
Submission to:

The WA Parliament Select Committee on Elder Abuse inquiring into Elder Abuse

Submitted by:

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Submitted on behalf of the L J Goody Bioethics Centre on 16th November 2017

Note: I wish to appear before the Committee to present our position in person.

Who we are

The L J Goody Bioethics Centre was founded in 1985 as an agency of the Roman Catholic Archdiocese of Perth to provide public and private consultation, education and research in ethical aspects of contemporary health care practice and public health policy for the people of Western Australia. Our services include:

- a confidential ethics advisory service for members of the public, as well as for the medical and nursing professions, and members of health ethics committees;
- on-call clinical ethics consultancy to hospitals and healthcare systems in WA;
- education in general ethics, bioethics, clinical and research ethics.

Centre staff are also members of a number of clinical and research ethics committees in the public and private healthcare sectors including the Health Department of WA and the new Perth Children's Hospital (formerly Princess Margaret Hospital). All private and clinical consultations are offered free of charge.

General Position

The L J Goody Bioethics Centre submits that

1. Elder abuse includes the financial abuse of elderly people, which may arise from a multiplicity of circumstances.
2. Advance Health Directives and Enduring Powers of Guardianship are blunt legal instruments which do not cover all medical eventualities, are improperly understood and may not even be chosen for use.
3. The possible legislation to introduce euthanasia or Voluntary Assisted Dying into Western Australia presents a potential form of elder abuse.

Introduction

4. The Inquiry concerns the definition, prevalence and forms of elder abuse with regard to current and future legislative and agency responses to counteract these abuses.
5. Term of Reference (TOR) 3 seeks to identify the forms of elder abuse, that includes but is not limited to neglect and TOR 10 invites consideration of any other relevant matter.
6. Elder abuse is commonly understood to incorporate a range of physical, psychological, sexual and financial abuse and neglect. It arises from attitudes that “fail to respect and recognise the rights of older Australians.”¹
7. Elder abuse sometimes presents as financial abuse driven by a child's or grandchild's desire to assimilate their parent or grandparent's assets. One possible explanation can be found in which the “sandwich generation” of persons aged 50 to 60 years care for senior parents and their stay-at-home young adult children whilst they try to provide for their own retirement.²
8. The Alliance for the Prevention of Elder Abuse in Western Australia (APEA:WA) notes that "Abuse may make it harder for an older person to stand up for their own rights. It is often more difficult for people to disclose and deal with abuse by relatives and friends than abuse by strangers because of the emotional and social ties that exist within these relationships."³
9. Without denying the seriousness of all forms of elder abuse, this submission focuses on one particular form of financial abuse, which arises in end-of-life settings.

Relevance of the Guardianship and Administration Act

10. Following amendments made in 2008 to the Guardianship and Administration Act, Western Australian law offers a number of statutory instruments intended to give a person a measure of assurance that their end-of-life wishes will be respected should they become non-competent. These include the Advance Health Directive (AHD) and the Enduring Power of Guardianship (EPG).
11. However, it is very difficult to write an AHD that will apply with certainty in all medical events. Additionally, the elderly person's appointed Enduring Guardian may be difficult or impossible to contact when needed to make an end-of-life medical decision.
12. In these circumstances, the State Administrative Tribunal could appoint a guardian or “responsible person”. It is however much more likely that the treating medical professionals will seek to identify the “responsible person” as defined in s110ZE of the Guardianship and Administration Act.⁴ This person may be a family member of the non-competent person.
13. It is noted that The Australian Law Reform Commission 2017 Report on Elder Abuse recommends that while older people or adults at risk may choose to exercise their

¹ Senator the Hon George Brandis QC, “Safeguarding Older Australians” Media Release, Attorney-General's Department, 24 February 2017.

² McCrindle, Mark., “What are the ‘Triple Decker Sandwich’ Baby Boomers facing and what are the solutions?” 14 May 2015, www.mccrindle.com.au Accessed 13 November 2017.

³ APEA: WA. (2013). Elder Abuse Protocol: Guidelines for Action. Perth, WA., p5.

⁴ Government of Western Australia: Department of the Premier and Cabinet, Guardian and Administration Act 1990, State Law Publisher, Version 05-jO-01 as at 30 November 2015.

autonomy by means of such statutory instruments, they cannot be required to do so.⁵ Therefore, if an elderly person has chosen not to use a statutory instrument, then recourse to a “responsible person” for decision-making at end of life situations becomes all the more likely.

14. Current law does not allow a “responsible person” to demand that the elderly patient receive any particular medical treatment: they can only refuse consent to a treatment offered by the treating medical professional.

Implications of possible legislation of euthanasia or Voluntary Assisted Dying (VAD)

15. Should euthanasia or VAD be legislated in WA, it is possible that the “responsible person” may choose this option for the patient, even if the patient would never have chosen it for him or herself.
16. In other words, the introduction of euthanasia in WA could conceivably place the older person (who is non-competent and in an end of life situation) at risk of having their life shortened against their will.
17. This risk could be mitigated or avoided altogether in several ways:
 - a. Excise euthanasia or VAD from the reach of AHDs, EPGs or responsible persons;
 - b. Regulate or require an independent review of any and all end of life choices made through AHDs, EPGs and responsible persons;
 - c. Refuse to legislate for euthanasia or VAD in any circumstances.
18. The first alternative (17.a) would likely fail on the grounds that it is discriminatory: if a competent person could opt for euthanasia or VAD, why should a non-competent person be refused this right?
19. The second alternative (17.b) would likely fail due to the number and urgency of cases requiring review.
20. The only way to exclude absolutely the risk noted above (16), and so to protect the rights of older persons and reduce the risk of elder abuse, is to refuse to legislate for euthanasia or VAD at all (17.c).

Recommendation

The LJ Goody Bioethics Centre submits that an effective response to the ongoing risk of elder abuse must include repudiation of attempts to legislate for euthanasia or VAD in this State.

⁵ Australian Government: Australian Law Reform Commission, “Elder Abuse – A National Legal Response (ALRC Report 131)”, Recommendations 4.13 and 5.1, 14 June 2017.