

Victorian assisted dying bill raises estate planning questions



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With “more people than not” wishing that the power of attorney came with the power to authorise euthanasia, families “should” be discussing euthanasia in end-of-life conversations.

The Victorian Upper House this week passed the voluntary assisted dying bill and could be set to make history. However, with this new legal territory comes a number of important considerations for families, experts have said.

Australian Unity Trustee's national manager of estate planning, Anna Hacker told Nest Egg that because the legislation requires that the person seeking doctor-assisted euthanasia has the mental capacity to undertake the decision, the decision cannot be made by an attorney, and it's crucial that families understand each other's needs and wishes.

She said that these conversations are necessary to prevent disputes over mental capacity by determining early on which situations would see the person wanting to access assisted dying.

"People are already making lists about the situations where they would want their attorney to turn off this machine... The problem is going to be that [if they are not on life support] they should have capacity so they can change their mind. It's about having that conversation with the family around them," Ms Hacker said.

"I think that it would add an extra level of conversation with family members... saying — okay, I've appointed you as my medical power of attorney. If there was a case where I was terminal and had six months [to live], and I've ticked all of my criteria, then I want to talk to you all about how this would be my decision.

"I don't want to have an argument when i have six months to live about this. In estate planning we always say, have those conversations earlier rather than later."

Ms Hacker also acknowledged that many with terminal or severe illnesses do not want to access assisted dying and that it is a deeply personal decision.

A number of people with disabilities have also spoken out about euthanasia, arguing the assumption that with severe disability comes a desire to die is not only offensive but inaccurate, as the late disability rights activist Stella Young wrote in 2013. Continuing, she said people with disabilities need to be supported to live full lives before the question of euthanasia is broached.

However, for those that do wish to access assisted dying, Sean McGowan, a financial planning and estate planning strategist with WLM Financial said they should have their estate plan "sorted out well before" they get to that point.

He said people need to have adequate wills in place and also understand that superannuation doesn't automatically direct to the estate.

He explained: "If you get to this point where you want to use these new rules if they get in place, you probably at that point are going to need a terminal illness condition of release in the superannuation.

“So rather than waiting to die to get your superannuation paid out, you're probably better having it paid out under a terminal illness benefit because it's tax-free. If you've got non-dependent beneficiaries and you pay them money from superannuation ... they can be up for 15 to 30 per cent tax on that money.

“You've really got to prepare for it. If you're looking at testamentary trusts, get them sorted out as part of the will, make sure your superannuation nomination reflects that and even think past that: who's the money going to go to and what's the best way to get it to them tax wise?”

Regardless of the legislation's outcome, Ms Hacker and Mr McGowan agreed that more Australians are seeking advice on this topic as our population ages.

Ms Hacker said: “The specifics of this legislation does come up in estate planning conversations... I have seen in the last decade more and more people that have been wondering about when it comes to end of life, appointing someone to act on your behalf and more people than not wish that they could give their attorney that power to end their life if there was no real enjoyment of life.”

However, she appreciates that the legislation cannot go that far due to the moral hazards attached, “but it's something that I'm hearing more and more... I do think it's something — especially with people as they are ageing, they want to make decisions on their own terms”.

She continued: “I think that this legislation is going to be welcomed, [and] it's going to be creating more conversations about: what can my attorney do? The reality is that the attorney can't do anything, but that conversation is going to keep continuing.”

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