

**Submission into the Voluntary Assisted Dying Bill 2021**

**Submission No.:** 274  
**Submitted by:** Darryn Jensen  
**Publication:** Making the submission and your name public  
**Position:** I/We do not support the Voluntary Assisted Dying Bill  
**Comments in relation to:** Conscientious objection by either individuals or entities  
**Attachments:** See attachment  
**Submitter Comments:**

## SUBMISSION

### *Voluntary Assisted Dying Bill 2021*

#### ***Introduction***

This submission focusses upon the ‘conscientious objection’ provisions of the Bill. It is the author’s view that these provisions are inadequate to the extent that persons in certain professions or employment who have conscientious objections to voluntary assisted dying may still be required by law or be subjected to pressure to assist a person in obtaining access to assisted dying.

#### ***Part 6, Division 1***

Under paragraph 84(2)(b) of the Bill, a health practitioner who has a conscientious objection to voluntary assisted dying remains obliged to perform acts that assist a person obtain access to assisted dying, namely *either* provide ‘information about a health practitioner, health service provider or service’ who is likely to be able to assist the person obtain access to assisted dying *or* to provide the details of ‘an official voluntary assisted dying care navigator service’. If the purpose of such a provision is to ensure that all people who wish to have access to assisted dying do have access, the provision goes beyond what is strictly necessary to achieve that purpose. For example, information about official voluntary assisted dying care navigator services could be made available on the Queensland Health website. The rationale of imposing a duty on health practitioners to provide such information would seem to be to ‘normalise’ the provision of such information as an aspect of the provision of health care and to provide a basis for disciplinary proceedings and findings of unprofessional conduct against health practitioners who conscientiously seek to detach themselves from any involvement in assisted dying (see section 152).

The preceding comments apply also to the obligations of speech pathologists under subsection 85(2) of the Bill. It is further noted that speech pathologists employed or engaged by a health service provider that provides assisted dying services will be obliged to discuss with the provider ‘how they can practise in accordance with their beliefs without placing a burden on their colleagues or compromising a person’s access to voluntary assisted dying’. It is not difficult to imagine a situation in which the outcome of such a discussion is that the speech pathologist will not be able to continue to work for the health service provider. The obligation is one-sided, i.e. there is no obligation on the health service provider to act reasonably in accommodating the conscientious objection of the speech pathologist. This shows a marked preference for the interests of those who wish to gain access to assisted dying to the interests of persons with conscientious objections to assisted dying in carrying out their professional lives in accordance with their cherished religious beliefs or ethical stances.

#### ***Part 6, Division 2***

Many of the entities affected by this part, i.e. entities that provide health services, residential aged care or personal care services, are ‘faith-based’ charitable entities. The imposition of obligations to assist people to gain access to assisted dying may be contrary to the distinctive religious ethos of these entities. Once again, this shows a marked preference for the interests of those who wish to gain access to assisted dying to the interests of persons with conscientious objections to assisted dying in carrying out their professional lives in accordance with their cherished religious beliefs or ethical stances.

**Conscientious Objection Generally**

I draw the committee's attention to a recent study of challenges anticipated by medical practitioners and staff in relation to the voluntary assisted dying scheme adopted in Victoria. The study made the following finding:-

Overall, participants appeared fearful about being judged by other clinicians and management regarding their willingness to participate or not in [voluntary assisted dying]. Consistent respect for staff views was anticipated as a challenge. There were concerns about conscientious objection in practice, particularly about foreseen pressure on junior doctors and nurses to participate

...

Other anticipated challenges in organisational culture were protecting the privacy of clinicians who chose to be involved in [voluntary assisted dying], and preventing discrimination in the workplace based on a staff member's position on [voluntary assisted dying].<sup>1</sup>

The weak conscientious objection provisions contained in the Bill leave open the possibility that health professionals with conscientious objections will be discriminated against in securing employment and obtaining preferment in their workplaces on the basis of their positions on assisted dying. Indeed, it might be doubted whether conscientious objection provisions - even provisions that are more robust than those currently included in the Bill – could provide adequate protection for health professionals from discrimination on the basis of their attitudes to assisted dying. Consideration should be given to amending the anti-discrimination legislation to make discrimination in employment on the basis of a person's position on assisted dying unlawful. In this connection, the existing provisions relating to discrimination on the basis of religion may not be adequate, as ethical objections to assisted dying are not necessarily religious in character.

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22<sup>nd</sup> June 2021

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<sup>1</sup> Rosalind McDougall, Barbara Hayes, Marcus Sellars, Bridget Pratt, Anastasia Hutchinson, Mark Tacey, Karen Detering, Cade Shadbolt and Danielle Ko, 'This is uncharted water for all of us': challenges anticipated by hospital clinicians when voluntary dying becomes legal in Victoria' (2020) 44 *Australian Health Review* 399, 403.