



COMMITTEE SUPPORT

Select Committee on the Inquiry into the
Voluntary Assisted Dying Bill 2023

ANSWER TO QUESTION TAKEN ON NOTICE

Asked by Suzanne Orr on 2 February 2024: Tara Cheyne took on notice the following question:

Reference: Hansard [uncorrected] proof transcript 2 February 2024 [PAGE 49]

In relation to:

THE CHAIR: And in the Bill, Palliative Care ACT said, for those sections where it says, “Take all reasonable steps to ensure”, they actually recommended that got changed to “ensures”. Can I please get from you the basis for the wording, and whether a change in wording would actually, legally work? You might need to take that one on notice.

Mr Ng: We might do.

Ms Cheyne: Just to clarify. At the moment it says, “To take all reasonable steps to ensure”, and they are saying, Take out “reasonable steps”.

THE CHAIR: They want just saying, “ensures”. I mean, it is a small change, but it has got quite a lot of legal ramifications, and I am interested to get your view on whether that changes, or does not change anything.

Ms Cheyne: Yes. I think we might take that on notice, Ms Orr.

Minister for Human Rights: The answer to the Member’s question is as follows:–

Clause 152 of the VAD Bill imposes minimum standards that must be followed by certain health professionals who choose to initiate a conversation about VAD:

- Clause 152(1) applies to a medical practitioner or nurse practitioner who is satisfied that they have the expertise to appropriately discuss treatment and palliative care options with the individual. They must ‘take reasonable steps to ensure the individual knows’ of their treatment and palliative care options, and the likely outcomes of those options.

- Clause 152(2) applies to all other registered health practitioners, as well as social workers and counsellors. They must 'take reasonable steps to ensure the individual knows' that treatment and palliative care and treatment options are available, and that the person should discuss these options with their treating doctor.

Palliative Care ACT's submission called for clause 152 to be strengthened by requiring health professionals to 'ensure', rather than 'take reasonable steps to ensure', that an individual knows about the matters mentioned in clause 152.

The basis for the wording requiring health professionals to 'take reasonable steps' to ensure the individual knows certain information is to ensure that individuals requesting VAD are actively supported by their doctor, nurse practitioner or other relevant health professional to understand the information being provided to them.

For example, the requirement in Clause 152(1) to "take reasonable steps to ensure" is more than a simple requirement to inform the individual about their options (as it is in other jurisdictions) – it requires medical or nurse practitioners to take active steps, including tailoring how information is provided, so that every individual will understand their options and the likely outcomes. Clause 152 takes a more person-centred approach than legislation in other jurisdictions (that allow health professionals to initiate discussions in relation to VAD) provides for.

If the words 'take reasonable steps' were removed, this may create a degree of legal uncertainty when determining the individual's knowledge, which is a subjective state of mind. The words 'take reasonable steps' ensures that there are active steps health professionals should take, and an element of objectivity when determining whether a health practitioner has complied with this section.

We will consider any recommendations of the Committee in this regard.

Approved for circulation to the Select Committee on the Inquiry into the Voluntary Assisted Dying Bill 2023

Signature:



Date:

9/2/24

By the Minister for Human Rights, Ms Tara Cheyne