

The NSW Council for Civil Liberties (CCL) welcomes the invitation from the Hon Trevor Khan MLC to participate in consultations by the NSW Parliamentary Working Group on Assisted Dying on the Voluntary Assisted Dying Bill 2016¹.

1. In general support of the Bill.

Since its inception, the Council for Civil Liberties (CCL) has had a policy of supporting the legalisation of assisted suicide and voluntary euthanasia. In the last two decades, this has been manifest in our support for the Northern Territory's Rights of the Terminally Ill Act 1995, our opposition to the Euthanasia Laws Bill 1996 (Cth) which, when passed, overrode that act, our support for the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008,² which would have restored the power of the Northern Territory Government to re-enact its rights of the terminally ill legislation, and of the Rights of the Terminally Ill Bill 2013 (NSW)

Our submissions in 1997 and 2008 contain between them strong arguments in support of legalising assisted suicide and voluntary euthanasia, and replies to eight weak arguments that are often raised against them. We accordingly confine ourselves here to noting that five countries have legislation for voluntary euthanasia, five more have legislation for assisted suicide, as do five states of the United States. Contrary to commonly made assertions, there have not been any atrocities as a result of these laws. There has been no slippery slope, nor decline in the value accorded to human life.

Moreover, recent surveys have shown that an overwhelming majority of New South Wales citizens support making assisted suicide available—72%, with only 16% opposed, in a survey of 34,000 residents, conducted last year by the Australian Broadcasting Corporation. Across Australia, support has been even higher—82% in a Newspoll survey of 2,500 people conducted in 2012.

We note also that voluntary passive euthanasia (allowing someone to die of a curable disease, such as pneumonia, in order not to prolong pointless suffering) is common. Here, the intention, that the patient's suffering end, and the outcome, death, are the same as those of assisted suicide. There is no significant moral difference between these two procedures.

2. Comment on detail.

The Bill properly contains a number of provisions to prevent misuse of the permissions proposed in it, and to protect not only patients but also the doctors, nurses, pharmacists and others who may be involved from legal risks.

We have some concern about the limitation to patients who are expected to die within a year. This would exclude people who have Alzheimer's disease, and wish their lives to be ended once they become mentally incapable, and people with motor neurone disease, who know that death will come and that their life till then will be unbearable so they want to be able to decide to do it while they can still physically do it. They do not want continual deterioration of functions like swallowing.

¹ Letter 12th July 2016

² This submission is number 418 of those listed by the Senate Legal and Constitutional Standing Committee in its 2008 inquiry into the bill.

While we recognise that the requirement for a certificate by a psychiatrist provides a protection for the other two doctors as well as for the patient, we are concerned that patients in rural hospitals may not have ready access to an independent psychiatrist to carry out this task. We note that the Oregon legislation permits the equivalent task to be carried out by two laymen. The committee might like to consider permitting this where no independent psychiatrist is available.

In some cases, a person may fail the psychiatrist test on one occasion, but be capable of making the necessary decision on another—perhaps the next morning. There is nothing in the bill to prevent a second assessment, but perhaps a note could be added making this clear.

We are concerned by the very conservative limitation to people over the age of 25.

It is not made clear what the purpose is of the referral to a social worker. Is this for people suffering intolerable incapacity, so they can learn about the availability of support? In any case, we have the same concern about availability as we have about the psychiatrist requirement.

However, notwithstanding these suggestions, the Council for Civil Liberties supports this bill. The passage of such legislation is long overdue.

3. NSWCCCL Position

Subject to consideration of our suggested improvements, the NSWCCCL supports the Voluntary Assisted Dying Bill (2016) as a positive step towards the much needed legalisation of euthanasia in NSW.

4. Concluding comments

The NSW Council for Civil Liberties hopes these brief comments are of assistance to the NSW Parliamentary Working Group on Assisted Dying. We would be interested in further discussions with the Working Group if this is desired.

This submission was written by Dr Martin Bibby with assistance from Hans Heilpern (CCL Committed members).

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