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THE CONVERSATION

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The bill to legalise assisted dying was introduced to the NSW Legislative Council in September, 2017. MICK TSIKAS/AAP

The NSW assisted dying bill isn't as robust as Victoria's model

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The NSW Legislative Council will today resume debate on the **Voluntary Assisted Dying Bill 2017**, which was introduced on September 21 this year. The bill was drafted by a cross-party parliamentary working group after extensive consultation.

Despite significant public support for euthanasia, the state's Premier Gladys Berejiklian and opposition leader Luke Foley **both indicate** they won't support this bill. Other groups, including the Catholic church, have also stated their opposition.

Like the Victorian bill being debated in the state's upper house this week after passing the lower house last month, the NSW legislation legalises physician assisted dying rather than euthanasia. In physician assisted dying, a doctor facilitates patient access to a means of dying, typically a regulated drug, which the patient self-administers.

Euthanasia instead involves a medical professional or another person actively taking steps to end the patient's life.

Apart from the NT's short-lived Rights of the Terminally Ill Act 1995, euthanasia legislation in Australia has had a consistent history of failure. Since 1995, over 50 separate bills have failed to pass

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Australian state parliaments. The NSW bill differs substantially from the more conservative Victorian version - and leaves a lot of substantial questions answered.

Read more: Why Australia hesitates to legalise euthanasia

What's in the NSW Bill?

Eligibility

Under the NSW bill, residents of the state over the age of 25 are eligible to seek assistance to end their lives. This is subject to medical opinion confirming they have 12 months or less to live due to a terminal illness, and they are experiencing unacceptable pain, suffering, or physical incapacity.

The bill permits doctors to lawfully provide assistance to patients wanting support to end their own lives. That support must accord with a process outlined in the bill. The doctor prescribes, prepares, or supplies a substance for self-administration by the patient. Assistance also includes administering (or authorising administration of) the substance to patients unable to administer it themselves.

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The patient must be examined by at least two doctors, including a specialist relevant to the patient's terminal diagnosis. This is to confirm the patient's eligibility, and that there are no medical interventions acceptable to the patient that could reasonably lead to a cure.

A psychiatric or psychological evaluation assessing the patient's decision-making capacity and verifying that their decision is voluntary is also required. The patient and the doctors then complete a request certificate, documenting the request for assistance.

At least 48 hours after completion of the certificate, the principal assessing doctor can provide the requested assistance. The patient can then self-administer the substance or, if physically incapable of self-administering it, have it administered.

Protections

Doctors may refuse to provide assistance for any reason and a patient can withdraw the request at any time. Withdrawal must be recorded on both the certificate and medical records.

Request certificates can be declared invalid by the Supreme Court on application if the court is not satisfied the prescribed conditions have been met.

The bill provides immunity from liability for health professionals, facilities and providers who provide assistance, are present when the assistance is provided or the substance administered, or who dispose of any unused substance, either because the patient died or rescinded their request. It expressly

excludes assisted death from the suicide provisions of the NSW Crimes Act. Consequently, provisions concerning abetting suicide will not apply.

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Those protections won't be available when there is a conflict of interest, or a personal relationship between the doctors and any interested parties, including other doctors and the patient.

Assisted deaths must be reported to both the coroner and the Voluntary Assisted Death Review Board, a body created under the bill to review and report on assisted deaths and to maintain a register of assisted deaths. The board will also report assisted deaths to an "investigative authority" - presumably the police - when appropriate.

Financial penalties apply to doctors who fail to maintain records and provide information to the board. Criminal penalties of up to four years imprisonment apply for influencing the provision of, or request for, assistance inappropriately.

Victoria is a better model

If the assisted dying bill passes Victoria's upper house, it will take effect in 2019. Assistance to die in Victoria would be subject to far greater external oversight than in NSW. Assisted death requires a permit from the Secretary of the Victorian Department of Health and Human Services. Application for that permit can only be made after at least two requests by the patient, made at least nine days apart.

Like NSW, requests are similarly supported by medical assessment of at least two medical practitioners, but the qualifications of those practitioners are more comprehensively detailed under the Victorian bill. Copies of all their assessment reports, and documentation regarding a request, must be forwarded to the Voluntary Assisted Dying Review Board within seven days.

Read more: Victoria's model for assisted dying laws may be narrow enough to pass

Under the NSW bill, the only routine external review or monitoring occurs after the patient's death, unless a challenge to the certificate brings it before the Supreme Court.

Overall, the NSW bill leaves significant questions unanswered, disquieting ethicists, lawyers and doctors. NSW politicians who are not opposed to assisted death and euthanasia might benefit from considering the more careful Victorian bill, as might legislators in other jurisdictions.

