

Medical Services (Dying with Dignity) Bill 2014

Senate Committee Hearing – Melbourne - 15 October, 2014

Supplementary Submission by the Australian Family Association

1. Palliative care:

- Should not include euthanasia or assisted suicide. Palliative Care Australia believes:
“Euthanasia and physician assisted suicide are not part of palliative care practice.” (see <http://www.palliativecare.org.au/Portals/46/PCA%20Voluntary%20Euthanasia%20and%20Physician%20Assisted%20Suicide%20Position%20Statement.pdf>)
- If euthanasia/assisted suicide were legalised that would undermine the ethic of palliative care and caring for the vulnerable and there is a danger that there would be reduced investment in improving palliative care by research and clinical trial nor in increasing the availability and access to palliative care. Availability and accessibility of palliative care is an essential component of care for those facing death. In Australia the number of full time palliative care specialists is not at the level needed for reasonable provision of service as recommended by the ANZ Society of Palliative Medicine or by Palliative Care Australia. This is a serious issue that needs to be addressed.
- Claims that palliative care in the Netherlands and Belgium since legalisation of euthanasia has not lagged behind countries that have not legalised euthanasia state on the face of the record that **euthanasia is part of palliative care**. A 2013 report in the European Journal of Palliative Care on palliative care in the Flanders region of Belgium openly reports on “...the growing involvement of palliative care professionals and teams in the accompaniment of euthanasia.” The report also states that: “Today, one in two non-sudden deaths in Flanders occurs with the support of specialist palliative care professionals, whether within mobile home care teams, hospital support teams (which are available in every hospital), hospital palliative care units (there are 29 in the region totalling 209 beds) or through ‘reference persons for palliative care’ in homes for the elderly.” (see http://www.palliatief.be/accounts/143/attachments/Publicaties/ejpc_20_6_vdb_am_md_gh.pdf) Euthanasia is becoming or is already embedded in palliative care. The report states that one in two, that is half, 50%, of euthanasia or assisted deaths (“non-sudden deaths” ie planned) in Flanders are facilitated by or carried out by specialist palliative care specialists.

2. Constitutional issues –

- Criminal law in Australia is a state matter. Federal criminal laws relate to offences by federal employees or involving international crime.
- The proposal for a federal law to legalise euthanasia/assisted suicide involves overriding the criminal laws of all states, which laws prohibit euthanasia and assisted suicide. Numerous euthanasia bills have been consistently rejected by state parliaments.

Euthanasia Bills rejected by Australian states since 2002:

New South Wales

Voluntary Euthanasia Trial (Referendum) Bill 2002

Voluntary Euthanasia Trial (Referendum) Bill 2003

Rights of the Terminally Ill Bill 2013 (defeated in May 2013 in the Legislative Council, 23 votes to 13).

Western Australia

Voluntary Euthanasia Bill 2002

Voluntary Euthanasia Bill 2010 (defeated September, 2010, 24 vote to 11)

Victoria

Medical Treatment (Physician Assisted Dying) Bill 2008 (defeated September, 2008, 25 votes to 1)

Tasmania

Dying with Dignity Bill 2009

Voluntary Assisted Dying Bill 2013 (defeated in the Legislative Assembly in September, 2013, 13 votes to 11)

South Australia

Dignity in Dying Bill 2002

The Voluntary Euthanasia Bill 2006

Voluntary Euthanasia Bill 2007

Voluntary Euthanasia Bill 2008

Voluntary Euthanasia Bill 2010

Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill 2010

Voluntary Euthanasia Bill 2012 (defeated on the 14th of June 2012 by the margin of 22 to 20 votes in the Legislative Assembly).

Medical Defences Bill 2012

- It is a highly artificial construct to define as a “medical service” the act of killing a patient or assisting a patient to kill him/herself. It is contrary to what to date has been the service and responsibility of the practice of medicine which is to seek to heal or make well, to alleviate the pain and distress of illness and disease. It has never been understood or accepted that to kill the patient is a way to achieve this. It is questionable whether euthanasia and assisted dying would come within the meaning of “medical service” in Section 51 (xxiiiA) of the Constitution to provide a head of federal power under which to legislate.

3. Professional bodies – euthanasia and assisted suicide are against the codes of ethics of peak medical bodies:

World Medical Association:

“Adopted by the 53rd WMA General Assembly, Washington, DC, USA, October 2002 and reaffirmed with minor revision by the 194th WMA Council Session, Bali, Indonesia, April 2013

Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient’s own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.

The WMA similarly opposes assisted suicide:

Physicians-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. Where the assistance of the physician is intentionally and deliberately directed at enabling an individual to end his or her own life, the physician acts unethically. However the right to decline medical treatment is a basic right of the patient and the physician does not act unethically even if respecting such a wish results in the death of the patient.

BE IT RESOLVED that:

The World Medical Association reaffirms its strong belief that euthanasia is in conflict with basic ethical principles of medical practice, and

The World Medical Association strongly encourages all National Medical Associations and physicians to refrain from participating in euthanasia, even if national law allows it or decriminalizes it under certain conditions.”

From - <http://www.wma.net/en/30publications/10policies/e13b/> .

After the Second World War, and primarily because of human rights abuses by doctors in Nazi Germany, the World Medical Association adopted two modernised forms of the Oath - the Declaration of Geneva in 1948 and the International Code of Medical Ethics in 1949.

The Declaration of Geneva states, 'I will maintain the utmost respect for human life from the time of conception' and the International Code of Medical Ethics says that 'a doctor must always bear in mind the obligation of preserving human life from the time of conception until death'.

b)The Australian Medical Association: Although no longer has a position statement specifically on euthanasia still makes reference to the WMA position statement. See <https://ama.com.au/codeofethics> (reference 2)

c)The Australian and New Zealand Society of Palliative Medicine position statement of 31 October, 2013:

“The purpose of this position statement is to state that:

(a) The discipline of Palliative Medicine does not include the practice of euthanasia or assisted suicide;

(b) ANZSPM endorses the World Medical Association Resolution on Euthanasia, adopted by the 53rd WMA General Assembly, Washington, DC, USA, October 2002, which states:

"The World Medical Association reaffirms its strong belief that euthanasia is in conflict with basic ethical principles of medical practice, and The World Medical Association strongly encourages all National Medical Associations and physicians to refrain from participating in euthanasia, even if national law allows it or decriminalizes it under certain conditions."

(c) ANZSPM opposes the legalisation of both euthanasia and assisted suicide.”

d)British professional medical bodies:

“The opposition to euthanasia is strongest amongst doctors who work most closely with dying patients and are most familiar with treatments available. One of our members is the **Association for Palliative Medicine of Great Britain & Ireland**, which represents over 800 UK specialists in palliative care. Well over 90% of its members are strongly opposed to euthanasia. The **British Medical Association (BMA)**, the **Royal College of Physicians (RCP)**, the **Royal College of General Practitioners (RCGP)**, the **Royal College of Anaesthetists**, the **Royal College of Surgeons of Edinburgh**, The **Royal College of Nursing** and the **British**

Geriatric Society also remain strongly opposed to euthanasia.”

(<http://www.carenokilling.org.uk/about/faqs/>)

4. The Bill is not restricted to the dying nor to persons experiencing unbearable pain or suffering which are the usual reasons put forward for requesting euthanasia or assisted suicide. The definition of “illness” in Clause 4 as including “...degeneration of mental or physical faculties” would include old age. Old age will, “... in the normal course ... result in the death of the person.” and thus would also come within the definition of “terminal illness” in Clause 4. Under the proposed Bill persons would be able to request euthanasia or assisted suicide simply because they are old.

A further concern is with the experience where euthanasia and assisted dying have been legalised that the categories of those who can be euthanised has been extended. In the Netherlands euthanasia has been extended by practice beyond the provisions of the law to children and in Belgium the original voluntary euthanasia law has been extended to those suffering from dementia and to children (see <http://noeuthanasia.org.au/blog/1683-belgium-and-the-netherlands-escalate-their-children-s-euthanasia-programmes.html>).

To quote Paul Russell, Director of the organisation HOPE, Preventing Euthanasia and Suicide: “This all points to another reality: that the existence of euthanasia laws creates deep and almost indelible changes to any society where it is legally practiced. What is legal is moral. The law provides boundaries that human nature pushes against almost constantly. Move those boundaries to accommodate the push and, inevitably over time, the push will come against the newly defined boundary. This is the human experience and why, until relatively recently, all societies resisted such changes.”

(see - <http://noeuthanasia.org.au/blog/1856-the-arbitrary-nature-of-euthanasia-safeguards.html>)

SUMMARY:

- Legalising euthanasia or assisted suicide would undermine palliative care.
- Criminal law in Australia is a state matter and a federal law allowing euthanasia and assisted suicide would override state laws which prohibit it. And the states have voted consistently against bills to allow euthanasia or assisted suicide.
- The proposed bill would be open to constitutional challenge as it is questionable whether euthanasia and assisted suicide would come within the meaning of a “medical service” in Section 51 (xxiiiA) of the Constitution.

- Euthanasia and assisted suicide are against the codes of ethics of peak medical bodies.
- The bill would allow those who are not terminally ill or facing death to request euthanasia or assisted suicide. A person could request euthanasia or assisted suicide merely because he/she is old and isolated and lonely.
- Experience in countries where euthanasia and assisted suicide is legalised is that it opens the way to expand the categories of persons who can request it.