



19 October 2010

H16, 72.5  
RB;rp

The Honourable Stephen Wade MLC  
Shadow Attorney-General  
Parliament House  
North Terrace  
ADELAIDE SA 5000

Dear Mr Shadow Attorney

***Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill  
2010***

I refer to an email received on 21 September 2010 from your Adviser, Mr Sandy Biar, and thank you for referring the above Bill to the Society for comment.

It is the view of The Society that the primary concern in relation to the operation of the legislation should be around clarity and certainty, that those who participate in the manner contemplated by the Bill can be confident that they have participated in the process in compliance with the legislation and that, from the perspective of the person requesting voluntary euthanasia (**VE**), those procedures are workable.

This Bill offers both the opportunity for "active" requests and for "advance requests". In the latter case, it differs from the Voluntary Euthanasia Bill (which does not incorporate such a concept).

The Act establishes a process of request.

1. In the case of active requests, the request must be by an adult person who is then in the "terminal phase of a terminal illness" (both being concepts already defined within the Act), or an adult person who is suffering from an illness, injury or other medical condition (not being a mental illness) that irreversibly impairs the person's quality of life so that life has become intolerable.

The process leading to the request requires that the person intending to make the request has had their principal place of residence in the State for not less than twelve months or that they be the subject of a request for VE under another Commonwealth or State law.

2. The person must attend a preliminary appointment with a "request practitioner" and be given certain information, including diagnosis and prognosis, information explaining forms of treatment that is reasonably available, the extent to which appropriate palliative care may alleviate suffering and other matters.
3. The person making the request must then be independently examined by a specialist (in relation to the illness being suffered) and obtain a report from that specialist setting out diagnosis and prognosis, forms of treatment available and the extent to which palliative care may alleviate suffering and further, whether or not in the opinion of the specialist practitioner, the person is of sound mind or is adversely affected in terms of decision-making ability by their state of mind or is acting under any form of duress or inducement.

4. If either the request practitioner or the specialist practitioner suspects (which should arguably incorporate the concept of reasonableness) that the person intending to make the VE request is not of sound mind or is affected or is under duress, then before making the VE request the person must obtain a certificate from a psychiatrist certifying that in the psychiatrist's opinion, the person is of sound mind and that their state of mind is unlikely to adversely affect their decision-making ability in relation to VE and they are not acting under duress.
5. A VE request must be in writing and it must contain the information prescribed in Schedule 1. It must be made at a separate appointment with the request practitioner (not less than twenty four hours after the preliminary appointment) and it must be in the presence of a "*prescribed witness*" who must not be the request practitioner, a "*direct beneficiary*" of the person's estate (or who otherwise has a "*direct interest in*" the estate), or the owner or operator of a hospital or nursing home in which the person resides. It would be appropriate for clarity around the concept of "directness" in this context. For example, would it include the beneficiary of life insurance which was not part of the person's estate?
6. Provisions are made in the case of persons unable to write (in which event an active request may be made orally, but in respect of which there must be an audio visual record) and the request practitioner must reduce the request to writing and both the request practitioner and the prescribed witness must sign the form.
7. An active request has effect from the time that the request is entered on the VE Register and remains in force until revoked.
8. Section 40 addresses the revocation of requests and creates risk and uncertainty in that it provides that a revocation may be given by an "*indication*" of a wish to revoke a VE request, whether or not the person is mentally competent when the indication is given. This creates significant risk for medical and nursing staff attending patients who have made a request and may be significantly affected by high dosages of medication or be impacted by delirium. A medical practitioner or other person who "*without reasonable excuse*" refuses or fails to advise the Registrar that a request has been revoked, is subject to significant penalties – imprisonment for ten years or, in the case where a person has died as a consequence, imprisonment for twenty years.
9. In relation to an advance request (being a request for VE to be administered should the person suffer a permanent deprivation of consciousness), the request must be made by a person who has resided in the State for twelve months. There are proposed safeguards to the use of the procedure, but it is not clear who bears responsibility for ensuring this qualifying criteria has been met when the VE is to be actioned.
10. The person intending to make the request must attend a preliminary appointment with a "request practitioner" and be given information setting out procedures that may be used to administer VE, information explaining the risks associated with those procedures, and information setting out the effect of revocation under section 40. The person then must be independently examined by another practitioner with a report obtained from that medical practitioner setting out whether or not, in the opinion of that medical practitioner, the person is of sound mind, or their decision-making ability is adversely affected, or the person is acting under duress.
11. If either the request practitioner or the other medical practitioner suspects the person is not of sound mind, or their decision-making ability is adversely affected by their state of mind, or they

are acting under duress, then a psychiatrist's report must be obtained certifying that the person is of sound mind, and the person's state of mind is unlikely to adversely affect the person's ability to decide as to the request, and the person is not acting under any form of duress.

12. The request must then be in the form prescribed by Schedule 2, which is a form which contains prescribed information and is made at a separate appointment (at least seven days after the original appointment with the request practitioner) and is witnessed by a prescribed witness and is accompanied by a copy of the report of the "*other medical practitioner*".
13. The request practitioner and the prescribed witness must then each certify that the advance request form was completed, and that after "*making reasonable enquiries*", form the opinion that the person was not acting under any form of duress.
14. To the extent that this requires a certification, it would be reasonable and appropriate that "*reasonable enquiries*" bore some meaning, as it may present significant risk to the practitioner and interns.
15. The request form is then forwarded to the Registrar and it may be varied in relation to, for example, the form of administration of VE.
16. As with active requests, advance requests may also be revoked by an "indication" (whether or not the person is mentally competent when the indication is given). The concerns expressed above are repeated.
17. Section 41 provides for certain interested persons named to make application to the Euthanasia Board for declarations regarding compliance with the Act and the Board may make appropriate orders. This is appropriate and steps to ensure applications are addressed expeditiously would be encouraged.
18. Section 45 provides for the administration of VE to a person who has made a request which has not been revoked, which may be administered after the medical practitioner has taken steps (as will be prescribed by regulation) and, as far as reasonably practicable, determined whether the person has revoked the request and has made prescribed enquiries with the Board in relation to the request. Certainty, by prescription of steps to be taken in the VE process, is to be strongly encouraged so that participation in the process focuses on patient care, not legal risk.

I trust these comments are of assistance. Please do not hesitate to contact me, should you require any further information.

Yours sincerely



Ralph Bönig  
PRESIDENT

cc Hon Stephanie Key MP