

reporting to the oversight body established to review and regulate voluntary assisted deaths. In cases where the oversight body has concerns regarding the death; the conduct of the relevant doctor; or the circumstances of the death, it would be authorised to report the matter to the Coroner or to the Australian Health Professional Regulation Agency for investigation as appropriate.

- 7.88 The Oregon model requires that doctors report all prescriptions for lethal medications to the Oregon Health Authority. Together with reporting by the assessing doctors, a similar system in Western Australia would provide another point of oversight, and a mechanism for collecting relevant data.

Recommendation 24

The Western Australian Government develop and introduce legislation for voluntary assisted dying having regard to the recommended framework and following consultation with the Panel established under Recommendation 21.

- 7.89 The following contains the Voluntary Assisted Dying Legislation Framework:

VOLUNTARY ASSISTED DYING LEGISLATION FRAMEWORK

Preamble

The Government should introduce legislation to provide for voluntary assisted dying.

The legislation should not merely provide a criminal defence to those assisting an eligible person to die. Nor should it merely provide for a change to prosecution guidelines relating to the prosecution of those assisting an eligible person to die. Rather, the legislation should reform the law with a standalone Act that permits voluntary assisted dying to eligible people in accordance with strict criteria.

The WA Government should establish a panel of experts to consider the implementation of legislation for voluntary assisted dying, based on the elements contained in this framework.

Assisted dying

The legislation should provide for self-administration of lethal medication where an eligible person is physically able to self-administer. In cases where the person is eligible but physically incapable of self-administration, the legislation should permit a doctor to administer the lethal medication.

Eligibility

Eligible conditions

The legislation is intended to provide assisted dying for those for whom death is a reasonably foreseeable outcome as a result of an eligible condition.

An eligible condition is an advanced and progressive:

- a. terminal illness or disease;
- b. chronic illness or disease; or
- c. neurodegenerative illness or disease,

Where death is a reasonably foreseeable outcome of the condition.

The person's suffering

The person's suffering must not be temporary nor able to be treated or remedied in a manner acceptable to the person. The suffering:

- a. must be related to an eligible condition;
- b. must be grievous and irremediable;
- c. cannot be alleviated in a manner acceptable to the person; and
- d. must be subjectively assessed – that is, from the person's point of view.

Age

The person must be aged 18 years or over.

Capacity

In order to request assisted dying the person must have decision-making capacity in relation to a decision about voluntary assisted dying.

Residency

Eligibility requires ordinary residence in Western Australia and either Australian citizenship or permanent residency.

Assessment

Two doctors must assess the person. Either or both doctors can be a general practitioner and neither doctor is required to be a specialist regarding the person's disease or illness. Each doctor must be independently satisfied that:

- a. the person is aged 18 or over;
- b. the person is ordinarily resident in Western Australia;
- c. the request is voluntary, made without coercion or duress;
- d. the person has decision-making capacity in relation to a decision about voluntary assisted dying;
- e. the person has an advanced and progressive: terminal, chronic or neurodegenerative illness or disease;
- f. the person has grievous and irremediable suffering due to the disease or illness that cannot be alleviated in a manner acceptable to the person; and

- g. death is a reasonably foreseeable outcome of the condition.

Referral for specialist assessment

A person is not required to undergo consultant or specialist assessment except where either doctor is unable to determine:

- a. The precise nature of the disease or illness, in which case they must refer to a specialist in the relevant area of medicine.
- b. Whether the disease or illness is advanced and progressive, in which case they must refer to a specialist in the relevant area of medicine.
- c. Whether death is reasonably foreseeable.
- d. Capacity, and/or the absence of coercion, in which case they must refer to a consultant psychiatrist or a consultant geriatrician as appropriate.

Procedure

A person must make an initial verbal request to a doctor to access assisted dying. A doctor must include a record that a verbal request has been made in the medical record. Following this request, providing that the doctor does not personally object to voluntary assisted dying, they must provide the person with information regarding:

- a. the nature of the disease or illness;
- b. the prognosis;
- c. any possible curative treatments;
- d. any available palliative treatments;
- e. the nature, effects and risks of the lethal medication that may be prescribed; and
- f. that the person's consent to assisted dying may be withdrawn at any time.

The person must provide the initial assessing doctor with a signed written request using a standard template. The written request must be filed with the oversight body.

The doctor should then carry out the assessment as described above. If satisfied that the person meets the assessment criteria, the doctor should complete a standard template referral to a second assessing doctor.

The second assessing doctor must then also carry out the assessment as described above. The second assessing doctor must then provide the initial doctor with written advice regarding the outcome of the assessment. The written advice must be filed with the oversight body.

The initial assessing doctor must inform the person of the results of the assessment. If both doctors concur that the person meets the assessment criteria, and the person makes a further verbal request to access assisted dying, the initial

assessing doctor may provide the prescription for the lethal medication to the person and must provide instructions on the manner of use.

Timelines for each step in the process should be advised by the expert panel to ensure integrity in the process without unnecessary delay.

Reflection period

In order to provide a period of reflection a prescription for medication must not be filled sooner than prescribed under the legislation as determined by the expert panel.

Personal objection

At the time the patient makes the first verbal request, any doctor with a personal objection to providing assisted dying must inform the patient of the objection and offer to refer the patient to a doctor who is willing to provide assistance.

Where a person is an inpatient in a health service unwilling to provide assisted dying, that service must facilitate timely transfer to another service.

Non-discrimination

Mental illness

A person with a mental illness who meets the eligibility criteria shall not be denied access to voluntary assisted dying.

Disability

A person with a disability who meets the eligibility criteria shall not be denied access to voluntary assisted dying.

Medication

The choice of lethal medication for voluntary assisted dying should remain a clinical decision based on the prescribed list of medications for this purpose. The WA Government should review current federal laws in relation to scheduling of medication in Australia, and negotiate with the Federal Government and the Therapeutic Goods Administration for the use of the best medication(s) for assisted dying.

Pharmacists dispensing lethal medication(s) must report the dispensing of the medication to the oversight body.

Death Certification

Where an assisted death takes place it must be noted on death certification documents.

The WA Government should amend the:

- a. Medical Certificate Cause of Death – completed by the doctor certifying cause of death;
- b. Manual Death Registration Form – completed by the funeral director to register a death; and
- c. The Death Certificate – issued by the Registrar of Births Deaths and Marriages,

to make provision for the inclusion of voluntary assisted dying as a contributing cause of death, and to provide guidance for doctors and others who complete each of the documents.

Oversight

An oversight body must be established to:

- a. provide policy and strategic direction for the State of Western Australia;
- b. review all voluntary assisted dying deaths;
- c. provide community education and resources;
- d. provide health professional education and resources, including counselling and advice for practitioners;
- e. provide a telephone advice line;
- f. maintain a database of all relevant statistics related to assisted dying; and
- g. provide an annual report to Parliament.



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