

**Submission  
No 64**

**INQUIRY INTO PROVISIONS OF THE VOLUNTARY  
ASSISTED DYING BILL 2021**

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# What does it mean to Legalise Euthanasia?

Submission to the NSW Legislative Council's Standing Committee on Law and Justice  
Inquiry into *Voluntary Assisted Dying Bill 2021*  
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We consider humane to put down an animal that is suffering from a significant irreversible injury or has a terminal disease. This decision means that we consider the most important matter in the life of this animal is to avoid suffering, more important than life itself. Of course, an animal does not have to give consent.

A similar consideration applies about what is considered of paramount importance in the life of a human being when we agree to kill or help to kill itself a person because “unbearable suffering”, although there is an important difference, we are required to obtain consent. It is good to reflect whether requiring consent is enough to distinguish between the way we treat animals and ought to treat human beings.

In this instance, it appears we accept that what differentiates and underpins our humanity is the ability to consent, considered as an external expression of our autonomy and dignity. This view of human beings is not only highly reductionist but also fundamentally flawed. It is a radical devaluation of the person similar to others such as: “a political animal”, “a planning animal”, etc. Human beings are all of that and much more. Certainly, we are animals who can consent or refuse to do so, but it is difficult to deny that each one of us is much, much more than a consenting individual.

This submission focuses on consent because an important reason given in support of euthanasia or assisted suicide is respect for the autonomy of individuals. An aim of the euthanasia laws promulgated in different jurisdictions is to protect individual autonomy, but true autonomy is founded on personal agency. Autonomy is a functional term that refers to the ability to understand the nature and effects of one’s acts, whereas personal agency is the ultimate source of free, intentional, and uncompelled actions. Simply, the forces moving individuals to act may not owe their power to their capacity to decide what to do, in which case they undermine the true autonomy of the agent. Examples of undermining influences that threaten personal agency

are addiction, brainwashing, trauma, fatigue, etc. A person with a strong addiction could have the decisional capacity to want a drug, but owing to the conditioning imposed by the habit would not be a true agent of her/his actions, and will be deprived of true autonomy but not of capacity to decide.<sup>1</sup>

Euthanasia laws such as *Voluntary Assisted Dying Bill 2021* do not address agency, they describe the conditions for individuals to have a minimum capacity to decide, but true respect for persons requires that they are allowed to act as agents of their actions, to initiate their actions exercising their power to do so, acting by self-governing. Moreover, besides addiction, trauma, etc., there are less obvious ways in which the autonomy of an agent can be undermined: four well-studied states that can affect agency deeply are depression, demoralisation, existential distress and family dysfunction. These and other mental states and life situations are common conditions amongst persons who request euthanasia and could remain hidden to affected individuals, their carers and treating health professionals. This is not to say that any individual who may request euthanasia is not an agent of her/his actions. The argument simply states that these laws do not set the conditions to achieve one of the proclaimed goals of euthanasia: respect for personal autonomy.<sup>1</sup>

An answer to this objection is that euthanasia laws must be such that besides assessing the decisional capacity of individuals, they would establish their agency too; then, these laws would be truly respectful of human autonomy. A fundamental problem is that whereas the agency of an individual could be established, the characteristics of each person make it impossible to legislate general norms to achieve this goal, at variance with the norms to establish decisional capacity.

In justice and sound medical practice, individual assessments of agency must be accompanied by individual palliative care. The fact is that seldom persons who receive adequate palliative care request euthanasia, and most of those who request euthanasia, stop asking for it when provided appropriate care. It is not a trivial indicator that the majority of persons who request assisted suicide decide not to go ahead with it, an option not present in euthanasia.

That there may be few individuals that under proper care and social conditions still could request euthanasia does not justify legislating its legality. A simple reason, is the socially regressive characteristic of approval of killing on demand, which in passing is not a right. Wishes or desires by themselves do not constitute rights.

Another important principle invoked to support euthanasia is the respect for the dignity of individuals. The most basic and fundamental acknowledgement of the dignity persons is respect for their life. Other possible manifestations of respect are subject to it, including respecting their wishes. It is intrinsically contradictory to show respect for persons by killing them.

This discussion assumed that the implementation of a law such as the *Voluntary Assisted Dying Bill 2021* would carefully respect the spirit and the letter of such a law. This has not been the practice in jurisdictions such as The Netherlands, Belgium, Oregon State, Canada, etc. where laws on euthanasia and/or assisted suicide have been in operation for some time. The data contained in the reports of these countries show common short circuiting of the law and are available to anyone who want to examine them. In addition, the continued expansion of the scope of these laws under the guise of various reasons, indicate that their original safeguards meant little or nothing at all.

This Bill is detrimental to individual persons and to society at large and should be rejected.

Respectfully yours,

**Professor George L Mendz. MSc, MBioeth, PhD**

Reference

1. A more detailed discussion can be found in:

**Agency, Autonomy and Euthanasia**

George L. Mendz and David W. Kissane

*The Journal of Law, Medicine & Ethics*, 48 (2020): 555-564.