Anscombe Centre Submission to Government of Jersey Consultation on Euthanasia and Assisted Suicide (EAS)

From 17 October 2022 to 14 January 2023, the Government of Jersey held a Consultation on proposals to introduce euthanasia and assisted suicide (EAS) into Jersey law and medical practice.

The Consultation took place *via* a series of set questions, with multiple choice answers and space to give explanations of the answer. The below is the submission on behalf of the Anscombe Centre composed by our Education and Research Officer, Dr Chris Wojtulewicz.

Q.1 Do you give permission for your comments to be quoted?

No ☐ Yes, anonymously ☐ Yes, attributed ☑

Name to attribute comments to: ___

Organisation to attribute comments to, if applicable: *Anscombe Bioethics Centre*

Q.2 Do you, or the organisation on whose behalf you are responding, hold a strong view on whether or not assisted dying should be permitted?

Yes ☑ No ☐ Prefer not to say ☐

Q.3 If yes, do you think assisted dying:

Should be permitted ☐ Should not be permitted ☑

Q.4 Do you agree that the eligibility criteria should be changed to allow for those with a neurodegenerative disease to become eligible for assisted dying when they have a life expectancy or 12 months or less?

Yes ☐ No ☑ Don't know ☐

Please tell us the reasons for your response:

Among the many reasons to object to this practice, it is worth noting that the drawing up of eligibility criteria inevitably signals that some disabilities can or ought to be considered reasons for not living. This is a very serious affront to disabled communities, and erodes the affirming attitude towards those in need of care that our society needs. See Pia Matthews, 'Dignity in Living: Addressing Euthanasia by Affirming Patient Personhood in Dementia'.

Q. 5 Do you agree that the definition for Jersey resident should only include those ordinarily resident in Jersey for 12 months?

Yes □ No ☑ Don't know □ Other, please state ☑ ___

Please tell us the reasons for your response:

In addition to residents, non-residents should not be allowed access to euthanasia or assisted suicide either.

Q.6 Do you agree that assisted dying should only be permitted for people aged 18 or over?

Yes □ No □ Don't know □

Please tell us the reasons for your response:

Euthanasia legislation has been (or is seriously being considered to be) extended to children under the age of 18 (e.g. Belgium, the Netherlands, Canada). This is one of many examples of how the passing into law of euthanasia and/or assisted suicide leads to further liberalising of restrictions. For an up-to-date survey of the latest peer-reviewed evidence see: https://bioethics.org.uk/about-us/showcase/euthanasia-and-assisted-suicide-a-guide-to-the-evidence/

Q.7 Do you agree that the Jersey Assisted Dying Service should be free to people who want an assisted death and who meet all the criteria?

Yes, it should be free □ No, it should be paid for □ Don't know □

Please tell us the reasons for your response:

Although the Anscombe Bioethics Centre opposes all forms of euthanasia and assisted suicide, to offer the service for free would add an additional stress for those nearing the end of their lives to accept the service.

Q.8 Do you agree that health professionals should have the right to refuse to undertake a supporting assessment (or provide their professional opinion), if that information may be used by an Assessing Doctor to make a determination on the person's eligibility for an assisted death?

Yes, they should have the right to refuse ☑ No, they should not have the right to refuse □ Don't know □

Please tell us the reasons for your response:

No healthcare professional should be expected to be involved in an assessment, and additionally, they should not be expected to refer to someone who would make such an assessment. Such expectations would place an unacceptable moral burden on healthcare professionals, and would deny them their right to refuse participation on the grounds of conscience. This issue was recently considered by the World Medical Association in revising its International Code of Medical Ethics, and an open letter signed by over 250 professors, directors of research centres, physicians, and others concerned with medical ethics, urged the WMA not to impose an obligation to refer patients for procedures that the physician sincerely and reasonably considers unethical, see: https://bioethics.org.uk/news-events/news-from-the-centre/open-letter-to-the-world-medical-association-on-conscientious-objection/

Q.9 Do you think that conscientious objection clause should provide a premise owner / operator the right to refuse an assisted death on their premises (for example, a care home provider may choose not to permit a resident to have an assisted death in their room, even though it is the person's place of residence or care)

Yes, they should have the right to refuse ☑ No, they should not have the right to refuse if the person who wants an assisted death is resident or being cared for in the premises □ Don't know □

Please tell us the reasons for your response: ___

Q.10 Do you agree that the assisted dying register should be public?

Yes ☑ No □ Don't know □ Please tell us the reasons for your response: In the unfortunate event that assisted suicide becomes legal, it is important that data be available to allow for transparency and scrutiny.

Q.11 Do you agree that the nine proposed steps are all necessary?

Yes □ No □ Don't know □

Please tell us the reasons for your response:

It is not possible to commend the proposed steps due to the Centre's opposition in principle to euthanasia and assisted suicide. Moreover, evidence from other jurisdictions shows that proposed safeguards do not provide the safety they purport to offer. On the issue of the extension of legislation once passed, see John Keown, 'Voluntary Euthanasia & Physician-assisted Suicide: The Two 'Slippery Slope' Arguments'.

Q.12 Do you think there are any further steps / actions that should be included?

Yes □ No ☑ Don't know □

Please tell us the reasons for your response: ___

Q.13 Do you agree with the proposed minimum timeframe for those with a terminal illness of 14 days?

Yes – I agree □ No – I do not agree ☑ Don't know □

Please tell us the reasons for your response: ___

Q.14. Do you agree with the proposed minimum timeframe for those with unbearable suffering of 90 days?

Yes – I agree □ No – I do not agree □ Don't know □

Please tell us the reasons for your response: ___

Q.15 Do you agree that the law should not prohibit professionals for raising the subject of assisted dying?

Yes – I agree □ No – I do not agree ☑ Don't know □

Please tell us the reasons for your response: ___

Q.16 Do you agree that the law should not place an explicit requirement on relevant professionals (e.g. those working in GP surgeries or hospital departments) to tell people about the assisted dying service?

Yes – I agree ☑ No – I do not agree □ Don't know □

Please tell us the reasons for your response: ___

Q.17 Do you agree that a person should only be entitled to one second opinion?

Yes □ No □ Don't know □

Please tell us the reasons for your response:

The question presupposes support for euthanasia/assisted suicide, which the Centre does not.

Q.18 Should the law allow for confirmation of consent to proceed?

Yes □ No ☑ Don't know □

Please tell us the reasons for your response:

It is not clear how consent can be legitimately confirmed when the reasons for consenting to the process are themselves tied to the interests and concerns of others. This is clear in jurisdictions where assisted suicide is legal. The idea of autonomous consent in this area is a dangerous falsehood. See: Xavier Symons, 'The Principle of Autonomy: Does it Support the Legalisation of Euthanasia and Assisted Suicide?'.

Q.19 Should the law allow for the option of a waiver of final consent?

Yes – the law should allow for a waiver of final consent □ No – the law should not allow for a waiver of final consent ☑ Don't know □

Please tell us the reasons for your response: ___

It is proposed that there are two different approval routes:

a) Route 1 (terminal illness) which will entail approval by the Coordinating Doctor based on their assessment and that of the Independent Assessment Doctor (i.e. two doctor assessments),

b) Route 2 (unbearable suffering), which will entail approval by the Coordinating Doctor based on their assessment and that of the Independent Assessment Doctor (ie. two doctor assessments), and then confirmation of that approval by a specialist tribunal

Q.20 Do you agree with the two different approval routes as proposed?

Yes □ No – all approvals should be by the Coordinating Doctor based their assessment and that of the Independent Assessing Doctor only (i.e. no requirement for a Tribunal) □ No – all approvals by the Coordinating Doctor should be confirmation by a Tribunal (i.e. a Tribunal involved in all cases) ☑ Don't know □ Other, please state □ ___

Please tell us the reasons for your response: ___

Q.21 Do you agree that the Tribunal should only review decisions of the Coordinating Doctor to approve Route 2 assisted dying requests?

Yes □ No □ Don't know □

Please tell us the reasons for your response: ___

Q22. Do you agree that the Law should provide for appeals to the Royal Court?

Yes ☑ No □ Don't know □

Please tell us the reasons for your response: ___

Q23. Do you agree with proposed grounds for appeal?

Yes □ No ☑ Don't know □

Please tell us the reasons for your response: ___

Q.24 Do you agree with there should be at 48-hour time period between approval and the assisted death to allow for appeals?

Yes – I agree □ No – I do not agree, there should be no minimum time period for appeals □ No – I do not agree, there should be a time period longer than 48-hours ☑ Don't know □

Please tell us the reasons for your response: ___

Q.25 Do you agree that the right to appeal should be restricted to the person (or their agent) or a person with special interest?

Yes □ No □ Don't know □

Please tell us the reasons for your response: ___

Q.26 Do you agree that there should be no expiry date for the approval of an assisted death?

Yes – I agree, there should be no expiry date □ No – I disagree, I think there should be an expiry date ☑ Other, please state □ ___ Don't know □

Please tell us the reasons for your response: ___

Q.27 Do you agree that there should be an Administering Practitioner with the person or nearby?

Yes □ No □ Don't know □

Please tell us the reasons for your response:

It is important to note that the proposed role of an Administering Practitioner blurs the distinction between assisted suicide (self-administration) and euthanasia (administration by another). On this issue see Christopher M. Wojtulewicz, 'Analysing the Assisted Dying [HL] Debate 2021', The New Bioethics 28, no. 4 (2022): 350-67.

Q.28 Do you agree that a loved one should be able to support the person to self- administer the substance?

Yes □ No ☑ Don't know □

Please tell us the reasons for your response: ___

Q.29 Do you agree that the medical certificate of the fact and cause of death, and hence the register of deaths, should accurately record the cause of death as assisted dying?

Yes ☑ No □ Don't know □

Please tell us the reasons for your response:

It is absolutely necessary that there be no obfuscation of the cause of death in such cases, and that such information should be readily and easily accessible to the public. Clarity and precision in language is indispensable, and 'assisted dying' is itself already euphemistic. Not only should the records show the means of death (e.g. ingestion or injection of lethal drugs) but also whether this was self-administered or administered by someone else. On the reasons why such clarity is necessary, see David Albert Jones, 'Defining the Terms of the Debate: Euthanasia and Euphemism'. In jurisdictions where euthanasia and/or assisted suicide is legal, the data that is available to researchers (including the cause of death) allows us to see that rates of euthanasia/ assisted suicide increase significantly over time, as do rates of self-initiated deaths (euthanasia/ assisted suicide and non-assisted suicide). The latest data therefore shows that legalising euthanasia or assisted suicide is a threat to suicide prevention, despite arguments which seek to distinguish 'assisted dying' from suicide. See David Albert Jones, 'Suicide Prevention: Does Legalising Assisted Suicide Make Things Better or Worse?'.

Q.30 Do you agree that an HCS Service Delivery and Assurance Board is needed to provide oversight of the safety and quality of the assisted dying service?

Yes ☑ No □ Don't know □

Please tell us the reasons for your response: ___

Q.31 Do you agree that post-death administrative review of each assisted death is required?

Yes ☑ No □ Don't know □

Please tell us the reasons for your response: ___

Q.32 Do you agree that the Jersey Care Commission should independently regulate and inspect the Assisted dying service?

Yes □ No □ Don't know ☑

Please tell us the reasons for your response: ___

Q.33 Do you agree the Jersey Assisted Dying Service should not be considered as an essential service? (i.e., that the JCC should have the powers to close the service down)

Yes – I agree, it should not be considered an essential service ☑ No– I disagree, it should be considered an essential service □ Don't know □

Please tell us the reasons for your response:

Assisted Dying, that is euthanasia or assisted suicide are not part of palliative care, they are not part of end-of-life care, they are not part of healthcare. If it is deemed to be 'essential' healthcare for those who request then it will be 'essential' to provide it to people who do not request, on the basis of best interest (which is how essential healthcare decisions is made in all other cases). Furthermore, if it is an 'essential' service and is more cost effective than palliative care or assisted living at reducing suffering (as it eliminates the one suffering and has no further costs) then it will gain priority in allocation over palliative care and assisted living. Deeming euthanasia and assisted suicide as essential services is also likely to lead to coercion of healthcare professionals and others who regard these interventions as harmful and do not wish to participate.

Euthanasia and assisted suicide are essentially elective and, even if they are tolerated by law, they should not be deemed essential services that others have a duty to provide.

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