LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON VOLUNTARY ASSISTED DYING BILL
Ms Suzanne Orr MLA (Chair), Ms Leanne Castley (Deputy Chair),
Mr Andrew Braddock MLA, Mr Ed Cocks MLA, Dr Marisa Paterson MLA

Submission Cover Sheet

Inquiry into the Voluntary Assisted Dying Bill 2023

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The Chair
Voluntary Assisted Dying Committee
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: lacommitteeVAD@parliament.act.gov.au

Dear Chair,

HOPE is pleased to present a submission to the Voluntary Assisted Dying Committee into the Provisions of the *Voluntary Assisted Dying Bill 2023*.

We thank the Committee for granting us an extension to 13 December 2023.

HOPE: Preventing Euthanasia and Assisted Suicide Ltd is a coalition of groups and individuals who oppose the legalisation of euthanasia and assisted suicide. We believe that euthanasia and assisted suicide are contrary to human rights and the obligations of a state to its most vulnerable.

The Committee may wish to visit the HOPE: No Euthanasia website which contains many more resources about the issue of euthanasia and assisted suicide: http://www.noeuthanasia.org.au/

We trust this submission will assist the Committee with its deliberations to ensure that the most vulnerable in our community will not be put at further risk of marginalisation, and instead receive the priority care that is characteristic of strong governments and compassionate communities.

We would be pleased to speak with the Committee in relation to any aspect of this Submission.

Yours sincerely,

Branka van der Linden

Director
www.noeuthanasia.org.au

SUBMISSION TO THE INQUIRY INTO THE *VOLUNTARY ASSISTED DYING BILL 2023*

13 December 2023

Introduction

It is our considered position that the *Voluntary Assisted Dying Bill 2023* ("the Bill") should be rejected by the ACT Legislative Assembly. Legislating to allow deliberate killing is inherently unsafe and the drafting of this particular Bill does nothing to mitigate, and much to exacerbate, the risks that vulnerable people could be killed wrongfully in the ACT.

The legal change to the criminal law being proposed by this Bill is profound and grave. It removes the prohibition against committing homicide for some citizens in society (namely physicians and other health professionals) by overturning the long-held prohibition in the criminal law and the medical profession against physicians killing their patients or assisting them to suicide. In the words of one commentator, a law which allows euthanasia and assisted suicide is one that 'authorises private citizens to kill other citizens with almost no judicial oversight.'[1] The Legislative Assembly should not pass such a law unless it can satisfy itself and the community that allowing euthanasia and assisted suicide in some cases will never lead to the death of an individual who would not otherwise have chosen to be killed. The onus lies on those proposing this radical change to the criminal law to demonstrate that such deaths will not occur; thus far, they have been unwilling or unable to do so.

The availability of assisted suicide is a blunt instrument that treats each person the same and does not take into account the differentiating vulnerabilities of members of the community. As has been stated by Baroness O'Neill, a member of the House of Lords during debates in the United Kingdom on this issue: "Legalising 'assisted dying' places a huge burden on the vulnerable, let alone the vulnerable and depressed … Laws are written for all of us in all situations – not just for the unusually independent."

Citing a letter from Lady O'Neill, Lord Alton of Liverpool articulated the disproportionate threat to the less independent as follows:

> *"Legalising 'assisted dying' amounts to adopting a principle of indifference towards a special and acute form of vulnerability; in order to allow a few independent folk to get others to kill them on demand, we are to be indifferent to the fact that many less independent people would come under pressure to request the same."*[2]

Proponents of the Bill claim that it is restricted to only those with terminal illnesses who are suffering unbearable pain, and that only a small number of people will make use of the laws. However, once the law is changed for one group of people in society, it is only a matter of time before it is seen to be

[1] https://mercatornet.com/euthanasia-think-hard-theres-no-going-back/75829/

[2] Accessed at https://publications.parliament.uk/pa/ld200506/ldhansrd/vo060512/text/60512-24.htm

discriminatory to deny others in society to also avail themselves of the perceived benefits of the law. If the rationale for this change in the law is patient autonomy and a duty to relieve suffering (which underpins the arguments of proponents of the Bill), it is difficult to logically argue for its limitation to those with terminal illnesses and not others who are also suffering, such as people with chronic illnesses or disabilities. In jurisdictions that have legislated to remove the prohibition on doctors killing their patients, the argument has moved quickly to become one of equal access and 'discrimination', where whole categories of society are seen as being 'denied' access to something that has come to be characterised as a 'right'. Inevitably the law expands.

The history of euthanasia and assisted suicide in many countries where it has been legalised has been characterised by bracket creep. After legalising euthanasia and assisted suicide, these jurisdictions subsequently pass legislation to liberalise existing laws. For example, the experience in Canada illustrates how quickly the laws can be expanded. Its euthanasia and assisted suicide laws came into operation in 2016, and initially allowed for terminally ill patients whose death was reasonably foreseeable to access their regime. This has now been expanded in 2021 to allow those with chronic illnesses but who do not have a terminal illness to also access the scheme. In 2024, euthanasia and assisted suicide will be extended to those with mental illness only.

As described by Professor Law Neil Foster:

> *"However carefully crafted the limits of a piece of legislation are, there will be people pushing the limits, and an emotive case made for the next 'liberalisation' of the law to relieve some new type of suffering, or someone who just falls outside the current guidelines. The fact is that some moral decisions do require a clear, 'black line' rule – and once this line is crossed, there is no logical stopping point to expansion. If this sounds like a 'slippery slope' argument, it is; a 'slippery slope' argument of the sort that is perfectly valid".*[3]

It is our considered view that there is no safe way to legalise euthanasia and assisted suicide, and as such, we oppose the Bill in its entirety.

However, if the ACT government is committed to the passage of these laws, then we recommend that certain provisions contained within the Bill should be amended or deleted.

In this submission, we refer to the term 'euthanasia' to describe the practice of a physician or other health professional ending the life of a patient at the patient's voluntary request, and 'assisted suicide' to describe the practice of a physician or other health professional prescribing a lethal substance to a patient at their voluntary request, in order that the patient may end their own life. These terms represent accurate terminology to describe what is being proposed by the Bill and is preferable to the euphemism of 'voluntary assisted dying,' which masks and obfuscates the reality of what is being proposed by the Bill.

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[3] Neil Foster, "Euthanasia and Assisted Dying: the Law and Why it should not change", accessed here: https://lawandreligionaustralia.blog/2018/05/10/euthanasia-and-assisted-dying-the-law-and-why-it-should-not-change/

Specific concerns with the *Voluntary Assisted Dying Bill 2023*

1. Eligibility criteria

Sections 10 to 12 of the Bill outline the eligibility requirements for a person to access euthanasia and assisted suicide. These are much broader than any other jurisdiction in Australia.

Unlike euthanasia and assisted suicide laws in other states around Australia, this Bill does not include a stipulation for the patient's life expectancy.

To qualify, the person must be an adult with a medically diagnosed, advanced, and progressive condition that is expected to lead to death. Additionally, the person must be experiencing unbearable suffering due to this condition.

Section 11(4) defines ***advanced*** as follows:

(a) The individual's functioning and quality of life has declined
(b) any treatments that are available and acceptable to the individual lose any beneficial impact; and
(c) the individual is in the last stages of their life.

In addition, the Bill considers a person to be suffering intolerably if they anticipate, based on medical advice, that they will or may experience pain due to their condition or its treatment.

Taken together, these provisions result in a very wide eligibility criteria, making many elderly – but not necessarily terminally ill – individuals in the ACT eligible for euthanasia and assisted suicide.

The eligibility requirements in sections 10, 11 and 12 are similar to the eligibility requirements under the expanded regime in Canada. These, however, are the starting point for the ACT. Given that the first review of the Act, in three years' time, will examine eligibility (including advanced care planning), it is not unreasonable to presume that the ACT will follow Canada's trajectory, where there has been a considerable increase in the numbers of people dying by euthanasia and assisted suicide in every year of its operation.

In 2022, 4.1 per cent of all deaths in Canada were attributed to euthanasia and assisted suicide, according to figures provided in the latest annual report on euthanasia statistics, released by the country's health ministry.

This equates to 13,241 deaths – 36 people per day or one every 40 minutes – and represents a significant 31 per cent increase from the previous year.

2. Conscientious objection

Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR).

Article 18(3) of the ICCPR provides that 'everyone shall have the right to freedom of thought, conscience and religion' and provides that this freedom 'may be subject only to such limitations as are prescribed by law and are necessary'.

Sections 94 and 95 of the Bill detail the right of healthcare practitioners and providers to conscientiously object to participating in any part of the euthanasia and assisted suicide process. This includes opting out of acting as a coordinating practitioner, offering advice, providing or being present during the administration of an approved substance for euthanasia or assisted suicide.

Section 95 of the Bill however mandates that a practitioner or provider who chooses not to participate **must nevertheless provide the individual with written contact details for an approved care navigator service or face penalties.**

For those health practitioners who hold a personal belief that it is always wrong to take a human life, these provisions of the Bill will prove to be extremely problematic. Requiring that they take part in any part of the process of euthanasia or assisted suicide represents an unjust imposition on their right to freedom of thought, conscience and belief.

As such, a doctor, nurse practitioner or relevant health professional should have the right to refuse to participate in any part of a patient's death, including the provision of information about the voluntary assisted dying navigator service or other details about whether a patient may find assistance to die. This requirement in section 95 that requires the provision of information about euthanasia and assisted suicide should be deleted. Patients in Canberra have numerous ways in which they can access information about euthanasia and assisted suicide, without having to impose on the consciences of health professionals who are opposed.

The Bill also requires care facilities to allow every stage of the euthanasia and assisted suicide on site, even if the facility itself objects (Part 7 of the Act).

Notably, the Bill imposes a penalty of up to $11,000 for those institutions that do not allow reasonable access to those who want to enter the facility for the purpose of engaging in the process. This penalty is much higher than the penalties for non-compliance with most other aspects of the euthanasia process.

Individuals have the right to freedom of conscience and religion, but to fully exercise these rights, the freedom to associate with institutions that uphold these values is also essential. This is especially true in the context of religious freedoms.

Faith-based residential aged-care facilities should not be obligated to permit euthanasia or assisted suicide on their premises. Forcing these institutions, along with their owners, operators, and residents, to go against their core beliefs is a breach of the freedoms of belief and association. These facilities are often chosen by residents and their families precisely for their commitment to the sanctity of life at all stages. It is crucial that faith-based aged-care facilities maintain the right to

assure residents and potential residents that they will not participate in or allow euthanasia and assisted suicide on their premises.

The Bill seeks to mandate that religious care facilities allow medical practitioners to carry out all aspects of euthanasia and assisted suicide on-site, contradicting the duty of care owed to their residents. It requires that doctors and medical professionals, who do not have regular involvement in residents' care or any connection to the facility, be permitted to facilitate residents' deaths without even notifying the institution. This approach infringes upon the rights of the residents and staff, many of whom choose to be part of a faith-based institution because of its ethos and values.

We strongly recommend that these provisions be amended to remove any requirement on faith-based institutions or other institutions that are opposed to euthanasia and assisted suicide to have to facilitate or take part in any aspect of the process of euthanasia and assisted suicide.

3. Doctors, nurse practitioners and relevant health practitioners may initiate discussions about euthanasia and assisted suicide with a patient

Section 152 of the Bill allows doctors, nurse practitioners and relevant health practitioners to initiate discussions about euthanasia and assisted suicide with individuals.

We recommend that they be amended to strictly prohibit doctors, nurse practitioners or other relevant health practitioners from initiating conversations about euthanasia or assisted suicide with individuals. Such restrictions are a crucial safeguard. They acknowledge the vulnerable state of critically ill patients, the inherent imbalance of power in the doctor-patient relationship, and the considerable influence doctors can wield over their patients' decisions. There's also the understanding that any course of action outlined by a doctor might be perceived by the patient as an endorsement or the most appropriate path to take.

Health care practitioners are prohibited from doing so under the Victorian *Voluntary Assisted Dying Act 2017*.

4. A person can make a euthanasia or assisted suicide request either in writing, orally, or by communicating in any other way the individual can

The Bill should be amended to provide that if a person makes a request for euthanasia or assisted suicide in a way that is not in writing (for example by way of a gesture or other signal), there should be an audio-visual recording made of the person making the oral request or giving the gesture or other signal. Otherwise, it is difficult to determine how such a request could be verified or challenged. This would not be an onerous obligation, given the prevalence and ready availability of smartphones.

5. The Bill imposes penalties for trying to coerce someone away from a euthanasia or assisted suicide request

Like other states, the Bill includes a penalty for coercing a person towards euthanasia and assisted suicide.

Unlike most other states, however, it also includes a penalty for coercing someone to revoke their request for euthanasia or assisted suicide. A person, including a close friend, family member, or religious or spiritual advisor who tries hard to persuade their loved one away from choosing death could face a penalty of up to $11,000 if such behaviour was deemed to be coercive.

It is not clear how coercion would be defined or interpreted. Would a palliative care specialist, who in the normal course of events, responds to a request for hastened death with a further probing and questioning of the source of the request, deemed to be engaging in coercion? Would a religious leader who advises a person that suicide is sinful be deemed to be engaging in coercion?

This provision risks stifling discussion and genuine interactions between individuals and their families and health professionals, and funneling them towards euthanasia and assisted suicide instead.

6. The Bill has the lowest threshold for decision making capacity in the country

The Bill specifies that a person should not be refused eligibility for euthanasia and assisted suicide for a lack of decision-making capacity unless "all practicable steps to support them to make decisions have been taken." Notably, there is no requirement to give them "all practicable steps" to access palliative care or other support.

The Bill also provides that just because a person does not have decision-making capacity for another decision (for example, in relation to their financial affairs or other decision), does not mean they do not have decision-making capacity to ask for lethal drugs.

In addition, the Bill also states that if a person moves between periods of having and not having decision-making capacity, they should be given the opportunity to make a decision when they have capacity.

These provisions lower the bar for medical consent and risk a person making a decision when they have limited capacity to understand what is going on.