

House of Representatives

Supplementary Order Paper

Tuesday, 30 July 2019

End of Life Choice Bill

Proposed amendments

Hon Maggie Barry, in Committee, to move the following amendments:

Clause 3

In *clause 3*, after the definition of **competent** (page 3, line 11), insert:

decision-making capacity has the meaning given in **section 4A**

Clause 4

In *clause 4*, replace *paragraph (f)* (page 4, lines 29 to 31) with:

- (f) has decision-making capacity.

New clause 4A

After *clause 4* (page 4, after line 31), insert:

4A Meaning of decision-making capacity

- (1) A person has decision-making capacity in relation to assisted dying if the person is able to—
 - (a) understand the information relevant to the decision relating to access to assisted dying and the effect of the decision; and
 - (b) retain that information to the extent necessary to make the decision; and
 - (c) use or weigh that information as part of the process of making the decision; and
 - (d) communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

- (2) For the purposes of **subsection (1)(a)**, a person is taken to understand information relevant to the decision if the person understands an explanation of the information given to the person in a way that is appropriate to the person's circumstances, whether by using modified language, visual aids, or any other means.
- (3) In determining whether or not a person has decision-making capacity, regard must be had to the following:
 - (a) a person may have decision-making capacity to make some decisions and not others:
 - (b) if a person does not have decision-making capacity to make a particular decision, it may be temporary and not permanent:
 - (c) it should not be assumed that a person does not have decision-making capacity—
 - (i) on the basis of the person's appearance; or
 - (ii) because the person makes a decision that is, in the opinion of others, unwise:
 - (d) a person has decision-making capacity to make a decision if it is possible for the person to make a decision with practicable and appropriate support.
- (4) A person is presumed to have decision-making capacity unless there is evidence to the contrary.
- (5) A person who is assessing whether a person has decision-making capacity for the purposes of this Act must take reasonable steps to conduct the assessment at a time and in an environment in which the person's decision-making capacity can be most accurately assessed.
- (6) In this section, **practicable and appropriate support** includes the following:
 - (a) using information or formats tailored to the particular needs of a person:
 - (b) communicating or assisting a person to communicate the person's decision:
 - (c) giving a person additional time and discussing the matter with the person:
 - (d) using technology that alleviates the effects of a person's disability.

Explanatory note

This Supplementary Order Paper inserts the provision defining **decision-making capacity** set out in section 4 of the Voluntary Assisted Dying Act of Victoria, Australia,

edited for the definitions of the End of Life Choice Bill and with a consequential change to the bar-2 version of the bill’s ‘understanding’ subclause regarding eligibility.

The bill currently makes only limited requirements for ascertaining the competence or decision making capacity of the person seeking assisted dying. In the bar-2 version of the bill, the person only needs the ability to understand “the nature of assisted dying” and “the consequences of them dying”.

New clause 4A sets out a fuller test for decision-making capacity in subclause (1) and several consequential considerations in subsequent subclauses concerning presumption of capacity, communication appropriate to circumstances, regard to the nature of capacity, and reasonable steps to accurately assess capacity.