

The Hon Wes Fang MLC  
Chair, Standing Committee on Law and Justice  
Legislative Council  
NSW Parliament  
[law@parliament.nsw.gov.au](mailto:law@parliament.nsw.gov.au)

Re: Submission to the Inquiry into the provisions of the Voluntary Assisted Dying Bill 2021

Dear Mr Fang

Positive Life NSW welcomes the opportunity to provide a submission into the Inquiry into the provisions of the Voluntary Assisted Dying Bill 2021.

Positive Life is the state-wide peer based non-profit organisation that speaks for and on behalf of people living with and affected by HIV in NSW. We provide leadership and advocacy in advancing the human rights and quality of life of all people living with HIV (PLHIV), and to change systems and practices that discriminate against PLHIV, our friends, family and carers in NSW.

**Summary:**

Positive Life NSW strongly supports the proposed Voluntary Assisted Dying Bill 2021.

Positive Life NSW supports bodily autonomy and a legislative framework that supports individual choice. In turn this supports person-centred healthcare in which services are designed with empathy and people at its core.

Positive Life NSW strongly advocates for the right of the HIV community to live with dignity, a central tenet of the way people living with HIV have positioned ourselves engaging with our healthcare professionals and to self-determine the way we live our lives.

Positive Life NSW believes that when no other options are acceptable to a terminally ill person to relieve their pain, that their rational request to a medical practitioner to assist in the ending of their pain should be respected and granted.

Positive Life NSW advocates for every individual's right to choice and the ability to make decisions about their own bodies and lives, with a view to removing existing legislation which prevents this. The argument in favour of voluntary assisted dying is one of human rights.

**Positive Life NSW: advocating for human rights**

Voluntary assisted dying (VAD) allows for the end to long periods of pain especially in the case of an incurable and terminal illness. It is a rational decision-making process in which the individual makes the choice.

All people should have the right to die with dignity and with the same autonomy as in life. This right to die with dignity should not be removed by increasing incapacity to a point where the manner of their death is decided by others. VAD is a treatment option worthy of the same support as palliation. VAD makes the process of death less terrifying, degrading and painful.

## **The Living Will**

The signing of a Living Will will give health professionals an advanced declaration directing them to withhold life-sustaining medical procedures in the event of a terminal situation. A Living Will is not enforceable under NSW legislation. However, it communicates an individual's intentions to health professionals.

The NSW Government has the ability to add a clause to the proposed legislation containing provisions for a Living Will, which would make treatment against the wishes expressed in a Living Will an offence of medical trespass. Positive Life NSW is committed to achieving this legislative change, which has already been enacted in South Australia, Western Australia, Victoria and the Northern Territory, and in Tasmania and Queensland as of 2022 and 2023 respectively.

## **The legal position**

The greatest obstacle to our rights to die prior to a natural occurring death is the law. It is no longer illegal to suicide or attempt suicide in NSW. However, aiding, abetting, counselling and/or inciting someone to suicide carry a jail of up to ten years. This raises a glaring anomaly, where a person can be criminally charged for helping in an act which in itself is now legal.

This issue is subject to so much fear, prejudice, and social pressure that doctors, friends and relatives are placed in a very difficult position due to existing legislation. Unfortunately, Positive Life has been aware of instances where an individual's demise has been more of silent and unspoken agreement where pain management has also facilitated death, and less an open and honest discussion between the patient, their doctors, friends and relatives. This need for secrecy drives the issue underground and makes humane and informed discussion impossible.

The refusal to recognise or rationally discuss the issue means that such attempts, as illegal as they are, also tend to be conducted without clinical skill or information. As a result, many attempts result in botched efforts causing more unwanted pain, emotionally and physically. A comfortable and dignified means of death such as the use of morphine are presently out of people's reach because they involve health care workers assisting and placing themselves at risk of criminal prosecution. Oral medications often are not effective as the body may not absorb enough to effect a lethal dose. Correct doses depend on many variables such as body weight or tolerance to a drug. The only way to reliably bring about death is with an injection, which requires assistance from a person with medical skills.

The emotional and physical risks of unsuccessful attempts at VAD are high. This is not a reasonable situation for the individual, their carers and friends or indeed for the community as a whole. The problem summarised is that the individual is not able to enlist help in administering an effective lethal dose without placing the helper at risk of criminal prosecution.

## **Recommendation**

Abolish the offence of Aiding etc Suicide (ss 31C(1) & (2) Crimes Act, 1900 (NSW)). Positive Life NSW strongly supports this change in legislation.

## Commonly raised objections

A frequent objection to the availability of VAD is that people will either be coerced by family members into asking for VAD, or that elderly or dependent people will consider themselves a burden to their carers and it would be a kindness to them to ask for VAD.

Numerous independent inquiries have found no evidence that this has occurred. These include; Australian palliative care physician Dr Linda Sheahan whose 2012 Churchill Fellowship study of how these laws work overseas concluded, 'the slippery slope in terms of risk to vulnerable groups has not been demonstrated by the data.' The cross-party parliamentary inquiries in Victoria and Western Australia, the most comprehensive and forensic reviews of the issue undertaken in Australia, found, 'no evidence of institutional corrosion or the often cited slippery slope'. The Victorian committee said, 'assisted dying is currently provided in robust, transparent, accountable frameworks. The academic literature shows that the risks are guarded against, and that robust frameworks help to prevent abuse.' The WA Committee added, 'there is no evidence to suggest, from either Oregon or the Netherlands data, that people with disabilities are at heightened risk of assisted dying.' Perhaps most telling is that representatives of peak elderly and disability groups in Belgium, the Netherlands and Oregon also report no abuse of their members under VAD laws. The Journal of the American Medical Association in 2016, concluded, 'in no jurisdiction was there evidence that vulnerable patients have been receiving euthanasia or physician-assisted suicide at rates higher than those in the general population.'

VAD law encourages better practice. It brings regulation and scrutiny to a space that is currently unregulated. It specifically insists that doctors examine questions of competency and coercion. And it offers the vulnerable protections they currently do not have, with strict eligibility criteria and strong safeguards which apply only to those for whom the law is written.

Positive Life would like to commend the Standing Committee on Law and Justice in their dedicated and thorough research and consultation process with the aim of pursuing a change in the law that will enhance choice at the end of life to ensure that possible for all Australians including those of us living with HIV.

If this submission requires additional information or clarification, I can be contacted at [contact@positivelife.org.au](mailto:contact@positivelife.org.au) or on 02 9206 2177.

Yours respectfully

A handwritten signature in black ink that reads "Jane Costello". The signature is written in a cursive, flowing style with a long horizontal stroke underlining the name.

Jane Costello

Chief Executive Officer

22 November 2021