

20 July 2021

Our ref: BT – MC

Health and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: hec@parliament.qld.gov.au

Dear Health and Environment Committee

Inquiry into the Voluntary Assisted Dying Bill 2021 – supplementary submission

Thank you for the opportunity to appear at the Health and Environment Committee's (**Committee's**) *Inquiry into the Voluntary Assisted Dying Bill 2021* (the **Inquiry**). The Queensland Law Society (**QLS**) provides the following remarks in response to two questions taken on notice:

1. Are there any areas of the Voluntary Assisted Dying Bill 2021 (the **Bill**) which can be amended by regulation?
2. Are there any amendments required to estate laws in relation to coercing a person to access the voluntary assisted dying scheme?

Are there any areas of the Bill which can be amended by regulation?

Section 167 of the Bill provides a regulation-making power, where the Governor in Council may make regulations under the legislation. Specific regulations that may be made under the legislation include the following:

- Section 55(2)(c) – A regulation may prescribe any other matters to be certified by the administering practitioner in writing following administration of the voluntary assisted dying substance, in addition to those prescribed in s 55(2)(a) and (b).
- Section 67 – A regulation may prescribe other requirements with which a coordinating practitioner must comply in relation to prescribing a voluntary assisted dying substance.
- Section 71 – A regulation may prescribe the labelling requirements with which an authorised supplier who supplies a voluntary assisted dying substance must comply.
- Section 73 – A regulation may prescribe other requirements with which an authorised supplier must comply in relation to supplying a voluntary assisted dying substance.
- Section 74 – A person who receives a voluntary assisted dying substance must store the substance in accordance with the requirements prescribed by regulation.

- Section 79 – A regulation may prescribe other requirements with which an authorised disposer or administering practitioner must comply in relation to disposing of a voluntary assisted dying substance or unused or remaining substance.
- Section 117(1)(d) – The Voluntary Assisted Dying Review Board must record and keep information prescribed by regulation about requests for, and provision of, voluntary assisted dying.
- Schedule 1, “prescription” – the definition of “prescription” includes documents that comply with requirements prescribed by regulation in relation to prescriptions under the legislation.

Are there any amendments required to estate laws in relation to coercing a person to access the voluntary assisted dying scheme?

QLS does not consider that amendments are required to existing estate laws in relation to situations where a person is coerced into accessing the voluntary assisted dying scheme. The Bill provides a number of safeguards to mitigate coercion, including the following:

- The person must be assessed as “eligible” by two different medical practitioners, which requires them to determine that the person has decision-making capacity (which includes being capable of freely and voluntarily making decisions about access to voluntary assisted dying) and that the person is acting voluntarily and without coercion.
- A medical practitioner, if unable to determine whether the person is acting voluntarily and without coercion, must refer the person to another person who has the appropriate skills and training to determine the matter.
- Two witnesses must witness the person’s second request and certify that the person appeared to be acting freely and voluntarily.
- The coordinating practitioner, when undertaking the final review, must be satisfied that the person has decision-making capacity (which includes being capable of freely and voluntarily making decisions about access to voluntary assisted dying) and that the person is acting voluntarily and without coercion.
- Where the person makes a self-administration decision, the administering practitioner is only authorised to administer the voluntary assisted dying substance, in the presence of an eligible witness, if the administering practitioner is satisfied at the time of administration that the person has decision-making capacity and is acting voluntarily and without coercion.
- A witness who witnesses the administration of a voluntary assisted dying substance must certify that the person appeared to be acting voluntarily and without coercion.
- A decision by the coordinating practitioner (in a first assessment or final review) and the consulting practitioner (in a consulting assessment) as to whether a person is acting voluntarily and without coercion is a reviewable decision, about which an eligible person may apply to QCAT for review of the decision.
- It is an offence under s 141 of the Bill to dishonestly or by coercion induce another person to make, or revoke, a request for voluntary assisted dying.
- It is an offence under s 142 of the Bill to dishonestly or by coercion induce another person to self-administer a voluntary assisted dying substance.

It is QLS' view that these safeguards are sufficiently robust to mitigate situations of coercion in relation to voluntary assisted dying. In the event that such a situation does occur, QLS considers that the current common law rule of forfeiture would operate so as to exclude the person responsible for the coercion from benefitting financially from the deceased's death. The forfeiture rule provides that where a person is criminally responsible for the death of another, and that death is a material fact in the vesting of property in favour of that person, then the person's interest in that property is forfeited.¹

Queensland has not introduced legislation to replace or augment the operation of the common law forfeiture rule, unlike New South Wales² and the Australian Capital Territory.³ As such, the forfeiture rule is applied inflexibly and without regard to the moral culpability of the person responsible for the death.

Generally, only those convicted of murder or manslaughter were barred from benefiting from an estate in Queensland if named as executors or beneficiaries in the victim's will. Despite this, recent legal precedent has expanded the scope of the forfeiture rule's application, including to assisted suicide. The English Court of Appeal has held that the common law forfeiture rule is not confined to cases of murder and manslaughter, and extends to assisted suicide, where provided the death was the result of the crime, then the rule will apply.⁴ In 2014, the Supreme Court of Queensland followed the English Court of Appeal's reasoning and applied the forfeiture rule to the case of a man who assisted the suicide of a friend,⁵ finding that he was unable to benefit from the deceased's estate.⁶

Therefore, it is likely the forfeiture rule would apply to cases where a person is found guilty of the crime of coercing another person to make a request for voluntary assisted dying, or coercing another person to self-administer a voluntary assisted dying substance, where the person stands to benefit financially from the deceased person's death. As such, QLS considers both the proposed safeguards under the Bill and the current common law forfeiture rule to be adequate to deal with situations of coercion in relation to voluntary assisted dying.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Brooke Thompson, at [REDACTED] or by phone on [REDACTED].

Yours faithfully

[REDACTED]

Elizabeth Shearer
President

¹ The first statement of the principle was made by Fry L J in *Cleaver v The Mutual Reserve Fund Life Assurance* [1892] 1 QB 147, 156: 'It appears to me that no system of jurisprudence can within reason include amongst the rights which it enforces rights directly resulting to the person asserting them from a crime of that person.' See also *Troja v Troja* (1994) 33 NSWLR 269, 299.

² *Forfeiture Act 1995* (NSW).

³ *Forfeiture Act 1991* (ACT).

⁴ *Dunbar v Plan* [1998] Ch 412.

⁵ Which is a crime in Queensland pursuant to s 311 of the *Criminal Code Act 1899* (Qld).

⁶ *Public Trustee of Queensland v Public Trustee of Queensland* [2014] QSC 47.