



# AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

## Bishops Commission for Life, Family and Public Engagement

15 February 2024

Department of Health and Aged Care - New Aged Care Act Consultation  
GPO Box 9848  
Canberra ACT 2601  
Email: AgedCareLegislativeReform@health.gov.au

Dear Sir/Madam

### Consultation on the new Aged Care Act

This submission from the Australian Catholic Bishops Conference (**the Conference**), as prepared by the Bishops Commission for Life, Family and Public Engagement (**the Commission**), is made to contribute to this consultation into the proposed new Aged Care Act.

One in five Australians identify as Catholic. The Catholic Church and its agencies contribute in various ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people to experience the fullness of life. It is concerned with all that impacts on human dignity and wellbeing for the common good. Catholic agencies provide ten per cent of hospital and aged care services in Australia, including more than 25,000 residential aged care beds and more than 7,000 retirement and independent living units.

The Conference is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Commission is one of several commissions established by the Conference to address important issues both within the Church and in the broader Australian community. The Commission has responsibility for commenting on human rights law and particularly religious freedom.

The Conference seeks to participate in public debate by making reasoned arguments that can be considered by all people of goodwill.

Without the necessary amendments, the proposed Aged Care Bill (**the Bill**) fails to distinguish between potentially conflicting rights and could be used to force Catholic aged care providers to allow euthanasia in their facilities.

For this submission, the term 'euthanasia' includes the practices of assisted suicide and voluntary assisted dying. The Catholic Church's concern about euthanasia is longstanding:

"Catholic teaching on euthanasia flows from our understanding of the human person. Euthanasia contradicts the goodness and dignity of each human person, created in the image of God – a unique, irreplaceable, individual. ... To appreciate why euthanasia is wrong, it is helpful to recall why – in every other circumstance – we regard every intentional ending of life as a tragedy. The reasons are multiple: the despair and isolation of the person who dies, the impact on their family and friends, the future

opportunities and blessings for the person that have been cut off, and more. Why should anyone suppose that these reasons cease to matter in the case of a person with a terminal illness, or someone who is ‘tired of life’, or who feels they are a burden to others, or who is afraid of becoming ‘undignified’ through frailty?”<sup>1</sup>

National aged care legislation must very clearly state that an aged care provider may decline to facilitate euthanasia, by refusing to house the lethal drugs that cause the death of a patient or by refusing the entry of medical practitioners who facilitate euthanasia, and that these actions do not constitute a breach of the provider’s duty of care to a patient or an impediment to necessary treatment.

A Bill that does not allow an aged care provider to provide a euthanasia-free home would undermine the rights of vulnerable individuals to choose a provider that ensures quality care free from such harmful services. The Conference also does not want the proposed new law to restrict the capacity of Catholic organisations to provide critical aged care services to thousands of vulnerable people around Australia.

The Conference recommends that the Bill formalise recognition of the rights of aged care providers in the Bill, including Catholic aged care institutions, which have a conscientious objection to providing euthanasia.

### **Findings of the Royal Commission**

The Bill comes in response to the findings of the Royal Commission into Aged Care Quality and Safety released in 2020. The Government is right to act in response following the Commission’s conclusion that the aged care sector requires substantial reform, given numerous examples of elder abuse, poor nutrition and inadequate health care.

Palliative care is insufficiently accessible to all Australians and priority should be placed on making palliative care services more accessible, especially to people in aged care. As the Australian Institute of Health and Welfare uncovered in 2020, although 90,000 Australians would have benefited from palliative care in that year, only 53,000 patients had access to a palliative care service.<sup>2</sup> The Royal Commission into Aged Care Quality and Safety also found “...patchy and fragmented palliative care for residents who are dying, creating unnecessary distress for both the dying person and their family.”<sup>3</sup>

However, as the Royal Commission concluded, all legislative reforms must be balanced with ensuring that the aged care industry receives adequate funding for the growing number of older Australians in need of high-quality care. It is also a priority to address the industry's severe staffing shortages by ensuring that aged care staff receive adequate pay and improved working conditions.

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<sup>1</sup> Australian Catholic Bishops Conference, *To Witness and to Accompany with Christian Hope*. Australian Catholic Bishops Conference, 2023. Page 5.

<sup>2</sup> Australian Institute of Health and Welfare, 2022, *Palliative Care Services in Australia: Summary of Palliative Care Services in Australia*, URL: <https://www.aihw.gov.au/reports/palliative-care-services/palliative-care-services-in-australia/contents/summary> [23 June 2022].

<sup>3</sup> Royal Commission into Aged Care Quality and Safety, *Interim Report: Neglect*. Volume 1. Commonwealth of Australia, 2019. Page 6.

## **Euthanasia in a rights-based approach to aged care**

The Bill has been drafted as a rights-based approach to aged care to ensure that “registered providers delivering funded aged care services to individuals must not act in a way that is incompatible with the rights specified.”<sup>4</sup>

There are obvious merits to a rights-based approach such as this. For example, among the rights listed in section 20 of the proposed Bill is the right to equitable access to “palliative care and end-of-life care when required.”<sup>5</sup> The Conference supports including this provision as adequate end-of-life care is a human right that should be accessible to everyone and is currently inaccessible to many vulnerable Australians. This care should be clearly delineated as separate from euthanasia.

It is possible that some may consider euthanasia to be a necessary aged care service that is covered by the right to palliative care and end-of-life care. Under this interpretation, the provision of euthanasia and assisted suicide would be mandatory in aged care settings through the proposed Bill’s Statement of Rights, especially through clauses that stipulate the right to exercise choice about “the funded aged care services the individual has been approved to access”<sup>6</sup>; “how, when and by whom those services are delivered to the individual”<sup>7</sup> and that the individual must “be supported (if necessary) to make those decisions, and have those decisions respected”.<sup>8</sup>

Euthanasia should not be considered part of a human rights-based approach to aged care and end-of-life care because it involves the intentional killing of human beings. Euthanasia should instead be considered an infringement against the rights and principles stipulated in the Bill to ensure that the “safety, health, wellbeing and quality of life of individuals is the primary consideration in the delivery of funded aged care services.”<sup>9</sup> The accessibility of euthanasia and the potential for the coercion of vulnerable individuals towards the practice constitutes a danger to the human rights of people in aged care facilities that must be explicitly excluded from the Bill’s definitions of aged care services and end-of-life care.

## **Conflict of human rights in the Bill**

Although section 21 (2) of the Bill contains provisions for limits on rights, this section does not adequately legislate for the potential conflict of rights that may occur in the provision of aged care services. Notably, the Bill does not address a clear conflict of rights when it comes to the provision of euthanasia in an aged care facility.

While some residents may seek access to euthanasia within an aged care service, others may wish to reside in a faith-based aged care facility where euthanasia is not practised. This is especially the case for those who come from migrant communities whose histories include atrocities committed against the vulnerable, including the elderly. This right of residents is perhaps implicit in the express rights of an individual to exercise choice and make decisions relating to “how, when and by whom [funded aged care] services are delivered to

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<sup>4</sup> Aged Care Bill 2023 (Cth), s 21 (2).

<sup>5</sup> Aged Care Bill 2023 (Cth), s 20 (2)(b).

<sup>6</sup> Aged Care Bill 2023 (Cth), s 20 (1)(a)(i).

<sup>7</sup> Aged Care Bill 2023 (Cth), s 20 (1)(a)(ii).

<sup>8</sup> Aged Care Bill 2023 (Cth), s 20 (1)(b).

<sup>9</sup> Aged Care Bill 2023 (Cth), s 20 (1)(b).

the individual”<sup>10</sup> and the right to equitable access to “culturally safe, culturally appropriate, trauma-aware and healing-informed” assessment of their need for aged care services.<sup>11</sup> However, greater protection of rights would be afforded if the right to choose a facility that does not offer or facilitate euthanasia or assisted suicide was explicitly expressed in the Bill.

Residents who choose Catholic and other religious aged care facilities face the risk that their ability to choose a funded aged care facility that respects their freedom to associate with others who share the same beliefs around life and death will not be recognised. Owners, operators and employees who choose religiously-run aged care facilities because of their commitment to the protection of life similarly risk that their conscientious objection against facilitating a practice that violates core ethical convictions will not be upheld. The section of the Bill does not fully articulate how the conflicts between competing rights of residents will be resolved, nor does it acknowledge the rights of those operating or working within aged care. Better definitions of the rights of all involved in aged care, and the process for discerning between potential conflicts of rights, are necessary for the best operation of this Bill.

### **The provisions of the Bill**

The Bill also stipulates, as a “condition of registration”, that aged care providers must “deliver funded aged care services in accordance with any applicable requirements prescribed by the rules.”<sup>12</sup>

These provisions are, on the whole, reasonable. However, given that there is a divide in community expectations about whether euthanasia constitutes quality and compassionate aged care, and that it is only the silence of state and territory legislation in Victoria, Western Australia and Tasmania that makes it possible for faith-based aged care facilities to opt out of euthanasia and assisted suicide completely, there must be provisions in federal legislation that safeguard the right of healthcare providers to refuse to provide euthanasia in their services. However, this Bill contains provisions that may be read as supporting an obligation for aged care institutions to provide euthanasia.

For example;

- Section 15 stipulates that aged care providers must “deliver funded aged care services”<sup>13</sup>, “support individuals accessing funded aged care services”,<sup>14</sup> and “deliver quality and safe clinical care to individuals.”<sup>15</sup>
- Section 16 defines a reportable incident as any incidence of “neglect of the individual”.<sup>16</sup>
- Section 18 defines a significant failure in an aged care provider’s conduct as “if the conduct represents a significant departure from the conduct that could reasonably be expected from a registered provider or responsible person”.<sup>17</sup>

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<sup>10</sup> Aged Care Bill 2023 (Cth), s 20 (1)(a)(ii)

<sup>11</sup> Aged Care Bill 2023 (Cth), s 20 (2)(a)(i)

<sup>12</sup> Aged Care Bill 2023 (Cth), s 105 (a).

<sup>13</sup> Aged Care Bill 2023 (Cth), s 15 (b).

<sup>14</sup> Aged Care Bill 2023 (Cth), s 15 (f).

<sup>15</sup> Aged Care Bill 2023 (Cth), s 15 (d).

<sup>16</sup> Aged Care Bill 2023 (Cth), s 16 (f).

<sup>17</sup> Aged Care Bill 2023 (Cth), s 17 (1).

- Section 19 defines high-quality care as care that prioritises “specific tailoring of care to the personal needs, aspirations and preferences of the individual, including the timely and responsive delivery of the service to the individual”.<sup>18</sup>
- Section 120 defines the duties of registered aged care providers to ensure that their conduct “does not cause adverse effects to the health and safety of individuals”.<sup>19</sup> The proposed Bill classifies infringements of this section as a strict liability offence with considerable penalties. The Bill has provisions allowing for a “reasonable excuse.”<sup>20</sup>

The emphasis in these provisions on access to services, individual choice, the tailoring of care to the individual and prohibiting neglect are commendable, if unclear in the full range of their intended meanings. Given that these sections could be interpreted to include or exclude a wide range of behaviours, some may claim that the best way to achieve all of these requirements is to mandate access to euthanasia in aged care facilities.

These standards, should they come to include obligatory access to euthanasia, would place Catholic residential aged-care providers in an impossible situation. Requiring aged care providers to allow euthanasia on their premises would be incompatible with the religious freedom of Catholic aged care providers and the freedom of individuals who choose religiously-run aged care facilities specifically for their commitment to the sanctity of life.

The enactment of the Bill’s penalty systems, which include heavy fines and deregistration, when tied to these often opaque standards is also a disproportionate means of encouraging compliance. This will achieve the opposite effect of the Royal Commission’s recommendation to improve the working conditions of aged care staff and may even push quality staff and organisations out of the sector.

### **Other concerns with the legislation**

It is unclear whether the Bill would maintain the responsibilities in the *Quality Care Principles 2014* under the previous *Aged Care Act 1997* that ensures aged care providers cooperate with visiting health practitioners<sup>21</sup> and supervise and assist in taking medication.<sup>22</sup> Although Catholic aged care providers have the operational freedom to not make euthanasia available on-site, the concern among many Catholic aged care providers is that they would not be able to prevent a visiting health practitioner from facilitating euthanasia in a Catholic institution.

It is also unclear whether the proposed Bill would compel workers in a Catholic aged care institution to provide information about euthanasia services. Under Victorian Voluntary Assisted Dying legislation, to take one example, a practitioner may refuse to provide information due to conscientious objection or unavailability of the service<sup>23</sup>, which is likely if the practitioner works at a Catholic organisation where euthanasia services are not offered.

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<sup>18</sup> Aged Care Bill 2023 (Cth), s 19 (c)(ii).

<sup>19</sup> Aged Care Bill 2023 (Cth), s 120 (1).

<sup>20</sup> Aged Care Bill 2023 (Cth), s 120 (7).

<sup>21</sup> *Quality Care Principles 2014* (Item 2.7, part 2, Schedule 1).

<sup>22</sup> *Quality Care Principles 2014* (Item 2.7, part 2, Schedule 1).

<sup>23</sup> *Voluntary Assisted Dying Act 2017 (Vic)* s 7(a).

No Catholic organisation would forbid a patient from being transferred into the care of another service of their choice, except on the occasion when it would be too risky for a patient to be transferred. If a patient requests a transfer to a facility that does perform euthanasia and is unfit to be transferred, the Conference expects that this would not constitute denial of necessary medical care. There are several examples of this happening in other fields of medical care that do not constitute denial of necessary care.

Additionally, there is some confusion surrounding the Bill's institution of a "support person" and whether the Bill grants the support person the authority to make medical decisions on behalf of an individual receiving an aged care service. The Bill does not explicitly provide for medical treatment decision-making, which is already governed by state and territory laws, but says that a representative will be able to do anything that the person may or could do under the legislation.<sup>24</sup> Although state and territory Voluntary Assisted Dying legislation requires an individual to have full decision-making capacity before requesting euthanasia, this role must be clarified in legislation in the event that these safeguards are removed.

### **Conclusion**

Euthanasia should not be considered a part of a human rights-based approach to aged care and end-of-life care. Any Bill that aims to ensure quality aged care must distinguish between standards of care that reduce pain and ensure individual choice and comfort do not include euthanasia. This Bill must more carefully define what practices and services should be considered as quality care, and therefore mandatory, and what acts must be prohibited in an aged care institution.

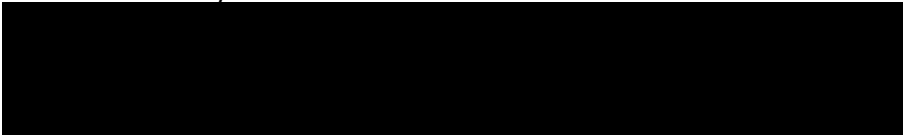
There should be a formal conscientious objection clause in the Bill that would allow organisations with a conscientious objection to facilitating euthanasia to prevent visiting medical officers from performing assisted suicide in their homes and allow providers to prevent the storage of lethal medications in their homes.

Alternatively, a positive right for aged care providers not to be forced to facilitate or allow practices that violate the religious values and mission of the institution and those who choose to live there could be inserted into section 20 of the Bill.

Without such amendments, there is a risk aged care providers could be forced to facilitate euthanasia against the institutional conscience and against the consciences of the residents and staff.

I would be happy to answer any questions the Committee may have. I can be contacted via Mr Jeremy Stuparich, Deputy General Secretary at the Conference on 02 6201 9863 or at [policy@catholic.org.au](mailto:policy@catholic.org.au)

Yours sincerely



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<sup>24</sup> Aged Care Bill 2023 (Cth), s 24 (c).