LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON VOLUNTARY ASSISTED DYING BILL
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Submission Cover Sheet

Inquiry into the Voluntary Assisted Dying Bill 2023

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Archdiocese of Canberra and Goulburn Submission to the Select Committee on Voluntary Assisted Dying

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I thank the Legislative Assembly and the Select Committee for the opportunity to comment on the Bill currently before the Assembly. We anticipate that this Bill will generate robust discussion and highlight the diversity of views held, and often held passionately, by citizens of the ACT. Further I look forward to the opportunity to engage with the Select Committee during the hearings section of the Inquiry.

Introduction

The Catholic Archdiocese of Canberra and Goulburn in itself and through its agencies represents the largest non-Government employer in the ACT. Additionally, the Church, through its health and social welfare agencies, including Calvary ACT, Southern Cross Care, Catholic Health Care, Marymead Catholic Care and the St Vincent de Paul Society, as well as our network of parishes, serves very significant portions of the ACT Community – both Catholics, as well as those of other beliefs and none.

"The life and death of each of us has its influence on others" (Romans 14:7). The Church argues that human life in all its forms must be protected from conception until natural death. We argue this in alignment with the long tradition of Catholic doctrine but also in keeping with mainstream philosophy and human rights, in particular the underpinning construct of the Universal Declaration of Human Rights.

Additionally, the Church in a broad sense, and the Archdiocese directly in the ACT, offers tangible support and care to vulnerable peoples at all points in their lives but most acutely in the final phases of life to the point of death. We seek to reach out to the sick, the vulnerable and the dying.

Due to our active, practical, direct engagement with people in need and our long intellectual history in grappling with the fundamental questions of existence, we must state strongly and unambiguously that the legislation before the Assembly is morally and politically wrong. The deliberate and intentional taking of human life is always and everywhere wrong; state sanctioned killing or enabling of suicide is also wrong. Should the legislation pass, making the actions proposed in the Bill legal will not alter that they are morally flawed and contrary to human rights.

There is a further level at which we must oppose this legislation. The fundamental duty of Government, it has been argued, is to protect citizens from all forms of violence and to provide for them in their need, especially those who are most vulnerable.[1]

Enacting legislation that enables the state to participate in the intentional ending of a human life is not only morally wrong – it is contrary to the very foundations of civil society, the nature of Government. It is also contrary to the Universal Declaration of Human Rights.

"The true measure of any society can be found in how it treats its most vulnerable members"[2] which is certainly the case for those who face imminent death. The ACT (Self Government) Act Part IV S22 (1) states that "the Assembly has power to make laws for the peace, order and good Government of the Territory." It is our contention that no parliament or legislature can legitimately enact laws that have as their sole intent the end of life for citizens.

Nonetheless, the Church is a participant in civil society such that, while arguing that this proposal is simply wrong, we choose to be involved in the public discourse regarding the legislation. This proposed legislation seeks to re-write the social contract within our polity – that, it would be considered a given in democratic states that the role of Government and society is to protect the most vulnerable. It seeks to alter the understood obligations of all citizens, but especially those involved in the provision health and medical services whose primary obligations are to preserve life, then to care and, if possible, to cure. In contrast to this Bill, the Catholic Church through its various health and welfare agencies offers a powerful and consistent ethic of care and healing that is shared by the Australian Medical Association and the World Medical Association.[3]

These principles, we acknowledge, have been traduced in many jurisdictions, including each Australian State. Still, even by these standards the ACT Bill goes further in seeking to minimise and eliminate protections for the vulnerable and those whose very existence is precarious due to their health status. Most of our submission to this inquiry focuses on specific elements of the Bill; however, we believe it is important to state unambiguously our view that the Bill even should it become law is simply wrong. In the concluding section we offer proposals for amendment of the Bill.

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[1] Hobbes, T., *Leviathan* Penguin Classics, 2017.

[2] Quote variously attributed to Gandhi, but also in slightly different form, Hubert Humphrey, former President of the United States; was used in a speech to the UN Security Council by Ambassador Sir Matthew Rycroft 2015.

[3] See the Australian Medical Association Position Statement on Euthanasia and Physician Assisted Suicide (2016). Available at https://ama.com.au/position-statement/ euthanasia-and-physician-assisted-suicide-2016; World Medical Association, Resolution on Euthanasia (2013). Available https://www.wma.net/policies-post/wmaresolution-on-euthanasia/

Specific Issues

1. Use of 'regulations' to vary the Act

We are deeply concerned about the number of instances where variation of the Act is able to be accomplished by regulation rather than a legislative instrument. There are at least 34 such instances within the Bill. Particularly concerning is the provision in Part 5, Clause 84 on Eligibility for Authorisation. Where the Bill has established clear requirements for the qualifications of those involved in the requests and authorisation of euthanasia – already the most lax and flexible in the nation – to enable the requirements to be changed without public or Assembly scrutiny. Given the public discourse of the responsible Minister about seeking extremely open access to state-sanctioned killing, it must be assumed that this provision would be varied by Regulation at the earliest opportunity.

2. Section 6 Objects of the Act

The stated Objects of the Act make clear that its intent is to provide for the intentional ending of a person's life and to empower and protect those who choose to be involved in state-sanctioned killing.

These Objects are contrary to the Universal Declaration of Human Rights which declares that all persons have the right to life (article 3) and that the rights enshrined in the Declaration are inalienable and binding on Member States (preamble). While Article 30 of the Declaration makes clear that no State can enact provisions which limit or destroy the rights enumerated within the Declaration.

The ACT is not a signatory to the UDHR but Australia is; in fact, it was under Australian leadership at the United Nations that the Declaration was developed and passed by the General Assembly. It is our contention that this Bill is contrary to the Declaration and Australia's international obligations under the Declaration.

It should be noted that in the Explanatory Memorandum to the Bill there are references to the UN Human Rights Committee endorsing legislation such as this Bill; while these citations can be considered learned or scholarly opinions, they have neither the same weight as the Declaration itself, nor are they binding on signatories as is the case with the Declaration itself.

3. Section 7c Principles of the Act

The Bill suggests that it is both supportive of the 'fundamental importance' of human life and that it is consistent with human rights. Yet in this section of the Bill the principle and right of autonomy is presented as superior to and, it is implied, prevails over the fundamental importance of life itself, without which autonomy has no meaning. The Explanatory Memorandum goes further in arguing that individual autonomy is not only superior to the right to life but also to religious freedom and the obligations of conscience.

The position of the Catholic Church and its agencies and ministries is frequently misrepresented on this point. It is often presented that the Church is *pro-life* while other perspectives are described as *pro-choice*. This is erroneous. The Catholic Church throughout its long engagement with humanity and the existential questions faced by humanity has consistently argued that its position is both pro-life and pro-choice. We believe that free will is an essential dimension to what it means to be human. We also hold that, logically, the right to life is prior to and fundamental to all other rights. The rights are not incompatible; simply no right can be exercised if the right to life is not always and everywhere protected, even if an individual should choose otherwise for themselves. It is for this reason that societies, including the ACT, make such strenuous efforts to prevent suicide and even to punish those complicit in suicide.

The approach of the Catholic Church could be summarised as, *we live in order to make choices; given our specific belief that humanity is called to live a full and flourishing life, choices when well made, assist human flourishing*. Just as newborns are highly vulnerable and unable to care for themselves, enjoy particular protections and place obligations on each member of society; so too, those who are in the final stages of life whose situation may also make them highly dependent on others and whose situation places an obligation on each of us – individually and collectively.

End of life choices too must be respected: however, this Bill does not seek to enhance currently available end-of-life choices: to seek to be cured, to delay inevitable death, to seek palliative care or to cease medical treatment. This Bill does not increase or enhance the choice a person may make to access palliative care or curative options. The Bill does not seek to compel the ACT Government or the Health Directorate to ensure that everyone in the Territory who seeks palliative care as they would choose to receive it (generally preferred in the home) will be able to access it; nor does it seek to provide all options for choice for those facing life-threatening health conditions. These choices are not being enabled or enhanced. In fact, there seems little evidence in the Budget papers or forward estimates that the Government has plans to fulfil its 2020 election promises related to palliative care provision.

This Bill has as its object the legitimising of a choice to intentionally end life and to make society and specific health practitioners complicit in the intentional ending of life. As such it states to those already vulnerable and suffering that, *we will not stand with you as you enter the dark night of the soul, instead we offer further isolation and seclusion.*

4. Sections 10 and 11 Eligibility Criteria and Meaning of eligibility requirements

While opposing the very intent of the Bill we have specific and reasonable concerns about aspects of the eligibility under the Bill: the lack of a clinical determination regarding life expectancy; and, the ancillary risks posed by the loose residency requirements.

The eligibility requirements are actually intended to delineate who may not have access to this form of dying. They focus heavily on *voluntariness* and that the person has been diagnosed with a condition that is advanced, progressive and expected to cause death and which is causing intolerable suffering. However, this section of the Bill goes on to include among the basis for intolerable suffering, the treatments they are receiving, the anticipation that suffering *might* be caused by treatment options or might result in a medical complication.

Further the "advanced" criteria is considered to be established if:

- the individual's functioning and quality of life have declined,
- any available and acceptable treatments lose beneficial impact and,
- the individual is in the last stages of life.

As set out, this criteria it would seem could be met by any person of later age. Life itself is a self-limiting condition that is always terminal. For many people it includes decline where there are no available treatments, especially in the last stages of life. In the end, there is no cure for the natural end of life.

The eligibility options seek to cast the net as widely as possible to encompass as many people as possible including those who are not terminally ill. It is evident from the current elements included in the Explanatory Memorandum for the initial review of the Act that there remains an intent to extend the provisions of the Bill to minors; through Advanced Care Planning instruments, of requests for euthanasia prior to any terminal illness or incapacity situation – which in turn must mean a single request would be sufficient to enable a practitioner to administer the poison; and, to broaden further residence or association access.

The Explanatory Memorandum highlights that there is research suggesting any clinical determination of life-expectancy is arbitrary. What is not cited is the abundance of research and clinical studies which indicate that, broadly speaking, specialist clinical determinations are generally accurate. That, further, the accuracy increases with proximity to death and as treatment options become less effective. For this reason most medical practitioners are rightly cautious in predicting a time to death; they must generalise since the reaction of individuals to treatment options and connections with other dimensions of health are complex. This is not and cannot be reduced to an algorithm.

Our concerns about ancillary risks associated with eligibility involve the following:

The risk to a person who is not a resident of the ACT but who is deemed eligible under S11 f(ii) – that is they have a close association by reason of proximity or health practitioner connection etc. Under this provision, the person resident in another jurisdiction where stricter eligibility criteria apply could receive the 'approved substance' and, on taking it home for self-administration, be liable to the provisions in that jurisdiction with respect to both diagnosis, prognosis of time of death and security of the substance;

Risks to others, again outside the ACT of access the substance when it is not covered by the limited protections of this Bill;

Three recent occurrences in other jurisdictions arising in the introduction of VAD. The ACT has claimed that this jurisdiction has the opportunity to learn from others. These instances have occurred this year and do not seem adequately provided for in this Bill. In Western Australia questions have arisen about the eligibility of those seeking euthanasia to also be organ donors, which, of course, necessitates the place of death being a tertiary health facility and eliminates the option of self-administration. Secondly, in South Australia, when a prisoner who was deemed eligible for VAD, there were significant protests from his victims seeking that he not be considered eligible. Thirdly, in Queensland, a man *not* eligible for euthanasia accessed the substance prescribed for his partner knowing she would again be deemed eligible.

Learning from others does not only involve relaxing criteria but facing real world issues arising from the provisions created: how will the ACT deal with similar issues? Should the ACT Government only be reactive? Surely with an election in proximity to the intended commencement of the operations of this scheme, citizens have a right to know the views of their elected representatives on these and similar questions?

Further, should the Assembly be committed to the passage of a Bill such as this, it would seem to us that such a Bill should essentially mirror the provisions of NSW. Given the significant interchange between residents in the two jurisdictions, especially in terms of health care, that differing from NSW in such key matters as eligibility and enforceability is fraught with difficulty – as became evident during the COVID pandemic.

5. Part 6 Conscientious objections

Ss 94 and 95 of the Bill provide for conscientious objection, with Section 94 appearing to provide a wide-ranging set of objections that are supported by the proposed legislation. However, Section 95 demonstrates that those who have drafted the Bill and those who may vote for it in this form have an erroneous understanding of the very notion of conscientious objection.

Conscience is an intellectual, moral judgement that a particular course of action or omission is wrong and once arrived at, the conscience obliges a person to not undertake the course of action or to avoid the omission. It is intrinsic to persons and overrides all other determinations. The Catholic Church supports conscientious objection – even when, by other assessments the judgement is erroneous. A judgement of conscience obliges the person.

Likewise, a judgement of conscience cannot enable or empower the person who is obliged themselves to not act or to act in a particular way to engage in any activity contrary to that judgement. That is, they cannot refer the decision, act or omission to another. This would not be conscientious objection but cowardice based on distaste or disapproval.

Section 95 of the Bill obliges a health practitioner or health services to refer an individual to people who will assist in a process to deliberately end a person's life. This section prohibits the effective exercise of the conscience of a health practitioner or health service provider. This section provides that a conscience decision is a criminal offence; further, it is deemed to be a strict liability offence under the Bill. That is, the presumption of innocence is limited due to that fact that there is no need to prove fault. Simply exercising one's conscience in full is sufficient to be considered and penalised as a criminal.

6. Part 7 Obligations of Facility Operators

Somewhat ironically, the Bill is silent on the rights of facilities as such, though it chooses to impose obligations on them.

It is generally widely accepted that proprietors and operators of health, aged care and community care facilities are able to operate within their own ethical frameworks. No health facility offers all health services or treatment options and many choose to specialise in particular areas. All Catholic facilities operate under a Code of Ethical Standards that has made clear and explicit for over two decades that any choice, action or activity that has as its sole intent the deliberate ending of human life will not be undertaken or permitted within our facilities or by our services. Each employee of our health, aged care and community care services is bound by the Code of Ethical Standards as well as by their own professional Codes and their personal views.

It would seem evident that Catholic services and facilities are intended to fall under this section of the Bill. Under this section facilities operators are required to:

- Provide information about the 'care navigator service'
- Provide access to 'relevant people' who would not ordinarily be given access or credentials to function in their setting
- Facilitate the transfer of a person who seeks to engage with or undertake euthanasia
- Have a policy regarding euthanasia and how it will comply with the Bill or any subsequent regulations
- The policy must be published so that it will come to the attention of a resident or prospective resident
- Not withdraw or refuse to provide a care service based on the person's intention to access euthanasia.

The rights of conscience and, in our case, freedom of religion are severely constrained by the provisions of this Bill as it stands.

For clarity it is worth noting the following in response:

- Catholic facilities have long established ethical views which are widely known in the community and which have since 2001 in Australia been articulated unambiguously in the Code of Ethical Standards for Catholic Health and Aged Care Services and which apply in our community and welfare services as well.

- We have no objection to publishing a policy that reinforces these ethical standards and directs people to the Code for more extensive guidance.
- At no point will any patient or resident of a Catholic facility be denied care due to their making choices with which we disagree.
- Should a patient or resident be adamant in their choice, every effort will be made to transfer them to another facility that they identify as being willing and able to receive them.
- At no point will any Catholic facility allow or undertake any steps in the process of euthanasia.

An objective reading of the Bill as it stands suggests that the operators of facilities adopting such clear standards will be criminalised.

7. The VAD Board

In each other jurisdiction, from which the ACT Government claims to have learned, the equivalent public instrument described as the VAD Board in this Bill has a prospective role in assessing requests for euthanasia and ensuring that the eligibility provisions are met. In the ACT Bill this role is entirely limited to a retrospective role in examining matters only after death and even then in quite a limited fashion.

This is another instance where the Bill, flawed though it is, should mirror that of adjoining jurisdictions rather than seeking to expand the options for state-sanctioned killing and minimising any scrutiny whatsoever.

Conclusion Proposals for Amendments

As noted previously, we believe the Bill is wrong; in addition it has a number of flaws which have been explicated in the major section of this submission. That being noted, we propose the following amendments for the consideration of the Select Committee and the Assembly.

1. The Bill should broadly seek to replicate the NSW Act Voluntary Assisted Dying Act 2022 No 17 due to the porous and transferrable nature of ACT and NSW residents within the region.
2. Changes to the Bill/Act should be required only by legislative instrument, not be Regulation, albeit disallowable.
3. If the first suggestion is not accepted, clarify how the Bill is intended to operate in a cross border context: specifically how can a substance prescribed and provided in the ACT be transported and, potentially used in NSW where a person may not have a satisfied the provisions of the NSW Act? Would such a person or those enabling the actions be subject to prosecution under the NSW Act?

4. If such a Bill is to be passed there ought also be an amendment that attaches a requirement for full and adequate funding of palliative care including full funding of all beds at Clare Holland House; the Government meeting its (as yet unfulfilled) election promise for a hospice/palliative care facility in South Canberra; and, especially full and adequate funding of palliative care in the home.
5. That the provisions for conscientious objection be strengthened to recognise that a judgement of conscience would constrain the objector from conforming with any provision of this Bill.
6. Include a correct understanding of conscience and the judgements of conscience in the Act.
7. As a result of a correct understanding of conscientious objection, remove the criminal liability attached to such judgements of conscience.
8. The oversight by the proposed VAD Board ought be strengthened to include a prospective dimension as is required in all other Australian jurisdictions.

As a final comment, I would reflect that the Church stands constantly and unambiguously with the vulnerable, especially those nearing the end of their life. We will always respond to persons with compassion and care; we will walk with them in their final weeks, days and hours. We will celebrate and hold their life as precious. We will not turn our backs on them or suggest that their plight makes their life worth less. The value of every human life is not diminished due to frailty, disease, pain or suffering. These are intrinsic to being human and are part of living a full and rich life.

Thank you for the opportunity to make a submission to the Inquiry. I would appreciate the opportunity to elaborate on certain aspects and/or to clarify the submission for the Select Committee or answer any other questions during the public hearing phase of the Inquiry.

Archbishop Christopher Prowse
Catholic Archbishop of Canberra and Goulburn
8th December 2023