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New South Wales Parliamentary Working Group on Assisted Dying

Key Amendments to the Exposure Draft of the Voluntary Assisted Dying Bill 2017 (NSW)

Establishment of a Voluntary Assisted Death Review Board (Part 8)

The Review Board is a new addition to the Bill and has been created to provide oversight of all deaths under the provisions of the Bill; information to the government, public, and the Parliament; and recommendations to improve the operation of the law. The Review Board would also have the power to refer any breaches of the provisions of the Bill to the relevant authority. The functions of the Review Board are in addition to the existing role of the Coroner in the Bill, and will ensure that the Bill contains strong oversight, monitoring, and evaluation mechanisms.

Inclusion of a regulation making power to specifically deal with the storage, disposal or use of substance (Clause 45(2))

A regulation-making power has been included to allow for the Minister to make further regulations in respect of the storage, disposal, or dealing with an unused authorised substance. This will be in addition to the existing laws and regulations at a Commonwealth and State level. The power has been included in the Bill in response to concerns that arose during consultations about the framework for storage, disposal or use of authorised substances. The Minister may be guided by the expert advice of the new Voluntary Assisted Death Review Board (Part 8) in developing such regulations.

Inclusion of a mandatory offer of a referral to a palliative care specialist by the primary medical practitioner (Clause 19(3))

The primary medical practitioner will be obligated to offer the patient a referral to a palliative care specialist for a consultation. The patient is under no obligation to accept the referral and can refuse the offer and have the process continue.

Patient eligibility will be further limited to Australian citizens and permanent residents (who ordinarily reside in NSW) (Clause 9(2)(b))

This additional requirement that patients be Australian citizens and permanent residents, who also ordinarily reside in NSW, is in line with the intention of the Working Group to have a NSW voluntary assisted dying framework available only for NSW residents.

Removal of the ability for a nominee of a patient, who was not a medical practitioner, to administer the substance to the patient

The ability for a patient to authorise a spouse, family member, or friend, to administer the substance has been removed from the Bill. A patient seeking assistance will be required to self-administer a substance and in the rare circumstance when they are unable to self-administer, only a qualified doctor or nurse can be authorised to administer (Clause 5). This directly responds to concerns raised in public consultations about a nominee's competence to administer a substance, and ensures the patient has the appropriate support of medical practitioners.

Patients are always required to receive the relevant information from their doctor in writing, and doctors are required to provide more information (Clause 19)

The information the primary medical practitioner is required to provide the patient upon the patient's request for assistance is to always be provided in writing (Clause 19(2)). This is to ensure there is a record demonstrating that the provisions have been met.

The primary medical practitioner will also be required to provide patients with written information about the consequences of taking the substance including the risk and possible adverse consequences if the substance does not result in death. They will also be required to provide the patient with written information about their right to rescind the request for assistance at any time and in many manner.

A new regulation power has been included to specify for additional relevant information to be provided by the primary medical practitioner.

Clarification of the qualifications, role, and assessment by the psychologist/psychiatrist

The Bill now makes it clear that a qualified psychologist must indeed be a clinical psychologist.

A number of clarifications have been included to make it clear that the primary medical practitioner must not provide assistance unless the psychologist/psychiatrist determines that the patient meets the requirements that are assessed by the psychologist/psychiatrist. The psychologist/psychiatrist must now also provide a report to the primary medical practitioner regardless of whether the patient meets the assessment criteria.

A definition of 'decision-making capacity' has been included (Clause 7), so as to give further guidance to the psychologist/psychiatrist as to their assessment of the patient. The Bill now also requires the patient to have decision-making capacity 'in relation to the request for assistance' (Clause 20(4)), but no longer is required to be of "sound mind" to be eligible for assistance. This responds to concerns raised in consultations that "sound mind" is an archaic term not widely used in the profession and open to interpretation. The relevant concern is that the patient is able to understand the consequences of their decision after due consideration and is making the decision freely, voluntarily, and without external influence.

Inclusion of an independence requirement for the interpreter

In the Bill, treating medical practitioners must not be close relatives of the patient. The interpreter, if they are to be required in the process, now must also not be a close relative of the patient (Clause 23(3)).

Strengthened protections for those present at time of administration of substance

Protections have been strengthened for anyone who is present when a patient self-administers or a doctor or nurse administers a substance to a patient, to include failing to provide life-saving assistance (Clause 29(3)(d)).

Obligation on medical practitioners to pass on previous patient reports, and to notify treating medical practitioners if the patient rescinds request

A new obligation on health care providers who are not the primary medical practitioner to notify the primary medical practitioner if the patient rescinds the request has been included (Clause 10(2)). An obligation has also been included to require the primary medical practitioner to pass on any previous reports in their possession related to previous rejected requests for assistance to a second secondary medical practitioner and a second psychiatrist/psychologist if a patient starts the process again (Clause 21).