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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Anglican Diocese of Canberra and Goulburn

Submission to the Select Committee on the Voluntary Assisted Dying Bill 2023

Introduction

The Anglican Diocese of Canberra and Goulburn is grateful for the opportunity to make a submission on this proposed legislation. It does so mindful that it deals with matters of profound significance and commits to praying for members of the ACT Legislative Assembly as they exercise their weighty responsibilities.

Background

The Anglican Diocese of Canberra and Goulburn is one of the 23 Dioceses of the Anglican Church of Australia. Our diocese is a partnership of churches in 60 ministry units, numerous associated agencies and schools, covering most of south-east New South Wales, the eastern Riverina and the Australian Capital Territory (ACT). It stretches from Marulan in the north, from Batemans Bay to Eden on the south coast, across to Holbrook in the south-west, north to Wagga Wagga, Temora, Young and Goulburn.

Within the Australian Capital Territory the Diocese incorporates 21 Parishes with a total average weekly attendance of over 2500 persons. It has four schools with a total attendance of over 5000 students and has been selected as the preferred operator of a new school at Wright in the Molonglo Valley. It also exercises extensive welfare and justice ministries through Anglicare, participates in theological education through St Mark's National Theological Centre and public engagement and inter-faith dialogue through the Australian Centre for Christianity and Culture.

Principles

Inspired by the teaching and healing ministry of Jesus and in common with the broader Christian tradition the Diocese seeks to express a wholistic concern for human well-being in all dimensions – physical, mental, emotional, relational and spiritual. Allied to this is a deep conviction of the God-given dignity and sanctity of human life at all ages and stages. For

this reason, Christians have throughout history opposed the deliberate taking of human life through voluntary assisted dying.

This opposition was expressed in the following motion passed at the Diocesan Synod (the governing body of the Diocese, which includes over 200 lay and ordained representatives from Parishes and other ministries) when it met from September 8-10 this year:

In light of the introduction (and foreshadowed introduction) of Voluntary Assisted Dying laws throughout Australia by State and Territory Governments, this Synod:

a. Affirms its conviction that human beings are made in the image and likeness of God, and that life is a divine gift: sanctified by the incarnation, renewed by the resurrection, and eternally abounding in the new creation;

b. Proclaims the resurrection of Christ, whose Easter victory transforms our suffering, breaks the power of death and offers hope to the dying;

c. Asserts its principled opposition to Voluntary Assisted Dying, all other forms of Euthanasia, and all medical interventions whose purpose is to kill;

d. Commends the wisdom of medical experts who may advise when medical treatments become unduly burdensome;

e. Supports the already-existing legal rights of patients to refuse medical interventions, and to receive pain relief with palliative care which may unintentionally hasten death, and

f. Commits itself to the physical and spiritual care of the dying as a pastoral imperative of the Gospel.

In expressing these convictions, the Anglican Diocese of Canberra and Goulburn recognises that it serves an increasingly diverse ACT community. This is captured in our call to “engage a world of difference with the love and truth of Jesus”. Given the ongoing significance of faith, particularly for people who have arrived here from overseas in recent years, we believe this diversity is best described as ‘pluralism’ rather than ‘secularism’.

When it comes to legislating on matters of profound moral significance in a pluralistic society we believe the best approach is to recognise and embrace this diversity rather than to seek to subsume it within some more restrictive ideology. In practice this will mean allowing Canberrans to express their fundamental convictions, not just as individual employees or service providers but through the formation and maintenance of institutions and organisations which embody these convictions in communities of practice oriented to the well-being of the other.

Legislation

With respect to the proposed legislation, this means we must dissent at the fundamental level of principle. Should the legislation pass, we advocate for amendments that would strengthen safeguards for the most vulnerable and also ensure that Canberrans from all backgrounds can continue to care for the sick and dying from their deeply held convictions.

Specific Issues

Eligibility criteria to access VAD

Sections 10, 11 and 12 of the Bill set out the requirements for an individual to access voluntary assisted dying. Broadly speaking, an individual meets these requirements if they are an adult, have been diagnosed with a condition that either on its own or in combination with other condition(s) is advanced, progressive and expected to cause death, and they are suffering intolerably in relation to the relevant conditions.

There are two areas of particular concern. First, unlike other jurisdictions in Australia there is no 'time to death' requirement, ie. no requirement that a medical practitioner certify that death is likely to occur within a particular period such as 6 or 12 months. In practice, this would seem to allow for a situation of eligibility by diagnosis rather than eligibility by assessment whereby eligibility is determined by the existence of a particular condition rather than by the particular course it is taking in the life of an individual. It has been suggested that the absence of a time to death requirement is to allow discussion of voluntary assisted dying prior to a person becoming incapacitated; however it is difficult to understand this argument given that Sections 13 to 15 presume that an individual can make a first request to access voluntary assisted dying prior to being assessed as to whether they meet the eligibility requirements.

Second, amongst the criteria listed in the Bill as a sufficient basis for deciding that an individual is suffering intolerably is the anticipation or expectation, based on medical advice, of suffering that *will or might* be caused by the relevant condition(s) or associated treatment. Once again, this seems to push in the direction of eligibility by diagnosis, especially given the difficulty of determining in advance how a particular condition will progress in the life of an individual.

Given the complexity of these matters and the proximity of another jurisdiction should the Assembly be committed to the passage of a Bill such as this, it is argued that such a Bill should essentially mirror the provisions of NSW Legislation.

Health Service provider obligations including provisions for conscientious objection

Sections 94 and 95 set out the provisions for conscientious objection by a health practitioner or health service provider. The former may refuse to act as a co-ordinating practitioner, provide certain advice to a co-ordinating or consulting practitioner, supply an approved substance or be present when an approved substance is administered by or to an individual. The latter may refuse to participate in a request and assessment process, participate in an administrative decision or to be present when an approved substance is administered by or to an individual.

While these provisions are welcome insofar as they go there are two specific concerns. First, they seem to assume that conscience is expressed solely through the commission or avoidance of individual acts and not also through participation or non-participation in a particular system or organisation. This is addressed further below when considering the role of facility operators.

Second, under Section 95 (2) where a health practitioner or health service provider refuses to do one of these actions, they must give the individual, in writing, the contact details for the approved care navigator service or face sanction. It is difficult to see how this is consistent with the statement in 'Summary of the ACT's framework for voluntary assisted dying' that "the objecting health professional is not required to declare their objection". Furthermore, given that under the relevant Act 'health service provider' can refer to a variety of practitioners including nurses and pharmacists one can envisage situations where employees will be asked by their employer to undertake actions that go against their conscience, where there is an inherent power imbalance arising from the nature of the relationship. To avoid such situations, there should be provision in the legislation for health practitioners or health service providers to pro-actively express their conscientious objection to participation in voluntary assisted dying and an obligation on the part of employers to facilitate such a process and not discriminate against employees on the basis that they have chosen to exercise this right.

With respect to facility operators the summary document states that "All care facilities may decide their level of involvement with voluntary assisted dying, as long as they do not hinder access to voluntary assisted dying and comply with the following minimum standards." However Part 7 of the Bill speaks only of the "Obligations" of facility operators. There is no explicit right, as is the case in other jurisdictions, for a facility operator to withdraw, in part or in full, from the voluntary assisted dying process.

For example, under Section 11 of the South Australian legislation a facility "has the right to refuse to authorise or permit the carrying out, at a health service establishment operated by the relevant service provider, of any part

of the voluntary assisted dying process in relation to any patient at the establishment (including any request or assessment process under this Act)." The same section makes provision for a person at such a facility who wishes to access voluntary assisted dying to be transferred to another facility where they may do so.

Section 101 of the ACT Bill envisages circumstances where an individual may be transferred from a facility if "the facility operator decides it is not reasonably practical for a relevant person to have access to the individual at the facility." It is difficult to see why such a transfer can be contemplated for reasons of practicality but not for reasons of principle.

Allowing facility operators to withdraw, in part or full, from the voluntary assisted dying process reflects two principles. First, it acknowledges the pluralism and diversity of the ACT by embracing this diversity not just at the level of individual actions but also through communal practice and culture. It affirms, for example, that faith traditions have the right and the obligation to express their care for the sick and dying by establishing institutions that are consistent with their fundamental convictions, even as they recognise those convictions may not be shared by all. It notes that individuals who share those convictions will be more likely to engage in the care of the sick and the dying if they can do so in contexts where they will not find themselves under pressure to violate these convictions. Given that Australia is increasingly drawing its health and aged care workforce from people of Cultural and Linguistically Diverse backgrounds for whom religious faith is a key motivator there is a public policy imperative for preserving and reflecting this diversity at the organisational level.

Conclusion

Thank you once again for this opportunity to make this submission on this proposed legislation. Regardless of the outcome, the Anglican Diocese of Canberra and Goulburn remains committed to embracing and affirming the dignity and the value of persons nearing the end of their earthly life and providing them with wholistic pastoral care. We do so for many reasons, not least because in encountering them we may find ourselves encountering our Lord Jesus Christ Himself.

Bishop Mark Short

Anglican Diocese of Canberra and Goulburn