



19 October 2010

H16, 72.15
RB;rp

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

Dear Mr Shadow Attorney

Voluntary Euthanasia Bill 2010

I refer to an email received on 8 October 2010 from your Adviser, Mr Sandy Biar, and thank you for referring the above Bill to the Society for comment.

The Voluntary Euthanasia Bill, 2010 (**Bill**) expresses the intention to provide a pathway for voluntary euthanasia (**VE**) for a "limited number of patients" (although there is no further reference to the nature in which such a limit is imposed other than the complexity of the procedure) who are in the terminal phase of a terminal illness (which expression being defined as within the *Consent to Medical Treatment and Palliative Care Act, 1995*) who are suffering "unbearable pain" and who have expressed a desire for VE.

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 VE, those procedures are workable.

As identified by the Bill, the following are the necessary steps prior to a request for VE being validly and lawfully actioned.

1. The person proposing to make a request must consult a medical practitioner who must "fully inform" the person of:
 - (a) the diagnosis of the person's illness; and
 - (b) the prognosis of the person's illness; and
 - (c) the forms of treatment that may be available to the patient and the respective risks, side effects and likely outcomes of such treatment; and
 - (d) the extent to which the effects of the illness could be mitigated by appropriate palliative care; and
 - (e) the proposed VE procedure, risks associated with the procedure and feasible alternatives to the procedure.

2. If that medical practitioner is not a palliative care specialist (as defined), the medical practitioner must "*if reasonably practicable*" consult a palliative care specialist about the person's illness and the extent to which its effects may be mitigated by appropriate palliative care before giving the person the explanation. The extent to which this preliminary consultation is required may be of concern to medical practitioners, given the generality of "reasonably practicable".

3. If the medical practitioner is the treating practitioner, then consultation with a palliative care specialist before this appointment is reasonable in terms of time frame. Alternatively, if the relevant practitioner is neither a treating practitioner nor a palliative care specialist, then an appointment would need to be made at which the practitioner is first apprised of the person's condition, then consults a palliative care specialist, then sees the patient again for the purposes of section 5(2).
4. A second medical practitioner must also meet with the person requesting VE and undertake the same process and explanation. The medical practitioners must be "acting independently" – a concept which is not defined and may cause concern, for example, if the patient has been referred by one to the other.
5. Having received the explanations from the two medical practitioners, four persons must be assembled at the same time to witness a request for VE:
 - (a) the two medical practitioners; and
 - (b) two other adult witnesses.
6. Each witness must certify that the person who made the request appeared to be of sound mind, appeared to understand the nature and implications of the request and did not appear to be acting under duress.
7. The two "other" adult witnesses must not be related to the person requesting VE. The second reading speech refers to the legislation requiring that the witness not benefit from the estate. No such provision appears.
8. In addition, the two witnesses who are medical practitioners, must also certify that they have each complied with the requirements of section 5 and, having examined the person immediately prior to the request (presumably independently), each certify they have no reason to suppose the person is suffering from treatable clinical depression or, if the person does exhibit symptoms of depression, is of the opinion that treatment is unlikely to influence the decision to request VE. There is no reference as to the measure of "likelihood". For example, treatment may be "unlikely to influence on the balance of probabilities", or there may be "no reasonable likelihood" that it would influence the decision. This should be clarified.
9. The record of the request having been made is to be prepared and completed in accordance with Schedule 1. Whilst Schedule 1 identifies that there are two witnesses who are not medical practitioners, it only identifies or provides for a certificate of one medical practitioner who has provided the information under section 5. Section 6 contemplates that **each** medical practitioner would certify, and it would seem the form should therefore incorporate, and have clarity around, the necessity for two medical practitioners' certificates, being the certificates of each practitioner, acting in accordance with section 5.
10. Section 7(3) refers to "*if practicable*" a request for VE that has been made orally be recorded on video tape. No provision is made as to responsibility for this. Does it fall on all four witnesses?
11. The Registrar must be notified in writing of the making of the request, although there is no provision specifying to whom that responsibility falls. (See section 7(4)).
12. Section 8 provides that a person who has made a request for VE may revoke the request at any time and that that revocation may be made "*even though the person may not be mentally competent when the indication is given*".

13. The section clearly contemplates that the revocation may be given by "an indication". A person who is aware of that revocation who does not communicate it to the Registrar is guilty of a significant offence (carrying a maximum penalty of imprisonment for ten years). This potentially places medical and nursing staff (and others) at considerable risk, particularly when patients may express views under the influence of strong medication and/or delirium. A strained cry "*I don't want to die*" under strong pain relief and/or delirium, may have created "an indication".
14. Presumably, if under the influence of medication, a person requesting VE has given an indication of revoking the request then, should they regain "sound mind", they must recommence the requesting process.
15. VE cannot be administered unless the request is registered in the Register, the medical practitioner assisting VE has made a request for information which reveals both the existence of the request and the fact that no revocation has been notified, the patient has not expressed a desire to postpone the administration of VE and, since the request, another medical practitioner (who is not involved in day-to-day treatment or care) has certified in the form prescribed by Schedule 2. Presumably, this may be one of the two original practitioners, or a third practitioner and this examination must have occurred at least forty eight hours before the administration of VE occurs. Similar issues exist in relation to this certificate regarding the "unlikelihood" of treatment influencing the patient's decision to request VE.
16. Whilst expressed as a Bill to afford patients "suffering unbearable pain" access to VE, it is only certification to that effect by the patient themselves which is contemplated (see clause 2 of Form 1). However, under section 9(5) the Registrar must, at the request of a medical practitioner "*who is attending a terminally ill patient*" inform the practitioner in relation to a VE request. Issues arise in relation to how the Registrar determines that a medical practitioner is "attending" a patient and that that patient is "terminally ill". (Other than, in the latter case, that the Registrar is holding a request from the patient certifying to that effect).
17. Unlike the *Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill*, there are no qualifying residence criteria, which relieves medical practitioners of potential uncertainty but could lead to "forum shopping".

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 Bob Such MLC