



COMMITTEE SUPPORT

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

ANSWER TO QUESTION TAKEN ON NOTICE

Asked by Leanne Castley on 31 January 2024: Ross Hawkins took on notice the following question:

Reference: Hansard [uncorrected] proof transcript 31 January 2024 [PAGE 32-33]

In relation to:

MS CASTLEY: Can I just clarify? Is there more information about the aged care homes that you have referred to, Mr Hawkins, in the submission? You said that it is different to the hospital facility. Is there different information?

Mr Hawkins: No, but Ms Castley, we would happily provide some details of the different levels of regulation that sit amongst both. That is not a problem.

MS CASTLEY: Thank you. That would be great.

THE CHAIR: I think I know the point you are going to. Mr Hawkins, just to clarify there, what you were saying was the accreditation for the hospital is quite different to the accreditation for the aged care facilities, and a third-party provider is much higher and problematic for a health care facility than an aged care facility. Have I got that correct?

Mr Hawkins: Correct, but it would not be a problem for us to be able to set out very clearly under what legislation and what our obligations are as a facility provider, and therefore how this act would potentially intersect with it.

MS CASTLEY: Thank you.

THE CHAIR: We will count that as you are taking that on notice to provide the committee with some more information. I think we have reached the actual finish time of the hearing now. Everyone else was half an hour, so I was just running with the norm. I think we will now finish up there.

Calvary Health Care: The answer to the Member's question is as follows:–

Preliminary observations

In Clause 96 Definitions – pt 7 of the *Voluntary Assisted Dying Bill 2023 (ACT)*, the definition of a 'facility' includes hospitals, hospices and residential aged care facilities and the term 'resident' encompasses in-patients at a hospital or hospice and permanent and non-permanent residents at a residential aged care facility.

The scope of services provided by health care facilities and residential aged care facilities is distinct, as are the legislation and regulatory requirements with which each type of facility must comply. These governance differences are summarised below.

Health care facilities

Hospitals are governed by States and Territories under Council of Australian Governments (COAG) agreement. States and Territories license both public and private hospitals to act in accordance with the commitment by COAG agreement and ensure that all of these services comply with National Quality and Safety Health Care (NSQHS) Standards.

In the ACT, operating a *health care facility* (e.g. a private hospital) is an activity that must be licensed by ACT Health under the *Public Health Act 1997 (ACT)*. The *Public Health (Health Care Facility) Risk Declaration 2021* defines a *health care facility* as a premises where overnight inpatient services are provided under the care of a registered medical practitioner or specified public health risk procedures are performed.

As a condition of the activity licence, health care facilities operating in the ACT must maintain accreditation to the NSQHS Standards as published by the Australian Commission on Safety and Quality in Health Care. Standard 1 *Clinical Governance* of the NSQHS Standards requires health care facilities to ensure that clinicians are credentialed and that their scope of practice is clearly defined, with consideration to "the clinical service capacity of the organisation and clinical services plan."ⁱ

Health care facilities must clearly delineate which services will be provided at the facility and ensure the appropriate services, equipment and staff are available. An individual clinician's credentialing and scope of practice at an individual facility can only be granted within the services that the facility provides. The Australian Commission on Safety and Quality in Health Care notes that "[h]ealth service organisations provide different types and levels of services in a variety of settings. They manage different levels of consumer need and complexity of care. [...] Not all services or all levels of care can or should be delivered in all settings or facilities."ⁱⁱ

Residential aged care facilities

In Australia, aged care services are governed by the *Aged Care Act 1997 (Cth)* and the *Aged Care (Transitional Provisions) Act 1997 (Cth)*, and regulated by the Aged Care Quality and Safety Commission (ACQSC), under the *Aged Care Quality and Safety Commission Act 2018 (Cth)*. All Commonwealth subsidised aged care services must be accredited by ACQSC.

Under the *Aged Care Act 1997 (Cth)*, aged care providers must abide by the Charter of Aged Care Rights and meet the Aged Care Quality Standards. Under Standard 1 *Consumer Dignity and Choice* of the Aged Care Quality Standards, a person who is receiving aged care services must be supported to exercise choice and independence, including "to make decisions about their own care and the way care and services are delivered."ⁱⁱⁱ Under the Charter of Aged-Care Rights, a person who is receiving aged care services has the right to "have control over and make choices about my care, and personal and social life, including where the choices involve personal risk."^{iv}

The governance framework for a residential aged care facility comprehends the residential environment and the care services offered by the aged provider. Compliance with all of the regulatory requirements supports the resident to have the right to choose and engage with external health service providers, such as medical practitioners, pharmacists or allied health

professionals, to meet their health needs. Therefore, the resident chooses their own medical practitioner and the medical practitioner sees the resident in the resident's home. The aged care provider does not credential medical practitioners, define their scope of practice or provide them with the right to admit patients. The relationship is between the resident and the practitioner.

Concluding remark

For these reasons, Calvary submitted that legislation in both SA and NSW provides a clearer framework than the proposed Bill. A clear framework is a necessity, particularly if strict liability is attributed to non-compliance.

ⁱ Australian Commission on Safety and Quality in Health Care. National Safety and Quality Health Service Standards. 2nd ed. – version 2. Sydney: ACSQHC; 2021. Standard 1, Actions 1.23-1.24.

ⁱⁱ Australian Commission on Safety and Quality in Health Care. Credentialing health practitioners and defining their scope of clinical practice: A guide for managers and practitioners. Sydney: ACSQHC, 2015. Page 6.

ⁱⁱⁱ Aged Care Quality and Safety Commission. Aged Care Quality Standards. 2019.

<https://www.agedcarequality.gov.au/providers/quality-standards>. Standard 1, Requirement (3)(c).

^{iv} Aged Care Quality and Safety Commission. Charter of Aged Care Rights. 2019.

<https://www.agedcarequality.gov.au/older-australians/your-rights/charter-aged-care-rights>

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



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By Calvary Health Care, per Mark Green, National Director, Mission and People