Dear Madam,

Attached is the submission of The Right to Life Australia Inc.

Yours faithfully

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Chief Executive Officer

The Right to Life Australia

Submission to the Legislative Council Legal and Social Affairs Committee.

End-of-Life Choices

Summary

Legalising euthanasia and assisted suicide breaches the international right to life of everyone and if introduced incrementally, discriminates against the aged, sick and those with a disability. These people are vulnerable to coercion. Those who do not want to die would be killed. More accessible palliative care and treatment for depression is a better solution than legalising killing people.
1. LEGAL ISSUES

There are 4 legal documents that provide for a person to express their wishes in relation to future medical treatment and in the case of incapacity:

1.1 The Enduring Power of Attorney (medical treatment) is a legal document that appoints another person to make decisions about your medical treatment. This begins when you are unable to make those decisions.

1.2 An Enduring Power of Guardianship is a legal document appointing someone to make personal or lifestyle decisions on your behalf, which begins when you are unable to make decisions. Your guardian can consent, or withhold consent, to medical treatment on your behalf. The guardian cannot be a person who is providing you with professional care, treatment or accommodation.

If a person is appointed under an Enduring Power of Attorney (medical treatment), their decision about your medical treatment will have priority over the decision of your guardian.

1.3 A Refusal of Medical Treatment Certificate by Competent Person is a document signed by a medical practitioner, saying that, in relation to a current condition, the patient had clearly expressed refusal of medical treatment generally or specific treatment. The condition must be named and the patient verifies their refusal by signing.

1.4 The Refusal of Medical Treatment Certificate: Agent or Guardian of Incompetent Person is a legal document, demonstrating that the person has been appointed to act by an enduring power of attorney (medical treatment) or an Order of the Guardianship and Administration Board under the Guardianship and Administration Board Act 1986. On the patient’s behalf, they may refuse medical treatment generally or specific medical treatment for the patient’s current condition.

1.5 The Medical Treatment Act 1988 confirms the common law of the right to refuse medical treatment. Many people confuse “euthanasia” with withdrawing futile extraordinary treatment, but that is allowing a person to die from their condition without futile extraordinary treatment.

There is adequate provision for a patient to make their views known, safeguarded by written and signed documents, witnesses and signatures of medical practitioners. There is no need to change the law to ensure a person’s death is not delayed by futile extraordinary treatment. That issue can be addressed in medical schools or hospitals.

1.6 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Preamble of The Universal Declaration of Human Rights states,

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and
peace in the world… …Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person …

… Article 3. **Everyone has the right to life**, liberty and security of person.

…Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment….

…Article 7. **All are equal before the law and are entitled without any discrimination to equal protection of the law.** All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

...Article 21. (2) **Everyone has the right of equal access to public service in his country**

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

...Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

...Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Article 28. **Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.**

It is clear that everyone has an equal right to life, equal access to public services and medical care regardless of whether they are aged, sick or have a disability. A well person who is suicidal is offered counselling. A depressed suicidal person should also be offered counselling and the terminally ill, palliative care.

Legalising euthanasia and assisted suicide would breach the International Human Rights of those targeted for killing. It would discriminate against the aged, sick, and those with a disability. Parliament must consider the common good and govern for everyone including the aged, sick, and those with a disability, not just a few doctors who want immunity from prosecution.

The Council of Europe has resolved, \(^3\) “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.”
The Convention on Human Rights and Biomedicine states that, “the state has no obligation to provide citizens with the means to commit suicide.”

Australian-Canadian lawyer and ethicist Margaret Somerville, in evidence to the Australian parliament, said "If you look at the most fundamental norm or value on which our type of societies are based, it is that we do not kill each other. No matter how compassionate and merciful your reasons for carrying out euthanasia, it still alters that norm that we do not kill each other to one where we do not usually, but in some cases we do."

Whenever assisted suicide or euthanasia is in the news the Right to Life office receives phone calls from vulnerable people afraid that they will be on the list for execution. It is obvious to them that it is cheaper to kill them, than for them to be cared for. Legalising euthanasia and assisted suicide is the ultimate in elder abuse. By not wanting to be a burden on their family or society, elderly frail people may be coerced by financial pressures, health care costs and family expectations into accepting the lethal jab. People who do not want to die, will die. Parliament’s duty is to protect the lives of its citizens, not authorise their killing.

2. SOCIAL ISSUES

2.1 “Euthanasia takes you out of my pain”– Paul Kelly, Editor-in-Chief, The Australian.

Care for the relatives The article “No solution” to euthanasia in the Medical Journal of Australia, 18/5/2015 had a noteworthy comment by Peeb on 18/5/15:

“I look after people who are dying all the time. Had one in my rooms this morning. Why have I never felt the need to euthanase someone in the last 20 years? Have I been asked? Maybe 5 times. Am I religious? No. People go all funny in the head when relatives die. In my experience it’s rarely the person dying that feels distressed. It’s the person watching them. They then respond to how they are feeling by projecting their distress onto the dying individual which leads them to decide that the best way to alleviate their own suffering is to hasten the death of others (or themselves) so they (others) don’t have to watch. How selfish. No one said death had to be fun but it can be. When someone in the hospital has a good death you will hear laughter coming from the room. When it’s a bad death it’s a complaint, often well after the fact. Maybe if we were better at caring for the relatives of the dying this whole euthanasia question wouldn’t be an issue? Euthanasia. The wrong answer to the right question.”

At the recent International Symposium on Euthanasia and Assisted Suicide at Adelaide 22-23 May 2015 a Dutch academic, Henk Reitsma said that although relatives cannot bear to see their loved ones in difficult circumstances, we are more human when we stay, and bear the suffering together. He said that by overcoming our own psychological pain we can walk together with that person.

2.2 SUICIDE COACHING Also at the Symposium, Judi Taylor of Mornington Peninsula, described how her 26 year old son Lucas committed suicide with “death coaching” from Dr Philip Nitschke’s EXIT organisation. Lucas paid $600 to join EXIT
and was involved in their on-line forums prior to his death. She asked that the EXIT website be deleted.

Also at the Symposium, Marie Gleeson, an Australian woman described the death of her mother. She believes that her mother was coached into ending her life with a string of instructions from EXIT International. The tick box instruction list was found in her mother’s bedside cabinet. The “choice” of assisted suicide does not only affect the dead person, but his or her family, friends and community.

People who are depressed and suicidal need proper help, and we spend resources on Lifeline, Beyond Blue and Suicide Helpline to prevent suicide. Rightly so. If assisted suicide were legalised, this would send a confusing message to our young depressed members of our community. We want them to choose life, not death. We want a culture of life, not death.

Better acceptance of death and communication would help. A friend went to see a dying person. In the living room his family said, “We know he is dying but we have not told him because we do not want to upset him.” When he went into his friend’s room, the dying person said, “I know I am dying, but I have not told my family because I do not want to upset them.”

3. CURRENT LEGISLATION

3.1 HISTORY OF EUTHANASIA BILLS IN AUSTRALIA

Tasmania – 17/10/2013 Legislative Assembly – “Voluntary Assisted Dying Bill” was defeated 11/13

NSW 23/5/2013 Legislative Council “The Rights of the Terminally Ill” Bill was defeated 11/23

S.A. 14/6/2012 Legislative Assembly, Ending Life With Dignity Bill lost on the voices

W.A. 21/9/2010 - Legislative Council “Voluntary Euthanasia bill” defeated 11/24

VIC 10/9/2008 –Legislative Council “Medical Treatment (Physician Assisted Dying Bill 2008” defeated 13/25

N.T. 25/5/1995 Legislative Assembly The Rights of the Terminally Ill Act allowed terminally ill people to have medical assistance in committing suicide. Dr Nitschke assisted 4 people to commit suicide

Federal Government 25/3/1997 passed the Euthanasia Laws Act 1997, rendering the NT Act ineffective. Euthanasia has been rejected by the Federal Parliament. During the debate, Kevin Andrews said if the national parliament could not legislate on an issue that went, literally, to the life and death of its citizens, then what on earth was its purpose?

3.2 It is an offence to assist a person to commit suicide in every State of Australia.
3.3 The A.M.A.

When the Australian Medical Association amended its Position Statement on the Role of the Medical Practitioner in End of Life Care 2007 (amended 2014), it kept section 10.8: 

10.5 The A.M.A. believes that medical practitioners should not be involved in interventions that have as their primary intention the ending of a person’s life. This does not include the discontinuation of futile treatment.  

10.6 Patient request for euthanasia or physician assisted suicide should be fully explored by the medical practitioner in order to determine the basis for such a request. Such a request may be associated with conditions such as depressive or other mental disorder, dementia, reduced decision making capacity and/or poorly controlled symptoms such as pain. Understanding and addressing the reasons for such a request will allow the medical practitioner to adjust the patient’s clinical management accordingly or seek specialist assistance.”

3.4 World Medical Association9 - Its Declaration on Euthanasia, adopted by the 38th World Medical Assembly, Madrid, Spain, October 1987 and reaffirmed by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005 states: 

"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 Statement on Physician-Assisted Suicide, adopted by the 44th WMA, Marbella, Spain, September 1992 and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005 likewise states:10

"Physician-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."

The World Medical Association has said, “euthanasia is in conflict with basic ethical principles of medical practice,” and “The WMA strongly encourages all national medical associations and physicians to refrain from participating in euthanasia, even if national law allows it or decriminalises it under certain conditions.”
3.5 Advanced Care Planning/Directives

The danger of these programs is that they often include tube feeding and intravenous hydration as part of an end of life care plan, which could allow euthanasia to occur by removing basic food and fluids. When people sign up for these programs they may not be really informed about their condition, and whether it is right to act in such a way before you are confronted with the actual situation. There is an element of judgment about these decisions and we believe it is better to make such decisions with the real situation at hand. Only then can people be properly informed about their condition and its likely consequences.

3.6 LIFE INSURANCE

The financial service council represents Life Insurance Providers and is opposed to providing payouts in cases of legalised assisted suicide. Currently they do not provide payouts to families of those who commit suicide.

4. OVERSEAS JURISDICTIONS

Euthanasia and assisted suicide has, with very few exceptions, been rejected by legislatures, expert committees, courts, professional healthcare organisations and disability groups around the world. Of almost two hundred countries in the world, only the Netherlands, Belgium, and Colombia have legalised euthanasia, and Switzerland and a few U.S. states have legalised assisted suicide.

The experience of those few jurisdictions that have legalised euthanasia is incrementalism, or the slippery slope.

“Once the genie is out of the bottle, it is not likely ever to go back in again.” – Theodore Boer

Seven years ago Professor Boer argued that a ‘good euthanasia law’ would produce relatively low numbers of deaths. He made international headlines this year when he announced that, after supporting the Dutch euthanasia laws and being a nine-year member of a regional euthanasia evaluation committee, that he had completely changed his mind. He now opposes euthanasia. “I was terribly wrong, in fact,” he said. The Daily Mail reported he told the U.K. House of Lords, “Don’t do it Britain.” “Once the genie is out of the bottle, it is not likely ever to go back in again.” He now believes that the very existence of a euthanasia law turns assisted suicide from a last resort into a normal procedure.

6.1 THE NETHERLANDS

The Netherlands legalised euthanasia and assisted suicide 30 years ago, when pain relief and palliative care was not as good as it is now. It started for very limited and specific illnesses. There is now a group of Dutch doctors suggesting that the “over 70’s” people who are “tired of life” and those with limited financial resources can now be candidates for euthanasia. The Groningen Protocol provides for the non-voluntary euthanasia of sick babies, which is infanticide. The children eligible are to be “gravely ill” or have “significant birth defects.” 300 involuntary deaths have been reported. From their history, we can see the “slippery slope” To deny this is to deny history and fail to learn from it.
6.2 BELGIUM
Last December Belgian twins who were deaf and learnt that they would go blind were killed. Neither was terminally ill or suffering any physical pain. After they were killed the Belgian legislature tabled an amendment that allows children and Alzheimer’s sufferers to be killed by a doctor administering a lethal injection. Patients euthanased have included a man psychologically distressed by his appearance after several “sex-change” operations. The European Court of Human Rights wants a Belgian Court to hear allegations of serious irregularities in the euthanasia of Godilva De Troyer by Dr Wim Distelmans. Her son, Tom Mortier, a university lecturer, claims that her own doctor denied her his mother’s request for euthanasia because she was depressed. However Dr Distelmans, who had no psychiatric expertise, readily agreed. Ms De Troyer made a 2500 Euro donation to Dr Distelmans’s Life End Information Forum, which suggests there may have been a conflict of interest. Tom was notified only after her death, to transfer her body to the morgue. In Belgium people have been euthanased because they had autism, anorexia, borderline personality disorder, chronic fatigue syndrome partial paralysis and bipolar disorder. Even children over 12 years of age with a disability can be euthanased.

6.3 1920 GERMANY and INCREMENTALISM
There is a political process called “incrementalism.” An example of this can be seen in the thinking of the German government from 1920 onwards. In 1920 the German government legalised euthanasia for children, under three years old, who had specific disabilities. The categories of disability widened over time. This was the beginning of the Nazi holocaust. Categories expanded to include gypsies, homosexuals, Armenians and Jews, then Allies. This attitude does not spring up overnight – there is a background of gaining acceptance for killing groups of people considered unwanted.

We have seen the consequences of euthanasia for a specific group of people in a specific age group, has expanded from those in a specific category in 1920 Germany to other groups such as the sick elderly, all those with a disability, Gypsies, Armenians, homosexuals and Jews. We do not want to go down that track. Professor Theodore Boer said, “To deny the slippery slope is to deny history.”

6.4 OREGON Patients in Oregon have received letters from the state Health Insurance company, refusing to fund extensive chemotherapy but agreeing to fund “assisted suicide” for $50. These patients were outraged because they do not want to die.

7. ARGUMENTS IN FAVOUR OF LEGALISING EUTHANASIA AND ASSISTED SUICIDE

7.1 AUTONOMY – Professor John Keown, of the Kennedy Institute of Ethics, argues, “Respect for autonomy is limited on choices that undermine the individual’s worth or well being. We do not allow people to sell themselves into slavery, or take hard drugs or drive without a seatbelt. [If we legalised euthanasia] how many requests would be truly autonomous, truly informed and considered, and how many the result of depression, or a sense of being worthless or a burden or pressure from relatives, or inability to afford treatment? We restrict individual choice in order to protect others. Arguments that some people are “better off dead” should raise 3 red flags.
“Red flag 1. Judgments are deeply discriminatory. The principle of equality before the law lies at the heart of our law. This should resonate this year, the 800th anniversary of the Magna Carta.” The House of Lords Select Committee on Medical Ethics 1994 said that the law’s prohibition on intentional killing is “the cornerstone of law and social relationships” that “protect each one of us impartially, embodying the belief that we are all equal.”

“Red flag 2. Legalising euthanasia starts the slippery slope. The criteria that justify an intentional death are intrinsically arbitrary. Oregon has “terminal illness.” Dutch law allows “unbearable suffering” and “mental suffering.” One enters a world of arbitrary and discriminatory judgements about whose life is “worth living” and whose is not.

“Red flag 3 Acceptance of hastened death for suffering patients who request it leads to acceptance of hastened death for suffering patients who cannot. Dutch and Belgian doctors have given lethal injections to thousands of patients without an explicit request with impunity.

7.2 COMPASSION

“Advocates of change have no monopoly of witnessing loved ones dying in distressing conditions. It does not follow that the answer is euthanasia or assisted suicide. The answer is to improve the quality and availability of end-of-life care so that people do not die, or fear they will die, in distressing conditions.

7.3 MEDIA

“As the saying goes, “If it bleeds, it leads.” Coverage is typically emotive and one-sided. If opposing views are aired at all, they are often caricatured as “religious” despite the fact that legalisation has long been opposed by secular bodies like the World Medical Association.”

8. FUTURE CULTURE OF AUSTRALIA - LIFE OR DEATH?

Do we want to foster a culture of life and hope or despair and death? The Right to Life is the most fundamental right of all human rights. Without it, all other rights are meaningless. Euthanasia and assisted suicide oppose the right to life and discriminates against the terminally ill, who are a particularly vulnerable and weak group in our society, and who need and deserve the full protection of the law, as they have now. We want a culture of life and hope, not despair and death. Give the dying good palliative care, do not kill them.
References

7. conf noeuthanasia.org.au
15. [https://cbhd.org/content/groningen-protocol-making-infanticide-legal-does-not-make-it-moral](https://cbhd.org/content/groningen-protocol-making-infanticide-legal-does-not-make-it-moral)
16. The Telegraph, 16/01/2013 “Belgian twins in unique mercy killing” The Telegraph, 16/01/2013 “Belgian twins in unique mercy killing”
11 April 2013

**Ending Life with Dignity Bill 2013 (SA): FSC Initial Comments and Issues from a life insurance perspective**

**BY EMAIL**

Dear Sir/Madam/South Australian Parliamentarians

We appreciate being alerted to the provisions in the *Ending Life with Dignity Bill 2013 (SA)* (the "Bill") that deal with insurance.

The Financial Services Council ("FSC") represents Australia’s retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks. The FSC has over 130 members who are responsible for investing $1.9 trillion on behalf of more than 11 million Australians.

The FSC and its members do not express any view on euthanasia and whether or not euthanasia should be supported by legislation. Nothing in this letter should be taken to be an expression of a view on, support for or non-support for, euthanasia. As such, our comments below should not be taken as being supportive or otherwise of government policy, or the policy of any political party or individual Parliamentarian on the matter of euthanasia. Our comments are limited solely to the potential life insurance implications of clauses 39 and 40 of the Bill.

Our comments below are our initial views on the impacts of the Bill on life insurers.

In providing the following comments on the Bill, we wish to emphasise that the interaction of State legislation concerning life insurance with federal legislation such as the *Life Insurance Act 1995*, and the *Insurance Contracts Act 1984* is potentially a complex matter requiring careful legal analysis - not least because of the provision in the federal Constitution that provides that where there is a conflict between State and federal laws, that federal law will prevail.

As such, we suggest that the insurance provisions be removed until such time as Members of the South Australian Parliament have had an opportunity to consider the complex legal details of the proposals for insurance in this Bill. In any event, the Bill raises the following significant issues, concerns and implications for the life insurance industry.

**We make the following brief and initial comments on the Bill being considered:**

- we raise the issue concerning the jurisdictional application of South Australian legislation in the area of life insurance - we understand that most life insurance contracts are expressed to be subject to the law of New South Wales, Queensland or Victoria, potentially resulting in the relevant provisions of the Bill having little effect;

- we note that the proposed protection for the insureds under clause 40 of the Bill contradicts current disclosure obligations of insureds under the *Insurance Contracts Act 1984* (Cth);
the proposed clause 40 also creates a risk of anti-selection for the insurer - which ultimately results in an adverse cost impact for other policyholders with that insurer (anti-selection within a risk pool will increase the cost of insurance for all those in that pool). Clearly it is contrary to the principles of insurance (and the duties of utmost good faith in insurance) to allow a benefit to be paid for an event effected by (and potentially, not disclosed by) the insured. (We make no comment on the policy matters relating to euthanasia, and this comment simply notes the impact on insurance.)

- It is not clear whether clause 40 will have a retrospective effect. If it does, this will have a negative and disruptive impact for insurers in terms of the pricing of insurance contracts, reinsurance arrangements, reserving and capital management (noting that capital/prudential standards for insurers in Australia are set and supervised by the Australian Prudential Regulation Authority - APRA - as such, APRA may be interested in the potential impact of these provisions)

- overall, clause 40 creates significant uncertainty as to its intention and scope, for example, where an existing life insurance policy has exclusions for pre-existing conditions.

FSC would be very grateful if you could advise further as to the progress of this Bill through the South Australian Parliament. We encourage our comments to be passed on to other South Australian Members of Parliament (of any political party). Our comments are an indication of some of the issues raised by the Bill but are not, and are not intended to be, a comprehensive statement of all of the implications of the Bill on the life insurance industry.

As currently drafted, there are a number of aspects of the Bill on which FSC's Life Insurance members would seek clarification regarding practical application. In particular clauses 39 (cause of death) and clause 40 (insurance) contain wording which is confusing, difficult to understand or which may be contradictory in parts.

For example, the industry would benefit from specific clarification on the application of clause 40 in particular and how it would apply to non-medically underwritten life policies which operate via a 'pre-existing conditions' clause. In these cases a claim may be denied on the basis of an existing condition, which may ultimately be the reason for exercising the option of euthanasia. Therefore, a claim citing this condition as the cause of death may be declined. FSC believes that insureds would also benefit from clarification around this issue should the Bill be passed.

If timing and events permit, the FSC would be happy to provide a more detailed brief for South Australian Parliamentarians on the insurance matters raised above.

Please feel free to contact me on [redacted] if you have any questions or wish to discuss our initial comments on the life insurance impacts of the Bill.

Regards,

Stephen Judge
General Counsel