

The Hon Scott Morrison MP  
Prime Minister  
Parliament House  
Canberra ACT 2600

CCed: The Hon Christian Porter MP  
Federal Attorney-General

Address for Correspondence:  
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Dear Prime Minister,

Please find enclosed a letter from various religious organisations and representatives regarding the restriction of Freedom of Religion and the Victorian Voluntary Assisted Dying Act 2017 and our call for the Federal Government to urgently intervene before the implementation of the legislation on June 19<sup>th</sup> 2019.

Our concerns regarding the impact on our religious freedom and our suggested means of Federal intervention are detailed in the letter below.

We thank you for your consideration on this most important issue.

With Kind regards,

Rabbi Shimon Cowen, Institute for Judaism and Civilization.

Dr Eamonn Mathieson, Australian Catholic Medical Association.

Mr Dan Flynn, Australian Christian Lobby.

Dr David Adler, Australian Jewish Association.

Prof John Whitehall, Christian Medical and Dental Fellowship of Australia.

\*The full list of signatories are at the end of the letter.



AUSTRALIAN  
CATHOLIC  
MEDICAL  
ASSOCIATION



We are writing to request an urgent intervention by the Federal government to avert the implementation of the Victorian Voluntary Assisted Dying Act 2017 (VAD Act 2017) on the 19<sup>th</sup> of June. We request this intervention on the grounds that the Act does not effectively protect the religious freedom of conscientiously objecting doctors, which is contrary to Section 116 of the Federal Constitution, which prevents the Commonwealth from promulgating any law that prohibits the free exercise of religion.

It is also contrary to Article 18 of the International Covenant on Civil and Political Rights (ICCPR)<sup>1</sup>, to which Australia is a signatory<sup>2</sup>, and which considers Freedom of Religion and Conscience to be non-derogable rights<sup>3</sup>.

We ask that you consider utilising Commonwealth-State hospital funding agreements as a legislative means to delay the implementation of the VAD Act 2017 at least until greater protections for religious freedom can be guaranteed by Federal legislation currently being considered.

The following details our concerns with the VAD Act 2017 and elaborates on our suggestion of a possible legislative remedy:

1. The Voluntary Assisted Dying (VAD) Act proposes to facilitate suicide by the provision of a lethal substance to a person to end his or her life. This is something that is something which is forbidden by all major religious traditions. It may also constitute an accessory to suicide/homicide under current Australian law.
2. Moreover, the Act goes beyond the facilitation of suicide and in the event that a patient cannot self-administer the drug, a doctor may administer a lethal substance directly, thereby legalising the act of euthanasia which many faith traditions consider to be an act of murder or homicide. Under

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<sup>1</sup> United Nations human Rights Office of the High Commission: International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>2</sup> <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttofreedomofthoughtconscienceandreligionorbelief.aspx>

<sup>3</sup> Article 4(2) of the International Covenant on Civil and Political Rights (See footnote 1)

current Australian law, at least until the implementation of the Victorian VAD law on June 19<sup>th</sup>, such an act affixes a maximum penalty of life imprisonment.

3. For many people of faith, the facilitation of suicide or the act of a doctor intentionally administering a lethal substance to end a patient's life, will remain morally repugnant acts of homicide and murder, even after they have become "legal".
  
4. The Act also delivers a deeply corrosive message to the wider society. The legislation stipulates that the request for euthanasia be made through a process which verifies that the request is *not* the product of mental illness or dementia, but that the person who asks for it is in his or her "right mind". Euthanasia is then viewed as a lucid, "rational" act and decision. How can the Government hope to dissuade youth from suicide with various services and "help lines", when it considers suicide to be a product of a "principled" and "rational" choice in other settings?
  
5. Although the Act ostensibly provides for "conscientious objection" in Part 1, section 7, by affirming the right of a health practitioner **not** "to provide information about voluntary assisted dying", it remains unclear whether desisting from providing information, means:  
  
(A) that the practitioner is protected from having to provide the information about the procedure of Voluntary Assisted Dying  
**or**  
  
(B) the practitioner is protected from doing anything which *leads* the patient to the information, i.e. he or she does not have to inform the patient how to obtain the information.

6. On 10 April, 2019 clarity regarding the above question was finally provided in a document published on a Government website<sup>4</sup>, entitled *“Community Information about Voluntary Assisted Dying”*, in which the following question was posed:

*“Do all health services have to participate in voluntary assisted dying?”.*  
Although the response to this question is “no”, it concluded by stating:  
*“Even if a health service is not participating, people can still ask its doctors or health practitioners where they can go to get information about voluntary assisted dying”.*

This statement clarifies the expectations of the Act for doctors with a conscientious objection who, despite the Act affirming their right *not* “to provide information about voluntary assisted dying”, are still obligated to participate in the process of a patient seeking information about PAS and euthanasia by informing and directing them as to how to obtain the desired information.

7. This explanation of the Act requires a doctor of traditional faith to have a degree of participation and moral culpability in a process which under current law is consistent with homicide or an accessory to suicide and for him or her remains morally repellent.

Consider this analogy: If you refuse a request to kill another human being but acquiesce to the demand: “Find me someone who you know will do it”, or even:

“Tell me how I might be able to find someone who would do it”, then this would constitute participating in a process leading towards murder. A person providing such information would be considered an accessory to murder.

A doctor who is obligated to inform a patient how to obtain the information and means for suicide (“to get information about voluntary assisted dying”) is in a similar position of legal and moral culpability. Such an obligation constitutes participation or complicity in what the law at present,

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<sup>4</sup> <https://www2.health.vic.gov.au/about/publications/factsheets/community-information-about-voluntary-assisted-dying>

until June 19, considers murder/homicide (in the case of a doctor-administered lethal substance) or accessory to suicide (where the lethal substance is provided to the patient).

The Government's advice in its "Community information" clarifies that the Act does not properly protect doctors with a conscientious objection from having "to give information" and participate in the process of euthanasia and Physician Assisted Suicide.

8. The AMA Position Statement on Conscientious Objection 2019, in clause 1.5, states *"Doctors have an ethical obligation to minimize disruption to patient care and must never use a conscientious objection to intentionally impede patients' access to care"*. Apart from the issue of whether "access to care" includes "access to death", it is not correct to infer that a refusal to inform a patient about access to information or the means of voluntary euthanasia or PAS, serves to "impede" the person from accessing that service. If another is not helped to carry out an activity, that does not mean that I impede it. Refusing to facilitate the "service" by declining to participate in the process by providing information or direction, is not the same as "impeding". It is passive non-action.
9. The refusal to grant proper conscientious objection under this Act is a curtailment of the religious freedom of practitioners, whose faith tradition and conscience mandates this objection.

### **What may be done?**

10. The Federal Constitution in Section 116 prevents the Commonwealth from promulgating any law that prohibits the free exercise of religion. The Victorian VAD Act 2017 prohibits the free exercise of religion by failing properly to provide for conscientious objection on religious grounds.
11. Despite the Victorian VAD Act 2017 being a State based law, we believe that the a mechanism exists through the Federal Parliament's provision of funding for public hospitals to utilise Federal legislation to enforce state law to conform with the Commonwealth Constitution which provides for protection of the free exercise of religion in all Commonwealth legislation.

This funding and legislative mechanism was highlighted in a press release by the former deputy leader of the Labor Party, Tanya Pilbersek, prior to the 2019 election. She stated, that as part of Labor's plan to extend the availability of abortion, *"For the first time, Commonwealth-State hospital funding agreements will expect that termination services will be provided consistently in public hospitals"*.<sup>5</sup> Ms Pilbersek wanted to use this means to advance a policy of the Federal Labor Party, despite having nothing to do with Constitutional requirements.

Were the Government to use the same mechanism to restrict the operation of the Victorian Voluntary Assisted Dying Act, it would be doing so to protect and enforce the Australian Constitution in its provision in Section 116 for religious freedom.

- 12.** Therefore we call upon the Federal Government to act urgently, utilising its legislative power in regard to its funding towards State hospitals, to uphold the Constitutional rights of doctors to conscientiously object to participating in Euthanasia and Physician Assisted Suicide, on the grounds of the free exercise of religion.

We hope that this issue could be addressed and acted upon prior to the implementation of the Act on June 19<sup>th</sup> 2019.

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<sup>5</sup>[http://www.tanyapilbersek.com/media\\_release\\_labor\\_s\\_plan\\_to\\_support\\_women\\_s\\_reproductive\\_rights\\_wednesday\\_6\\_march\\_2019](http://www.tanyapilbersek.com/media_release_labor_s_plan_to_support_women_s_reproductive_rights_wednesday_6_march_2019)

## List of Signatories:

Rabbi Shimon Cowen, Institute for  
Judaism and Civilization.

Dr Eamonn Mathieson, Australian  
Catholic Medical Association.

Mr Dan Flynn, Australian Christian Lobby.

Dr David Adler, Australian Jewish  
Association.

Prof John Whitehall, Christian Medical  
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Professor Graeme Clark AC

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Riad Galil OAM,  
Senior Imam,  
West Heidelberg Mosque

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Ps Caleb Nicholes,  
Southern Lights Church, Skye

Ps Dale Stephenson,  
Crossway Church, Burwood

David Nair, Hope Centre, Glenroy

Ruth Smart, River of Fire Ministries,  
Sunbury

Peter Stevens, Victorian State Director,  
Family Voice Australia.

Rev Wendy Gravolin, Winchelsea Anglin  
Parish

Peter MacPherson, St Alfred's Anglican  
Church, Blackburn North

Ps Peter Smith, Synergy Christian Church,  
Colac

Monsignor Rev Charles Portelli,  
St Mary of the Assumption,  
Keilor Downs-Kealba.

Ps Neville Woodbury, Freedom Church,  
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Terri M Kelleher, National President,  
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