



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON VOLUNTARY ASSISTED DYING BILL

Ms Suzanne Orr MLA (Chair), Ms Leanne Castley (Deputy Chair),

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Submission Cover Sheet

Inquiry into the Voluntary Assisted Dying Bill 2023

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Plunkett Centre for Ethics

A joint centre of Australian Catholic University, located at St Vincent's Hospital in Sydney

- 1 As Acting Director of the Plunkett Centre, I write as someone who is opposed to the legalization of assisted suicide, who fears that once it is legalized it will be impossible for legislators to make it available to some but not to others, and who thinks that doctors should never deliberately bring about the death of any individual.¹
- 2 **Preliminary:** I urge you to consider calling the practice which you intend to legalize 'assisted suicide'. I understand the reasons for using the euphemism (in particular, that this has been helpful to those who support the legalization of the practice, and that the circumstances in which someone undertakes *unassisted suicide* can be tragic), but it would be admirable of the ACT to follow the practice of both *supporters and opponents* in the US who all call it what it is: physician-assisted suicide.
- 3 **Re objects:** I recommend that you introduce something into this Bill which makes good of your promise that one Object of the Bill is to protect individuals from coercion and exploitation. I submit that there is nothing substantial in the Bill to achieve that Object. How would one ever know if the individual had been subject to coercion or exploitation, particularly since mental suffering is countenanced as an 'eligible' form of suffering.
- 4 **Re eligibility:** I recommend you revise S 11 (1) (b) to limit eligibility to those likely to die within a finite period (say, 6 months). Otherwise just about everyone over a certain age will meet this requirement (particularly given that subsection (3) includes 'mental' suffering amongst the kinds of suffering that make one eligible. Remember that, when physician-assisted suicide was first legalized in jurisdictions around the world, it was because it was thought that some forms of *physical pain* and discomfort were unrelievable.

¹ See Bernadette Tobin: It's inevitable that rules on euthanasia will be expanded. *The Australian*, 10 November 2021. Attached as an Appendix

- 5 **Re Notice of death:** As drafted currently, the Bill will embed in legislation a falsehood, ie that ingestion of a poison is not the cause of death (S 77 (2) (a) and (b). That is very regrettable. It is however welcome that the ingestion of a poison will be noted as the *means* of death. But the Bill must require that statistics can be both kept and regularly reported to the public on the number of deaths which occur ‘in this manner’. It is not clear to me that the Bill would require this.
- 6 **Re requiring institutions to give access to persons who will administer the substance.** I urge you to follow the lead of Victoria, Western Australia and Tasmania. In each of those jurisdictions VAD legislation has not only legalized assistance in suicide to eligible persons but also recognized the community value of there being a variety of hospitals, of hospices, of aged care facilities, etc, some of which have institutional codes of ethic according to which doctors should never, and will never in their institutions, deliberately bring about the death of a patient or resident. This is what any genuinely liberal, pluralist, democratic society should do, and I urge you to accommodate that pluralism in your Bill. For this reason S 100 should be revised along the lines of the Acts in Victoria, Western Australia and Tasmania.
- 7 **Re review of the Act.** I urge you to delete (a), (b) and (c), but in particular (b) and (c). They will become de facto promises for how eligibility should be widened to make it available to children and to those who have lost decision-making capacity. Indeed it would be inconsistent to limit it to children with decision-making capacity and then to make it available to people who have lost decision-making capacity (but express a desire in an ‘advance directive’). Nothing more clearly shows that once a Bill such as this is enacted, there is no principled way of limiting access to some citizens but not to others. Two things will go: the voluntariness (as in authorizing it in an advance directive) and prognosis (as it limiting it to people with life-limiting illness).

Dr Bernadette Tobin AO

13.12.23


BERNADETTE TOBIN

It's inevitable that rules on euthanasia will be expanded



By **BERNADETTE TOBIN**
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To legalise so-called voluntary assisted dying is to legalise a practice that predictably and inevitably expands. There is plenty of evidence of bracket creep already in Australia and overseas.

From 2017 in Victoria through to this year in Queensland, the circumstances in which this service has been made available have widened as bills have been debated in state jurisdictions.

So, too, in NSW from 2017 when the state parliament debated the Khan Bill to this year when it debates the Greenwich Bill: once again the conditions under which the service is to be available have expanded. And there's plenty of evidence of the same phenomenon from Europe and Canada.

Expansion should not surprise us. More important, however, than acknowledging these empirical facts is understanding why they have occurred.

There are, I think, two forms of pressure that cause this by now familiar expansion of the laws. I will call the first pressure “choice will not be necessary” and the second pressure “choice will be the only thing that’s necessary”.

The “choice will not be necessary” pressure works like this. The patient chooses VAD. Then two doctors assess the person’s eligibility: a medical condition from which the patient will likely die soon, from which the patient is suffering intolerably. The doctors must judge whether these criteria are met. But, if someone else meets these criteria, why will choice be necessary? Why not expand the availability to people who meet these eligibility criteria but who cannot choose?

The pressure to expand availability in this direction can be seen in the arguments of those who say euthanasia should be made available for newborn babies (as in The Netherlands) and/or to people with dementia (as in Canada).

Indeed, years ago the late Dr Rodney Syme, a proponent of these laws, predicted that once the service was legally available to those who could choose it, society might come to think that it would be unfair if it were not available to people who could not choose it. His reference was to people with dementia. Thus the “choice will not be necessary” prediction.

The “choice will be the only thing that’s necessary” pressure goes in the other direction. A patient chooses VAD. Then the doctors must assess the patient’s eligibility. But the doctors, understandably, are likely to shy away from making what is mostly a medical judgment (that the patient meets the eligibility criteria) and prefer to rely on the actual choice of the patient.

The pressure to expand availability in this direction to anyone who chooses can be seen in Canada, where the requirement that death must be reasonably foreseeable has been dropped on the grounds that requirement discriminates against people with serious disabilities who are not terminally ill. Thus the pressure towards “choice will be the only thing that is necessary” prediction.

These two forms of pressure, which seem to go in opposite directions, in fact share an assumption: that we can know when a life is not worth living.

In the former case, that assumption is made “objectively” by others. In the latter case, that assumption is made “subjectively” by the person themselves.

This is why most of the debate about adequacy of the safeguards in these bills misses the point. However humane one's motives in supporting these laws, the likelihood of the criteria of eligibility being expanded cannot be set aside as though it were mere panic-mongering.

Parliamentarians, in framing laws for the wellbeing of everyone in the community, have a responsibility to deepen and widen their thinking.

The social policy before them is not simply a matter of how best to ensure that people do not die in unrelieved suffering. It is also a matter of how to protect the lives of those who, on their own or at the behest of others, have come to think their lives are not worth living. Their existential demoralisation is a challenge to us all.

Yes, I'm a Catholic, so it will be said I'm trying to impose my religious beliefs on those who don't share them. Well, any reasonable religion holds out its social teachings as matters that are apt for rational assessment.

But, that said, there is nothing religious in the claim that expansion of these laws is predictable and inevitable.

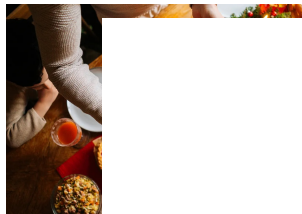
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