

Terms of reference

Queensland's laws relating to voluntary assisted dying

Background

In Queensland, people seeking relief from prolonged intolerable suffering due to a life-limiting illness or a neurodegenerative condition are currently unable to access voluntary assisted dying (VAD). While these people may receive palliative care or a range of other supports, the options available to them are limited to refusal of medical treatment, refusal of food and/or hydration, palliative sedation and suicide. These options are further constrained by restrictions on what health practitioners can legally provide to their patients.

Voluntary assisted dying is a very complex and deeply personal issue, in which competing interests and views must be carefully balanced. The lives of the elderly and most vulnerable people in the community must be protected.

There are very divergent views held by the community, health, palliative and aged care providers and health and legal practitioners on the matter of voluntary assisted dying, with some supporting and others opposing voluntary assisted dying laws in Queensland.

On 14 November 2018, an inquiry on aged care, end-of-life and palliative care and voluntary assisted dying was referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee).

The Terms of Reference for the Committee Inquiry were as follows:

1. That the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee inquire into aged care, end-of-life and palliative care and report to the Legislative Assembly on:
 - a. the delivery of aged care, end-of-life and palliative care in Queensland across the health and ageing service systems; and
 - b. Queensland community and relevant health practitioners' views on the desirability of supporting voluntary assisted dying, including provisions for it being legislated in Queensland and any necessary safeguards to protect vulnerable persons.
2. That in undertaking the inquiry, the Committee should consider:
 - a. in relation to aged care, the terms of reference and submissions made to the Australian Government's Royal Commission into the Quality and Safety of Aged Care and, in recognising the Commission will occur in parallel, how to proactively work with the Commission to ensure an appropriate exchange of information to inform the conduct of the inquiry;

- b. outcomes of recent reviews and work including Queensland Health's Palliative Care Services Review; and
- c. the current legal framework, relevant reports and materials in other Australian states and territories and overseas jurisdictions, including the Victorian Government's Inquiry into end-of-life choices, *Voluntary Assisted Dying Act 2017* (Vic) and implementation of the associated reforms.

3. That the Committee report to the Legislative Assembly by 30 November 2019.

On 22 August 2019, the Queensland Parliament agreed to a motion that the date for the Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying, be extended from 30 November 2019 to 31 March 2020.

On 24 March 2020, the Committee tabled Report No. 33, *Aged care, end-of-life and palliative care* (AEP Report). The AEP Report includes 77 recommendations.

On 31 March 2020, the Committee tabled Report No. 34, *Voluntary assisted dying* (VAD Report) and Information Paper No. 5, *Summary of the Findings and recommendations from report No. 34 on Voluntary assisted dying* (Information Paper No. 5). The VAD Report includes 21 recommendations.

Recommendation 1 of the VAD Report is that the Queensland Government should use the well-considered draft legislation submitted to the inquiry by Professors Lindy Willmott and Ben White as the basis for a legislative scheme for voluntary assisted dying in Queensland. The Committee's proposed VAD legislation mostly aligns with the Victorian and Western Australian approaches.

In particular, the Committee recommended that any voluntary assisted dying scheme in Queensland:

- should limit eligibility to adults aged 18 years or older and Australian citizens or permanent residents ordinarily resident in Queensland;
- should require that, to be eligible to access voluntary assisted dying, a person must be diagnosed by a medical practitioner as having an advanced and progressive terminal, chronic or neurodegenerative medical condition that cannot be alleviated in a manner acceptable to the person, and that the condition will cause death;
- should limit eligibility to people with decision-making capacity.

Under the *Parliament of Queensland Act 2001*, the Queensland Government is required to table a response to the Committee's AEP and VAD Reports by 24 June 2020 and 1 July 2020 respectively.

Terms of Reference

I, STIRLING JAMES HINCHLIFFE, Acting Attorney-General and Minister for Justice, refer to the Queensland Law Reform Commission, the issue of developing an appropriate legislative scheme for voluntary assisted dying for Queensland and the preparation of draft legislation to give effect to its recommendations, pursuant to section 10 of the *Law Reform Commission Act 1968*.

Scope

The provision of compassionate, high quality and accessible palliative care for persons at their end-of life is a fundamental right for the Queensland community.

The Queensland Law Reform Commission is asked to make recommendations about an appropriate voluntary assisted dying scheme and to prepare draft voluntary assisted dying legislation to give effect to its recommendations, with particular regard to:

1. the best legal framework for people who are suffering and dying to choose the manner and timing of their death in Queensland;
2. identifying who can access voluntary assisted dying;
3. the process for access to voluntary assisted dying to be initiated, granted or denied;
4. the legal and ethical obligations of treating health practitioners;
5. appropriate safeguards and protections, including for treating health practitioners;
6. ways in which compliance with the Act can be monitored;
7. timeframes for implementation of a scheme in Queensland, if progressed.

In preparing draft legislation, the QLRC should also have regard to the following:

- A. The Parliamentary Committee's Report No 34 Report, *Voluntary assisted dying*, including the draft legislation in Appendix A of the Report (VAD Report) and Information Paper No. 5, *Summary of the Findings and recommendations from Report No. 34 on Voluntary assisted dying* (Information Paper No. 5);
- B. The Parliamentary Committee's Report No 33 Report, *Aged care, end-of-life and palliative care* (AEP Report);
- C. Consultation with stakeholders and the community that occurred during the Parliamentary Committee's consideration of the matter;
- D. Views of experienced health and legal practitioners;
- E. Views of the Queensland public;
- F. Legislative and regulatory arrangements in other Australian and international jurisdictions.

Consultation

The QLRC shall consult with any group or individual, in or outside of Queensland, to the extent that it considers necessary.

Timeframe

The QLRC is to commence its review on and from 1 July 2020 and is to provide its final report and draft legislation to give effect to its recommendations to the Attorney-General and Minister for Justice by ~~4 March 2021~~ **10 May 2021**.¹

Dated the 21st day of May 2020

STIRLING HINCHLIFFE MP

Acting Attorney-General and Minister for Justice
Acting Leader of the House
Minister for Local Government, Minister for Racing and
Minister for Multicultural Affairs

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This amendment to the terms of reference was made by letter from the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Hon Shannon Fentiman MP, to the Chair of the Queensland Law Reform Commission, the Hon Justice Peter Applegarth AM, dated 7 December 2020.