

Atheist Ireland



To: the Oireachtas Committee on Justice

29 January 2021

Scrutiny of Dying with Dignity Bill 2020

Dear Committee on Justice,

This is a submission from Atheist Ireland to the Committee's scrutiny of the Dying with Dignity Bill 2020. We prepared this in co-operation with the advocacy group Right to Die Ireland, who have also submitted a shorter similar submission. We have addressed some but not all of the questions that you will be considering.

1. Define the problem/the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention?

The Bill has the potential to relieve the extreme pain, suffering and anxiety of terminally ill patients by giving them control over their own bodies.

It can increase the quality of life for terminally ill people, as they have the peace of mind of knowing that they can die peacefully when the time comes.

In addition, for those who decide to avail of this option, the ability to say goodbye properly and at a set chosen time has the potential to be of great psychological relief - for patients and loved ones alike.

We see no tension between palliative care and assisted dying. Both, we believe, are compatible with each other and can serve the interests of terminally ill people.

Indeed, assisted dying can become a natural part of a holistic palliative care process that respects the rights of terminally ill people who want to live as long as they can and those who want to die at a time of their choosing.

It can regulate a practice that is happening anyway, and will continue to happen regardless of the Bill. In reality, terminally ill people have their own ethical priorities and their own autonomy.

It can put an end to tragic cases of terminally ill patients trying to take their own lives in a painful or inhumane manner which might result in further injury and severe psychological repercussions for loved ones.

If the Bill is passed, such people would have access to reliable information, as well as psychological counselling that might result in them changing their mind.

In the wider context, a society where voluntary assisted dying is possible would be one containing less pain and suffering. In fact, it is often the case that patients who received assurances from doctors that they will assist them to die if their suffering becomes unbearable have an enhanced sense of well-being.

Conversely, the thought of their lives becoming unnecessarily drawn out seems to add an extra sense of fear, dread, and anxiety. The mere availability of voluntary assisted dying can by itself bring solace without the practice having to be provided.

2. What is the current policy and legislative context? Have there been previous attempts to address the issue via legislation?

Suicide was de-criminalised in 1993 but assisted suicide and euthanasia are both still illegal under Irish law, and anyone who deliberately provides assistance to someone else could potentially face a 14-year prison term on conviction.

In 2012, laws around assisted suicide were challenged by the right-to-die campaigner Marie Fleming, who was in the final stages of multiple sclerosis. She argued that the ban on assisted suicide disproportionately infringed her constitutional rights and discriminated against her, as a disabled person, under the European Convention on Human Rights. Both the High Court and the Supreme Court rejected her claim.

In 2013, eight months before Ms Fleming's passing, the Supreme Court said there was no constitutional right to die or to receive assistance to die, but that the Oireachtas could legislate to permit it if it included sufficient safeguards for vulnerable people.

In 2015 the Independent TD, John Halligan, brought the Right to Die with Dignity Bill before the Dáil – a private members bill removing any criminal sanctions against a doctor or relative who assisted someone else to die. It set out stringent criteria before assisted dying could take place: the person must have a terminal or incurable illness, be genuinely informed, and over 18. Each case would also have to be evaluated by at least two doctors. The bill passed through first stage in the Dáil and order was made for the second stage.

The issue was also the focus of discussions at two meetings of the Oireachtas Joint Committee on Justice and Equality in November 2017. Based on the hearings, the Committee “believes serious consideration should be given” and it “urges the Houses of the Oireachtas to consider referring the issue to the Citizens’ Assembly for deliberation”.

3. Is there a wider EU/international context?

The European Court of Human Rights has generally afforded a wide margin of appreciation to member states on end of life matters. It has upheld national decisions in *Pretty v. the United Kingdom* 2002 (Chamber judgment), *Haas v. Switzerland* 2011 (Chamber judgment), and *Lambert and Others v. France* 2015 (Grand Chamber).

In *Koch v. Germany* 2012 (Chamber judgment), the Court ruled that there had been a violation of the applicant's procedural rights under Article 8 (right to respect for private and family life) of the Convention, in respect of the German courts' refusal to examine the merits of his complaint. As further regards the substance of the applicant's complaint, the Court considered that it was primarily up to the German courts to examine its merits, in particular in view of the fact that there was no consensus among the Member States of the Council of Europe as to the question of whether or not to allow any form of assisted suicide.

There is the option to amend or enhance the safeguards currently proposed in the Bill as appropriate and in synch with the regulatory regimes prevailing in jurisdictions such as Switzerland, the Netherlands and certain US states, such as Washington and Oregon, which have legislated in this area.

In the Netherlands both euthanasia and assisted suicide are legal if the patient is experiencing unbearable suffering with no prospect of improvement. Other countries which legally permit both euthanasia and assisted suicide are Belgium, Luxembourg, Canada and Colombia.

Assisted suicide is permitted in Switzerland and several US states, including California, Colorado, Hawaii, New Jersey, Oregon, Washington, Vermont and the District of Columbia. Laws permitting assisted suicide came into force in the Australian state of Victoria in June 2020, and in October 2020, New Zealand voted to legalise assisted dying.

7. What are the specific policy implications of each proposal contained within the Bill (environmental/economic/social/legal)?

This particular Bill has limited social policy implications.

It does not allow for assisted dying in cases where a person looking for help does not suffer from a terminal illness.

People suffering from depression or any mental health issues could not access this law. People suffering from life-threatening physical illnesses could not avail of assisted dying.

People of advanced age could not avail of this law.

It applies only to those suffering from a terminal illness and only to adults with full mental capacity and who are able to make a rational and conversant decision about their lives.

Objections usually come from those with religious beliefs. However, not everyone holds religious views or accepts that it is always wrong to assist someone to die. At the same time, opponents may be reluctant to say their opposition is directly connected to their faith.

Most people don't actually think human life should be preserved at all costs.

At present, we allow patients the option of abstaining from potentially life-prolonging treatments, and doctors often withhold or withdraw treatments that could keep patients alive for longer. We don't normally deny individual autonomy in cases like this because it is assumed – implicitly or explicitly – that prolonging life is not always in the patient's best interest.

This, essentially, is passive assisted dying. There is no intrinsic moral difference between its active and passive forms; doing nothing, after all, is also a deliberate choice. And, moreover, the outcome is the same in both instances. But why should one be regarded as acceptable medical practice and the other a criminal offence?

If we accept that individuals can receive a benefit when life-sustaining treatment is withheld or withdrawn, then presumably they can also receive a benefit when voluntary assisted dying is made available.

8. Could the Bill, as drafted, have unintended policy consequences, if enacted?

Opponents of assisted dying say it could lead to a slippery slope, whereby the value of human life would be diminished. They fear vulnerable groups, such as the elderly and disabled, will be pressurised into assisted dying because they feel they are a burden on society.

In fact, in the countries and regions with such laws, there is no evidence that this has happened. Oregon has had a similar law since 1997 and none of these trends have been observed.

Other regions and countries have had the same experience, namely, Colorado, California, Washington, Montana, Vermont, Switzerland, the Netherlands, Canada, and Luxembourg.

Also, the Netherlands, in 2002, was the first country in the world to formally legalise assisted dying, and it was subsequently legalised in its closest neighbours Belgium and Luxembourg.

Levels of abuse – for instance, in cases of non-voluntary ending of life – are not any higher in jurisdictions where it is permitted than in ones where it is banned, and often they are lower.

11. Does the Bill include formal review mechanisms?

The Bill if passed would establish a review committee. The role of the review committee could be expanded on in an amendment.

15. Is the draft PMB compatible with the Constitution?

The constitutionality of the current legislation was upheld by the Supreme Court in its judgment in the Marie Fleming case in April 2013. The courts also said that it is open to the Oireachtas to legislate in this area, provided it includes sufficient safeguards to protect vulnerable people. It would be a matter for the courts to consider if a law with such safeguards is constitutional.

19. Are there potential unintended legal consequences which may stem from the PMB as drafted?

Conscientious objectors might take a legal challenge on whether they should be obliged to make arrangements to transfer a person to somebody who is willing to help them to die?

Yours sincerely,

Michael Nugent
Chairperson
Atheist Ireland

Jane Donnelly
Human Rights Officer
Atheist Ireland