

Submission to the Scrutiny of Acts and Regulations Committee

on the Voluntary Assisted Dying Bill 2017

by Richard Egan, *Defend Human Life!*

This submission addresses the Committee's terms of reference:

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –

(i) trespasses unduly upon rights or freedoms;

(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;;

(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
[and]

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

RIGHT TO LIFE

The Universal Declaration of Human Rights¹ proclaimed by the United Nations General Assembly in Paris on 10 December 1948, begins with a solemn declaration that:

*“ 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*,”*

It goes on to enumerate among these “equal and inalienable rights” in Article 3 “Everyone has the right to life”.

Inalienable means “Not subject to being taken away from or given away by the possessor.”

The “right to life”, like the right in Article 4 “*No one shall be held in slavery or servitude*” is inalienable, it cannot be given away by the possessor.

In relation to Article 4 this means that no person can agree to become a slave.

In relation to the right to life in Article 3 this means that no person can agree to have their life intentionally ended.

This prohibits the following practices:

- Duelling
- Any form of fights to the death for sport or betting
- Killing for cannibalism by agreement (other as a fetish or even in a survival situation)

¹ <http://www.un.org/en/universal-declaration-human-rights/>

- Private societies (gangs) in which members agree to be killed if they violate oaths or disobey the leaders
- Suicide by murder in which a person hires someone to kill them (for example to prevent an insurance claim being voided by a suicide clause)

The common law has never recognised consent as a defence to a crime of murder.

Article 6 (1) of the International Covenant on Civil and Political Rights states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²

The United Nations Human Rights Committee has expressed concern³ about law on the *Termination of Life on Request and Assisted Suicide* in the Netherlands:

7. The Committee remains concerned at the extent of euthanasia and assisted suicides in the State party. Under the law on the Termination of Life on Request and Assisted Suicide, although a second physician must give an opinion, a physician can terminate a patient's life without any independent review by a judge or magistrate to guarantee that this decision was not the subject of undue influence or misapprehension. (art. 6)

The Committee reiterates its previous recommendations in this regard and urges that this legislation be reviewed in light of the Covenant's recognition of the right to life.

Despite the Minister for Health's claim that “at international law an assisted dying regime can be compatible with the right to life, provided that there are sufficient safeguards to prevent abuse of vulnerable people”, this is not an established position in international law.

The Minister obliquely refers to Canada to justify her claim that the Bill is compatible with the right to life. The Supreme Court of Canada advanced the Kafkaesque notion that a law prohibiting assisted suicide or murder of the terminally violated their right to life because some of this class of persons might take their own life sooner in the absence of a regime permitting assisted suicide or euthanasia than they would if such a regime were available.

This highly speculative and tendentious argument was effectively nullified by a careful study⁴ on differential trends in suicide rates in those states of the United States which have legalised assisted suicide compared to those which have not. The study, which controlled for various socio-economic factors, unobservable state- and year effects, and state-specific linear trends, found that legalizing

² <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

³ HUMAN RIGHTS COMMITTEE Ninety-sixth session Geneva, 13-31 July 2009, **CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT, Concluding observations of the Human Rights Committee: NETHERLANDS** CCPR/C/NLD/CO/425 August 2009, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrU3mlyiFHTCrYPBecWJaXYifOhoEt6xE3Gy3bUUART%2bXrCYoEsqSjsYArFCER%2fjzKZBVx2RmEEi5najeaLFu%2bxgZN1tObZVUOqRRWDDIBQk>

⁴ Jones, David Albert and Paton, David (2015) How does legalization of physician assisted suicide affect rates of suicide? *Southern Medical Journal*, 180 (10). pp. 599-604. <http://eprints.nottingham.ac.uk/31805/1/Suicide%20US%20SMJ%20 pre-publication.pdf>

assisted suicide was associated with a 6.3% increase in total suicides (i.e. including assisted suicides). This effect was larger (14.5%) in the over 65s (14.5%, CI = 6.4%, 22.7%).

Introduction of legalised assisted suicide was not associated with a reduction in non-assisted suicide rates, nor with an increase in the mean age of non-assisted suicide.

The conclusion is that assisted suicide either 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.

The latter suggestion would be consistent with the well-known Werther effect of suicide contagion.⁵

The Bill could then, by promoting official state suicide permits for some Victorians undermine the fundamental message of suicide prevention for all Victorians, putting vulnerable suicidal people, including young people at greater risk of acting on suicidal ideation.

Furthermore, Clause 82 of the Bill would remove the protection of Section 463B of the Crimes Act 1958 (*Every person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which he believes on reasonable grounds would, if committed, amount to suicide.*) from family members, ambulance and emergency care workers and good Samaritans who try to save the life of a suicidal person. The wording of Clause 82 could be understood to mean that Section 463B would not apply even if the suicide was by means other than a voluntary assisted dying substance provided the person committing suicide was “accessing” the processes of the Act.

So for example, if a person had made a first request under the provisions of the Bill but before being supplied with the “voluntary assisted dying substance” attempted suicide by slashing his or her wrists, it could now be an assault to attempt to stop the person bleeding to death.

Additionally, despite claims that the Bill has numerous safeguards these, on close examination prove illusory.

Just to give one example, there is no requirement at the time a person actually self-administers “voluntary assisted dying substance” the person be mentally competent to understand the effect of doing so. There is also no requirement for a witness which makes the offence in clause 84 of the Bill virtually impossible ever to prove. The Bill in fact creates the opportunity for the perfect murder.

Conclusion on the Right to Life:

The Voluntary Assisted Dying Bill 2017 would make it lawful for medical practitioners to aid the suicide of certain Victorians and, in some circumstance, to directly kill certain Victorians.

As the right to life is inalienable, the requirement that such acts be preceded by a series of requests from the person, along with the eligibility criteria and procedural steps, is NOT sufficient to sustain

⁵ Niederkrotenthaler T, Herberth A, Sonneck G. [The "Werthereffect": legend or reality?]. Article in German, *Neuropsychiatrie*, 2007;21(4):284-90, cf. Niederkrotenthaler T, Sonneck G, “Assessing the impact of media guidelines for reporting on suicides in Austria: interrupted time series analysis”, *Australian and New Zealand Journal of Psychiatry*. 2007 May;41(5):419-28.

the claim by the Minister that the Bill is compatible with the State's obligation to ensure that no person is arbitrarily deprived of the right to life.

The Committee should find that the Bill is incompatible with the right to life

RIGHT TO EQUAL PROTECTION

Article 8 (3) of the Charter of Human Rights and Responsibilities provides that:

Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The Bill would require two doctors to agree to a person's request for a prescription for a lethal dose to be used to end the person's life. To do so the doctors essentially need to agree that the person would "be better off dead" or at least that it is reasonable for a person in that position to consider that he or she would be better off dead.

The reasons given for requesting assisted suicide in Oregon are not primarily to do with pain (only 26.4%) but rather with concerns about loss of autonomy (91.4%), decreasing ability to participate in activities that made life enjoyable (89.7%), loss of dignity (77%), loss of control of bodily functions, such as incontinence and vomiting (46.8%) and the physical or emotional burden on family, friends, or caregivers (42.2%).⁶

These are all disability issues. The entirely subjective notion of suffering in the Bill would allow assisted suicide for a similar set of concerns. This set of concerns reflects the day to day realities of life for many people living with disabilities of various kinds. If we legalise assisted suicide for incontinence, a loss of ability to engage in one's favourite hobby, a need to have others take care of your physical needs, a loss of mobility and so forth what is the take home message for those Victorians who live with these challenges every day? Are we saying they would also be better off dead?

The late Stella Young, comedian, writer and disability activist, wrote on the implications of legalising assisted suicide for people living with disabilities:

As a disabled person, I'm accustomed to conversations about quality of life and dignity. Specifically, I'm accustomed to assuring people that my life is worth living. I'm short statured, a wheelchair user, and I frequently have bone fractures. All the visual cues that make me 'the other' are front and centre. People make all sorts of assumptions about the quality of my life and my levels of independence. They're almost always wrong.

I've lost count of the number of times I've been told, "I just don't think I could live like you," or "I wouldn't have the courage in your situation," or, my favourite one to overhear (and I've overheard it more than once), "You'd just bloody top yourself, wouldn't you?". What we as a society think we know about what it means to live as a disabled person comes from cultural representations of

⁶ Oregon Public Health Division, Oregon Death With Dignity Act: Data Summary 2016, Table 1. Characteristics and end-of-life care of 1,127 DWDA patients who have died from ingesting a lethal dose of medication as of January 23, 2016 [sic = 2017], by year, Oregon, 1998-2016, p.10, <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf>

disability seen through a nondisabled lens. And we, as people with disability, rarely get to tell our own stories. Also, social attitudes towards disabled people come from a medical profession that takes a deficit view of disability.

This is my major concern with legalising assisted death; that it will give doctors more control over our lives.

As a disabled person who has had a lot to do with the medical profession, I can tell you that this is the space in which I've experienced some of the very worst disability prejudice and discrimination. Doctors might know about our biology, but it doesn't mean they know about our lives.

Media reports on assisted dying feed these misconceptions. ABC News reported this week on the case of Barbara Harling, a Queensland woman with motor neurone disease who said that she would consider moving to Tasmania if the Voluntary Assisted Dying Bill had passed. Harling is quoted as saying: "Well, let's put it this way. I can use my left hand, my right hand is just about useless. If I can't use my left hand to wipe my bottom, then I can do nothing else for myself. That means someone has to do everything for me. I couldn't bear to live like that." The thing is, a lot of people do live like that.

I know many, many people who depend on personal assistants for all of their daily living tasks, some of them requiring 24 hour care. Having to rely on someone else to wipe your bum may not be something anyone aspires to, but I'm quite sure it's never killed anyone. Perhaps our discomfort with this kind of thing is why we don't hear the counter view in reports about assisted dying.

Often we hear supporters of euthanasia and assisted suicide talk about wanting to avoid the pain and suffering that often comes with imminent death. But more often, we hear stories like Barbara Harling's, which are more about wanting to avoid a loss of autonomy and independence.⁷

Notwithstanding Clause 9(3) of the Bill, a person with a disability would still be eligible if he or she has been diagnosed with a terminal condition. The Bill requires the two assessing doctors to assess the person's decision making capacity. Similarly the assessing doctors are supposed to determine that the request is voluntary and not the result of coercion.

Doctors are less likely to identify depression in people with disability, simply by assuming that it is normal for a person with disability to show signs of depression such as sadness and lack of hope. Doctors may also easily miss the particular vulnerability of a person living with disability to overt or subtle coercion from family or caregivers who reinforce a feeling that the person is a burden, "too much trouble", "life is too hard" and so forth.

The Bill would make assisted suicide available to people with a prognosis of less than 12 months to live. However, the prognosis may take account of which treatments are "acceptable to the person". On this basis various condition that are not in themselves terminal may be considered as terminal for the purpose of offering assisted suicide if the person decides to forego an effective, available treatment for whatever reason. This approach poses a severe risk to people following an initial acquisition or diagnosis of a condition that may involve a considerable level of disability. Research overwhelmingly shows that people with new disabilities frequently go through initial despondency

⁷ Stella Young, "Disability a fate worse than death?", Ramp Up, 18 Oct 2013, <http://www.abc.net.au/rampup/articles/2013/10/18/3872088.htm>

and suicidal feelings, but later adapt well and find great satisfaction in our lives. However, the adaptation usually takes considerably longer than the mere ten-day waiting period required by the Bill between the first and final request.

People with new diagnoses of terminal illness appear to go through similar stages. In that early period before one learns the truth about how good one's quality of life can be, it would be all too easy, if assisted suicide is legal, to make the final choice, one that is irrevocable.

Dr. Richard Radtke, a well-known retired academic oceanographer in Hawaii, provides one such example. Dr. Radtke has had a very disabling form of muscular sclerosis for over 25 years. In the period after his diagnosis, doctors often classified him as terminally ill. He experienced severe depression for two years. Had assisted suicide been legal, he acknowledges that he would have chosen it and died long ago. Today, still with an extremely limiting disability, he has retired from a successful academic career, is a happily married father, remains the president of a charitable foundation, and is grateful for the length and varied experiences of his life. How many such individuals is our society prepared to sacrifice as the collateral damage from the legalization of assisted suicide?⁸

Conclusion on the Right to Equal Protection

Legalising assisted suicide and euthanasia poses a direct threat to the lives of some people with disabilities who may be assessed as eligible to request it. Doctors are more likely to agree that they are "better off dead" and to miss signs of depression or coercion.

Legalising assisted suicide for being a burden, incontinence and loss of ability to enjoy activities trivialises issues faced daily by persons living with disability and demeans their courage in facing the challenges of life.

The Bill violates the right of persons with disabilities to the equal protection of the law and should be declared by the Committee to be incompatible with this right.

⁸ Marilyn Golden, Why assisted suicide must not be legalized, <https://dredf.org/public-policy/assisted-suicide/why-assisted-suicide-must-not-be-legalized/>