26 May 2021

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RE: Calvary Health Care's additional concerns regarding the Voluntary Assisted Dying Bill 2020

On 10 May 2021, I wrote to advise of Calvary's opposition to the adoption of the Voluntary Assisted Dying (VAD) Bill currently before the Parliament. I am grateful for the responses we received from several MHAs.

Calvary is a significant provider of health care and community care services and has served the South Australian community for more than 120 years.

We have reviewed with care the document provided by Wellbeing SA through the Minister to every Parliamentarian on 21 May 2021. This review prompts us to write to you a second time.

Calvary's position

Calvary's position is unchanged. As stated in our letter to every MHA dated 10 May 2021:

If the Bill is passed, Calvary cannot participate in Voluntary Assisted Dying and will conscientiously object to the scheme.

Our hospitals and residential aged care facilities are communities of practice drawing together doctors, nurses, allied health professionals, carers, hospitality staff, executives and administrators in a single mission with unambiguously articulated values – an enterprise that ultimately generates a distinct singular institutional identity, character, culture and purpose.

For the sake of clarity, certainty and business continuity, if the South Australian Parliament is determined to proceed with a VAD scheme, a right to organisational non-participation needs to be legislated.

A fuller exposition of this position is set out in the submission (attached) which also accompanied our previous letter. On the eve of the debate we make additional points.

Institutional Conscientious Objection

To date, in the Australian context, questions of organisational non-participation and institutional conscientious objection has been dealt with by policy which allows non-participation.

Whether legislated or not, the consistent position is to allow non-participation.

The question of institutional conscientious objection is grounded in a long history of ethical practice as an expression of the living mission of an organisation. The question arises from a particular understanding by a particular community of leaders and practitioners of what is right and what is wrong in the practice of medicine. It

is for this ethic that protection is sought. This ethic is that practitioners will not intentionally inflict death on patients, nor intentionally assist patients, residents or clients to take their own lives.

We make the following points in response to the paper issued by Wellbeing SA entitled *Voluntary Assisted Dying Bill 2020: Institutional Conscientious Objection*.

Individual or institutional?

Argument: Conscientious objection is a right that can only be held by individuals and not by businesses, legal entities or the state.

Response: This view fails to take account of social anthropology. Social anthropology affirms that human beings are inherently relational because, in their particularity, human beings are finite, limited, and dependent. Our institutions are organically developed through relationships, because of this human limitedness and dependence. In other words, when we are together and when we work together we can do more. The activity of institutional conscience is a pervasive, engrained element of *all* human institutions. Judgments of conscience are objectively oriented and subject to rational scrutiny based on objective criteria. Communities of people can suffer moral injury. Communities of people working together can bring significant benefit for others. Political parties and Parliaments, for example, invest much time weighing alternatives to address grave social issues and make decisions which bind respectively their members or the whole of society. These are institutional, social acts.

The decision of an individual, who resides in a particular community with a group of other individuals (such as a residential aged care service) to take a substance for the purpose of causing their own death affects these other people. Their decision impacts on the personal belief systems and values of others around them, including the values of their carers who must necessarily be involved. All these people, who operate and live together in community can and do suffer moral injury and can experience moral distress. They can and may conscientiously object to being involved.

Sincere conscientious objection versus pragmatic non-involvement?

Argument: The proposed amendment for institutional conscientious objection goes beyond the remit of the faith-based arguments presented by this discussion paper. There are clear arguments in favour of faith based and other sincere conscientious objection, but not so for private facilities who may object to being involved for purely pragmatic reasons.

Response: Purely pragmatic reasons may include a lack of skill or ability to effectively manage the requirements to be involved in administering VAD and/or provide the requisite clinical, emotional and bereavement support. Not to participate may in fact be a wise approach.

Argument: If the VAD Bill passes into law, the general population of South Australia should have a right to access VAD services where they live.

Response: Making an action or a service legal does not necessarily create a right which binds every member of society to meet. Indeed, if Parliament wants the whole community to benefit from a service, the Parliament should ensure that the Government of the day provides that service or contracts the provision of that service by willing and competent persons or organisations. It would be unwise to force those not orientated or equipped to offer the requisite public service to provide that service.

Argument: Extending conscientious objection without a clear definition of what this means risks enabling all private facilities to avoid providing a service to the South Australian community.

Response: Until now private facilities have been permitted to offer services to the State which are within their competence and align with their purpose to provide. It would be risky to try to make each and every private facility provide every health and aged care service the South Australian community needs or desires.

Such a risk could be mitigated if the State actively funded, offered and employed people to provide the service. Those facilities which offer VAD would identify themselves and people who desire this service would seek the service there.

The University of Tasmania's (UTAS) *Independent Review of the End-of-Life Choices (Voluntary Assisted Dying) Bill 2020* (on page 81) observes that 'the issue of organisational non-participation was one of the most complex considered by the Review Panel'. The report continues,

> **No organisation or entity should be compelled to participate in or provide VAD even though non-participation limits access, may compromise therapeutic relationships and, where transfers are required, may exacerbate suffering.**

A key principle set out in Clause 7 (1) (j) of the Bill is

> all persons, including health practitioners, have the right to be shown respect for their culture, beliefs, values and personal characteristics.

Residential Aged Care Facilities

Argument: Given the general lack of free beds available in residential aged care facilities, a transfer process would need to be established in advance to enable urgent transfer if necessary.

Response: Facilitating transfer to a provider of choice is something Calvary would always do. Based on the Victorian experience, it is unlikely that many residents in South Australian Calvary facilities will seek such a transfer. The present reported 'lack of free beds' is not likely to loom large as an issue.

The Charter of Aged Care Rights does not state that an institution must provide everything a resident wants. Rather the Charter suggests that a facility works with a resident to facilitate the resident's choices. This may include transfer to an institution which can better meet the resident's needs.

Argument: For many, if VAD is to be sought it will be at near death and with vulnerable and likely frail individuals.

Response: While this may be the case for some people, it should also be noted that the capacity to make a decision and gain a VAD permit reduces the closer a person is to their death. If a resident is seriously considering a VAD option, a good VAD navigator would advise a transfer process be pursued while the person was still well enough to make such decisions. If a person is so unwell that there will not be time to pursue a VAD process, effective palliative and end of life care becomes the highly desirable option. It is very important that operators of residential aged care facilities are skilled to provide this sort of care. Any 'right' to VAD will not help at this point in a person's journey.

Not all patients, residents and staff in faith-based organisations object to VAD

Argument: Conscientious objection for institutions may be considered institutional overreach that negatively impacts the individual autonomy of existing employees or patients/residents by imposing upon them a view that they do not necessarily support.

Response: Quality and safety considerations suggest that if an organisation's Board has determined that it does not offer certain services, its employees cannot autonomously commence such a service. Rightly, accreditation would not be granted to that organisation. If people are harmed in the process, the decision and actions of the individuals involved, together with the failure of governance on the part of the sponsoring organisation, would be scrutinised as reckless and negligent.

Conversely, in the case of services the Board of an organisation has approved, individual employees may have good reason not to participate because of a conscientious objection. This is respected under Calvary's Code of Ethical Standards and in practice.

Concluding Remarks

Calvary invests significantly to provide health and aged care services in South Australia.

Calvary wishes to continue to contribute to the long term comprehensive, quality and timely health care of South Australians by investing in present services and future developments.

However, **Calvary needs certainty that our services will not be forced by legislation to permit actions that are inconsistent with our fundamental ethic of care**.

Please direct any questions you may have to Calvary's National Director of Mission, Mark Green:

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Yours faithfully,

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