

SUBMISSION TO THE TASMANIAN LAW REFORM INSTITUTE

topic

VOLUNTARY EUTHANASIA

PREPARED BY

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(VEST).**

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INTRODUCTION

This submission relates only to voluntary euthanasia which we define as the bringing about of a comfortable, pain-free and gentle death in hopeless, intolerable and incurable situations at the request of the individual concerned.

The situation for many of the incurably suffering and terminally ill has improved in Tasmania (and Australia as a whole) in recent years. Yet it is still impossible for a competent hopelessly suffering person to choose voluntary euthanasia and legally obtain the means to die comfortably when and where they wish.

Medical practitioners and carers are still at risk of prosecution for assisting suicide should they assist or support the death of the individual. There are currently two cases in Tasmania (of which VEST is aware) where adult children of elderly and terminally ill suicides have been charged with assisting suicide.

Decisions on final release are still made by medical practitioners on their subjective view of the extent of suffering rather than by the suffering individual, although surveys show that many medical practitioners are, in practice, influenced by the expressed wishes of their patients.

The medical profession should be protected against prosecution if they use any treatment, even the procurement of a swift death, if this is in the best interest of their patient and to relieve irremediable suffering.

VEST strongly holds the view that people should have the right to choose a comfortable death as a relief from irremediable suffering and that adequate safeguards can be inserted in the legislation to protect the sanctity of life embedded in our social ethos.

To explain the basis for this view this introduction is followed by:

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SUBMISSION

The Voluntary Euthanasia Society of Tasmania (VEST) submits that the law in Tasmania should be changed to include provisions to legalise voluntary euthanasia in the following respects.

1. The right to voluntary self-euthanasia in hopeless end-of-life situations should be specifically recognised.

This would recognise the autonomy of individuals in end-of-life situations to make decisions regarding their person and bring into line the ability to obtain advice and medication with that which exists in relation to other life situations. It would result in the recognition of the associated right of the individual to obtain and use the means to peacefully end life and to self-administer such means without interference.

2. The right to obtain the means for peaceful self-administered voluntary euthanasia from medical practitioners should be recognised.

This would free practitioners from the danger of legal action.

3. Medical practitioners should be enabled to assist hopelessly suffering patients to voluntarily end their life.

Where the individual is so incapacitated that self-administration is impossible the practitioner should be able to assist (for example, by giving an injection as happens in extremity today) without facing the current risk of prosecution for assisting suicide.

Statutes should be prepared which recognise the right and responsibility of suitably qualified medical practitioners, when requested by a competent individual, to discuss, prescribe and assist in the administration of the means to end hopeless suffering even when this may result in the death of the sufferer.

This legislation *must* include suitable provisions to allow medical practitioners the right not to so discuss, prescribe and administer where they have a moral objection to so doing, in which case they have a responsibility to advise the hopelessly suffering individual of that fact.

4. It should be legal for close relatives, friends or guardians (as in Enduring Guardians) to provide assistance where the sufferer is physically incapable of self-administering the means of relief.

This would allow the individual the traditional comfort of the presence of loved ones in extremity free of the risk of prosecution for assisting suicide.

5. Rigorous conditions should be part of the legislation to safeguard against abuse.

EXECUTIVE SUMMARY

An increasing number of individuals in end-of-life situations are suffering (physically and/or mentally) for longer periods of time than in the past because of modern medication and life support systems, and the unavailability of peaceful means of relief.

Self-administered voluntary euthanasia in end of life situations in itself is not illegal because suicide is not illegal. The legal prohibition on assisted suicide means that competent able-bodied individuals are denied access to medication which would provide a comfortable death.

The most common forms of suicide in the elderly are violent, abhorrent, painful, undignified and extremely distressing to surviving relatives and loved ones. These methods are only available to a limited number of the able-bodied and knowledgeable. Illegal access to the means for a peaceful death is inequitably available to wealthy or privileged people.

People who commit suicide in hopeless and intolerable situations are denied the traditional comfort, in dying, of the presence of loved ones because they may risk prosecution.

Medical practitioners risk prosecution for assisting suicide should they assist in voluntary euthanasia. This may prevent full discussion of the whole range of outcomes and available options in hopeless situations and may result in a failure to appreciate the lack of a cure and the inevitability of death. This can prevent closure and resolution of outstanding issues and the re-iteration of the value of the life of the individual for them, their families and carers.

Religious objections to voluntary euthanasia are supported by a decreasing number of faiths and lay individuals in the opposing denominations. Failure to legalise voluntary euthanasia because of the views of the minority of the population on religious grounds is discriminatory.

The argument against voluntary euthanasia on the grounds of a slippery slope to increased levels of non-voluntary euthanasia are demonstrated to be wrong by evidence from legislatures where access to the means for voluntary euthanasia is legal. Again evidence from these states is disproving the argument that legalisation undermines the valuation of life. Support for weaker members of society is enhanced where hopeless suffering is recognised and relieved.

Adequate safeguards against abuse can be provided for in legislation supporting voluntary euthanasia in cases of hopeless suffering and distress. This is demonstrated by the successful legislation in Switzerland, The Netherlands, Belgium and the State of Oregon USA.

VEST contends that the legalisation of voluntary euthanasia in cases of hopeless, intolerable and incurable, suffering and distress supports the basic tenet of our society that the life of each and every individual is innately precious, each individual should be enabled to gain the highest quality of life possible to the limit of their capacity and that this extends to the autonomy to control the end of their life.

Legalisation of voluntary euthanasia shows the highest levels of compassion.

CURRENT LAW IN TASMANIA

The legal situation is governed by sections 163 and 53(a) of the Tasmanian Criminal Code

Aiding Suicide

163. Any person who instigates or aids another to kill himself is guilty of a crime.

Consent to Injuries

53. No person has a right to consent to the infliction

(a) of death upon himself;

b) except as provided in section 51, of an injury likely to cause death; or

c) of a maim for any purpose injurious to the public-

and any consent given in contravention hereof shall have no effect as regards criminal responsibility.

[section 51 refers to consenting to surgery]

Very little can be said about the precise application of the law regarding voluntary euthanasia in Tasmania because there have been no cases decided by the courts.

(Currently there are two cases in Tasmania where adult individuals have been charged under section 163 of the Tasmanian Criminal Code 1924 with assisting the suicide of their aged and ill parents).

In Tasmania there are no prescribed or mandatory sentences for capital crimes and it may be that the judge may give a minimal sentence if a conviction results from a prosecution under section 163 if the aiding was as a result of persistent pleas from the deceased.

The risk and stigma of a charge let alone a conviction is very real for medical practitioners and may have grave consequences for their livelihood.

ARGUMENTS FOR VOLUNTARY EUTHANASIA

The arguments in support of voluntary euthanasia have been well canvassed in the last 10 to 15 years but are reiterated here for completeness.

Relief of cruelty and distress

There are a small percentage of hopelessly distressed and suffering patients for whom palliative care is insufficient and who still wish to end their life. Even where pain can be relieved there are still some conditions which produce hopeless suffering for some people. The vast majority (over 80%) would be able to take medication without help. For these patients the availability of prescription drugs would provide a peaceful final solution. The knowledge that medication was available would be a great relief.

Of course self administered voluntary euthanasia is not illegal because suicide is not illegal, the problem is that doctors may not prescribe sufficient medication because they may be accused of assisting suicide if they prescribe suitable medication.

Palliative care will still not help the remaining few who are no longer able to self administer by mouth. In these cases medically assisted voluntary euthanasia is their only resort. Again the possibility of this solution will allow these patients to have peace of mind and perhaps die naturally before resorting to medical intervention.

Animals are treated better than humans in Tasmania in respect of hopeless end of life situations. An animal will be put to sleep peacefully in the arms of its owner by a veterinarian through the administration of barbiturates.

The self awareness of humans adds to their suffering. Their loss of dignity and autonomy and recognition of the hopeless emotional distress of their loved ones increases their suffering compared to an animal. When this is taken into account then we treat humans in a way which could be subject to prosecution as cruelty if the recipient of the treatment were an animal.

Denial of autonomy and civil liberties

Usually our law allows full autonomy to individuals. Under special situations such autonomy is restricted by legislation (eg. childhood, insanity, membership of the armed forces). Even children are considered to be able to make many decisions regarding their life. In cases of marital breakdown the wishes of the child are sought and weighed in decisions regarding custody. In many medical situations the child can have considerable control over whether procedures are undertaken. The living away from home allowance is specifically provided to allow people under the age of majority to live independently.

The emphasis throughout life, in our society, is to enable the individual to be independent. Not long ago people who were physically handicapped (even simply blind) or were considered imbeciles were incarcerated in institutions or at home. Now these same people

are rightfully helped to live in social situations as independently as possible with a very high degree of independence regarding lifestyle decisions.

In Australia the courts have reiterated the right of patients (and guardians of comatose patients) to refuse medical treatment including the removal of life support systems.

In the case of voluntary euthanasia this autonomy is removed from individuals who may be of the highest intelligence and who may have contributed enormously to the social and cultural wealth of their society. Eminent Judges, Nobel Prize winners, ex-Prime Ministers alike are legally denied the right to obtain the means to take action on informed decisions regarding their own end-of-life situations. (But see 'Unfair' below).

People in end-of-life and hopeless situations cannot be guaranteed the ability to easily talk to medical practitioners about euthanasia or seek assistance. This can cause considerable and lonely distress. It is a well-recognised factor that if anxiety and distress is relieved people often wish to live longer and have a more peaceful, fulfilling and positive tail end of their life.

In Oregon USA, prescriptions of lethal drugs are available in restricted situations. In 2002 doctors wrote only 58 prescriptions and only 36 patients died as a result of taking the prescribed medication. This would indicate that the need is small and that when the relief is at hand a large proportion do not resort to taking the medication.

Denial of democratic freedom

A basic tenet of a democracy is that you and I have the right to do what we like, believe what we like and say what we like provided we do not unduly interfere with the rights of others. John Stuart Mill in his "On Liberty" expressed this as -

"The only purpose for which power can be rightfully exercised over any member of a civilised community against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant."

In regard to voluntary euthanasia our society controls the action of the individual by denying them the ability to obtain the means to a comfortable end. Because of the risk of prosecution of doctors or loved ones who assist (or even passively do not intervene) our society is de facto exercising inappropriate power over the individual.

It is a denial of the rights of an individual who believes in voluntary euthanasia, that he/she is not allowed to practise with dignity his/her belief that self-euthanasia is their right.

Opinion polls repeatedly show that over 75% of Australians support voluntary euthanasia. Yet the law does not recognise the views of this majority. Instead the views of the minority prevail. History shows that this situation cannot be sustained indefinitely.

Unfair

The very wealthy are always able to purchase and/or obtain the means for an easier death, even if they have to take the extreme step of travelling to another legislature such as

Switzerland. It is usually possible for them to obtain information and drugs suitable for a sure and peaceful end of life at home. Members of the medical and veterinary professions have access to the means for a comfortable end.

Physically weakened individuals, such as those suffering from motor neurone disease, have the unimaginable torture of facing increasingly severe progression to isolation and imprisonment in their own physical shell.

These people are even unable to avail themselves of the most common methods of suicide used by the elderly in Australia which include hanging, shooting, imbibing domestic cleaners or overdosing on commercially available pain-killers (eg. paracetamol). Hanging or shooting are more usually used by able-bodied males before physical weakness occurs.

The weakest and most impoverished members of our community are denied, by law, the relief from suffering available to the strong and wealthy. This is the exact opposite of democratic ideals.

Illogical

The law makes no distinction between the suicide of individuals with the possibility of a positive and perhaps vibrant future and voluntary self euthanasia of people in hopeless and end-of-life situations. Suicide of the young and of individuals temporarily suffering from a condition which is curable is a tragedy to be prevented if we can. But supporting voluntary euthanasia is an act of compassion.

Failure to intervene or to reverse the self-administered voluntary euthanasia process when initiated (even where the intervention cannot restore the individual to their full faculties or may simply make inevitable dying take longer) may be seen to constitute the crime of assisting suicide. There is no other legal situation for which the law makes it a crime to assist (perhaps even passively) a legally competent individual to perform a legal action as in the case of the crime of assisted suicide.

You or I can watch someone undertake many dangerous and life threatening actions and legally provide assistance. We may even profit financially by providing the means. We may watch them smoke, drink to excess, go bungie jumping, mountain climbing without a rope, go swimming while inebriated, get into and start a car while inebriated or other conditions of diminished responsibility. In fact if we intervene physically we may be committing an assault (criminal offence). Even if they put others at risk of harm, injury or even death lack of intervention cannot be interpreted as a crime.

With voluntary self-euthanasia it is often seen as the responsibility of third parties to intervene. It may even be seen that failure to intervene is viewed as assisting suicide. What an anomaly.

In Australia we live in a country where modern medical, social and civic health facilities and methods result in prolonged life with the expectation of relief from ailments and illness to record levels. However these very medical miracles and methods result in hopeless cases of

prolonging life to the stage where existence is uncomfortable, painful and undignified and robs individuals of autonomy. The result is an obscene caricature of compassion.

Yet the individual is denied simple and inexpensive means for relief. This is not rational or loving.

In many cases medical practitioners do, in the end, practise mercy killing or euthanasia in that they administer sufficient sedative and pain-killer to reduce suffering even though they are well aware that this will result in death (double intent). It is ridiculous that the medical practitioner but not the patient makes the subjective decision that in their view the patient has suffered enough.

Current situation is detrimental to the operation of best medical practice

Medical practitioners attempt at all times to do the best for their patients. To cure where possible or to ameliorate symptoms and relieve pain and suffering where full cure is not possible.

Medical science and technology can keep people alive into a longer, active and relatively healthy older age. Many of the traditional conditions which ended life such as pneumonia (termed historically 'the old man's friend') are now cured with antibiotics.

This additional life is usually gratefully received by patients. Still the situation can arrive where discomfort and suffering are prolonged indefinitely or at least for a considerable time. Often antibiotics and other medication are administered to the sick, elderly and terminally ill patients without a full discussion of the possible outcomes of **not** administering the drugs.

The risk of prosecution for assisting suicide may make the practitioner reluctant to provide advice and discuss all options for their patients. The patient may be putting the doctor at risk simply by seeking to discuss voluntary euthanasia. The crime of aiding and assisting suicide appears very broad and is totally without any judicial review because of the lack of cases in Tasmania. This is a very difficult situation for the medical profession.

In hopeless end-of-life situations medical practitioners may eventually reach the stage where they believe that the best interest of the patient is to end their suffering and facilitate the relief of death. A quick remedy is not available to medical practitioners for fear of prosecution.

It is accepted that a doctor is not at risk of prosecution if they administer medication sufficient to relieve pain even though that may have the secondary effect of producing death..

Medical practitioners in Tasmania (in the 4-5% of cases where they assist death as a corollary of pain relief) may be leaving the pain relief to a very late stage and providing a relatively slow death (virtual sedation to starvation) for fear of prosecution. Long term users of morphine as pain relief often report intense nightmares. These long term morphine users also require very large doses to bring about the end of life. It cannot be guaranteed that the comatose patient is not suffering mentally.

The optimum treatment in these cases would be a sedative of a type and in such dose as will result in death quickly, if not immediately.

In 1997, Kuhse et al published their survey of 1,918 Australian doctors' end-of-life decisions (comparable to the Dutch Rummelink studies). From this survey they estimated that:-

- 1.8% of deaths were by voluntary euthanasia or physician-assisted suicide
- 3.5% of deaths involved termination of the patient's life without specific request
- in 24.7% treatment was withheld or withdrawn with the intention to hasten death
- in 6.5% of deaths opioids were administered with at least the partial intent to hasten death.

This would suggest that of the cases where life was deliberately terminated twice as many were without the request of the patient than where the patient requests termination. This seems a less than ideal situation.

Medical practitioners should be relieved of the burden of the risk of prosecution. The minimum level of legislation to facilitate voluntary euthanasia should be the protection from prosecution of medical practitioners on the ground of acting in the best interests of their patient.

Change is inevitable

The political pressure to change is growing and becoming more evident. The majority who support voluntary euthanasia will increasingly make their preferences known. When a conservative body such as the Tasmanian RSL vote to support legalisation of euthanasia then it is obvious that pressure is mounting.

In many jurisdictions all over the world this issue is under review. Where there have been several unsuccessful parliamentary attempts in the same legislatures the voting support is increasing so that defeat is by a much reduced majority.

In Tasmania there have been private members bills introduced and rejected attempting to legalise some aspects of voluntary euthanasia. There has also been a Parliamentary Committee of Inquiry which reported in 1998. There is currently a Bill under discussion in South Australia.

As the baby boomers age and a larger proportion of the population face the suffering of their loved ones or themselves the pressure will become more vocal. Increasingly voters will cast their votes in favour of candidates who support reform. Economic factors will also force change.

Economic decisions in regard to the provision or not of health care are made every day by individuals, medical practitioners, public servants, all health workers, 'in home care' service personnel and Members of Parliament (in the allocation of resources to health care). Even the choice for general practitioners to either prescribe a pharmaceutical benefit medication or a more expensive and, in their view, more effective medication have financial considerations. Usually the choice is made in discussion with the patient.

Other modern medical procedures costing thousands of dollars, per procedure or course of treatment, are decided economically. Again this decision is usually after informed discussion with the patient. The ability to choose between surgery or access radiation therapy for breast cancer is in many parts of Australia an economic decision. Those living far from relevant facilities often face large costs to gain access.

We see these facts as sad reality.

The ageing of Australia's population will result in the number of frail, elderly, suffering and hopeless 'end of life' patients increasing. This will result in a great challenge for our health services. Taxation to support health requirements will be onerous and result in diminishing quality of life for wage earners and the elderly.

It seems foolish to deny people the ability to choose to voluntarily end their life, comfortably and with dignity, when keeping them alive against their wishes causes social and personal distress and the economic consequence is that others are unable to access procedures to improve their life.

Budget restraints restrict the availability of expensive drugs and access to services to prolong life for people who desperately want to live longer and better. This fact is even more distressing when it involves young parents or even children. To expend substantial resources to keep people reluctantly alive for a very short time will become impossible in a few years.

Now is the time to painstakingly construct a better law before the pressure of expediency forces less than optimum choices. It is surely better to look at the situation in a rational manner today to prepare for the future than wait until panic and economic distress force less reasonable and well thought out solutions.

Eventually someone in our increasingly litigious society will sue medical professionals, hospitals or government health authorities for the cost of supporting their life against their wishes.

RESPONSE TO ARGUMENTS AGAINST LEGISLATIVE CHANGE

The arguments against the legalisation of voluntary euthanasia can be summarised under the following headings.

Right to Life

Slippery Slope

Diminished protection of weak and disabled

Palliative care sufficiency

Insufficient safeguards against abuse

Religious prohibition

Debate on euthanasia is a moral argument and cannot be made the basis of legislative change

Right to Life

The state or 'commonwealth' of any society has an interest in the safety and well being of its citizens whatever their condition or ability to contribute directly to the common wealth. Each individual is essentially valuable. The state and every individual has the responsibility to support and not destroy life and this responsibility overrides the individual's right to autonomy where they conflict. It follows that we do not have the autonomy to kill or discriminate against others nor to restrict their access to the benefit of state protection and support of their life, well-being and aspirations.

It is held that the Common Law incorporates an inalienable right to life which cannot be abrogated. This is enacted in Tasmania in section 53(a) of the criminal code in that the individual cannot consent to his/her death and any consent will still leave the action of the assister culpable under section 163.

This is the most real and important argument against the legalisation of voluntary euthanasia. VEST supports wholeheartedly the principle of the intrinsic value of human life and the contention that each and every individual should be supported, as necessary, to gain the most from their life whatever their circumstances.

However it is difficult to see the benefit or interest to the state in keeping alive for a short time, perhaps only hours or days, people who are hopelessly suffering and wish to die. It could well be argued that the basic cruelty of this situation is in fact detrimental to the 'common wealth' in that it may harden the ability for compassion in individuals who are able (but not permitted) to help.

It is also difficult to see how far this principle is applied when, in other circumstances, soldiers are licensed to kill and are sent into situations where the death of some is inevitable.

People who are opposed to voluntary euthanasia argue, with sophistry, that war is not necessarily an exception to the rule of the sanctity of life, it is a legal defence given by the State to killing another person and without this defence the soldier could be charged with murder just as anybody else. Their argument continues that therefore euthanasia should not be another state sanctioned exception to the rule of the sanctity of life.

It is difficult to follow this reasoning. It would seem that state sanction of voluntary euthanasia for the relief of suffering should be as strong as the sanction of war and would provide the same defence against a charge of murder.

There is more in the principle of the right to life than simply the right to exist. There is an implied support for quality of life which is why we consider cruelty a crime and have laws against discrimination. The enforced prolonging of suffering by denying requested access to euthanasia appears a travesty of the principle of the right to life.

The argument of the overriding supremacy of the state's interest in the life of the individual over that individual's right to autonomy cannot be logically applied to self administered euthanasia because it does not apply to suicide. It is also illogical to prevent the supply of appropriate medication for self administration on this ground.

Slippery Slope

This argument states that easing the legislative embargo on voluntary euthanasia would result in an increasingly relaxed attitude to non-voluntary euthanasia (the slippery slope).

In The Netherlands, where physician assisted dying has been legally possible since 1981, the latest official report (once popularly called the "Rommelink report" around the world) was issued in May 2003. Covering the year 2001, it estimated the number of cases of euthanasia to be about 3,500 (2.5% of the whole) and of assisted suicide as about 300. In particular, it was noted that "the practice of medical decision making relating to the end of life in The Netherlands appears to be stabilised....there are no signs indicating an increase in life-terminating treatment among vulnerable patient groups".

This shows that the "slippery slope" does not exist.

Diminished protection of weak and disabled

The view here is that our society supports the weak and disabled and imbues their existence with a dignity of itself and legislation to permit voluntary euthanasia will devalue the life of these weak and disabled members of society. It will result in pressure for these members of society to consider that they themselves are worth less than other members of society and eventually imposing pressure on them to seek voluntarily euthanasia.

The Report of the 'Inquiry into the Need for Legislation in Tasmania on Voluntary Euthanasia for the Terminally Ill' undertaken by The Community Development Committee at the direction of the Parliament of Tasmania expressed this view as:

"10 The Committee found that the legalisation of voluntary euthanasia would pose a serious threat to the more vulnerable members of society and that the obligation of the state to protect all members equally outweighs the individual's freedom to choose voluntary euthanasia."

This is a breathtaking leap of perspective and must be extremely insulting to the people of societies which allow euthanasia. These people, the Swiss, the Dutch, the Belgians and the residents of Oregon still take the same high care and responsibility for their sick and less able members of society. Euthanasia is seen by these societies as part and parcel of their compassionate care for the terminally ill and nothing to do with their care for the disabled.

VEST wholeheartedly supports the fact that each individual regardless of health, disability or different talents is inherently valuable to each and all of us in Tasmania and we categorically refute that a belief in voluntary euthanasia has any adverse implications for our concern for disadvantaged members of our society.

Palliative care sufficiency

This argument is that palliative care is sufficient to relieve all end of life suffering. But increasingly palliative care experts do not agree with this idea. As palliative care is more widely available and the number of elderly frail sufferers increases as a percentage of the population it is more and more evident that in some cases palliative care cannot relieve all suffering.

Proponents of this view often consider that a desire to end one's life is in itself evidence of treatable depression. There is a growing body of evidence showing that even when treatable depression and pain are relieved many of those seeking voluntary euthanasia still wish to die. There is also increasing medical evidence that anti-depressants are not successful in a sizeable minority of people and in some cases exacerbate the problem.

In any case it is perfectly rational to be depressed when facing the prospect of a future of intolerable suffering for the rest of one's life.

Even in palliative care situations euthanasia (voluntary or not) does occur with increasing doses of sedatives resulting in death. The irony of this situation is that it is the medical or palliative care practitioner not the patient who decides when the suffering is unbearable.

Recently, the Pharmaceutical Benefits Advisory Committee (PABC) has given in principle support to subsidise a range of drugs which may be used in the patient's house to hasten death for the terminally ill (ABC Radio News, Tuesday August 5, 2003). The changes which include a GP education package, were planned to be introduced in February 2004.

This is proof that palliative care also includes provision for the ending of life. It is almost the legalisation of euthanasia by stealth without the accompanying recognition of the autonomy of the suffering individual (by allowing them control of the process which would be conferred by legalisation of access to these drugs for self administered voluntary euthanasia).

Insufficient safeguards against abuse

Just as with the slippery slope argument, evidence from The Netherlands, with its 20 year history of access to euthanasia and strict reporting mechanisms, shows that it is possible to satisfactorily prevent abuse.

The evocative issue of the prevention of youth suicide is raised as a last-ditch stand against the legalisation of voluntary euthanasia. This tragedy will not cease by the passing of any law. Youth suicide is always violent and sudden. Intervention is usually impossible because the suicide is unexpected by family and friends and medical providers.

Medical practitioners would not today prescribe to curable young people in a known suicidal mood the medication to assist dying. They will not do so under any other legislative background. Voluntary euthanasia is defined as applying to hopeless and incurable situations. This would automatically bar any suggestion of assistance or approval of youth suicide.

Religious Prohibition

Sincerely held religious beliefs deserve respect and understanding but cannot be binding on others with different beliefs in a democratic society.

One of the religious bases for opposition to voluntary euthanasia is that a divine being creates life and only this being should be able to take it away. Therefore the individual is not entitled to take their own life, no one may take life or assist in bringing a life to an end and the state has no right to support voluntary euthanasia.

This is a concept applied by proponents in an illogical manner. It should follow that medical intervention to prolong life against the natural processes would also be an insult to the prerogative of this divine being to give or withdraw life.

The Roman Catholic hierarchy and "right to life" advocates also use this rationale to support their prohibition on contraception however they do not proscribe intrusive medical intervention to create life as in fertility treatments.

(It should also be held in mind that the official view of the Roman Catholic Church appears to be that it is better that someone infects their spouse with the AIDS virus than for that person to use a condom which may have a secondary result in the prevention of a life. In fact African Catholic bishops preach that the use of condoms causes AIDS.)

Another religious rationale against the legalisation of voluntary euthanasia is that suffering itself is inherently beneficial to the inner person (or Soul). Thus euthanasia can prevent the full benefit of the good that can come from suffering.

We may learn emotionally from the difficulties and grief in our lives but the corollary that therefore suffering is good and can be condoned does not apply. If it did we would not have laws to prevent cruelty; rather the proponent would be praised for action beneficial to the recipient.

It is also a recognised fact that unremitting suffering may often diminish the essential human characteristics of an individual and can reduce their behaviour and outlook to simply that of an animal organism

The Anglican Church and other faiths reject the view that suffering is inherently good. No religions other than the Roman Catholic Church appear to embody this concept. A very large proportion of Roman Catholics also find it abhorrent in terms of the hopeless suffering of end-of-life patients as is shown by the results of Morgan Polls.

It is also difficult to understand the logic of this approach when the same people consider that it is acceptable to administer sufficient amounts of pain-killers which inevitably result in death.

The third religious point made is that the process of dying is itself a rewarding and necessary part of life and therefore it should not be curtailed by any form of euthanasia.

It is true that often in end-of-life situations the individual concerned, their families and loved ones have the opportunity to review their lives and relationships and can find this an emotionally rewarding experience. However, the extremity of unrelieved, unbearable suffering and indignity does not figure in the rewarding part of this experience and usually when reflection and closure have been undergone the relief of the suffering is the desire of all of those involved. Even those who have religious objections to voluntary euthanasia often pray for the release from suffering of the victim.

The legal availability of voluntary euthanasia can in fact make this dying process easier and more valuable to the surviving loved ones. Another official report from The Netherlands issued in July 2003 in relation to deaths in 2001 notes that "the bereaved family and friends of cancer patients who died by euthanasia coped better with respect to grief symptoms and post-traumatic stress reactions than the bereaved of comparable cancer patients who died a natural death" (77% of the cases of euthanasia in the Netherlands in 2001 were for cancer).

The fact that medical practitioners face the risk of prosecution may mean that discussions between doctor and patient are concentrated on consideration of symptoms and treatments and not end of life concerns. This can prevent a real understanding of the finality of the situation and prevent closure and acceptance of death.

Tasmania is a non sectarian and democratic society and supports freedom of religious belief and expression. It is inappropriate for this state to reject legislative change desired by a majority which will benefit its suffering members on the grounds of a religious belief held by the minority.

In any case those who hold strong religious objections would always have the usual option of not availing themselves of the remedy which the legislative changes would allow.

Debate on euthanasia is a moral argument and cannot be made the basis of legislative change

In 1998 a Tasmanian Parliamentary Community Development Committee (the Committee) conducted an "Inquiry into the Need for Legislation on Voluntary Euthanasia" (report No 6 of 1998). The Committee considered that there was not sufficient case to legalise voluntary euthanasia.

Many of the reasons the committee used to reach this conclusion were flawed or have been proved unfounded by growing evidence from states where voluntary euthanasia is condoned (for example The Netherlands and Oregon).

Many good things came from the Committee's investigation. The Tasmanian Guardianship and Administration Act was strengthened and additional funding provided for the promotion of the understanding and use of Enduring Guardianships. Palliative care support systems and facilities have improved and the inclusion of palliative care units in the curriculum of Tasmanian medical practitioners and nurses has had a positive influence on improving the situation of many frail and suffering elderly people in Tasmania.

The Report included the following points in its Executive summary.

"1. The Committee found that whilst many of the moral arguments put by both sides of the debate were persuasive, a determination of the need for legislation on voluntary euthanasia cannot be made on the basis of a subjective moral choice.

2 The Committee found that the polarised character of the moral debate for and against euthanasia limited its utility as a determinant for legal reform. Euthanasia legislation would have to be based on a general principle that treated all individuals equally.

12. The Committee recognised that in a small percentage of cases palliative care is insufficient in relieving all pain, however whilst regrettable this is not sufficient cause to legalise voluntary euthanasia."

All legislation is based on moral arguments. The embargo on killing is a moral judgement as shown by its sanction in times of war or in self-defence. The repeal of laws proscribing homosexuality were based on moral arguments (upheld by scientific evidence). Universal suffrage and laws relating to equal rights for all members of our society are based on moral arguments. Even our taxation law is based on the moral view that individuals should contribute to society according to their means.

The balance between the morality of protecting the weak and vulnerable and the compassion of providing the relief of suffering by allowing individuals the autonomy to end their life are not incompatible moral arguments.

LEGISLATIVE SAFEGUARDS AGAINST ABUSE

Voluntary euthanasia is a permitted practice in the Netherlands (since 1981), Belgium and Switzerland.

In Oregon, USA it is legal for a doctor to prescribe a lethal drug for the patient to take (or not) at the time of their choosing. Of the small number of prescriptions written only about two thirds are in fact taken before death intervenes.

In each of these states there are strict safeguards and reporting mechanisms. Increasingly the evidence is growing from these reports that safeguards are adequate and there is no increase in abuse.

The Netherlands Government's report issued in May 2003 in relation to 2001 (the 20th year of legal doctor-assisted euthanasia) states "the practice of medical decision-making relating to the end of life in the Netherlands appears to be stabilised....there are no signs indicating an increase in life-terminating treatment among vulnerable patient groups".

It follows that the legislation in the mentioned states contain suitably worded safeguards against abuse which could be used in any Tasmanian legislation.

CONCLUSION

When the arguments for and against the legalisation of euthanasia are reviewed there are very few really pertinent considerations.

Arguments against legalisation such as the slippery slope, the inability to provide adequate safeguards against abuse and the superior value of the uninterrupted dying process are shown to be wrong by an increasing body of evidence from the places where euthanasia is possible.

Doctrinaire religious views held by the minority of the followers of a specific faith are not a basis for moral, social, ethical and legal considerations in a democracy, except in relation to laws against discrimination and the freedom of opinion and belief. Certainly minority religious views should not be allowed to sway issues supported by a majority of the people.

We are left with the strong argument against voluntary euthanasia that the interest of the state in the life of every individual citizen and the associated responsibility to protect these lives is paramount and overrides the autonomy of the individual where these conflict.

However the right to life has extended to legalisation for the right to education and health provisions in most societies. It has extended to laws against discrimination and cruelty. In democracies the right to life inherently includes the right to dignity and autonomy.

It is very difficult to see the benefit to the state in preserving, for a very short additional time, the miserable, unrelievable suffering of people who wish to die and who cannot find relief in any other way.

The arguments for voluntary euthanasia are made on the basis of compassion, protection of the medical profession and support for the autonomy of the individual.

Secondary support for legislative change lies in the fact that an increasing large majority of people support the change (Morgan and other polls) and that the availability of euthanasia reduces the stress of the patient and the post traumatic stress of carers (according to evidence from government reports from the Netherlands).

Legalisation of voluntary euthanasia will not threaten the paramountcy of the state and its interest in the life of its citizens but it will:-

- allow the medical profession to give their patients the optimal care medically available
- allow individuals the same autonomy over their own end of life decisions as they have over other aspects of their life
- support the compassionate treatment of people in hopeless suffering and distress
- relieve the stress of dying patients and their carers and enhance the beneficial aspects of the dying process for all involved.

The committee and members of VEST request that the Tasmanian Law Reform Institute review legislation from other jurisdictions in order to prepare legislation suitable to Tasmania to legalise voluntary euthanasia here

Reference Material

Otlowski, M., 'Voluntary Euthanasia and the Common Law' (Oxford 1997)

Netherlands Ministry of Foreign Affairs, 'Euthanasia-A Guide to the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act' booklet (2001)

South Australian Voluntary Euthanasia Society, Inc. (SAVES), 'The Right to Choose' (1998)

Criminal Code (Palliative Care Amendment Bill) 2003 Queensland

Tasmanian Parliament. Community Development Committee Report on the Need for voluntary Euthanasia, Report No 6, 1998