Voluntary Assisted Dying Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Voluntary Assisted Dying Regulation 2022* (the Regulation) made under the *Voluntary Assisted Dying Act 2021* (the Act).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Act was passed by the Legislative Assembly on 16 September 2021 and received Royal Assent on 23 September 2021. The voluntary assisted dying scheme (the scheme) commences on 1 January 2023. To allow the Voluntary Assisted Dying Review Board (the Review Board) to be established before the commencement of the scheme, part 8 and section 153 of the Act commenced six months after assent. The Regulation, which supports the effective operation of the Act, will commence with the Act on 1 January 2023.

The Act will provide individuals who are suffering and dying with an additional end-of-life choice, allowing eligible people to choose the timing and circumstances of their death. Voluntary assisted dying involves the administration of a substance to cause a person's death. The Act defines a voluntary assisted dying substance to mean a substance approved by the chief executive under section 160 of the Act.

The Queensland scheme was established by the Act and based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A legal framework for voluntary assisted dying* (Report No. 79) (QLRC report) and draft QLRC legislation. QLRC aimed to develop a draft law for Queensland that is compassionate, safe and practical.

The framework for how the voluntary assisted dying substance will be managed is established under division 3 of part 4 of the Act. In addition to the general regulation-making head of power, the Act provides that the following technical matters relating to the management of the voluntary assisted dying substance may be prescribed by regulation:

- prescribing a voluntary assisted dying substance (section 67 of the Act);
- labelling a voluntary assisted dying substance (section 71 of the Act);
- supplying a voluntary assisted dying substance (section 73 of the Act);
- storage of a voluntary assisted dying substance (section 74 of the Act); and
- disposal of a voluntary assisted dying substance (section 79 of the Act).

The Act also provides for the functions of the Review Board, which includes recording and keeping information prescribed by regulation about requests for, and provision of, voluntary assisted dying (section 117 of the Act).

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Act provides a lawful process to allow eligible people access to voluntary assisted dying. The Act achieves this by establishing a framework for voluntary assisted dying in Queensland that sets out the eligibility criteria for accessing voluntary assisted dying, the request and assessment process that must be followed, qualification and training requirements for participating practitioners, and matters to support the operation of the scheme. Crucially, it builds in appropriate safeguards and oversight into the process to protect vulnerable people and to ensure accountability and compliance with the requirements of the Act.

An extensive Human Rights Statement of Compatibility was tabled with the Act. The Human Rights Statement of Compatibility considered the Act to be compatible with Human Rights, acknowledging the conflicting, and highly contested, views within our society on the ethical and moral issues at stake in prohibiting or allowing voluntary assisted dying.
To achieve the policy objectives of the scheme, the Regulation prescribes, in accordance with the Act:

- the technical requirements for the management of a voluntary assisted dying substance including the prescribing, labelling, supply, storage, and disposal of the substance; and
- information to be recorded and kept by the Review Board about requests for, and provision of, voluntary assisted dying.

The detail provided in the Regulation improves operational clarity of the management of the voluntary assisted dying substance. The information prescribed by the Regulation to be recorded and kept by the Review Board adds clarity to the Review Board's processes.

<u>Voluntary assisted dying substance management</u>

Part 2 (clauses 3 to 7) of the Regulation prescribes the following requirements for the voluntary assisted dying substance:

- **prescribing** requirements – the prescription must be signed by the coordinating practitioner, include the name, work address and telephone number of the coordinating practitioner, the eligible person's address and the date the prescription was issued;
- **labelling** requirements – a label must be attached to the outside of the container or package stating details including the place where the authorised supplier supplied the substance, the details of the substance, 'KEEP OUT OF REACH OF CHILDREN' in red on a white background, the name of the person who is accessing voluntary assisted dying, the date of supply and expiry date of the substance. An additional label must be attached to the relevant package or container that states the purpose of the substance, the dangers of administering the substance and outline storage and disposal requirements;

- **supply** requirements – includes that the prescription will expire six months after the date it was issued and the prescription must be kept by an authorised supplier for a minimum of two years after the substance was supplied;
- **storage** requirements – a person who receives a voluntary assisted dying substance from an authorised supplier must store the substance in a locked box that is not easily penetrable, lockable with a lock of sturdy construction and must remain locked except when the substance is being prepared, administered or disposed of;
- **disposal** requirements – an authorised disposer or administering practitioner must personally destroy the voluntary assisted dying substance or any unused or remaining substance in a way that renders the substance unusable and unidentifiable by any person.

These requirements are not considered to engage human rights.

Voluntary Assisted Dying Review Board

Part 3, clause 8 of the Regulation prescribes the information the Review Board must record and keep under section 117(1)(d) of the Act, about requests for, and provision of, voluntary assisted dying. This includes:

- the number of people assessed as eligible or ineligible for access to voluntary assisted dying in a first assessment;
- the number of people assessed as eligible or ineligible for access to voluntary assisted dying in a consulting assessment;
- for each person assessed in a first assessment—
  - their age, sex, and the region where the person lives;
- for each person assessed as eligible to access voluntary assisted dying in a first assessment and consulting assessment— the disease, illness or medical condition with which the person has been diagnosed;
- the number of completed requests for voluntary assisted dying, as defined under 117(2) of the Act;
- for each completed request for voluntary assisted dying:
  - whether the person has died, and if so, whether the person died:
    - following self-administration of a voluntary assisted dying substance; or
    - following the administration of a voluntary assisted dying substance by an administering practitioner; or
    - without the administration of a voluntary assisted dying substance; or
  - whether the request was discontinued; and
- for each person who has made a final request–the time between the first and final requests;
- the number of medical practitioners who have been involved in requests for, or provision, of voluntary assisted dying;
- the number of nurse practitioners who have been involved in the provision of voluntary assisted dying; and
- the number of nurses who have been involved in the provision of voluntary assisted dying.

The Regulation engages the right to privacy in section 25(a) of the Human Rights Act as it prescribes personal information that must be recorded and kept, including personal information about people who are found eligible, or have completed a request, for voluntary assisted dying.

The limit on the right to privacy is reasonable and demonstrably justified for the following reasons.

Consideration of reasonable limitations on human rights (section 13 of the *Human Rights Act 2019*)

(a) the nature of the right

The right to privacy is 'the right of the individual to determine for himself [or herself] when, how, and to what extent he [or she] will release personal information about himself [or herself]'.[1] That control over one's personal information is important for autonomy.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the information prescribed to be recorded and kept by the Review Board is to facilitate transparency of the Review Board's functions and the scheme. These functions include monitoring the operation of the Act and compliance with the scheme as established by the Act. The Act requires the prescribed information to be included in a de-identified form in the annual report that is required to be given to the Minister each financial year.

In order for the Review Board to undertake its functions and obligations to ensure the voluntary assisted dying scheme is operated in a safe manner within the public interest, the Review Board must be able to collect information on people who make requests for, and access, voluntary assisted dying, and practitioners involved in the scheme. The prescribed information will assist the Review Board and the scheme operating in a way that is transparent is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Prescribing information the Review Board can record and keep about requests for, and provision of voluntary assisted dying helps achieve the purpose of ensuring the voluntary assisted dying scheme is operated safely by allowing the Review Board to monitor the operation of the scheme in Queensland.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The only alternative, which would impose a lesser burden in privacy, would be if the Review Board was unable to collect personal information about requests for, and provision of, voluntary assisted dying. However, by not prescribing the information the Review Board can collect would undermine the Review Board's ability to monitor the operation of, and compliance with the Act. The purpose of prescribing this information is to provide transparency of the functions of the Review Board and the scheme.

[1] *R v Duarte* [1990] 1 SCR 30, 46.

The Act also contains safeguards to counteract the limitation of the right to privacy. Sections 134(2)(d) and 136 of the Act protect the publication of personal information by requiring the de-identification of information contained in reports. Section 146 of the Act protects personal information by making it an offence for someone who obtains personal information in the course of, or because of, the exercise of a function or power under the Act, to record or disclose personal information except in limited circumstances, including for a purpose under the Act. If information was unable to be collected, the Review Board would be unable to meet the statutory requirement to publish an annual report containing this information in a de-identified form. There is no less restrictive way available for the Review Board to achieve its purpose.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limits on the right to privacy are minor when considering the scope of the power of the Review Board to record and keep information and the safeguards put into place under the Act to protect that information and manage its use.

The purpose of the Review Board carrying out its legislative function to monitor the operation of the Act, and compliance with the voluntary assisted dying scheme is fundamental to its safe operation.

The Regulation provides a baseline of key information the Review Board must record, keep and report on in a de-identified form. Prescribing the information that is required to be recorded and kept supports the Review Board in the undertaking of its functions and fulfilment of its requirements to include certain information in an annual report in accordance with section 134 of the Act. It also provides transparency to the community about the operation of the scheme by ensuring a baseline of key information the Review Board must report.

Overall, the minor limits on privacy are clearly outweighed by the need to ensure the voluntary assisted dying scheme operates effectively and safely, including the safeguards and oversight into the process to protect vulnerable people and to ensure accountability and compliance with the requirements of the Act.

Conclusion

I consider that the *Voluntary Assisted Dying Regulation 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
MINISTER FOR HEALTH AND
AMBULANCE SERVICES
AND LEADER OF THE HOUSE