

Admin, LACO

Subject: FW: Submission to Joint Select Committee on End of Life Choices

From: Johnson Kitto

Sent: Monday, 23 October 2017 6:04 PM

To: Joint Select Committee on End of Life Choices <eolcc@parliament.wa.gov.au>

Subject: Submission to Joint Select Committee on End of Life Choices

Mrs A Sanderson

Chair, Joint Select Committee of End of Life Choices

Dear Committee,

Disclosure of Interest

I drafted the initial bill on this subject, for consideration by an informal group including:

- The Hon Robin Chapple MLC
- The Hon Alannah MacTiernan MLC
- The Hon Anthony Simpson (former) MLA

I also initiated the suggested Bill title as **Freedom of Choice (End of Life Decisions)**

The Concept of the Individual as the source of rights over their own bodies

There is an important distinction, as suggested by the title, between the bill I prepared for discussion, and what is commonly known as euthanasia or assisted dying.

The distinction lies in euthanasia and assisted dying being concepts generally associated with a societal approach. My intention was to draft a bill focusing on the freedom of the individual, once certain parameters are met, to put in place procedures to end their own life.

This individualistic, as opposed to societal, approach to this emotive subject, is not controversial, especially on matters concerning an individual's medical treatment and health associated areas. We observe that some common examples under our existing legislative and common law system, involve individuals making the following lawful choices:

- A person may choose a healthy or unhealthy lifestyle;
- A person may choose to decline future medical treatment,(irrespective of whether their condition is terminal, life-threatening, or non life-threatening);
- A person may opt in to organ donation;
- A person may terminate their own pregnancy, with the assistance of medical personnel;
- A person may suicide*

*see reference to Criminal Code below

The current criminal law unlawfully discriminates against the physically disabled

To the best of my research, suicide *per se*, has never been illegal in any Australian jurisdiction, notwithstanding its condemnation in Judeo-Christian jurisprudence. What is illegal, is the involvement of 2nd or 3rd persons in a suicide.

Section 288 of the Criminal Code provides:

Procuring etc. suicide

Any person who —

(1) Procures another to kill himself; or

(2) Counsels another to kill himself and thereby induces him to do so; or

(3) Aids another in killing himself;

is guilty of a crime, and is liable to imprisonment for life.

Section 273 of the Criminal Code provides:

273. Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or

the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that

other person.

Both of these provisions effectively deny a freedom of choice to an individual who wishes to end their life, if that individual is so physically incapacitated that they cannot suicide. This immediately invites a query as to why a fundamental and lawful right (ie suicide) is allowed to an able bodied person, but not to a physically disabled person, who due to the advanced nature of their illness, or other reasons, cannot procure their own physical death.

Simply, our present regime discriminates against the disabled.

The present law is simply illogical

Putting all religious and ethical debate aside, our present legal regime provides a contradictory and unsatisfactory situation which might be demonstrated by the following comparisons:

Mr Armstrong is terminally ill.

He is in considerable pain, which despite the best endeavours of his medical practitioners has now become too much into bear, and he enjoys no quality of life .

He has put his affairs in order, and with full mental competence and realisation of his actions he prepares to end his life.

He lawfully acquires powerful sleeping pills from a pharmacy, and overdoses on them hoping to end his life.

Scenario A

He succeeds. No one is criminally liable.

Scenario B

He does not succeed, and is hospitalised on "suicide watch".

Arguably, anyone, whether they be medical practitioners nurses and allied health care workers or visiting relatives, who either place the sleeping pills within Mr Armstrong's bedside reach, or even if they fail to remove the sleeping pills from his bedside reach, might now be guilty of criminal homicide.

I submit that there is a dangerous and illogical inconsistency in the above scenarios.

The dangerous duality facing the medical profession

The AMA sets out its position on the matter in its Euthanasia and Physician Assisted Suicide Position Statement (available at <https://ama.com.au/system/tdf/documents/AMA%20Position%20Statement%20on%20Euthanasia%20and%20Physician%20Assisted%20Suicide%202016.pdf?file=1&type=node&id=45402>).

The problem facing the medical profession in WA, is that this policy, or position statement, exposes them to prosecution on the above cited Criminal Code provisions.

Reference is made specifically to paragraph 2.2 of the AMA's position paper:

2.2 If a doctor acts in accordance with good medical practice, the following forms of management at the end of life do not constitute euthanasia or physician assisted suicide:

- *not initiating life-prolonging measures;*
- *not continuing life-prolonging measures; or*
- *the administration of treatment or other action intended to relieve symptoms which may have a secondary consequence of hastening death.*

This won't protect a medical practitioner who, in terms of section 273 of the Criminal Code becomes"A person who does any act or makes any omission which hastens the death of another person....."

After all, the doctor's intention, or practice in good faith, is irrelevant. There would be a prima facie case for prosecution of a doctor, or nurse, who administers palliative care medication which has the "dual effect" of alleviating pain & hastening death.

I ask the committee to note this submission is not driven by the anecdotally driven notion that the medical profession has practised "dual effect" euthanasia for some time. Rather it is intended to high-lite the exposure of medical practitioners to prosecution in our existing legal regime.

KIND REGARDS,

JOHNSON KITTO