Edmund Joseph Wall

28 October 2017

Legislative Assembly
Legislative Assembly Committee Office
Level 1, 11 Harvest Terrace
WEST PERTH WA 6000

via email: ***laco@parliament.wa.gov.au***

Dear Sir/Madam

SUBMISSIONS

Enclosed are my submissions to the Joint Select Committee on End of Life Choices.

Thank you.

Yours faithfully

Ed Wall

SUBMISSION to the Joint Select Committee on End of Life Choices, inquiring into the need for laws in Western Australia to allow citizens to make informed choices regarding their own end of life choices

Submitted by: Mr Edmund Joseph Wall (Practicing Family Lawyer)

General Position

1. I agree that citizens should be empowered to make informed choices about their end of life options, and I believe that current Western Australian laws on allow for this.

2. I believe that irretrievable harm would be done to Western Australian society in general, and to the medical profession in particular, if State laws were to be amended to provide for voluntary euthanasia or physician-assisted dying.

Reasoning

A. While this inquiry does not directly address it, the matter of euthanasia or physician assisted dying (PAD) are usually raised in the context of informed decision-making in end of life choices.

B. Euthanasia and PAD are promoted as a simple way to address the complex problem of suffering at the end of life. But nothing in life is that simple without carrying significant known and unknown risks.

C. Wherever euthanasia or PAD have been legislated for persons with chronic or terminal illness, it has always been subsequently extended to cover persons with other distressing conditions. Logically, it would be unfair not to do so.

D. The safety of our society and the rule of law depend on upholding an absolute prohibition on one citizen intentionally killing another. Parliament cannot legislate such a breach safely without opening the way for a future Parliament to widen the breach.

E. The only way to protect all citizens of Western Australia in the future is for euthanasia and PAD to never be made lawful.

Term of Reference 1

a) Doctors currently practice sound medicine when they give their patients necessary relief for pain and suffering, even when that relief has the unintended secondary effect of shortening life. This is confused with euthanasia, which is an intentional action to end life.

b) It is permissible for patients to accept or refuse any and all treatments offered by their treating medical professional. However, they do not have the power to demand a treatment that their medical professional does not believe is medically indicated.

c) Anyone with a chronic and/or terminal illness should have equal access to the best possible palliative care, understood as comfort care and symptom relief even when a cure is no longer possible. Quality palliative care, not killing, is the answer to relieving pain for the dying[1].

d) Currently, patients in rural and remote regions of this State, and in the outlying metropolitan area, do not have adequate access to excellent palliative care. The State should ensure significant investment in making palliative care available to all citizens, before contemplating any other measures to enhance the rights of patients with chronic and/or terminal illnesses[2].

Term of Reference 2

a) The current provisions relating to duties to the preservation of human life and the offences of homicide and PAD, as contained in the Western Australian Criminal Code should be retained and not weakened in any manner. Euthanasia or PAD therefore should remain criminal offences.

b) There are no Australian States or Territories that have, at present, enacted legislation for euthanasia or PAD.

c) The State of Victoria has introduced a Bill "*The Voluntary Assisted Dying Bill*" by the Victorian Government Health Minister. The Australian Medical Association (AMA) and Palliative Care Victoria oppose the Bill[3]. Further, the Victorian Bill has been very critically critiqued by Professor John Keown of the Kennedy Institute of Ethics at Georgetown University[4].

d) However conservatively framed the initial legislation and assurance of safeguards, the experience overseas has always been the extension of euthanasia from initially the terminally ill to the chronically ill, then to the depressed and the mentally ill. As the threshold moved, the decision also moved from being "voluntary" to "involuntary".

e) Allowing euthanasia and PAD repudiates a pivotable principle of criminal law and medical ethics that all humans young or old, sick or well, suffering or not, possess a human dignity that cannot be swept aside. The inviolability of human life holds that regardless of age, health, gender, race, religion or sexual orientation, there is an "intrinsic and equal worth" in humans such that the sanctioning of euthanasia or PAD is a threshold that should never be crossed.

Term of Reference 3

a) Although the current provisions relating to the preservation of human life and the offences of homicide and assisted suicide contained in the criminal code should not be weakened in any way, examination could be made of whether greater legal protection could be afforded medical practitioners when it is their intention to relieve pain and suffering by administering a drug or surgical intervention but which has the secondary effect of shortening life[5].

b) Doctors should be required by law to refer suicidal patients to expert palliative care services if they are terminally ill, and for psychiatric treatment in all cases.

Terms of Reference 4

a) If a patient has not made a valid Advance Health Directive or granted effective Enduring Power of Guardianship, the *Guardianship and Administration Act* provides a priority of persons to make substitute medical decisions (as the 'responsible person'). The patient has no control over who this 'responsible person' will be.

b) If euthanasia or PAD are legislated, these become one of the possible 'medical treatments' a doctor may offer the 'responsible person'. The 'responsible person' may lawfully agree that the patient receive these, even if that treatment would not have been chosen by the patient had he/she been competent to make this decision in person.

c) Even under the Enduring Power of Guardianship, the patient cedes the final treatment decision to that enduring guardian. Euthanasia or PAD could likewise be agreed by the enduring guardian, regardless of the patient's personal preferences.

d) Patients who do not wish to be euthanised can have certainty that their end-of-life preferences are respected only if Parliament declines to legislate any form of euthanasia or PAD.

I seek leave to address the Committee in person.

Signed Date: 20 October 2017

Edmund Joseph Wall

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1 Palliative Care Australia says that good, well resourced palliative care gives people the ability not only to live well in their illness, but to die well too “free from pain in the place of their choice, with people they wish to be present, and above all, with dignity”.

2 Significant medical gains are being made in palliative care and many families speak of palliative care as providing very precious time with their loved one. However, palliative care is not offered to many dying people in Australia. In some places, there is no opportunity to receive it, even if a person in great pain asked for it. (The concern is that euthanasia or PAD would be more readily available instead.) Therefore, there is an urgent need for the extension of palliative care services.

[3] AMA President Michael Gannon told the Weekend Australian – Enquirer (October 14/15, 2017) that once you legislate in this area, you cross the Rubicon. He said the AMA position is that we need to do better in end of life care and that Doctors should have no role in intentionally ending a patient's life. He said the AMA greatly fears there will be coercion as it is common place for patients to tell Doctors in the presence of loved ones that they feel a burden upon their families. He said the AMA opposes any interventions that had their primary intention the ending of a person's life. Palliative Care Victoria also told the Enquirer of the Weekend Australian (October 14/15, 2017) that legalising voluntary assisted dying sends the wrong message to people contemplating suicide and undermines suicide prevention efforts and that the Victorian Bill will operate with a high risk for the sick and vulnerable.

[4] Professor Keown said that in the Netherlands in 2016 sanctioned killings and assisted suicide accounted for more than 6,000 deaths or 1 in 25 of deaths from all causes. The initial law in 1984 was introduced with the usual pledges that euthanasia without request would not occur, yet a series of official Dutch surveys disclosed that physicians "have, with virtual impunity, failed to report thousands of cases that have given lethal injections to thousands of patients without request". This critique will be published in the Journal of Law and Medicine.

[5] Section 259(1) and (2) of the Criminal Code could be expanded to define reasonable treatment to include treatment that is best medical practice including providing patients with necessary relief for pain and suffering when that relief has the secondary effect of shortening life.