Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

25 September 2019

David Seymour MP

By email: david.seymour@parliament.govt.nz

Dear Mr Seymour

End of Life Choice Bill – SOP No 259

I write further to your letter dated 30 July 2019. Your Supplementary Order Paper No 259 (SOP) has addressed some of my concerns about the End of Life Choice Bill (the Bill). Given the nature of this Bill, it is critical that persons receiving assisted dying services are competent to consent to such services at all times and especially at the point of administration of medication.

There remain a number of clauses within the Bill where it is unclear that an eligible person's competency must be assessed on an ongoing basis. The remaining areas of concern regarding the Bill are set out below.

1. *Capacity assessments in the assisted dying process*
   Given your intent is that the person must be an eligible person at each stage of the process after a formal request is made, it would avoid ambiguity to state this specifically in the Bill.

2. *Clauses 14(2)(d) & 14(2)(e) and 15(3)(b) & 15(3)(d)*
   Clauses 14 and 15 make express reference to a person being "eligible". By virtue of clauses 4 and 4A, one interpretation of the Bill is a requirement for ongoing competency assessments. An alternative interpretation which could be reasonably foreseen is that where competency assessments are *expressly* required in specific clauses (i.e. clauses 10-12), they are the only times in which such assessments need occur before a person is deemed "eligible".

3. *Clause 10 & the requirement to examine the person and read their medical notes*
   Clause 10 of the Bill does not include a requirement for the attending medical practitioner who gives a 'first opinion' to examine the person or read their medical notes. You have stated this is not explicit in clause 10 as the medical practitioner will have already examined the patient and be familiar with their file to meet the requirements in clauses 8 and 9.

While good clinical practice would require an attending medical practitioner examine the person and read their medical files when forming their opinion about a person's eligibility – this should nonetheless be made clear in clause 10.

4. *Delayed decisions*

There is no requirement for an advance directive to be a legal document (although it can be). The Code of Health and Disability Services Consumers' Rights (the Code) defines an advance directive to mean "a written or oral directive— (a) by which a consumer makes a choice about a possible future health care procedure; and (b) that is intended to be effective only when he or she is not competent".

An "eligible" person's competency will be assessed at different stages leading up to the initial date of administration (i.e. during the first, second and, if required, third medical opinions required in clauses 10-12). However, it remains unclear if, and when, an eligible person's competency is required to be reassessed should they choose to delay their decision to receive assisted dying services pursuant to clauses 14(2)(e)(ii), 15(3)(d) and 16(2)(b) (which are concerned with informing/permitting an eligible person to choose a time not more than six months after the date initially chosen to receive assisted dying).

As noted above, the Bill could clearly state that a person must be competent throughout the process, which would expressly include at the point of administration, whether delayed or not.

I trust these comments are of assistance.

Yours sincerely

Anthony Hill
Health and Disability Commissioner

Cc: Hon Dr David Clark, Minister of Health
Dr Ashley Bloomfield, Director-General of Health, Ministry of Health