatory Notes state that it is anticipated a person will be required to store the voluntary assisted dying substance 'in a locked box not easily penetrable by other people.'[29] The authors seek clarification on whether supply should be withheld unless the person collecting the voluntary assisted dying substance brings with them at the time of collecting the substance a suitable box that is lockable. This would minimise the risk of unintended death from inadvertent access to a voluntary assisted dying substance once the authorised supplier no longer has possession.

---

[22] Pharmaceutical Society of Australia, *Pharmacists in 2023: For patients, for our profession, for Australia's health system* (Report, February 2019) 7.
[23] Ibid.
[24] Onwuteaka-Philipsen (n 21) 439.
[25] Ibid.
[26] See The National Return & Disposal of Unwanted Medicines, *Return unwanted medicines*, (Web Page, 2020) <www.returnmed.com.au>.
[27] Voluntary Assisted Dying Bill 2021 (Qld) cl 70(2) (emphasis added).
[28] Ibid cl 70(2)(d).
[29] Explanatory Notes (n 3) 101.

2 Checking the authenticity of prescriptions

Clause 69(a) requires an authorised supplier—such as a pharmacist—to confirm the authenticity of a prescription prior to supplying a voluntary assisted dying substance.[30] The authors seek clarification as to how an authorised supplier can satisfy this requirement. The authors note that cl 66(2) mandates certain information to be included in a prescription.[31] This includes a statement certifying: (i) that the request and assessment processes have been followed and (ii) that a decision regarding administration of the voluntary assisted dying substance has been made.[32] Additionally, cl 58(1) requires a contact person to be appointed and cl 59(6) prohibits a practitioner from prescribing a voluntary assisted dying substance unless a contact person has been appointed.[33] The appointment of a contact person is therefore an integral factor to consider as part of an authenticity check under cl 69(a). The authors seek clarification as to whether a new subclause 66(2)(b)(iii) should be inserted to require a statement to be included on a prescription which certifies that a contact person has been appointed. This enables an authorised supplier to comply with their obligation to confirm the authenticity of a prescription.

[30] Voluntary Assisted Dying Bill 2021 (Qld) cl 69(a).
[31] Ibid cl 66(2).
[32] Ibid cl 66(2)(b).
[33] Ibid cls 58(1), 59(6).