Submission No 15

INQUIRY INTO PROVISIONS OF THE VOLUNTARY ASSISTED DYING BILL 2021

Organisation: Baptist Association of NSW and ACT

Date Received: 17 November 2021

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NSW Voluntary Assisted Dying Bill 2021
Baptist Association NSW & ACT
Submission to the Parliamentary Inquiry

Introduction

The Baptist Association NSW & ACT is a movement of over 350 congregations, committed to voluntarily serving together with a common purpose, values, vision and goals. We welcome the opportunity to make a submission to the Inquiry into the Voluntary Assisted Dying (VAD) Bill 2021. We acknowledge and grieve for the distress and pain that is sometimes experienced by people at the end-of-life and those who care for them, and we lament the direction that other states have gone in by passing assisted dying laws. Our resolve is to work alongside others to support them with love, compassion, and effective practical and palliative care.

Our opposition to the VAD Bill is informed by our faith in God and the life-giving ministry of Jesus Christ. Scripture affirms the value of all people, especially the poor, the sick, the marginalised, and the weak. We do not support the prolonging of life at all costs, but rather the provision of appropriate end-of-life care. Assisted dying laws change the nature of medicine from provision of care to taking of life. No matter how compassionate some advocates of assisted dying may believe this to be, it represents a fundamental shift in the practice of medicine.

We oppose the VAD Bill 2021 for the following additional reasons and we ask that you strongly consider the effects of these bills elsewhere in the world before voting in NSW Parliament.

The Problem with the term "Suffering"

Supporters of VAD say that it is a compassionate response to suffering at the end-of-life and that since the pain cannot be managed, it is more compassionate to let a person end their life than to continue in incurable suffering. Before exploring this further, it is important to note the difference between pain and suffering. Pain is defined as an "unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in

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terms of such damage".[1] Suffering on the other hand is more all-encompassing. Two people can experience the same level of physical pain, but their level of suffering can be different. One effort to define suffering says,

> suffering is defined as 'an all-encompassing, dynamic, individual phenomenon characterized by the experience of alienation, helplessness, hopelessness and meaninglessness in the sufferer which is difficult for them to articulate. It is multidimensional and usually incorporates an undesirable, negative quality'.[2]

In the majority of cases at the end-of-life, physical pain can be effectively managed with pain medication used in palliative care.[3] Suffering on the other hand requires a more comprehensive approach, incorporating resources that address physical, emotional, and spiritual needs as well as the opportunity to remain a part of community and family if desired.[45] Palliative care provides this holistic approach to end-of-life suffering in a way that VAD cannot. Palliative care shows true compassion, "suffering with those who are suffering."[6]

Pain is rarely a reason given for requesting VAD.[7891011] The most common reasons given for requesting VAD have more to do with loss of autonomy, being a burden to others, existential concerns, and a fear of future suffering, not a present experience of unbearable pain.[12] There

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[1] International Association for the Study of Pain (IASP). IASP terminology, December 2017. Available at: http://www.iasp-pain.org/Education/Contest.aspx?ItemNumber1698# as referenced in Brennan, F. et al. 2019. "Access to pain management as a human right." AMJPH 2019; 109: 61-61. (p.61)
[2] Best, M. et al. 2015. "Conceptual analysis of suffering in cancer: a systematic review." PsychoOncology. 2015. DOI: 10.1002/pon.3795. 8. (para. 340)
[3] Hendin, H. and K. Foley. 2008. "Physician-assisted suicide in Oregon: A medical perspective." Michigan Law Review. 106 (8).
[4]Best, M. (2018). Presentation for Anglican Deaconess Ministries School of Theology, Culture and Public Engagement . "Euthanasia".
[5] Wood Mak, Y.Y. and Elwyn, G. 2005. "Voices of the terminally ill: uncovering the meaning of desire for euthanasia." Palliative Medicine: 2005 (19:343-350).
[6] Oxford English Dictionary. "Compassion" Accessed at https://www.oed.com/viewdictionaryentry/Entry/37475
[7] Emanuel, E. 2017. "Euthanasia and physician-assisted suicide: focus on the data." MJA 206 (8).
[8] Sulmasy, D.P. et al. 2016. "Non-faith-based arguments against physician-assisted suicide and euthanasia." The Linacre Quarterly 83 (3) 2016; 246-257.
[9] Wood Mak and Elwyn (5)
[10] Hendin and Foley (3)
[11] Hudson et al. 2006. "Desire for hastened death in patients with advanced disease and the evidence base of clinical guidelines: a systematic review." Palliative Medicine 2006; 20:693-701.
[12] Ibid (3-5, 7-8)

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are therefore questions that arise around what defines unavoidable or intolerable suffering in VAD legislation since suffering is not just about physical pain. It is the difficulty in defining this term that contributes to future loosening of the legislation.

It is important to note that, because the research shows that the main reasons for requesting VAD do not have to do with current unbearable pain, what is actually prioritised in this legislation is autonomy, not compassion. We therefore must ask if granting autonomy to end one's life through consuming a deadly substance, either self-given or given by a medical practitioner, is good for society. We would argue that prioritising this level of autonomy is a shift that damages society. We may not see this damage immediately, but over time we believe it devalues life in a way that contributes to an increase in suicide rates and elevates individual autonomy above all else.

Suicide Rates

Promoting VAD as a valid choice for people will undermine the significant and important work that is being done to prevent suicide. In an article published in the Southern Medical Journal in 2015, researchers reported that,

> "Legalizing PAS (Physician Assisted Suicide) has been associated with an increased rate of total suicides relative to other states and no decrease in non-assisted suicides. This suggests either that PAS does not inhibit (nor acts as an alternative to) non-assisted suicide, or that it acts in this way in some individuals but is associated with an increased inclination to suicide in other individuals (pg. 599)."[13]

VAD in Oregon became legal in 1997. According to the U.S. Centres for Disease Control and Prevention, Oregon's suicide rate increased by 49% between 1999 and 2010 (the national rate was 28%).[14] Oregon's health department says the state's suicide rate has been rising since 2000 and, as of 2012, was 42% higher than the national average. This figure does not include those who access VAD.

VAD laws do not decrease overall suicide rates in society by offering an alternative; these laws normalise suicide as an option for suffering.

[13] Jones and Paton. 2015. "How does legalization of physician-assisted suicide affect rates of suicide?" Southern Medical Journal 2015; 108 (10): 599-604.
[14] Ibid, 599

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Psychological Evaluation and Telehealth

The NSW VAD 2021 Bill enables physicians to assist in dying without inquiring into the psychological, social, and existential concerns of the patient. Physicians are also expected to inform patients of alternatives to VAD without being required to know about the alternatives or consult someone who knows.[15] In a review of Belgian euthanasia laws, Cohen-Almagor also found that physicians granting euthanasia do not possess "the necessary palliative know-how and experience".[16]

At the end-of-life there can also be great fluctuation in people's desire for euthanasia and often when the options of palliative care are discussed or some fears about death are alleviated, they desire to have more time, not less with loved ones.[17][18][19] Wood Mak and Elwyn found that,

> …the will to live in the terminally ill is known to fluctuate during the course of illness, legalising euthanasia is at best, contentious and at worst, unreliable [and that] the desire for euthanasia cannot be interpreted at face value. Its meaning is not confined to the reality of physical disintegration or suffering from the effects of cancer but includes fears and existential concerns with desire for connectedness, care and respect, understood within the context of the patients' whole lived experience.[20]

According to the NSW VAD Bill 2021, the person requesting VAD must have decision-making capacity and not be under pressure or duress (pg. 6, sections e and f).[21] If the consulting medical practitioner is not certain about the person's decision-making capacity or duress, the practitioner must refer the person to a psychiatrist or other health practitioner for assessment. We have significant concerns about the ability of GPs to assess pressure or duress (even with training), especially over Telehealth consultations, which are allowed in the proposed legislation. We do not believe that the safeguards included in the Bill will be successful in preventing the pressuring of individuals at the end-of-life.

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[15] International Association for the Study of Pain (1)
[16] Cohen-Almagor, R. 2009. "Belgian euthanasia law: a critical analysis." J Med Ethics 2009; 35: 436- 439 (p.438).
[17] Hudson et al. (10)
[18] Wood Mak and Elwyn (5)
[19] Chochinov, H.M. et al. 1999. "Will to live in the terminally ill." The Lancet; 354:816-819.
[20] Wood Mak and Elwyn (5) (p. 343, 348)
[21] Draft Bill to NSW Legislature. Greenwich, A. MP. Voluntary Assisted Dying Bill. 2 July 2021. Accessed at https://cdnau.mailsnd.com/81257/fW3i37664wr3u5hLRqDBDM6f0kJO4aiVdUcAJh8LfJ4/2618115.pdf. Accessed on 8 September 2021.

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We also do not believe that there is enough consideration given to the psychological well-being of the patient requesting VAD. ABC news recently reported that legal services are linking high rates of elder abuse in NSW to the high cost of housing.[22] The article highlighted that the Legal Aid service centre sees most of the problems in elder abuse in the areas of money and housing. Older people are feeling pressured to help their children get into the housing market. Mary Lovelock, Senior Solicitor at Legal Aid NSW stated, "There's what we call 'inheritance impatience'."[23] How can doctors fully know the conversations and pressures put on vulnerable people at the end-of-life? How can they be assured that a patient hasn't felt burdened to quicken his or her death to make it "easier" for the family? It is impossible to fully safeguard family conversations and interactions.

Change in the Nature of Medicine

Euthanasia and PAS laws change the nature of medical practice, defining euthanasia as a medical intervention and giving physicians the ability to write prescriptions and in some cases administer life-ending drugs. Both the World Medical Association (WMA) and the Australian Medical Association (AMA) oppose euthanasia and PAS.[24] The AMA states that it agrees with the WMA in that, "it is opposed to doctors being involved in interventions that have a primary intention of ending a person's life".[25] The Christian Medical & Dental Fellowship of Australia, Inc. has stated, "The successful doctor-patient relationship depends on a high level of trust, which would be eroded if the doctor could not be depended on to preserve life".[26] To this effect Sulmasy et al note, "Medicine and the medical profession traditionally aimed at curing and healing, assisting in a suicide is neither cure nor healing. It pits the medical profession against itself: curing and caring versus killing".[27]

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[22] Farquhar, L. 5 Nov 2021. "Legal service links rising house prices to high rates of elder abuse." Accessed at: https://www.abc.net.au/news/2021-11-05/high-house-prices-linked-to-elder-abuse/100593796
[23] Ibid, (para. 18)
[24] AMA Tasmania. 2 Jan. 2020. "Euthanasia, Voluntary Assisted Suicide (VAS), and Physician Assisted Suicide (PAS)" Accessed on 04 August 2021 at https://tas.ama.com.au/tas/euthanasiavoluntary-assisted-suicide-vas-and-physician-assisted-suicide-pas
[25] Australian Medical Association. 28 Oct. 2017. "Euthanasia and physician assisted suicide." Accessed on 25 May 2019 at https://ama.com.au/media/euthanasia-and-physician-assisted-suicide. (para. 4)
[26] Best, M. Christian Medical & Dental Fellowship of Australia, Inc. 2017. Email. "Euthanasia Legislation in NSW." (point 8)
[27] Sulmasy et al. (8) (p. 254)

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Conclusion and Call for Increased Investment in Palliative Care

The introduction of assisted dying undermines society's value for life. The strong insistence on the free choice and autonomy of a small number of individuals must always be weighed against the common good. In this case, we strongly believe that VAD introduces ethical shifts into our society that are contrary to the common good. The introduction of Assisted Dying creates significant risks for the most vulnerable in our society.

We also believe that Australians need greater access to accurate information about palliative care and end-of-life care options. Palliative care supports a natural and dignified death for patients and provides support for family and colleagues. It is a solution that strengthens (rather than undermines) the foundational value we place on human life in our society. We urge you to consider these objections, and the objections of many community groups who agree that the legalisation of Assisted Dying is unnecessary. Considering these objections, we encourage you to oppose the current Bill and to join those in our movement and beyond in calling for greater investment into palliative care.

We join you in seeking a respectful and compassionate response to end-of-life care. However, we strongly suggest that the response to suffering at the end of life be focused on improving the quality and investment in palliative care, rather than the introduction of a legislative framework that legalises voluntary assisted dying.

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