

On October 14<sup>th</sup> 2021 the Voluntary Assisted Dying Bill 2021 was introduced into NSW Parliament by Mr A H Greenwich, MP.

PCNSW has provided a summary of the mains point of this Bill.

Key Principles include

- Access to palliative care and treatment to reduce suffering and maximise quality of life.
- A person is entitled to genuine choices about the person's care, treatment and end of life irrelevant of where they live in NSW, their culture or language.
- The same level of access to voluntary assisted dying should exist across, regional and metropolitan regions.
- All persons, including health practitioners have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics.

Decision-making capacity

- A person with the capacity to understand information around voluntary assisted dying is defined in the bill as a patient who understands advice about a voluntary assisted dying decision, as well the matters involved and the effect of this decision. Be able to remember this information, weigh up the decisions and communicate their decision in some way.

Voluntary assisted dying substance

- The Health Secretary may, in writing, approve a Schedule 4 poison or Schedule 8 poison for use under this Act for the purpose of causing a patient's death.

Other key provisions

- A registered health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to do any of the following—
  - (a) participate in the request and assessment process,
  - (b) prescribe, supply or administer a voluntary assisted dying substance,
  - (c) be present at the time of the administration of a voluntary assisted dying substance.
- A health care worker who provides health services or professional care services to a person must not, while providing the services to the person initiate a discussion that is about voluntary assisted dying nor suggest voluntary assisted dying unless they inform the person that they have palliative care and treatment options available and should discuss the palliative care and treatment options with the person's medical practitioner.
- Medical practitioners who initiate a discussion relating to voluntary assisted dying must also inform person of their treatment options, the likely outcomes of those options and their palliative care options and the likely outcomes of those options.

Voluntary assisted dying not suicide

- Voluntary assisted dying will not constitute suicide.

Requirements for access to voluntary assisted dying

- A person may access voluntary assisted dying if they have been assessed as eligible by two health practitioners, one of whom is the person's coordinating practitioner and one is the person's consulting practitioner after fulfilling all assessment requirements and decided on administration of the voluntary assisted dying substance.

#### Eligibility Criteria

- Must be an adult (over 18)
- Australian citizen/permanent resident or have resided in Australia for 3 continuous years.
- Ordinarily a resident of NSW for at least 12 months (exemptions may apply).
- Diagnosed with a terminal illness that will probably cause death within 6 months, or 12 months for a neurodegenerative disease, and is suffering intolerable pain that cannot be relieved.
- The person must have decision-making capacity and not be under pressure or duress.
- Disability and mental health impairment do not qualify a person for voluntary assisted dying.

#### Requesting access to voluntary assisted dying and assessment of eligibility

##### Eligibility requirements for medical practitioners

- Must hold specialist registration or
- General registration and practised for at least 10 years or
- Overseas trained specialist who holds limited or provisional registration.
- Completed approved training
- Not a family member of patient
- Must not be a beneficiary under a will or received financial or other benefit for provision of services other than reasonable fee for provision of services.

##### First request

- A person may make a request verbally or in another way such as gestures, or with the assistance of an interpreter.
- A person can discontinue process at any time.
- Medical practitioner must accept or refuse request and record this request formally.

##### First assessment and consulting assessment

- A patient must be assessed for eligibility, if a practitioner cannot decide on eligibility, they must refer the patient to another medical practitioner for opinion.
- If patient meets all eligibility criteria the practitioner must provide all information regarding diagnosis, prognosis, treatment and palliative care options, as well as all risks and outcomes of administering voluntary assisted dying substances.
- The outcome of this assessment must be formally recorded.
- If the patient is eligible for voluntary assisted dying, they must be referred to a second practitioner for a consulting assessment. If the referral is accepted by this practitioner, they will become the consulting practitioner for the patient.
- If these practitioners are unable to decide whether voluntary assisted dying eligibility criteria are met, they must refer the patient to a psychiatrist or other health practitioner.

##### Written declaration

- If assessed as eligible a patient must make a written declaration in the approved form, stating that there is no pressure or duress and they understand its nature and effect. This

document must be witnessed and recorded by coordinating practitioner and submitted to the Board within 5 working days.

#### Final request and final review

- A patient may then make a final request before the end of the designated period.
- A practitioner must then complete a final review and give a copy of this review to the Board within 5 days.

#### Eligibility to act as administering practitioner

- Must hold specialist registration or
- General registration and practised for at least 5 years or
- Overseas trained specialist who has limited or provisional registration or
- Nurse practitioner or
- Registered nurse with at least 5 years experience.
- Completed approved training
- Not a family member of patient
- Must not be a beneficiary under a will or received financial or other benefit for provision of services other than reasonable fee for provision of services.

#### Administration decision

- The patient must clearly decide whether they intend to self-administer or have the substance administered by their practitioner. These decisions can be revoked at any time.
- If self-administered a patient must appoint a contact person who will receive and prepare the substance
- That contact person must be an adult and can be the person's coordinating practitioner or consulting practitioner or another registered health practitioner or any other adult who consents to the appointment.

#### Prescribing, supplying and disposing of voluntary assisted dying substance

- Information must be given to the recipient about the substance and they must be informed they are under no obligation to self-administer the substance.
- It must be stored in a locked box and if not used it must be appropriately disposed of with an authorised disposer and recorded.

#### Notification of death

- A patient's coordinating practitioner or administering practitioner must notify the Board within 5 days after becoming aware the patient has died with appropriate information.

#### Participation

- Residential facilities, private health facilities and public hospitals may refuse to provide voluntary assisted dying services, and must publish information about this. They must however allow access to information about VAD, allow access to a health practitioner or VAD navigator service. The nature of the obligations here differ according to service type so we recommend reading Part 5 Participation Divisions 1, 2 and 3 in full.

#### Protection from liability

- A person does not incur criminal liability if the person in good faith, assists another person to request, access or is present when another person self-administers or is administered a prescribed substance in accordance with the Act.

#### Establishment of The Voluntary Assisted Dying Board

- This will ensure monitoring of the operation of this Act.

#### Births, Deaths and Marriages Registrations

- If the Registrar receives a cause of death certificate referred to in the *Voluntary Assisted Dying Act 2021*, section 87(6), the Registrar must register the death in the Register by making an entry about the death that records—
  - (a) the cause of death as the disease, illness or medical condition with which the person had been diagnosed that made the person eligible to access voluntary assisted dying, and
  - (b) the person was the subject of a voluntary assisted dying authority under the *Voluntary Assisted Dying Act 2021* and voluntary assisted dying was the manner of death.