End of life legislation
harmonisation

Deeble Institute Workshop: End of life care – the next steps

22/05/17 | v0102 | Georgie Haysom
Avant Position Paper
Advance care planning and end-of-life decision-making
The case for harmonisation

- 8 jurisdictions
- 17+ pieces of legislation
- + common law
- + guidelines – hospital, health services & professional bodies

- 8 different decision makers
- 6 different types of document
Why are we waiting?

2008  Australian Health Ministers’ Conference commissioned work to produce nationally consistent guidelines

2011  Australian Health Minister’s Advisory Council National Framework for Advance Care Directives

2012  Senate Community Affairs References Committee

Recommendation 13.62:

*The committee recommends that national model legislation for advanced care planning be developed, and that all governments pursue harmonisation legislation as a high priority.*

The Australian federal system is a barrier to national implementation
Nationally consistent approach

Threshold questions:

> Do we need legislation or should we leave it to the common law?
> Prescriptive vs flexible?
> Legislation vs guidelines?
What should be in it?

- Definitions – futility, end of life, life-sustaining treatment – include artificial hydration and nutrition?
- Scope of powers – consent to withdrawing and withholding treatment?
- Protections/immunities for practitioners?
- Substitute decision-making: who and on what basis?
- Prescribed forms or statement of values?
- Dispute resolution process – role for Tribunal, Courts, public advocate?
- Doctrine of double effect?
- Others?
References

Ashby M “How we die: a view from palliative care” QUT Law Journal 2016, 16, 5


Deeble Institute Improving end-of-life care in Australia Issues Brief No.19 14 December 2016

Scott I et al “Difficult by necessary conversations – the case for advance care planning” MJA 2013, 199: 662


Senate Community Affairs References Committee. Palliative Care in Australia. 2012


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