SUBMISSION IN SUPPORT OF THE “MEDICAL SERVICES (DYING WITH DIGNITY) EXPOSURE DRAFT BILL 2014”

This submission has been prepared by the Committee of the Dying with Dignity (NSW) Central Coast Group on behalf of our 200 members and supporters to record our arguments for the approval of the “Medical Services (Dying with Dignity) Exposure Draft Bill 2014” which (i) authorises medical practitioners to prescribe, prepare and/or administer, under prescribed conditions, a substance that would assist a terminally ill person to end his/her life and (ii) sets out the rules under which this change should be operated.

1. BACKGROUND:

The first Voluntary Euthanasia Societies in Australia were formed in New South Wales and Victoria in 1973. In the four decades since, VE Societies - many with sub branches - have been formed in every State, in the Northern Territory and in ACT. Membership of these Societies grows continually. Note: because of the shocking memories of the Holocaust, the words voluntary euthanasia are now being replaced almost universally by the terms Doctor-, Physician- or Medically-assisted Death.

In the last 50 years there have been approximately 20 initiatives demanding the legal right of the terminally ill to die with dignity. Only one of these was successful, resulting in the passing of the Rights of the Terminally Ill Act, 1995, in the Northern Territory. However, this lasted only 9 months until, by a narrow majority of only a few votes, it was overturned by the Australian Federal Government.

Since then there have been repeated initiatives seeking to restore the 1995 Act. In addition separate assisted-dying bills have been brought before the majority of State Parliaments, demanding the legalization of Death with Dignity in the concerned States. Despite widespread public support in the region of 80%, each of these has failed, but more are already in preparation.

2. SOCIAL AND CULTURAL FACTORS IN AUSTRALIA PROMOTING THE DEMAND FOR DOCTOR-ASSISTED DEATH.

i. SECULARISM: God is no longer respected as the only giver and taker of life. A great number of people in modern Australian society do not believe in a god of any kind.

ii. CHANGING MORAL ATTITUDES: Morals - truth, justice, laws - change with the times. What was good and virtuous two hundred years ago is not necessarily good and virtuous now. Abortion is today legal. Homosexuals are no longer imprisoned or their property sequestered. Soon they may be legally able to marry.

iii. BELIEF IN PERSONAL AUTONOMY: In modern society, people have become used to making their own decisions. They have the right to be fully informed on their disease, the proposed treatment therefor and to refuse that treatment or indeed treatment of any kind. This includes the right to refuse artificial life-aids and sustenance, even if the result is death. They also have the right to specify their treatment, by means of Advance Care Directives and Enduring Guardianships, for a future when they might become physically or mentally unable to make their wishes known.
iv. **CHANGING POPULATION:**
- The Baby Boom has caused an imbalance in population statistics.
- Urban sprawl: The growing population has led to building of new housing at ever further distances from population centres and homes of older family.
- International trade, employment and educational opportunities have prompted many Australians to move abroad, making them no longer available to look after terminally ill relatives.
- The modern trend for smaller families is resulting in fewer family members to care for sick and aging relatives.
- Divorce is common with the result that often dying divorcés are alone.

3. **CONCLUSIONS:**

As a nation we are in danger of becoming a very busy, utilitarian society which no longer has the time/ability to care for elderly and disabled members:
- A growing population means an increasing demand for medical services of all kinds.
- Constantly improving modern medical technology means that terminally ill people, with appropriate medical care, live much longer.
- The Baby Boomers are now approaching retirement age en bloc, with simultaneous and growing needs for medical attention, senior housing and end of life care.
- Medical facilities of all kinds are already strained by the number of patients demanding attention. Hospital beds are filled by aged patients being kept alive by artificial means. Many of these patients, given the opportunity, would ask for death with dignity now. This situation will worsen progressively as the present generation ages.
- The traditional doctor-patient relationship is in trouble to the point that when sick patients are admitted to the hospital, they too often do not receive care from their personal or family doctor who knows their medical/family history and attitude to life.
- Because of our changing life styles, there are fewer family members to care for the terminally ill.
- Many Australians do not believe in a god which forbids them to kill, even in compassion. At the same time, changing moral attitudes mean that many people now recognize that causing another to die is not always evil. In some circumstances it can be a merciful end to intolerable suffering. This belief is shared by many others who believe in the Christian God (Christians Supporting Choice for Voluntary Euthanasia) and by many physicians (Doctors for Voluntary Euthanasia Choice).
- Australians are used to organizing their own lives, including making their own decisions about medical treatment and end-of-life care both now and for the future. Yet, under the present laws of Australia, they are legally unable to request and be granted the final release of a dignified death.

4. **LEGISLATIVE POWERS OF THE FEDERAL PARLIAMENT:**

Under the Commonwealth of Australia Constitution Act, Section 51, the Federal Parliament has the power to make legislation for “the peace, order, and good government of the Commonwealth”, such legislation being limited to the heads of power specifically mentioned in Section 51.

The only social services provision in this was (xxiii), giving power to legislate for invalid and old age pensions, based on spending power (s81). By 1944, despite the lack of a clear
constitutional basis, Federal legislation already existed on a number of other social services including medical and dental services. In 1944, in the Pharmaceutical Benefits Case (Attorney-General (Victoria) questions were raised about the validity of Commonwealth social security legislation based on s81 of the Australian Constitution. The High Court then held unconstitutional the Pharmaceutical Benefits Act 1944, which sought to introduce a scheme of subsidised medications, since it was not supported by a section 51 head of power and could not be supported by s81.

In 1946, following one of the only three successful constitutional referendums in the history of the Commonwealth, the following section was inserted into the Constitution: (xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;

The passing of the new Bill made an enormous change to the lives of ordinary Australians. Medical treatment provided by a benevolent government was free, the cost of many drugs rebated. So completely has this benefit been accepted as part of normal day-to-day life that the present Budget proposal whereby patients would be charged for visits to their doctor has resulted in widespread protest.

The current Bill (Medical Services (Dying with Dignity) Exposure Draft Bill 2014) is based on the view that assisted dying for the terminally ill may be regarded as a "medical service", the costs thereof paid by Government. The Bill was tabled late last July before being referred to the Senate Legal and Constitutional Affairs References Committee for a Senate Inquiry.

With one amendment to the Constitution the right to die could be established in Australia, its States, the Australian Capital Territory, the Northern Territory and its external Territories.

There would be mixed response. Some would accept the change to the law gratefully. Others would contest it. But in the end, though it might take some time, those who had denied others the right to die would at last realise that, whether for political, religious or genuine personal belief, they no longer had the right to impose their own beliefs about dying on others.

Furthermore, the growing tendency in the judiciary/police of either not charging, or of giving light and/or suspended sentences to individuals charged with assisting a loved one to die with dignity would gradually become accepted under common law.

NOTE: It is important to consider the similarities between (xxiiiA) and the currently proposed Bill. Both are changes to Section 51 of the Constitution. Both made/will make sweeping changes to the life of Australians. Both will insert into Constitutional law, practices which were/are illegal under the Constitution but were/are nevertheless current. Admittedly, this last is a somewhat specious comment in that payment of the benefits outlined in sxxiiiA was already legal in the individual States while assisting others to die is still illegal throughout Australia. Nevertheless, an increasing number of people are illegally helping others to die, fewer and fewer official prosecutions are being made under this law and increasingly, dismissals or very light/delayed sentences are being handed out.
5. **FAILURE OF PREVIOUS INITIATIVES:**

Why have so many initiatives failed when poll after poll shows that 80 per cent of the Australian population believes that legal medically assisted death should be a right? We believe there are two main reasons;

1. Religious organizations, some with influence in high places, able to fund massive publicity of all kinds, continually drowning out the demand for death with dignity.

2. The so-called “conscience” vote, where MPs express their own opinions and/or their party line rather than that of their constituents.

Each MP has been elected to represent his or her constituents. In a simple for or against vote, an MP's duty is to respond according to the majority of his or her constituents, the purpose for which he or she has been elected.

No organization has the right to impose its beliefs on others, particularly if it itself is under public scrutiny. Equally, no matter the reasons, no person or organisation has the right to deny a merciful death to those who are suffering intolerably because in its opinion it would be wrong.

6. **COMMON ARGUMENTS AGAINST LEGALISING PHYSICIAN-ASSISTED DEATH:**

_The “slippery slope”:_
The countries where death with dignity is legal keep detailed, audited records. The opposition has never been able to produce such statistics. These statistics have proved that there has been no massive increase in death rates; far from it, some of those who have obtained the means for a voluntary death do not use them. For many the comfort of knowing that final relief is available if things get too bad, allows them to live out their natural life span, often in Palliative Care. Consequently, the demand for Palliative Care is growing, despite general acknowledgement that such care is not always enough to conquer pain. Here again the danger is that growing demand will overstrain the resources available.

_The fear that it will lead to elder abuse:_ To our shame, elderly abuse is already common in our country.

7. **WHY THE NEW BILL IS SO IMPORTANT:**

The draft Bill is put forward by a former practising doctor who has seen, only too well, the physical and existential suffering caused by being forced to live when life has become only suffering. It means also that he is well accustomed to Government procedures/paperwork.

We consider that the document is well structured, concise and detailed because:

-It defines very comprehensively the procedures to be followed - in particular that the request for death must be proved to have been made freely and voluntarily. There are safeguards against prosecution of the physicians involved, a schedule of offences and
detailed procedures for payment by Government of medical costs. This latter should ensure that, in future, a dignified death will no longer be the prerogative of the rich.

Of considerable importance also in meeting the objections of those who fear that Australia could become a Death Tourism country, is item 4, Definitions in Part 1-Preliminary, which rules that “Australian resident means an individual who resides in Australia and who is an Australian citizen (within the meaning of the Australian Citizenship Act 2007).”

Finally, the setting up of a Government website for electronic submissions together with provision for submissions by mail is to be applauded in that it makes it easier for ordinary citizens to forward their submissions and have them noted.

We, the following Committee members of the Dying with Dignity (NSW) Central Coast Group, urge the members of the Senate Inquiry to support unreservedly the Medical Services (Dying with Dignity) Exposure Draft Bill 2014, on the basis that it meets a long overdue and important need in Australian society.

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