



hopeIreland

# Submission to the Oireachtas Committee on Justice re: Dying with Dignity Bill 2020

Hope Ireland is a coalition of medical professionals and disability rights advocates, founded in 2015 by the late disability rights activist **Dr Kevin Fitzpatrick OBE**.

Our mission is to:

1. **Promote access** to high quality palliative care for all by:

- encouraging awareness of palliative care
- calling on the government to increase support for and access to palliative care.

2. **Respond to the needs** of vulnerable adults and those in care by:

- opposing the introduction of euthanasia and assisted suicide in Ireland, through bringing informed arguments to public debate.

This submission will answer the questions asked by the Committee which are relevant to our remit. Our primary focus is on Part A, with particular consideration given to question 8, on the potential unintended policy consequences of this Bill.

We would welcome the opportunity for some of our contributors to appear in public session at a Committee meeting.

## Executive Summary

This Bill, if passed, will dramatically change the fundamental nature of end-of-life care in this jurisdiction.

In practice, its operation would have **catastrophic consequences** for

- **people with disabilities,**
- **older people,**
- **those with terminal illnesses.**

Our evidence-based submission details the following key factors in outlining our firm opposition to this Bill:

- 1) Medical Professionals in Ireland are overwhelmingly opposed to the legalisation of euthanasia and assisted suicide, which this Bill would provide for if enacted.
- 2) This Bill brings immediate foreseeable and less foreseeable consequences. It is also indisputable that legislating for euthanasia and assisted suicide creates a real 'slippery slope', as testified to by all the **international evidence**:
  - the **numbers of people dying in this way increases exponentially**. Oregon, the Netherlands and Belgium have experienced an average 763% increase in euthanasia/assisted suicide deaths since legalisation.

- once the principle is conceded, the grounds of **eligibility for euthanasia and assisted suicide increase over time**, to include children, and adults with psychiatric conditions.

3) Concerns about euthanasia have been raised before international Human Rights institutions, including the pending European Court of Human Rights case of *Mortier v Belgium*, and the UN Human Rights Committee.

4) A change in the law in this area will **undermine suicide prevention efforts** in three respects:

- The emphasis on **personal autonomy** creates a climate where concerned others feel they should take a step back, and that they are interfering in another person's right to die.
- There is evidence in the academic literature that **euthanasia/assisted suicide has a contagion effect**.
- This Bill will create a dilemma in law to which would require the state to answer these troubling questions: **'a) Who gets suicide prevention? b) Who gets suicide assistance?'**

5) Fundamentally, this **Bill promotes the idea that some lives are not worth living**. This is an illegitimate and dangerous categorisation for the State to make, and **puts vulnerable people at risk**.

## PART A: Policy and Legislative Analysis

***What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation? (Question 2)***

The Bill's core provisions are contained in sections 6 and 11 and will make it lawful for "for a medical practitioner to provide assistance to a qualifying person to end his or her own life" thereby legalising physician assisted euthanasia, per sections 11(2)(a) and (b) and physician assisted suicide, per section 11(2)(c).

### Current policy and practice

With regard to assisted suicide, under the Criminal Law (Suicide) Act 1993, it is an offence if someone 'aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide'. The penalty upon conviction for this offence is a maximum sentence of 14 years imprisonment.

With regard to euthanasia, there is no specific crime as such, as deliberately ending the life of another person would be murder, contrary to common law and section 4 of the Criminal Justice Act 1964. The penalty upon conviction for this offence is a maximum sentence of life imprisonment.

### Previous attempts to change the law

A similar Bill was introduced to the Dáil in 2015, the Dying with Dignity Bill 2015, but it never passed second stage.

### ***Is there a wider EU/international context? (Question 3)***

In the entire global context, up to nine countries currently have some form of euthanasia or assisted suicide. More will be said below of the impact of such laws in these countries.

In Europe:

- **Switzerland** - 1937: Switzerland permits assisted suicide where the motives are 'benevolent'.
- **Belgium** - 2002: Belgian parliament legalised euthanasia only.
- **The Netherlands** - 2002: Dutch parliament legalised euthanasia and assisted suicide (codifying its previous practice).
- **Luxembourg** - 2009: Luxembourg parliament legalised both euthanasia and assisted suicide.
- **Germany** - 2020: German Supreme Court legalised assisted suicide only.

Other countries which have legalised some form of euthanasia and assisted suicide are:

- 1997 **USA** (Oregon - assisted suicide)
- 2015 **Colombia** (euthanasia)
- 2015 **Canada** (euthanasia & assisted suicide)
- 2019 **Australia** (Victoria - assisted suicide)
- 2021 **New Zealand** (forthcoming)

## **Implications and implementation of the Bill's proposals**

### ***How is the approach taken in the Bill likely to best address the policy issue? (Question 4)***

The Bill's very title misleadingly implies that some deaths are dignified, and some are not. The current system of palliative care in Ireland offers all terminally ill patients a dignified death. Human Dignity is innate, and as the Royal College of Physicians of Ireland have noted in the 2017 position paper:

*"Human dignity is not a thing that can be lost through disability, disease, dependency, or suffering, although insensitive treatment or attitudes to those so affected can constitute undignified care."*<sup>1</sup>

### ***Could the Bill, as drafted, have unintended policy consequences, if enacted? (Question 8)***

Yes, a number of gravely serious unintended policy consequences are anticipated, on account of the evidence from other jurisdictions:

#### **i) Palliative care services and their future development will suffer**

Investment in palliative care will be disincentivised if euthanasia becomes a more cost effective form of medicalised death. This problem has already been experienced in other countries which have legalised assisted suicide. In California, where assisted suicide was introduced in 2016, the American Association of People with Disabilities has documented and condemned the cruel practice of insurance companies refusing to cover chemotherapy for some terminally ill cancer patients, but covering the cost of drugs for assisted suicide.<sup>2</sup>

The Royal College of Physicians in Ireland have drawn attention to this problem:

*"There is a concern that a move towards assisted suicide would result in a shift in focus away from the development and the delivery of palliative care services and cure, and that research into palliative care may be discouraged."*<sup>3</sup>

#### **ii) Prejudice against people with disabilities is compounded**

Disability advocates consistently highlight how **prejudice against disabilities is compounded by euthanasia and assisted suicide laws**.

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<sup>1</sup>RCPI Assisted Suicide - Position Paper December 2017 p15

<sup>2</sup><https://www.aapd.com/when-insurance-companies-refuse-treatment-assisted-suicide-is-no-choice-at-all/>

<sup>3</sup>RCPI Assisted Suicide - Position Paper December 2017 p14.

Not Dead Yet, a group representing people with disabilities has commented that:

*“Individuals risk being easily exploited by the ‘right-to-die’ movement or, worse, by family, friends and healthcare professionals. Their attitude is not compassionate – it is prejudiced and disablist. We oppose policies that single out individuals for legalised killing based on their medical condition or prognosis.*

*Legalising assisted suicide will inevitably lead to increasingly adverse judgements about the quality of life of disabled people. This will undoubtedly begin to affect the many disabled people who cannot speak for themselves and who have not requested death. Research in the Netherlands has shown that legalising assisted suicide has led to nearly a quarter of overall intentional killings of patients happening without request. This research has also shown that intentional killings, by either withdrawal of treatment without the patient’s permission or by deliberate over-doses of symptom control, have increased. Nowhere is there evidence to show that legalising assisted suicide has deterred medical practitioners from intentional killings, or that the number of these killings has declined.”<sup>4</sup>*

Euthanasia introduces into society the idea that some lives are not worth living. Ultimately this creates societal attitudes and fuels prejudicial and discriminatory attitudes and behaviour.

In 2012, when Belgian twins Marc & Eddy Verbessem discovered that they would soon go blind, they decided to end their lives, as they did not want to become both blind and deaf. Their deaths were accepted, even encouraged. For example, upon learning of their situation a local woman commented to the BBC:

*“I think it is good, if you don’t have anything else anymore in life if you can’t see, can’t hear and can’t speak, what else can you do?”<sup>5</sup>*

This is an outrageous attitude towards people with disabilities. Such naked prejudice from the public is legitimised when euthanasia and assisted suicide are available in a society.

### **iii) Prejudice against older people is compounded**

When euthanasia and assisted suicide are introduced, implicit and explicit pressure mount on older people to consider euthanasia. They are made feel, or can themselves come to the conclusion, that they are a personal or financial burden on others, and thus should avail of it.

A 2020 Canadian report estimated that widening Canada’s existing euthanasia laws would save up to \$149 million per annum. It noted that:

*“Expanding access to MAID will result in a net reduction in health care costs for the provincial governments.”<sup>6</sup>*

Conclusions like this compound fears that in the future, utilitarian thinking combined with reports like this will provide a basis and motivation for Governments to support and even encourage euthanasia by those most likely to use the States healthcare budget – older people.

Attitudes towards older people and older people’s illnesses are also negatively affected by legalised euthanasia. The Netherlands is a prime example of this:

In 2020, a Dutch parliamentarian proposed an amendment to the current euthanasia law providing for euthanasia to be available to over 75s who are simply ‘tired of life’. Upon proposing the amendment Pia Dijkstra said:

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<sup>4</sup><http://notdeadyetuk.org/about/>

<sup>5</sup><https://www.bbc.com/news/av/world-europe-21039064>

<sup>6</sup>Govindadeva Bernier, COST ESTIMATE FOR BILL C-7 “MEDICAL ASSISTANCE IN DYING” [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/RP-2021-025-M/RP-2021-025-M\\_en.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/RP-2021-025-M/RP-2021-025-M_en.pdf)

*“There is a group of elderly people who have finished their lives. They say: I go to sleep every night with the hope that I won’t wake up again. I want to make euthanasia possible for that group under strict conditions... The problem is getting bigger now that the difference between your biological and your biographical life is increasing thanks to advancing medical conditions.”<sup>7</sup>*

These comments represent ageist and discriminatory attitudes towards older people. In any other context they would not be permitted.

In 2019, a women with dementia who revoked her consent to be euthanised had to be held down by her family whilst the doctor ended her life. A Dutch court approved this practice, and acquitted the doctor of any wrongdoing.<sup>8</sup>

Finally, in April 2020 the Dutch Supreme Court expanded the grounds for euthanasia for people who have dementia.<sup>9</sup> Even when a patient with dementia does not give consent, and a doctor euthanises her, the doctor will not be prosecuted.

**iv) The number of people dying by euthanasia and assisted suicide increase dramatically**

When euthanasia or assisted suicide have been legalised in a country, the number of people dying in this way has increased exponentially. The Guardian newspaper in 2019 ran an in-depth story in which it acknowledged this simple truth in its headline *“Euthanasia and assisted dying rates are soaring.”*<sup>10</sup>

In countries which have legalised euthanasia/assisted suicide for 10 years or more, the number of people ending their lives in this way has increased by an average of 661%

The statistics speak for themselves:<sup>11</sup>

Country/State	Numbers dying in year introduced	Numbers dying in most recent year on record	Percentage increase in deaths by euthanasia
Oregon (USA)	16 (1998)	188 (2019)	1075%
Netherlands	1626 (2002)	6361 (2019)	291%
Belgium	259 (2002/3)	2655 (2019)	925%
Washington (USA)	36 (2009)	238 (2018)	561%
Canada	1015 (2016)	5631 (2019)	455%

**v) More people die by euthanasia and assisted suicide than predicted**

In Australia, the state of Victoria has legalised assisted suicide. In 2020, the first year of the operation of their laws, the Voluntary Assisted Dying Review Board reported 124 deaths.<sup>12</sup>

<sup>7</sup><https://nltimes.nl/2020/07/17/submission-euthanasia-completed-life-law-causing-strife-among-coalition-parties>

<sup>8</sup><https://www.theguardian.com/world/2019/sep/11/dutch-court-clears-doctor-in-landmark-euthanasia-trial>

<sup>9</sup><https://www.theguardian.com/world/2020/apr/21/dutch-court-approves-euthanasia-in-cases-of-advanced-dementia>

<sup>10</sup><https://www.theguardian.com/news/2019/jul/15/euthanasia-and-assisted-dying-rates-are-soaring-but-where-are-they-legal>

<sup>11</sup>Belgium - Commission Fédérale de Contrôle et d'Évaluation de l'Euthanasie Bi-annual Reports (<https://overlegorganen.gezondheid.belgie.be/nl/documenten/euthanasie-cijfers-voor-het-jaar-2019>)

Oregon - <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year22.pdf>

Netherlands - <https://carealliance.org.nz/https-www-bioedge-org-bioethics-dutch-euthanasia-doctor-agrees-that-there-is-a-slippery-slope-13534/>

Washington - <https://www.doh.wa.gov/YouandYourFamily/InnessandDisease/DeathwithDignityAct/DeathwithDignityData>

<sup>12</sup><https://www.corowafreepress.com.au/national/2020/09/01/1561206/voluntary-death-demand-doubles-in-victoria>

This was over ten times higher than the 'dozen' deaths explicitly predicted by Health Minister Jenny Mikakos before the legislation was introduced.<sup>13</sup>

## vi) There are serious problems with euthanasia and assisted suicide in the jurisdictions in which it has been legalised

In the Netherlands:

- People with **non-terminal psychiatric illnesses can be euthanised**: In January 2018, Aurelia Brouwers (29) told BBC News about her situation: *"I'm 29 years old and I've chosen to be voluntarily euthanised. I've chosen this because I have a lot of mental health issues."*<sup>14</sup>
- In Spring 2020, the Dutch Parliament considered expanding euthanasia for over 75s who are simply *'tired of life'*.<sup>15</sup>
- In 2020 the Netherlands Government expanded euthanasia access to children aged between one-year-old to twelve-years-old. Dutch Health minister Hugo de Jong championed this proposed law change.<sup>16</sup>
- In 2020, the Dutch euthanasia review committee make it easier for dementia patients to be euthanised without their explicit consent. For people with advanced dementia, the new code says *"it is not necessary for the doctor to agree with the patient the time or manner in which euthanasia will be given"*.<sup>17</sup>

In Belgium:

- In December 2012, deaf twin brothers Marc and Eddy Verbesssem (45) were euthanised after discovering that they would soon go blind.<sup>18</sup>
- In September 2013, Nathan Verhelst (44) a transgender man, was euthanised following serious depression after his sex re-assignment surgery failed.<sup>19</sup>
- In 2014 'child euthanasia' was legalised.<sup>20</sup>

In Canada:

- After only 4 full years of their euthanasia laws being operational, plans to widen access to euthanasia are currently in place. The Federal Government have proposed a new Bill to allow people who are not in an imminent risk of death to receive help to end their lives.<sup>21</sup>
- Instances of abuse of the system are widely documented such as:
  - *"Physically healthy depressed man died by euthanasia in BC"*<sup>22</sup>
  - *"Elderly Woman Euthanized to Avoid Anguish of Lockdown Loneliness"*<sup>23</sup>

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<sup>13</sup><https://www.theaustralian.com.au/nation/victorian-euthanasia-figures-released-for-first-time/news-story/7b2ae73ae595f7b3b719e8af77b83255>

<sup>14</sup><https://www.bbc.com/news/stories-45117163>

<sup>15</sup><https://www.thetimes.co.uk/article/dutch-mp-backs-euthanasia-for-over-75s-who-are-tired-of-life-z8bdp6685>

<sup>16</sup><https://www.nytimes.com/2020/10/16/world/europe/netherlands-child-euthanasia.html>

<sup>17</sup><https://www.theguardian.com/world/2020/nov/20/dutch-euthanasia-rules-changed-after-acquittal-in-sedative-case>

<sup>18</sup><https://www.bbc.com/news/av/world-europe-21039064>

<sup>19</sup><https://www.independent.co.uk/news/world/europe/belgian-man-dies-by-euthanasia-after-failed-sex-change-operation-8851872.html>

<sup>20</sup><https://time.com/9016/belgiums-euthanasia-law-doesnt-protect-children-from-themselves/>

<sup>21</sup><https://www.theguardian.com/world/2020/feb/24/canada-government-access-assisted-dying>

<sup>22</sup><https://alexschadenberg.blogspot.com/2019/09/physically-healthy-depressed-man-dies.html>

<sup>23</sup><https://www.nationalreview.com/corner/elderly-woman-euthanized-to-avoid-anguish-of-lockdown-loneliness/>

In Oregon (USA):

- The number of people who have opted for this way to die has increased over tenfold - from 16 (1998) to 188 (2019).<sup>24</sup>
- The law was changed in 2019 to remove the two-week waiting period for some patients between requesting assisted suicide, and it taking place. This is an example of the erosion of one of the supposed 'safeguards' over time.<sup>25</sup>

In Victoria (Australia):

- In the first year of the operation of its assisted suicide laws, more than ten times the number of people died in this manner than expected (124, as opposed to the 12 deaths predicted).

The international experience of other jurisdictions which have legalised euthanasia and/or assisted suicide shows that the consequences of this particular Bill may be catastrophic for people with disabilities, older people, and those with terminal illnesses.

### vii) Suicide contagion effect

The push to legalise assisted suicide in particular should be resisted because in essence it normalises suicide. When such a radical policy change occurs, how can the state decide who gets suicide prevention, and who gets suicide assistance?

Suicide contagion is a recognised phenomenon, and without due diligence on the part of the media, politicians, and cultural influencers in how suicides are reported, it can be a cause of serious concern.

Former Dutch euthanasia reviewer Prof Theo Boer believes that the legalisation of so called assisted-dying has exacerbated a suicide problem in the Netherlands.

*"One hypothesis I increasingly accept as an academic and as someone who worked for almost ten years in monitoring and reviewing assisted dying cases for the Dutch authorities is the normalising effect that legalising assisted dying has had on the general population. We already know from the literature that when one person takes their own life, it can be a catalyst for others. Indeed, there are over 50 peer-reviewed studies reaching the same conclusion in what has been dubbed suicide contagion, copycat suicides or the Werther Effect. Not without reason, and based on advice from the World Health Organisation, the media go to great lengths to censor details that could trigger further suicides. Unfortunately, the same can't be said about their carefulness when reporting assisted suicide stories, the great majority of which express an ill-informed and naïve sympathy for assisted dying."*<sup>26</sup>

Prof Boer's analysis can be read in detail in the Journal of Ethics in Mental Health, the citation is in the footnotes.<sup>27</sup>

Prof Boer's thesis is backed up by a 2017 article in the peer-reviewed medical journal, the Linacre Quarterly. In her work, Nancy Valko argued that:

*"There is evidence that the increasing rates of suicide can be linked to the legalization of physician-assisted suicide. Factors such as suicide contagion and the increasing positive media reporting on such suicides are also relevant and have led to different standards of treatment for suicidal people who claim the right to have their suicides medically assisted."*<sup>28</sup>

<sup>24</sup><https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year22.pdf>

<sup>25</sup><https://apnews.com/article/d6c0af3855f24a0380ecd19bbe8676f0>

<sup>26</sup>Theo Boer, 'Legalising assisted dying can actually increase suicides' 13 September 2020, The Conservative Woman.

<sup>27</sup>Boer, T A, 'Does Euthanasia Have a Dampening Effect on Suicide Rates? Recent Experiences from the Netherlands', *Journal of Ethics in Mental Health*, 10, Special Theme Issue II, 28 December 2017, accessible at <https://jemh.ca/issues/v9/documents/JEMH%20article%20Boer%20final%20proof.pdf>

<sup>28</sup>Nancy Valko, 'Why are suicide rates climbing after years of decline?' *Linacre Quarterly* 2017 May; 84(2): 108–110. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5499219/>

A previous 2015 study in the Southern Medical Journal reached a similar conclusion. David Jones and David Paton found that:

*“Legalizing PAS [physician assisted suicide] was associated with a 6.3% (95% confidence interval 2.70%–9.9%) increase in total suicides (including assisted suicides). This effect was larger in the individuals older than 65 years (14.5%, CI 6.4%–22.7%). Introduction of PAS was neither associated with a reduction in nonassisted suicide rates nor with an increase in the mean age of nonassisted suicide.”*

They conclude that:

*“Legalizing PAS has been associated with an increased rate of total suicides relative to other states and no decrease in nonassisted suicides.”*<sup>29</sup>

Commenting in September 2020, Care Not Killing, an umbrella body of organisations opposed to euthanasia and assisted suicide, offered some further concrete evidence for this thesis.

Firstly, “Although suicides had been falling in neighbouring countries, over the last 10 years in the Netherlands euthanasia deaths have increased by 150% and general suicides by 35%.”<sup>30</sup>

Secondly, it found that the suicide rate in the US state of Oregon was 33% above the American national average.<sup>31</sup>

These sobering statistics are further reasons why euthanasia and assisted suicide should not be introduced in Ireland.

#### **viii) Medical professionals are overwhelmingly opposed to this Bill in particular, and the legalisation of euthanasia and assisted suicide more generally.**

Professional medical bodies opposed to this Bill include:

- The Irish Palliative Medicine Consultants' Association
- The Royal College of Physicians of Ireland
- The Association of Palliative Care of Britain and Ireland

Ireland's Medical Council makes this position clear in section 46 of its *Guide to Professional Conduct and Ethics* (8th Edition 2019). It mandates to registered medical professionals:  
*46.9 You must not take part in the deliberate killing of a patient.*

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<sup>29</sup>David Albert Jones and David Paton, “How Does Legalization of Physician-Assisted Suicide Affect Rates of Suicide?” *South Med J* 2015 Oct;108(10): 599-604. doi: 10.14423/SMJ.0000000000000349.

<sup>30</sup><https://www.carenotkilling.org.uk/events-reports/experts-outline-assisted-suicide-risks-to-mps/>

<sup>31</sup><https://www.datocms-assets.com/12810/1589487542-2020-state-fact-sheets-oregon.png>

Consultant in Palliative Medicine, Dr Regina McQuillan, testified before the Oireachtas Joint Committee on Justice and Equality in 2017 outlining the principal reasons, why in her professional opinion, Irish law should not change in this area. She said:

1. *A change in the law would put vulnerable people at risk.*
2. *It is not possible to put adequate safeguards in place.*
3. *The drive to improve the care of people with life-limiting illnesses by education, service development and research may be compromised.*
4. *Personal autonomy is not absolute and we are part of a society.*
5. *Allowing assisted suicide or euthanasia for some populations for example the terminally ill or the disabled, devalues the lives of those compared to those targeted in suicide prevention campaigns.*<sup>32</sup>

In addition, the World Medical Alliance in 2019 reaffirmed its longstanding and resolute opposition to euthanasia and assisted suicide.

*“The WMA reiterates its strong commitment to the principles of medical ethics and that utmost respect has to be maintained for human life. Therefore, the WMA is firmly opposed to euthanasia and physician-assisted suicide.*

*For the purpose of this declaration, euthanasia is defined as a physician deliberately administering a lethal substance or carrying out an intervention to cause the death of a patient with decision-making capacity at the patient’s own voluntary request. Physician-assisted suicide refers to cases in which, at the voluntary request of a patient with decision-making capacity, a physician deliberately enables a patient to end his or her own life by prescribing or providing medical substances with the intent to bring about death.*

*No physician should be forced to participate in euthanasia or assisted suicide, nor should any physician be obliged to make referral decisions to this end.*

*Separately, the physician who respects the basic right of the patient to decline medical treatment does not act unethically in forgoing or withholding unwanted care, even if respecting such a wish results in the death of the patient.”*<sup>33</sup>

It is contrary to the foundational principles of medicine contained in the Hippocratic Oath for a doctor to deliberately kill their patient.

It is not compassionate healthcare to:

- express in law the belief that some lives are worth less than others, by offering suicide to them;
- disincentivise palliative care;
- expose vulnerable people to unwanted pressure to end their lives.

It is very important that the voices of those who dedicate their lives to caring professionally for those who are terminally ill are heard in this debate.

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<sup>32</sup>[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_justice\\_and\\_equality/reports/2018/2018-06-25\\_report-on-the-right-to-die-with-dignity\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2018/2018-06-25_report-on-the-right-to-die-with-dignity_en.pdf)  
<sup>33</sup>Adopted in October 2019 by the 70th WMA General Assembly in Tbilisi, Georgia. <https://www.wma.net/policies-post/declaration-on-euthanasia-and-physician-assisted-suicide/>

## PART B - Legal Analysis

*Is the draft PMB compatible with the Constitution (including the 'principles and policies' test)?*  
**(Question 15)**

It is our opinion that this legislation may be unconstitutional in light of the judgement of comments from Kearns P in the Fleming v Ireland Divisional High Court decision of 2012.

Firstly, in upholding Ireland's explicit and absolute prohibition on assisted suicide, both the High Court and Supreme Court upheld the Constitutional permissibility of this position.

Writing for the Divisional High Court, Kearns P noted that:

*"The prohibition on assisted suicide is rationally connected to this fundamental objective of protecting life and is not remotely based on arbitrary, unfair or irrational considerations."*<sup>34</sup>

Kearns P further acknowledged in his judgement noted the various serious consequences which may arise as a result of legalising euthanasia or assisted suicide:

*"Yet the fact remains that if this Court were to unravel a thread of this law by even the most limited constitutional adjudication in her favour, it would – or, at least, might – open a Pandora's Box which thereafter would be impossible to close. In particular, by acting in a manner designed to respect her conscientious claims and to relieve her acute suffering and distress, this Court might thereby place the lives of others at risk."*<sup>35</sup>

Upon appeal to the Supreme Court, Denham J affirmed the radical nature of creating a right to die in Irish law:

*"A right which extends to the termination of life must .... necessarily extend to a right to have life terminated by a third party in a case of total incapacity. The concept of autonomy which extends not just to an entitlement, but to a positive right to terminate life and to have assistance in so doing, would necessarily imply a very extensive area of decision in relation to activity which is put, at least prima facie, beyond regulation by the State. When it is considered that recognition of such a right implies correlative duties on the State and others to defend and vindicate that right (and which must necessarily restrict those parties' freedom of action), it is apparent that the right contended for by the appellant would sweep very far indeed. It cannot properly be said that such an extensive right or rights is fundamental to the personal standing of the individual in question in the context of the social order envisaged by the Constitution. The right to life which the State is obliged to vindicate, is a right which implies that a citizen is living as a vital human component in the social, political and moral order posited by the Constitution."*<sup>36</sup>

The flaws in this Bill, on principled, policy, and procedural levels make the legislation constitutionally unsound, for failure to adequately protect and vindicate the right to life of all citizens, particularly the most vulnerable in our society, in accordance with Article 40.3.2<sup>o</sup> which states that:

*"The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."*

<sup>34</sup>Fleming v Ireland [2013] IEHC 2 para 75.

<sup>35</sup>Fleming v Ireland [2013] IEHC 2 para 77.

<sup>36</sup>Fleming v Ireland [2013] IESC 19 para 113.

## ***Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)? (Question 16)***

Ireland is under no obligation under the ECHR to introduce euthanasia and / or assisted suicide. The Fleming Supreme Court decision made that clear.

In addition, the European Court of Human Rights has held in its decision in *Pretty v UK* that:

*“Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.*

*40. The Court accordingly finds that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention.”<sup>37</sup>*

Further, multiple international Human Rights tribunals and bodies are aware of abuses in the operation of euthanasia and assisted suicide, particularly in the European context. Some bodies have expressed extreme concern at the operation of legislation enabling euthanasia.

First, The European Court of Human Rights is currently examining alleged abuses of the euthanasia regime in Belgium. *Mortier v Belgium* is a case brought by Tom Mortier, whose 64 year old mother suffered from depression, and was euthanised by her hospital without the knowledge or consent of her family. After her death Tom received a call from the hospital asking him to sort her affairs. His case against Belgium is pending before the ECHR.<sup>38</sup>

Second, the United Nations Human Rights Committee has expressed concern about the operation euthanasia laws in the Netherlands. It has said:

- *“The large numbers involved raise doubts about whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained”*
- *“The Committee is gravely concerned at reports that newborn handicapped infants have had their lives ended by medical personnel.”<sup>39</sup>*

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<sup>37</sup> *Pretty v United Kingdom* 2346/02 [https://hudoc.echr.coe.int/eng#{"itemid":\["001-60448"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>38</sup> *Mortier v Belgium* (European Court of Human Rights application no. 78017/17) <https://apnews.com/8217108af4f841b3a2d551ca73e9cb9c>

<sup>39</sup> U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, The Netherlands,” U.N. doc CCPR/CO/72/NET, 2001.

## Conclusion

This Bill, if passed, will dramatically change the fundamental nature of end-of-life care in this jurisdiction.

In practice, its operation would have **catastrophic consequences** for

- people with disabilities,**
- older people,**
- those with terminal illnesses.**

Our evidence-based submission details the following key factors in outlining our firm opposition to this Bill:

1) **Medical Professionals** in Ireland are **overwhelmingly opposed** to the legalisation of euthanasia and assisted suicide, which this Bill would provide for if enacted.

2) This Bill brings immediate foreseeable and less foreseeable consequences. It is also indisputable that legislating for euthanasia and assisted suicide creates a real 'slippery slope', as testified to by all the **international evidence**:

- the **numbers of people dying in this way increases exponentially**. Oregon, the Netherlands and Belgium have experienced an average 763% increase in euthanasia/assisted suicide deaths since legalisation.
- once the principle is conceded the grounds of **eligibility for euthanasia and assisted suicide increase over time**, to include children, and adults with psychiatric conditions.

3) Concerns about euthanasia have been raised before international Human Rights institutions, including the pending European Court of Human Rights case of *Mortier v Belgium*, and the UN Human Rights Committee.

4) A change in the law in this area will **undermine suicide prevention efforts** in three respects:

- The emphasis on **personal autonomy** creates a climate where concerned others feel they should back off, and that they are interfering in another person's right to die
- There is evidence in the academic literature that **euthanasia/assisted suicide has a contagion effect**.
- This Bill will create a dilemma in law which requires the state to answer these troubling questions:  
**a) Who gets suicide prevention? b) Who gets suicide assistance?**

5) Fundamentally, this **Bill promotes the idea that some lives are not worth living**. This is an illegitimate and dangerous categorisation for the State to make, and **puts vulnerable people at risk**.

