LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON VOLUNTARY ASSISTED DYING BILL
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Submission Cover Sheet

Inquiry into the Voluntary Assisted Dying Bill 2023

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actlawsociety

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Select Committee on the Voluntary Assisted Dying Bill
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: LAcommitteeVAD@parliament.act.gov.au

Dear Committee,

Inquiry into the Voluntary Assisted Dying Bill 2023

1. The ACT Law Society (the Society) welcomes the opportunity to provide a submission to the Committee as part of the inquiry into the Voluntary Assisted Dying Bill 2023 (the Bill).

2. The Society is the peak professional association that represents, advances, and defends the interests of an independent legal profession in the ACT, and lobbies for 'good law' in the ACT region through engagement in law reform processes. The Society has established a range of committees with relevant subject matter expertise and experience to support our purpose and strategic goals. In relation to this Bill, the Society has engaged with its Elder and Succession Law, Criminal Law and Employment Law Committees. Further, the Society notes its appreciation for the ongoing consultation during the development of the Bill by the ACT Justice and Community Safety Directorate.

3. As a general comment, the Society considers it important that the proposed ACT scheme be largely consistent with the voluntary assisted dying schemes in other Australian jurisdictions. This is not only in the interests of national harmonisation, but important to avoid the risk of 'jurisdiction shopping'. This submission focusses on three aspects of the Bill: procedural safeguards, criminal offences, and conscientious objection.

Procedural safeguards

4. The Society notes the commentary in the Explanatory Statement accompanying the Bill that the proposed scheme adopts the main features of the 'Australian model', incorporating adjustments that "build on the experiences of other jurisdictions and meet the unique needs of the ACT." The Society acknowledges that the Bill contains important procedural safeguards aimed at the protection of vulnerable persons. The Society appreciates that the Bill has sought to strike a balance between establishing a thorough and robust process (which provides sufficient time for a person to reflect, and change their mind and withdraw their request), while ensuring timely progress on a person's request to avoid unnecessarily prolonging their suffering.

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5. The Society seeks to ensure that the Bill includes sufficient procedural safeguards to ensure that the choice to access voluntary assisted dying is a genuine and informed one, not made as a result of coercion or duress, nor because of a lack of a person's understanding about or access to the range of options available to support their end-of-life care.

6. The eligibility requirements to access voluntary assisted dying are set out in section 11 of the Bill, and include that the individual:

(a) is an adult;

(b) has been diagnosed with a condition that, either on its own or in combination with 1 or more other diagnosed conditions, is advanced, progressive and expected to cause death (the *relevant conditions*);

(c) is suffering intolerably in relation to the relevant conditions;

(d) has decision-making capacity in relation to voluntary assisted dying;

(e) the decision to access voluntary assisted dying is made voluntarily and without coercion; and

(f) has lived in the ACT for at least the previous 12 months or been granted an exemption under section 151.

7. Subsection 11(2) specifically provides that an individual does not meet the eligibility requirement mentioned in subsection (b) only because they have a disability, mental disorder or mental illness. The remainder of section 11 provides further information about the terms *suffering intolerably*, *advances*, *condition*, *disability, mental disorder, mental illness* and *progressive*.

8. The Society notes that the proposed eligibility criteria are largely consistent with other Australian jurisdictions. However, the Society notes that other models include requirements around Australian citizenship or permanent residency. Further many jurisdictions require the person's condition is expected to cause death within a particular timeframe. For example, in New South Wales, Victoria and Western Australia, the timeframes for death are 12 months for neurodegenerative conditions, and 6 months for all other conditions. The Explanatory Statement accompanying the Bill states that by not including a 'timeframe to death requirement' the proposed ACT scheme is intended to reduce discrimination against persons based on the nature of their condition and prognosis. However, we understand that the timeframe requirement was considered an important safeguard in the framing of legislation in other jurisdictions and should not be dismissed without careful consideration.

9. Given the serious nature of a request for voluntary assisted dying, the Society considers there should be strong protections in place to ensure that the person making a request has the requisite decision-making capacity. The eligibility requirements in the Bill include, at paragraph 11(1)(d), that the person has decision-making capacity in relation to voluntary assisted dying. Whether the individual making the request meets the eligibility requirements (including the capacity to make decisions) is assessed by both the coordinating practitioner and consulting practitioner as part of the first assessment (see sections 16 and 23 of the Bill). The individual's decision-making capacity is also considered as part of the final assessment process (see sections 31 and 35 of the Bill). Subsection 12 sets out the meaning of *decision-making capacity*.

10. Subsection 12(1) provides that an individual has decision-making capacity in relation to voluntary assisted dying if the individual can:

- understand the facts that relate to a decision about accessing voluntary assisted dying;
- understand the main choices available to them in relation to the decision;
- weigh up the consequences of the main choices;
- understand how the consequences affect them; and
- on the basis of the above, communicate the decision in whichever way they can.

11. Subsection 12(2) provides that the person is assumed to have decision-making capacity unless it is established that they do not. Further, subsection 12(3) sets out matters that must be taken into account in deciding whether a person has decision-making capacity:

- an individual's decision-making capacity is particular to the decision they are to make;
- an individual is capable of making a decision if they are capable of making the decision with adequate and appropriate support;
- an individual must not be treated as not having decision-making capacity unless all practicable steps to support them to make the decision have been taken;
- an individual must not be treated as not having decision-making capacity only because they: make an unwise decision; or have impaired decision-making capacity under another Act or in relation to another decision; and
- an individual who moves between having and not having decision-making capacity must, if practicable, be given the opportunity to consider matters requiring a decision at a time when they have decision-making capacity.

12. The Society considers it important that, when a person's decision-making capacity is being assessed, it may be appropriate to consider whether there are impediments to the person's understanding, such as language barriers, communication methods, the extent of any physical or mental impairment (as distinct from having no legal capacity) and the vulnerability of the person's situation. Further, the Society notes that under other legislation, more guidance is provided about matters which do not indicate impaired decision-making capacity (see for example section 91 of the *Powers of Attorney Act 2006* (ACT)).

13. Following the acceptance of a first request, a health practitioner must give the individual any information that is prescribed by the Regulations (see paragraph 14(3)(a)). The coordinating practitioner cannot start the first assessment unless they are satisfied that the individual understands the information provided (see subsection 16(2)). The Explanatory Statement accompanying the Bill notes that subsection 14(3) is intended to ensure the individual receives the information they need to make informed end of life choices.

14. The Society understands that utilising the Regulations for this purpose provides sufficient appropriate flexibility for lawmakers to make timely changes as appropriate. However, the Society notes that as the Regulations are yet to be drafted, it is difficult to provide meaningful commentary on the effectiveness of these provisions. The Society considers that at a minimum, the Regulations should require that an individual be provided with information about their diagnosis and prognosis, available treatment and management options (including palliative care), to ensure informed decision-making. The Society notes that these and other matters are explicitly required under the

New South Wales Scheme (see section 28 of the *Voluntary Assisted Dying Act 2022* (NSW)). The Society also suggests that the Regulations could provide information that encourages individuals to ensure that their personal affairs are in order, including having a valid Will, and considering what additional information their nominated Executor will need to manage their affairs after death.

15. Subsection 16(3) provides that in making this determination, the following must be taken into account:

- the individual is capable of understanding the information if they are capable of understanding the information with adequate and appropriate support;
- the individual must not be treated as not understanding the information unless all practicable steps to support them to understand the information have been taken;
- an individual must not be treated as not understanding the information only because they have impaired decision-making capacity under another Act or in relation to another matter;
- an individual who moves between understanding and not understanding information must, if practicable, be given the opportunity to consider the information at a time when they are most likely to understand it.

16. Similar to the discussion above in relation to proposed section 12(2), the Society considers it important that, when assessing a person's ability to understand the information provided, it may be appropriate to consider whether there are impediments to the person's understanding, such as language barriers, communication methods, the extent of any physical or mental impairment (as distinct from having no legal capacity) and the vulnerability of the person's situation. Further, the Society notes that under other legislation, more guidance is provided about matters which do not indicate impaired decision-making capacity (see for example section 91 of the *Powers of Attorney Act 2006* (ACT)).

17. The second request must be in writing, signed by the individual or their agent (if the individual is unable to sign and asks their agent to sign on their behalf) in the presence of two eligible witnesses (see section 27 of the Bill). Subsection 28(1) requires each witness to the signing of the individual's second request to certify in writing that:

- if the request was signed by the individual, that the request was signed in the presence of the witness and that the individual appeared to sign the request voluntarily and without coercion; or
- if the request was signed by an agent in the presence of the witnesses, that the individual appeared to ask – voluntarily and without coercion – the agent to sign the request, and the request was signed by the agent.

The Society supports agents and witnesses being physically present when the individual (or their agent) signs the second request. However, consideration may need to be given for how to facilitate this aspect of the proposed ACT scheme should residence of the individual be subject to restrictions of the number of persons within a room (e.g., as happened during the COVID pandemic).

18. Under the Bill:

- Subsection 27(4)(b) provides that the agent must be: an adult; and not a witness to the signing of the request; and not the individual's coordinating practitioner.
- Subsection 27(6) of the Bill defines an eligible witness as a person who is not an ineligible witness, which is in turn defined as a person who:
    - is not an adult; or
    - knows or believes they are a beneficiary under the will of the individual making the request; or
    - knows or believes they may otherwise benefit financially in any material way … from assisting the person to request voluntary assisted dying or from the individual's death.

19. Given the importance of ensuring that requests to access voluntary assisted dying are made voluntarily and free from coercion, and the role of witnesses in certifying to this fact, the Society queries whether witnesses should be required to have some kind of qualification (e.g., solicitor, Justice of the Peace, or other persons who are able to witness statutory declarations). Further the Society notes that under the Victorian scheme, no more than one witness can be a family member. See sections 35 and 36 of the *Voluntary Assisted Dying Act 2917* (Vic).

20. The process for accessing voluntary assisted dying requires three separate requests to be made (and a decision about administration), and each request or decision can only be made by the individual or their agent (see Parts 3 and 4 of the Bill). The Society supports this approach which means that a person's family member, carer or person who has enduring power of attorney to make decisions on their behalf cannot make a request for voluntary assisted dying.

21. Under Divisions 3.1 and 3.2 of the Bill, the assessment as to whether the individual meets eligibility requirements (after the first request) is undertaken by two health practitioners (the coordinating practitioner and the consulting practitioner). The Society notes that this approach is consistent with other voluntary assisted dying schemes in Australian jurisdictions (see for example New South Wales and Victoria).

22. In making the first assessment the coordinating practitioner and/or consulting practitioner may refer the individual to another person who has the appropriate skills and training to provide advice about whether the individual meets the eligibility requirements (see sections 17 and 24). However, section 17 of the Bill provides that referral for advice cannot be made to a person who the coordinating practitioner or consulting practitioner knows or believes:

- is a family member of the individual;
- is a beneficiary under the will of the individual; or
- may otherwise benefit financially or in any material way (other than by receiving reasonable fees for the advice) from assisting the individual to access voluntary assisted dying, or the death of the individual.

The Society considers that this is an important safeguard in the Bill to reduce the risk of actual or perceived conflict of interest arising from the referral.

23. Section 18 of the Bill requires the coordinating practitioner to make a written report of their first assessment and provide that report to the oversight board and the individual. Subsection 18(1) provides that the written report must include the coordinating practitioner's decision and any other information prescribed by the Regulations. Again, the Society understands that utilising the Regulations for this purpose provides sufficient appropriate flexibility for lawmakers to make timely changes as appropriate. However, the Society notes that as the Regulations are yet to be drafted, it is difficult to provide meaningful commentary on the effectiveness of these provisions. The Society suggests that in drafting the Regulations, consideration be given to the requirements set out in section 30 of the *Voluntary Assisted Dying Act 2022* (NSW).

24. Subsection 18(2) provides that the coordinating practitioner may attach a copy of any document relevant to their decision. The Society suggests that it should be mandatory for the coordinating practitioner to attach copies of relevant documents, or to at least provide a list of those documents and ensure that they are available on request from the oversight board or the individual. Similar requirements apply in relation to the consulting practitioner's report to the oversight board and individual (see section 25 of the Bill), and the coordinating practitioner's report in relation to the final assessment (section 36). The Society makes the same comments in relation to those provisions.

25. Part 4 of the Bill provides that the approved substance can be self-administered or administered by an administering practitioner. The Society notes that the Bill does not require the actual administration of the approved substance to be independently witnessed. This is in contrast with the Victorian voluntary assisted dying scheme, which requires the administration of an approved substance to be witnessed by a person who is: aged 18 years or more; and independent of the coordinating medical practitioner for the individual to whom the substance is to be administered. The witness must also certify certain matters about the individual's decision-making capacity, and that the decision appeared to be made voluntarily and without coercion. See sections 46 and 65 of the *Voluntary Assisted Dying Act 2017* (Vic). The Society suggests that given the gravity of this part of the voluntary assisted dying process, this aspect of the Victorian model may provide an important final safeguard.

26. Health practitioners must be authorised to perform the functions of a coordinating practitioner, consulting practitioner or administering practitioner under the proposed voluntary dying assistance scheme. Division 5.3 of the Bill sets out the process for such persons to become authorised by the Director-General. The eligibility requirements for authorised practitioners are to be determined in the Regulations (see section 84 of the Bill). As discussed above, the Society understands that utilising the Regulations for this purpose provides sufficient appropriate flexibility for lawmakers to make timely changes as appropriate. However, the Society notes that as the Regulations are yet to be drafted, it is difficult to provide meaningful commentary on the effectiveness of these provisions. The Society suggests that at a minimum, the Regulations include a requirement that health practitioners seeking to be approved under the scheme to have undertaken specialised assisted dying training, including in relation to assessing eligibility requirements, and particularly the decision-making capacity of the individual making the request.

27. Part 10 of the Bill deals with review of coordinating practitioner, consulting practitioner and administering practitioner decisions by the ACT Civil and Administrative Tribunal (ACAT). Schedule 1 of the Bill sets out the decisions that are reviewable by ACAT, including decisions of practitioners on eligibility and final assessment requirements. Schedule 2 provides for the review of certain decisions relating to the authorisation of practitioners, the revocation of such authorisations, and refusals to grant a residency exemption. Section 131 provides that an *affected person* – that is, persons who can make an application to ACAT for review of decisions – is:

(a) the individual, or

(b) any other person who has a sufficient and genuine interest in the rights of the individual in relation to voluntary assisted dying.

28. The Society considers that avenues of review, such as ACAT, are an important element of the proposed voluntary assisted dying scheme. However, the Society queries whether the definition of *affected person* in paragraph (b) is too broad. The Society suggests consideration be given to adopting a definition based on *interested person* in section 74 of the *Powers of Attorney Act 2006* (ACT) which include a relative or guardian of the individual, the public advocate, the public trustee and guardian, or a person prescribed by the Regulations.

29. Section 132 of the Bill provides that where a person makes a reviewable decision, they must give the individual a notice that includes any information prescribed by the Regulations. The Explanatory Statement accompanying the Bill explains that this provision is to ensure that an individual is aware of their review rights at key stages of the voluntary assisted dying process. Again, the Society understands that utilising the Regulations for this purpose provides sufficient appropriate flexibility for lawmakers to make timely changes as appropriate. However, the Society notes that as the Regulations are yet to be drafted, it is difficult to provide meaningful commentary on the effectiveness of this provision. The Society suggests that at a minimum, the Regulations should prescribe that the notice include information about the individual's right to seek review of decisions, the process for seeking review, and how the ACAT makes decisions.

30. Section 133 of the Bill provides that an application for review of a decision by the ACAT must be made within five (5) days of an individual receiving a copy of the relevant report, or when the affected person becomes aware of the reviewable decision (whichever is the latter). The Society notes that this is a very short timeframe for making an application, particularly if the individual wishes to seek legal advice in relation to the report and/or making an application for review. The Society understands that the Bill is seeking to balance the availability of review, with ensuring that the voluntary assisted dying process is not unduly delayed. However, the Society notes that the short timeframe may also operate as a barrier where a person cannot seek a review of a decision denying a request to access voluntary assisted dying within the timeframe. The Society suggests that the Bill provide for applications to be made outside the five-day timeframe in appropriate circumstances, at the discretion of the ACAT.

31. Part 8 of the Bill establishes the Voluntary Assisted Dying Oversight Board. The functions of the Board are set out in section 114 of the Bill:

(a) to monitor the operation of this Act;
(b) to monitor requests for voluntary assisted dying;
(c) to refer issues identified by the board in relation to voluntary assisted dying to the following people if those issues are relevant to the person … [e.g., police, coroner, human rights body]
(d) to record and keep any information prescribed by regulation in relation to a request for, or access to, voluntary assisted dying;
(e) to analyse information given to the board under this Act and research matters relating to the operation of this Act;
(f) to give the Minister advice in relation to: the operation of this Act; or the board's functions; or the improvement of the processes and safeguards for voluntary assisted dying;
(g) any other function given to the board under this Act or another territory law.

32. The Society notes that function (b) – which provides the Board with a monitoring function – is aligned with other Australian jurisdictions (e.g., New South Wales and Victoria) and means that there is effectively a retrospective review of assisted dying requests. In other jurisdictions, such as South Australia, in addition to an oversight board providing monitoring of requests (i.e., retrospective review), an independent body is required to review the reports submitted by health practitioners, before the person can progress to the next stage of the voluntary assisted dying process, which is effectively prospective approval. The Society understands that the choice between prospective approval and retrospective review give different emphasis to either the thoroughness of the process or the timeliness of the process. The Committee could consider the inclusion of independent review of requests throughout key stages of the process and including review of the individual's final request (i.e., prospective approval).

33. The Society also notes that the Explanatory Statement accompanying the Bill emphasises the role of the Board in "monitoring a voluntary assisted dying process *in real time*" and "notes that this function has been highly successful in Western Australia in facilitating interventions by the Board in individual processes to support compliance". The Society seeks clarity on what is intended by the proposed ACT Board monitoring the process in "real time", and queries if this is intended to operate as de facto prospective approval. It would also be useful to understand the nature of the interventions the Western Australian Board has been able to make.

34. The function in paragraph (c) provides the Board with the ability to refer issues to appropriate persons/bodies. Given the serious nature of the proposed scheme, the Society queries whether the Board should be subject to mandatory reporting requirements where it becomes aware that persons involved in the process have or may have acted unlawfully.

35. Other jurisdictions (such as Victoria) provide the following additional functions for their respective oversight boards which are not included in the Bill:

- promote compliance with the requirements of the Act by the provision of information in respect of voluntary assisted dying to registered health practitioners and members of the community (section 93(1)(d) of the *Voluntary Assisted Dying Act 2017* (Vic));
- promote continuous improvement in the quality and safety of voluntary assisted dying to those who exercise any function or power under the Act (section 93(1)(f) of the *Voluntary Assisted Dying Act 2017* (Vic)); and
- consult and engage with any of the following persons and groups in relation to voluntary assisted dying: the community; relevant groups or organisations; government departments and agencies; and registered health practitioners who provide voluntary assisted dying services (section 93(1)(j) of the *Voluntary Assisted Dying Act 2017* (Vic)).

The Society considers the functions described above support the proper administration of the scheme, including to ensure that the process continues to protect the most vulnerable members in our community, including women, people with disabilities, Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds and people in incarceration. Further the Society notes that some international jurisdictions have also benefitted from consultation with indigenous communities to ensure cultural practices are appropriately respected.

Criminal offences

36. The Society is concerned about short timeframes (two (2) working days) for meeting certain requirements under the Bill (including making assessments and writing reports), given that a person will be subject to a strict liability offence for non-compliance (see for example section 18 of the Bill). These offences generally carry a penalty of 20 penalty units (which equates to $3,200 for an individual, and $16,000 for a corporation).

37. The Explanatory Statement accompanying the Bill provides that the policy intent underlying these offences is to support an effective regulatory scheme and deter unauthorised behaviour, emphasising the importance of timely notification of requests and decisions to support the Board's role to monitor the operation of the scheme in "real time". However, the Society notes that other jurisdictions impose more reasonable timeframes for requirements, such as five (5) working days under the New South Wales scheme and seven (7) days under the Victorian scheme. Further, these schemes do not necessarily attach criminal liability to failure to meet timeframes, and where they do, strict liability is not imposed.

38. The Society notes that the Explanatory Statement further justifies the application of strict liability as relevant persons (in most cases, health practitioners) involved in the regulated activity will be aware of what the requirements of the law are. Notwithstanding our concerns about the imposition of strict liability (as discussed above), the Society suggests that to ensure this is the case, as part of the process of authorising practitioners (under Division 5.2 of the Bill), the Director-General be required to provide information about the legal requirements under the scheme, drawing attention to the criminal sanctions which apply for non-compliance.

39. The Bill also includes offences directed at persons who seek to induce or coerce an individual into making decisions to access voluntary assisted dying (or revoke such decisions). The Society supports these offences. Section 70 of the Bill makes it an offence for unauthorised persons to administer an approved substance to an individual (e.g., person is not authorised under section 63). The maximum penalty is imprisonment for seven (7) years. The Society suggests that further consideration be given to the interaction of this offence with existing offences in the *Crimes Act 1900* (ACT) such as murder, manslaughter and aiding or abetting suicide. Further, the Society notes that there is no link between the offence and the eligibility of the individual to access voluntary assisted dying, and consistency around penalties should be considered.

Conscientious objection

40. Parts 6 and 7 of the Bill engages the right of persons to freedom of thought, conscience, religion and belief. Within Part 6, section 94 provides that *health practitioners* and *health service providers* can refuse to do certain things under the scheme based on a conscientious objection. Section 95 provides where a health practitioner or health service provider has refused to do a thing under section 94, they must – within two (2) working days – give the individual (in writing) contact details for an approved care navigator service. The penalty for failing to comply with section 95 is 20 penalty units (which equates to $3,200 for an individual, and $16,000 for a corporation).

41. The Society considers that the right to conscientious objection should not be limited to health practitioners and health services providers, but rather should be available to all employees, contractors and volunteers of a facility (such as administrative personnel, chaplains etc). Further, the Society considers that the right to conscientious objection should be unqualified, that is, such persons should be able to object to participating in the scheme in any way. The Society notes that

the voluntary assisted dying schemes in New South Wales, Victoria, Queensland and South Australia do not include any equivalent requirement to section 95 (referral to an approved care navigator service).

42. Part 7 of the Bill places certain obligations on facility operators who provide care services to residents of a facility. The Explanatory Statement accompanying the Bill provides that Part 7 is designed to strike a balance between the rights of the individual seeking access to voluntary assisted dying, and the interests of facility operators, particularly those that operate a facility in accordance with an ethos or faith that opposes voluntary assisted dying. Criminal offences (including offences of strict liability) apply to facility operators who fail to comply with certain requirements. Some of these offences carry a penalty of 100 penalty units (which equates to $16,000 for an individual, and $81,000 for a corporation).

43. The Society is concerned that, because there are criminal sanctions for non-compliance with requirements in Part 7 of the Bill, there is a risk that facility operators might take adverse action towards a person who holds a conscientious objection. The Society notes that legislative protections exist in relation to unfair and unlawful dismissal, workplace bullying and discrimination on the basis of religious conviction (*Fair Work Act 2009* (Cth) and the *Discrimination Act 1991* (ACT)) with avenues for complaints to be made to the Fair Work Commission, WorkSafe ACT and the ACT Human Rights Commission as appropriate. The Society suggests that the Bill could include a provision which draws attention to these existing employment safeguards and serves as a reminder to facility operators about their obligations in this regard.

Other matters

44. The Society notes that the Bill is silent on who can initiate a conversation with an individual about voluntary assisted dying. Under the New South Wales, Queensland, Western Australia and Tasmanian voluntary assisted dying schemes, a medical practitioner can initiate discussions about voluntary assisted dying, but also provide information about treatment and palliative care options. See for example section 10 of the *Voluntary Assisted Dying Act 2022* (NSW). The schemes in Victoria and South Australia do not permit medical practitioners, nurses or other registered health practitioners to start voluntary assisted dying discussions with a person; all health professionals and personal care workers can provide information about voluntary assisted dying if the person requests it. See for example section 10 of the *Voluntary Assisted Dying Act 2019* (Vic).

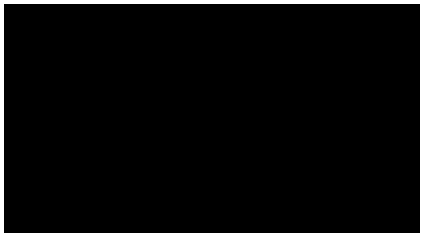
45. From a safeguarding perspective, there is an argument that it would be preferable to have a framework enshrined in legislation to ensure that the option of voluntary assisted dying is cast in an objective light and protect health practitioners who do or do not initiate the conversations. Section 125 of the Bill provides that a person is not criminally liable only because a person honestly and without recklessness engages in conduct that assists an individual to access, or request access to, voluntary assisted dying in accordance with the scheme. The Society is concerned that this provision would not be sufficient to protect a health practitioner from criminal liability if they initiated a conversation with an individual who does not then access, or request to access, voluntary assisted dying.

46. Finally, the Society draws the attention of the Committee to the recent decision of the Federal Court of Australia in *Carr v Attorney-General (Cth)* [2023] FCA 1500, which found that the term *suicide* as used in sections 474.29A and 474.29B of the *Criminal Code Act 1995 (*Cth) extends to the use of a carriage service (e.g., via telephone or email) to provide information about particular methods of ending a person's life in accordance with, and by the means authorised by, state and territory voluntary assisted dying legislation.

47. The Society notes that this issue has been raised with the recent Standing Council of Attorneys-General meeting (held on 1 December 2023) with the Communique from the meeting noting that Attorneys-General discussed jurisdictions' concerns regarding offences in the *Criminal Code 1995* (Cth) that limit the operation of state and territory voluntary assisted dying schemes. The Society supports the view that the Commonwealth should consider amendments so that persons acting in accordance with state or territory voluntary assisted dying schemes should be protected from liability from the offences in sections 474.29A and 474.29B of the Criminal Code.

48. The Society would be happy to respond to any questions of the Committee in regard to the comments made above, if this would be of further assistance.

Yours sincerely,



Chief Executive Officer