MEMBER BULLETIN

Voluntary Assisted Dying

Final Report of the Ministerial Advisory Panel

25 July 2017

In 2015 the Legislative Council's Legal and Social Issues Committee (the Parliamentary Committee) received the terms of reference to conduct an Inquiry into End of Life Choices, which, when completed, provided a range of policy directions for end of life care and included a recommendation to legalise assisted dying.

The Voluntary Assisted Dying Ministerial Advisory Panel (the Panel) was given the responsibility of developing a voluntary assisted dying (VAD) framework for Victoria.

The Panel conducted a broad community and sector consultation via discussion papers and roundtable forums, which resulted in an interim report that was delivered to the Minister for Health in May 2017.

The VHA's submission to this consultation process can be accessed here.

The final report (the report), published on Friday 21 July, provides the Victorian Government with 66 recommendations across five domains to introduce a VAD service in Victoria.

This Bulletin summarises the report's recommended framework for VHA members to consider.

The full report and its recommendations can be accessed here.

Next steps

The Andrews Government has accepted the report in full and has indicated that it will introduce a Bill to Parliament for debate in the coming months, with the intention of completing the debate and a vote before the end of 2017.

If the Bill successfully passes Parliament, there will be an 18 month period prior to the legislation commencing, during which time health services would be expected to decide their level of involvement in VAD and to work with the appropriate entities (i.e. Safer Care Victoria, the Department of Health and Human Services and the Voluntary Assisted Dying Review Board) to establish and refine various frameworks to guide the implementation of the legislative framework.

Guiding Principles

The report recommends that the following principles are included in the legislation to help guide interpretation:

- Every human life has equal value.
- A person's autonomy should be respected.
- A person has the right to be supported in making properly informed decisions about their medical treatment and should be given, in a manner that they understand, information about medical treatment options, including comfort and palliative care.
- Every person approaching the end of life has the right to quality care to minimise their suffering and maximise their quality of life.
- The therapeutic relationship between a person and their health practitioner should, wherever possible, be supported and maintained.
- Open discussions about death and dying and peoples' preferences and values should be encouraged and promoted.
- Conversations about treatment and care preferences between the health practitioner, a person and their family, carers and community should be supported.
- Providing people with genuine choices must be balanced with the need to safeguard people who might be subject to abuse.
- All people, including health practitioners, have the right to be shown respect for their culture, beliefs, values and personal characteristics.

Eligibility Criteria

The following criteria must be met before a person can access VAD, namely that a person must:

- be an adult, 18 years and over; and
- be an ordinary resident of Victoria and an Australian citizen or permanent resident; and
- have decision making capacity in relation to VAD; and
- be diagnosed with an incurable disease, illness or medical condition, that:
    - is advanced, progressive and will cause death; and
    - is expected to cause death within weeks or months, but no longer than 12 months; and
    - is causing suffering that cannot be relieved in a manner the person deems tolerable.

A person's decision making capacity would be assessed against the test outlined in the Medical Treatment Planning and Decisions Act 2016. If an assessing medical practitioner is in doubt about whether a person has decision making capacity, they are to refer the person to an appropriate specialist for assessment.

The report makes clear that disability or a mental illness does not satisfy the criteria for access to VAD services, nor do they exclude a person from accessing VAD.

The Request and Assessment Process

Initiating a request for VAD

The report recommends that a request for access to VAD can only come from a person, and that all others – doctors, families and carers, for example – cannot initiate a request.

Importantly, the report makes a clear distinction between a *request for access to* and a *discussion about* VAD. In both cases, a health practitioner with whom the person has a therapeutic relationship cannot initiate either a request for or a discussion about VAD.

The entire process remains voluntary, and a person is able to withdraw from it at any stage. If they choose to withdraw from the process, they will have to commence the process from the beginning if they make a subsequent request for VAD.

People from CALD backgrounds and those with other barriers to verbal communication can be assisted by appropriately accredited interpreters to assist in making verbal and written requests for VAD.

Receiving a request for VAD

Two medical practitioners must undertake independent assessments of a person's eligibility for VAD, with their roles clearly defined as:

- the coordinating medical practitioner; and
- the consulting medical practitioner.

Both practitioners must be qualified as Fellows of a College (or vocationally registered) and:

- at least one must have at least five years of post-fellowship experience; and
- at least one must have expertise in the person's disease, illness or medical condition.

Both practitioners must complete specified training before undertaking an assessment of a person's eligibility for access to VAD.

The report makes clear that a health practitioner may conscientiously object to participating in the provision of information, assessment of eligibility, prescription, supply or administration of the lethal dose of medication for VAD.

The report makes an intentional semantic distinction when describing the process for health services in regards to their participation in VAD. Conscientious objection relates to the practitioner's professional obligations, whereas a health service is expected to assess which medical treatments it can safely provide, and make decisions, as an organisation, about whether to provide those treatments, including VAD.

Making a request for VAD

A person must make three separate requests to access VAD, consisting of a first request, followed by a written declaration of enduring request, and then a final request.

The formal process for requesting VAD would proceed as follows:

1. The person makes their first request to a medical practitioner.
2. The person undergoes a first assessment by the coordinating medical practitioner.
3. The person undergoes a second independent assessment by the consulting medical practitioner.
4. The person makes a witnessed written declaration of enduring request to the coordinating medical practitioner.
5. The person makes a final request to the coordinating medical practitioner.

Having received a request, the coordinating and consulting medical practitioners must ensure that the person is properly informed of:

- their diagnosis and prognosis;
- treatment options available to them and the likely outcomes of these treatments;
- palliative care and its likely outcomes;
- the expected outcome of taking the lethal dose of medication (that it will lead to death);
- the possible risks of taking the lethal dose of medication;
- that they are under no obligation to continue with their request for voluntary assisted dying, and that they may withdraw their request at any time; and
- any other information relevant to the person's needs.

The final request for VAD must be made after a period of at least 10 days has passed since the first request, with a single exception made if the coordinating medical practitioner believes that the person's death is likely to occur within 10 days.

The person's written declaration of enduring request must be in writing, signed by the person, and be witnessed by two persons in the presence of the coordinating medical practitioner. The report recommends that of the two witnesses, one must not be a family member. Both must be 18 years and over and cannot be:

- a person who would receive a financial or other material benefit resulting from the person's death; or
- an owner or operator of a health care facility in which the person resides; or
- directly involved in providing health or professional care services to the person.

Completing the VAD process

Once the request is confirmed by the coordinating medical practitioner, a number of formal protections and process requirements have been recommended, including:

- The nomination of a contact person who would be responsible for returning any unused medication within 30 days after the person has died, and to act as a point of contact for the Voluntary Assisted Dying Review Board (the Board).
- A requirement for any prescribed lethal medication to be stored in a locked box.

- Ensuring that the legislation does not preclude health practitioners from being present at the time of self-administration of the medication, and that the legislation protects health practitioners who are present.
- Where the person does not have the capacity to self-administer the medication, they must return to the coordinating medical practitioner and return unused lethal medications to the pharmacist. Once this has occurred, the coordinating medical practitioner may undertake the process to administer the medication.
- Where self-administration is not possible and both the coordinating and consulting practitioners conscientiously object to administering the medication, there are provisions for a new consulting practitioner to be identified. Once the new practitioner has undertaken their own assessment, the formal role can be transferred to them.
- In either case, if the coordinating or consulting practitioner administers the lethal medication, an independent witness must be present and has to certify that the person's request appears to be voluntary and enduring.

Oversight

Monitoring the death

The report emphasises the regulatory and oversight controls that would need to be established and maintained. Key processes recommended by the Panel include:

- The death certificate of a person who has accessed VAD would identify the underlying disease, illness or medical condition as the cause of death.
- Accessing VAD should not impact on insurance or other annuities.
- A medical practitioner who certifies death must notify the Registrar of Births, Deaths and Marriages if they are aware that the person had been prescribed lethal medication, or if they are aware the person had self-administered lethal medication.
- Both the Registrar of Births, Death and Marriages and the Board would share information about VAD.
- Any deaths by means of VAD in accordance with legislative requirements would not be considered a reportable death for the purpose of the Coroners Act.

Voluntary Assisted Dying Review Board

The report recommends establishing the Voluntary Assisted Dying Review Board under statute. The Board would review every case of VAD and report on the operation of VAD in Victoria.

Its role and function would include:

- reviewing each case of voluntary assisted dying and each assessment for voluntary assisted dying to ensure the statutory requirements have been complied with;
- referring breaches of the statutory requirements to the appropriate authority to investigate the matter such as Victoria Police, the Coroner, or the Australian Health Practitioner Regulation Agency;

- collecting information and data, setting out additional data to be reported and requesting additional information from medical practitioners or health services, for the purpose of performing its functions;
- monitoring, analysing, considering and reporting on matters relating to voluntary assisted dying, supporting improvement by facilitating and conducting research relating to voluntary assisted dying and maintaining and disseminating guidelines to support the operation of the legislation, in collaboration with other agencies and professional bodies and services; and
- any other functions necessary to promote good practice.

Members of the Board would be appointed by the Minister for Health.

Monitoring of VAD

It will be mandatory for medical practitioners to report to the Board within seven days of:

- completing the first assessment (regardless of the outcome);
- completing the second independent assessment (regardless of the outcome);
- completing the certification for authorisation (which will incorporate the written declaration of enduring request and appointment of contact person forms); and
- when the lethal dose of medication is administered by a medical practitioner.

The report is clear about the need to ensure consistency of reporting by medical practitioners and has recommended that all relevant forms be set out in legislation.

The Board will report back to Parliament every six months in the first two years after commencement, and annually thereafter.

The VAD legislation would be subject to review five years after commencement.

Protections and offences

The report recommends a range of protections and offences to accompany a VAD service. These include:

- Clear protection for health practitioners who act in good faith and without negligence to facilitate access to VAD under the legislation.
- A requirement for health practitioners to notify AHPRA if they believe another health practitioner is acting outside the legislative framework.
- An allowance for other persons to notify AHPRA if they believe a health practitioner is acting outside of the legislative framework.
- The report recommends that the following activities be considered offences:
    - inducing a person, through dishonesty or undue influence, to request voluntary assisted dying;
    - inducing a person, through dishonesty or undue influence, to self-administer the lethal dose of medication;
    - falsifying records related to voluntary assisted dying; and
    - administering a lethal dose of medication to a person who does not have decision making capacity.

Implementation

The report is clear that VAD should occur within the context of existing end of life care options, and that VAD activity would be embedded within existing safety and quality processes.

In terms of preparing the structures and processes for a VAD service, the Voluntary Assisted Dying Review Board would be established at least 12 months prior to commencement of the legislation.

The Department of Health and Human Services would establish and support an Implementation Taskforce to investigate and report on the development of VAD and would have the coordinating role in overseeing and facilitating the work set out in the report's implementation recommendations.

Implementation Support

Workforce support, information, clinical and consumer guidelines, protocols, training, research and service delivery frameworks to support the operation of the legislative framework would be developed in partnership between Safer Care Victoria, the Board and DHHS in consultation with sector representatives. All products would be periodically reviewed.

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