AUSTRALIAN CATHOLIC BISHOPS CONFERENCE
Bishops Commission for Pastoral Life

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20 August 2014
Memorial of St Bernard

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
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Dear Sir/Madam

Inquiry into the Exposure Draft of the Medical Services (Dying with Dignity) Bill 2014

This submission from the Australian Catholic Bishops Conference (ACBC) has been prepared by the Bishops Commission for Pastoral Life (BCPL).

The ACBC is the assembly of Catholic Bishops of this country and the means by which the Bishops act nationally and address issues of national significance. The BCPL is one of the commissions established by the ACBC to address important issues both within the Church and the Australian community. The BCPL has responsibility for life issues such as euthanasia.

The ACBC appreciates the opportunity to make a submission on the *Medical Services (Dying with Dignity) Exposure Draft Bill 2014* (the Bill).

We believe that the Bill is misleading from its very title onwards and would be dangerous were it legislated. Under the cloak of "*Medical Services*" the Bill proposes to legalise activity contrary to the Hippocratic Oath, and the Codes of Ethics of the World Medical Association and the Australian Medical Association: it asks medical professionals to engage in activities that are *not* medical services but are in fact *inimical* to medicine. The subtitle of the Bill, *"Dying with Dignity"*, also conceals rather than reveals the real objects of the Bill: to be allowed to die with dignity is to be allowed to die naturally, pain-free and with full respect; not to die at the hand of another without legal sanction.

A more honest title for the Bill would surely be: the *Euthanasia Bill.* Euthanasia is intentionally bringing about a person's death by active intervention, or by neglect of reasonable care. People who are sick or otherwise weakened or marginalised deserve our support to lead as full a life as possible, not a lethal dose.[1]

In this submission the ACBC argues that:

- Euthanasia cannot be made safe
- There is no dignity in giving sick people a lethal dose
- Where euthanasia has been legalised, it has been disastrous
- Euthanasia undermines true autonomy
- Compassion requires that all Australians have access to good palliative care.

1. Euthanasia cannot be made safe

The clear conclusion of reason and experience is that euthanasia cannot be made safe, because no law can prevent vulnerable people from abuse. Legalised euthanasia endangers the lives of people who are seriously ill, elderly, disabled, have low self-esteem or are otherwise vulnerable. Vulnerable people deserve our care and the continued protection of our laws.[2]

World-leading Australian expert in medical law and ethics, Professor Margaret Somerville, points out that "physician-assisted suicide and euthanasia involves taking people who are at their weakest and most vulnerable, who fear loss of control or isolation and abandonment – in a state of intense 'pre-mortem loneliness' – and placing them in a situation where they believe their only alternative is to kill themselves."[3] What such vulnerable people would hear from the community – from its laws and legal system – is that they are thought to be better off dead or that the community thinks it would be better off if they were dead.

The evidence from all places that have attempted to legalise and regulate euthanasia is that it is not possible to draft safeguards that would effectively protect vulnerable people from subtle or overt pressure to request euthanasia. It is not possible when euthanasia is legal to prevent someone from feeling or being made to feel they are a burden. It is not possible when euthanasia is made socially acceptable to prevent other people deciding that certain patients would be better off dead.

Euthanasia advocates argue giving someone a lethal dose is a private decision, but allowing euthanasia would make a person's death a public act, necessarily involving, in addition to the sick person, medical professionals, regulators, as well as the community.[4] It therefore has an impact not just on how one person dies but on how all of us will live out our last days and will die.[5]

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[1] *Catechism of the Catholic Church* (2nd ed., Sydney: St Paul's, 2004), ##2276-7.
[2] Boudreau, JD and Somerville, MA, Euthanasia is not medical treatment. *British Medical Bulletin*, 2013; 106:63.
[3] Somerville, MA, "Death talk": debating euthanasia and physician-assisted suicide in Australia. *MJA* 2003; 178:173-4.
[4] *Ibid*.
[5] Boudreau, JD and Somerville, MA, Euthanasia and assisted suicide: a physician's and ethicist's perspectives. *Medicolegal and Bioethics*, 2014; 4:7

Once a community accepts the idea that doctors or others can end people's lives for one reason or another, it is difficult to argue that those people's lives might not be ended for some other reason or that some other people's lives should not also be ended.

Cambridge and Georgetown ethicist John Keown argues that "if there is a right to make decisions concerning life and death in accordance with one's own values and beliefs why should euthanasia not be available to any autonomous person who believes for whatever reason (terminal, chronic or mental illness, 'tiredness of life', bereavement, divorce, unemployment, lost election ...) that their life is no longer 'worth living'?" Having admitted the principle that some people may choose death for their own reasons, he argues, we cannot reasonably restrict it to the terminally ill.[6]

Rather than a pessimistic 'slippery slope' argument, therefore, those who argue that euthanasia cannot be made safe are simply reflecting upon the logic of legalising the practice. Having undermined the principle that doctors never kill we will have changed what doctors are, what the community expects from them, and how sick people relate to them. Having undermined the principle that our community does not sanction the killing of any member – even for serious crimes – we will have changed how we think of sick, elderly, disabled or other 'unwanted' people and how we relate to them.

2. There is no dignity in giving sick people a lethal dose

Human dignity, as understood in international human rights instruments, sound secular ethics, as well as Christian tradition, is a feature of our common humanity. It is the basis of our equality at law, our human rights including the right to life, and the care we can expect from others. It cannot be lost or volunteered away, and does not depend on whether we are useful, healthy or wanted, or even whether we appreciate ourselves and our rights. Whatever the motive, killing someone is no way of recognizing their inalienable dignity or their right to life.

Doctors can either affirm the dignity of their patients by offering them ongoing care, or add to their sense of hopelessness by words or actions that imply their life is not worth living. We do not demonstrate respect for the dignity of others by telling them by our words or actions that we think they would be better off dead or that others would be better off if they were dead. Especially where care is insufficient and symptoms are not adequately addressed, people can experience a loss of meaning and hope, even depression. Undiagnosed depression is, in fact, very common in the terminally ill.[7]

Speeding someone's death also dishonours the very important remaining part of their life and deprives people of a valuable and special time.[8] Laws allowing this effectively say to people at a very low ebb: we do not regard the rest of your life as valuable; in fact you might well be better

[6] Keown, J, Mr Marty's muddle: a superficial and selective case for euthanasia in Europe. *Journal of Medical Ethics*, 2006; 32:32.
[7] Street, A and Kissane, D, Dispensing Death, Desiring Death: An exploration of medical roles and patient motivation during the period of legalised euthanasia in Australia. *Omega*, 1999-2000; 40(1):246.
[8] Boudreau, JD and Somerville, MA, Euthanasia is not medical treatment. *British Medical Bulletin*, 2013; 106:62.

off dead. Legalising euthanasia makes frail and ill people feel they are a burden on their families or the community and are somehow selfish for not 'volunteering' to die.[9]

If euthanasia were truly regarded as 'a medical service', treating doctors would be required to offer it among the various treatment options. Where patients are incompetent but have given someone power of attorney to make decisions on their behalf, why wouldn't euthanasia be a medical service to which the appointed guardian could consent on the patient's behalf?[10]

Just as it is necessary for doctors to refuse to kill people for us to continue to have trust in them, so it is necessary for our community to refuse to allow people to be killed for us to continue to have respect for those people.[11]

3. The experience of legal euthanasia

The idea of euthanasia is not new, yet it has been resisted for thousands of years because of the dangers it poses to our community.[12]

Amongst those jurisdictions that have experimented in legal euthanasia are Australia's Northern Territory, Belgium and The Netherlands.

In the Northern Territory where euthanasia was legal in 1996-97:

- There was a procedure set out for patients wanting approval for euthanasia, which meant steps like a psychiatric assessment were seen as barriers to overcome rather than a key safety check;[13]
- "Four of the seven cases had symptoms of depression";[14]
- Fear of what might happen was a major reason given for wanting euthanasia;[15]
- Some desperate people engaged in doctor-shopping as they sought a doctor willing to endorse their death;[16] and
- One doctor, Philip Nitschke, was involved in all the euthanasia deaths.[17]

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[9] Tonti-Filippini, N, *About Bioethics: Caring for people who are sick or dying* (Ballan: Connor Court, 2012), p. 106

[10] Boudreau, JD and Somerville, MA, Euthanasia is not medical treatment. *British Medical Bulletin*, 2013; 106:61.

[11] Somerville, MA, "Death talk": debating euthanasia and physician-assisted suicide in Australia. *MJA* 2003; 178:174.

[12] Boudreau, JD and Somerville, MA, Euthanasia is not medical treatment. *British Medical Bulletin*, 2013; 106:56.

[13] Street, A and Kissane, D, Dispensing Death, Desiring Death: An exploration of medical roles and patient motivation during the period of legalised euthanasia in Australia. *Omega*, 1999-2000; 40(1):246.

[14] Kissane, DW, Street, A and Nitschke, P, Seven Deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia. *The Lancet*, 1998; 352(9134):1097-1102.

[15] Street, A and Kissane, D, Dispensing Death, Desiring Death: An exploration of medical roles and patient motivation during the period of legalised euthanasia in Australia. *Omega*, 1999-2000; 40(1):246.

[16] *Ibid*.

[17] Kissane, DW, Street, A and Nitschke, P, Seven Deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia. *The Lancet*, 1998; 352(9134):1097-1102.

In Belgium where euthanasia has been legal since 2002:

- There are five deaths by euthanasia every day;[18]
- Almost one third of cases of euthanasia in Flanders are now without explicit consent;[19]
- Only half the euthanasia cases are reported as legally required;[20]
- The law was changed this year to remove any age limit so competent children can request euthanasia with their parents' consent;[21] and
- Life-ending drugs are administered by nurses in almost half the cases of assisted death without an explicit request.[22]

In the Netherlands, where euthanasia has also been legal since 2002, but was tolerated under guidelines even before that:

- 23 per cent of deaths by euthanasia are not reported to authorities;[23]
- There were 310 euthanasia deaths without explicit consent in 2010;[24]
- Euthanasia is permitted from 12 years of age with parental consent and from 16 years of age without parental consent;[25]
- The Groningen protocol allows for the euthanasia of newborns with poor prognosis, in agreement with the child's parents.[26]

Earlier this year Professor Theo Boer, a former supporter of euthanasia and member of a Dutch euthanasia Regional Review Committee since 2005, warned the United Kingdom not to legalise euthanasia, saying "beginning in 2008, the numbers of these deaths show an increase of 15% annually, year after year… Euthanasia is on the way to becoming a 'default' mode of dying for cancer patients."[27]

The High Court of Ireland commented in 2013 that "the fact that the number of LAWER ('life-ending acts without explicit request') cases remains strikingly high in jurisdictions which have liberalised their law on assisted suicide… without any obvious official response, speaks for itself as to the risks involved."[28]

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[18] Caldwell, S, Five people killed every day by assisted suicide in Belgium as euthanasia cases soar by 25 per cent in last year alone. *Daily Mail*, 29 May 2014.
[19] Chambaere K, Bilsen J, Cohen J, et al, Physician-assisted deaths under the euthanasia law in Belgium: a population-based survey. CMAJ 2010;182:895–901.
[20] Smets T, Bilsen J, Cohen J, et al, Reporting of euthanasia in medical practice in Flanders, Belgium. *BMJ* 2010; 341:c5174.
[21] Dan, B, et al, Self-requested euthanasia for children in Belgium. *The Lancet* 2014; 383:671-2.
[22] Inghelbrecht, E, et al, The role of nurses in physician-assisted deaths in Belgium, *CMAJ* 2010; 182(9):905-10.
[23] Onwuteaka-Philipsen, BD, et al, Trends in end-of-life practices before and after the enactment of the euthanasia law in the Netherlands from 1990 to 2010: a repeated cross-sectional survey. *The Lancet*, 2012; 380(9845):908-15.
[24] Statistics Netherlands, see: http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLen&PA=81655ENG&LA=en
[25] Dan, B, et al, Self-requested euthanasia for children in Belgium. *The Lancet*, 2014; 383:671-2.
[26] *Ibid*.
[27] *The Daily Mail*, 10 July 2014.
[28] Boudreau, JD and Somerville, MA, Euthanasia is not medical treatment. *British Medical Bulletin*, 2013; 106:59.

4. Euthanasia undermines true autonomy

In at least four respects euthanasia undermines true autonomy.

First, the autonomy of sick, frail, disabled and dying people is commonly already compromised by their condition: by legalising euthanasia the community adds to their sense of being a 'burden' and 'expendable' and to the pressures upon them 'to end it all'. In the name of autonomy euthanasia actually reduces the freedom of such persons.

John Keown argues "the fact that, through depression or pain or loneliness, some patients may lose sight of their worth is no argument for endorsing their misguided judgement that their life is no longer worth living. Were the law to allow patients to be intentionally killed by their doctors, it would be accepting that there are two categories of patients: those whose lives are worth living, and those who are better off dead. What signal, moreover, would that send out to people who are sick, elderly disabled, or dying?"[29]

Secondly, no serious-minded doctor would give a lethal dose to a patient just because the patient asked: the doctors would have to come to his/her own judgment that this person was an appropriate candidate for euthanasia. In the end it is the doctor, not the patient, who decides whether to administer a lethal drug or not. Thus in the name of autonomy euthanasia further undermines patient autonomy by giving doctors the power of life and death over their patients.

Thirdly, having accepted that doctors may sometimes decide that certain patients are 'better off dead' or are appropriate candidates for euthanasia, why wouldn't a responsible doctor make that decision on behalf of someone not able to request death? Why should a patient be denied what the doctor may regard as good treatment – euthanasia – just because she or he is not able to request it?[30] The slide from voluntary to non-voluntary euthanasia has already demonstrably occurred in some jurisdictions and some euthanasia advocates themselves see voluntary euthanasia as the first step towards providing this 'mercy killing' to others who do not or cannot ask, such as children, the severely disabled or the unconscious. Once again, euthanasia endangers the autonomy of these people.

Fourthly, though the 'right to be killed' has been unknown to international human rights instruments and thinking, were there really such a right, it would imply doctors a duty on the part of health professionals and others to collaborate in killing, whatever their conscientious beliefs.[31] Thus euthanasia is not only about the rights of the suffering person: it inevitably affects the freedom of medical professionals who are asked to assist or turn a blind eye, of by-standers, of regulators and others.

5. Compassion requires that all Australians have access to good palliative care

In at least four respects euthanasia is a countersign to true compassion.

First, compassion is never merely giving people what they say they want or looking for quick fixes to problems. Rather it involves sharing in the suffering of others – literally *suffering-with*

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[29] Keown, J, Mr Marty's muddle: a superficial and selective case for euthanasia in Europe. *Journal of Medical Ethics*, 2006; 32:31-2.
[30] *Ibid*.
[31] Boudreau, JD and Somerville, MA, Euthanasia and assisted suicide: a physician's and ethicist's perspectives. *Medicolegal and Bioethics*, 2014; 4:4.

them – and so standing by and investing ourselves in them and in the hard slog of caring well for them. True compassion for the dying means offering to help them live the rest of their lives, however long or short that time may be, in the best comfort possible and with every sign that they are loved and respected. There are always ways to help a patient, even if a cure is not possible.[32] Euthanasia points in a rather different direction.

Secondly, good palliative and pastoral care, not killing, is the answer to relieving pain and suffering for the dying. Palliative Care Australia says that good, well-resourced palliative care gives people the ability not only to live well in their illness, but to die well too. Pastoral experience suggests that people's sense of meaningless or hopelessness in suffering can also be addressed. Yet the fact is that many Australians who are dying or otherwise in severe pain are never offered good palliative and pastoral care and, even if they asked for it, would not have access due to their geographic or financial situation. If compassion were our real motive we would surely be ensuring that everything possible was being done to address people's physical, psychological and spiritual pain before entertaining more drastic measures.

Thirdly, any community that legalises euthanasia is likely further to neglect the provision of good palliative and other care for elderly, sick and dying people. Where euthanasia is legalised it becomes a competing option with palliative care, with all the dangers of economic and other considerations affecting which 'option' is promoted.[33] By introducing the idea that not all people have lives worth living or deserve our help and care, the practice of euthanasia undermines such care even for those who do not want euthanasia. [34]

Fourthly, legalised euthanasia would mean that respect for the lives of people is no longer assumed, but depends on whether they have the will to defend their life or have others willing to stand up for them.[35]

Conclusion

In conclusion it is the view of the Catholic Church in Australia that the proposed Bill would be bad law because

- Euthanasia is dangerous and cannot be made safe
- Euthanasia fails to respect the dignity of patients: there is no dignity in giving sick people a lethal dose
- Wherever euthanasia has been legalised, it has been socially disastrous
- Euthanasia undermines true autonomy
- Compassion requires that all Australians have access to good palliative care.

[32] Ibid, p. 98.
[33] Tonti-Filippini, N, *About Bioethics: Caring for people who are sick or dying* (Ballan: Connor Court, 2012), p. 98.
[34] *Ibid*, p.102.
[35] *Ibid*, p. 99.

I would be happy to answer any questions the Committee may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC on 02 6201 9863 or at policy@catholic.org.au

Yours sincerely in Christ

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