Our ref: BNE3414954

15 April 2019

Committee Secretary

Health Committee

PARLIAMENT HOUSE QLD 4000

***By email:*** [***careinquiry@parliament.qld.gov.au***](mailto:careinquiry@parliament.qld.gov.au)

Dear Secretary

**Inquiry into aged care, end-of-life and palliative care, and voluntary assisted dying**

Thank you the opportunity to provide a submission to this inquiry. The terms of reference include inquiring into the views of the Queensland community and relevant health practitioners on the desirability of supporting voluntary assisted dying, including provisions for it being legislated in Queensland and any necessary safeguards to protect vulnerable persons.

This submission is confined to providing information on human rights relevant to voluntary assisted dying.

I note that in undertaking the inquiry the Committee is to consider the current legal framework, and relevant reports and materials in other jurisdictions, including the Victorian Government’s inquiry into end-of-life choices, the *Voluntary Assisted Dying Act 2017* (Vic), and implementation of the associated reforms.

The Issues paper for the inquiry identifies that there is no universally accepted definition of assisted dying or of euthanasia. For the purpose of this submission, the terms ‘voluntary assisted dying’ and ‘voluntary euthanasia’ are used interchangeably.

A 2016 Issues paper of the Australian Human Rights Commission, *Euthanasia, human rights and the law*, concludes with a human rights-based analysis of voluntary euthanasia and commentary of the practice informed by human rights principles. The analysis states:

## **6 Analysis**

An analysis of international human rights law relevant to the practice of voluntary euthanasia does not lead to ‘the’ answer. Rather it reveals a balancing of rights, the appropriate balance of which may be subject to competing views.

The right to life does not (as a corollary) include a right to choose to die. But nor does it require a State to ensure that a person’s life is protected when this is against the express wishes of that person. In the case of a request for voluntary euthanasia, the State’s obligation to protect life must be balanced against the right to personal autonomy which is contained within the right to privacy.

Laws prohibiting access to voluntary euthanasia may interfere with the right to respect for private life as guaranteed under article 17 of the ICCPR, and as such need to be able to be justified as a legitimate limitation of that right.

In relation to access to passive euthanasia, it is important to note that to subject a person to medical treatment against their will or without their consent may violate their physical integrity and breach their rights under article 17 (and possibly article 7) of the ICCPR.

Further, the Disability Convention makes clear that people with disability are entitled to the same respect for their rights to life, health, physical integrity and personal autonomy as people without disability.

If a State does choose to legalise voluntary euthanasia, article 6 of the ICCPR requires that the legislation includes strict and effective safeguards against abuse. In order to be compatible with the right to freedom of thought, conscience and belief, such laws may need to include an appropriately worded ‘conscientious objection’ provision.

The analysis suggests that there is no one identifiable right that necessarily requires the legalisation of voluntary euthanasia, nor is there one identifiable right that prevents its legalisation, provided stringent safeguards are instituted. It would seem from a human rights perspective, the option exists to support legalisation of voluntary euthanasia practices provided that sufficient safeguards are put in place to prevent ‘arbitrary’ (including discriminatory) deprivations of life.

The AHRC Issues paper identified that the following rights under the *International Covenant on Civil and Political Rights* (ICCPR) may be engaged by the practice of voluntary euthanasia:

* right to life (article 6)
* freedom from cruel, inhuman or degrading treatment (article 7)
* right to respect for private life (article 17)
* freedom of thought, conscience and religion (article 18).

The *Convention on the Rights of Persons with Disabilities* contains specific obligations in relation to people with disability that are also relevant.

The *Human Rights Act 2019*, which is expected to commence on 1 January 2020, primarily protects human rights drawn from the ICCPR, as well as two rights drawn from the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The following rights under the *Human Rights Act 2019* may be engaged in relation to voluntary assisted dying:

* recognition and equality before the law (section 15) – drawn from articles 16 and 26 of the ICCPR
* right to life (section 16) – drawn from article 6(1) of the ICCPR
* protection from torture and cruel, inhuman or degrading treatment (section 17) – drawn from article 7 of the ICCPR
* freedom of thought, conscience, religion and belief (section 20) – drawn from article18 of the ICCPR
* freedom of expression (section 21) – drawn from article 19 of the ICCPR
* privacy and reputation (section 24) – drawn from article 17 of the ICCPR
* protection of families and children (section 26) – drawn from articles 23(1), 24(1) and 24(2) of the ICCPR
* right to health services (section 37) – drawn from article 12 of the ICESCR.

The Victorian Scrutiny of Acts and Regulations Committee conducted a ‘Charter Analysis’[[1]](#footnote-1) of the Voluntary Assisted Dying Bill 2017, which has since become an Act in Victoria. The analysis involved consideration of similar rights in the Charter to those identified above. That Committee made the following observations and comments on the Bill:

* A deprivation of life by assisted dying may be ‘arbitrary’ if the person’s consent to voluntary assisted dying is the result of outside pressure, irrationality or depression.
* The Charter rights of people under 18 or who have an incurable, advanced, progressive illness, disease or medical condition that is non‐fatal or only fatal in the long‐term to enjoy their human rights without discrimination may be engaged.
* The Charter right of people who are refused a voluntary assisted dying permit, despite otherwise being eligible for access to voluntary assisted dying and complying with Part 3 of the Bill, to equality before the law may be engaged.
* The Statement of Compatibility accompanying the Bill did not address how health practitioners (other than the co‐ordinating and consulting medical practitioners) are to be given an opportunity to not participate in voluntary assisted dying.
* Various clauses limited how anyone, including family members, could discuss assisted dying with a person who may have a fatal illness.

The observations and comments of the Victorian Scrutiny of Acts and Regulations may assist this Committee in identifying human rights considerations relevant to voluntary assisted dying, and to address issues such as safeguards to protect vulnerable people and conscientious objection of medical practitioners to voluntary assisted dying.

The approach of identifying the human rights that may be engaged and considering whether any limitation of the rights is reasonable and justified in accordance with section 13 of the *Human Rights Act 2019* would assist the Committee in this inquiry. It will necessitate finding an appropriate balance of human rights.

Yours sincerely



**NEROLI HOLMES**

**Acting Commissioner**

**Anti-Discrimination Commission Queensland**

1. Under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter), the Scrutiny of Acts and Regulations Committee is required to report on the compatibility of proposed legislation with the human rights under the Charter. The Queensland *Human Rights Act 2019* provides for a similar obligation on portfolio committees of the Queensland Parliament. [↑](#footnote-ref-1)