Private Member's Bill Briefing Paper

Medical Treatment (Physician Assisted Dying) Bill 2008

A Bill for an Act to enable adult persons suffering intolerably from a terminal or advanced incurable illness to exercise their right to end their lives by requesting medical assistance from their doctors, to protect doctors who so assist, to prevent misuse of their ability to assist, and for other purposes. The Parliament of Victoria affirms its belief that life is precious, yet recognises that some persons with a terminal or incurable illness may suffer intolerably and have a compassionate right to a death they believe to be peaceful and dignified.

Purpose

The main purposes of this Bill are –

(a) to recognise the right of a competent adult person who is suffering intolerably from a terminal or advanced incurable illness who has decided to end his or her life, to request a doctor to provide medical assistance to die peacefully;

(b) to grant a doctor who does so (and those operating under the doctor's professional direction) immunity from liability in criminal, civil and disciplinary proceedings; and

(c) to provide procedural protections against the possibility of abuse of the rights recognised by this Act.

Need for Change

There is a compelling need for a change in the law to permit Physician Assisted Dying (PAD):

- Despite the best palliative care available anywhere in the world (Victoria included), 25% of late-stage cancer patients experience moderate to severe suffering.[1] Other diseases can cause equal or even more profound suffering.
- Only half of suffering is caused by physical symptoms (e.g. pain, weakness, breathlessness), with psychological, existential and social suffering also being key elements.[1]
- Oregon doctors (where PAD is legal) report that the most frequent reasons for requesting assistance are decreasing ability to participate in activities that make life enjoyable (89%), loss of dignity (89%), and losing autonomy (79%). Pain (24%) was comparatively less important.[2]
- Despite modern pharmaceuticals, research shows that around one in five to one in eight patients' pain cannot be adequately relieved (and is unlikely ever to be where it is episodic in nature).[3]

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[1] Wilson KG, Chochinov HM, McPherson CJ, *et al*: Suffering with advanced cancer. *Journal of Clinical Oncology*, 25:1691-1697, 2007

[2] "Eighth Annual Report on Oregon's Death with Dignity Act", *Oregon Dept. of Human Services,* March 9, 2006 at 23.

[3] Robert Twycross, Jean Jarcourt and Stephen Bergl, *Journal of Pain and Symptom Management*, Vol. 12, No. 5, Nov 1996.

- Every week more than four Australians over 70 take their own lives by violent suicide.[4] A lack of options encourages a patient to choose a violent and premature death while they still have the strength to act. Relatives are intensely distressed by having to identify a mangled body, and train drivers, emergency workers and others are also traumatised. And of course there is the profound trauma the deceased went through before dying.
- Fifty years ago many of us would peacefully drop off in our sleep at home from illnesses that are now 'conquered', and now the majority of us die in hospital surrounded by beeping machines and complete strangers: profound suffering that can contradict the very meaning and fabric of the patient's life.
- The availability of heroic yet ultimately futile treatments does not make them acceptable to all patients. A patient has the right to refuse treatment under the Victorian Medical Treatment Act (1988), although this does not necessarily result in an end to his or her suffering in a way the patient desires.
- Ninety-six percent of doctors (96%) believe a patient's request to die can be rational, 59% believe that actively hastening death on request can be right, 52% believe that their professional organisation should approve medically assisted dying, 45% personally wish to have the option, and 45% do ***not*** believe that present arrangements are adequate in delivering help to the dying.[5, 6]
- One third of Australian doctors (35%)[7] and surgeons[8] acknowledge that they have deliberately hastened a patient's death in order to alleviate suffering. PAD is already occurring because medical practice does not and cannot alleviate all intolerable suffering. Doctors feel forced to provide assistance despite the threat of prosecution and disciplinary action. Since such practice is clandestine, it is unmonitored and uncontrolled—without a robust framework, conducted on an ad hoc basis, and with no chance of the collection of data to inform sound policy formulation. In addition, loving families are turned into criminals by their wish for a peaceful and dignified death for their suffering relative.
- Independent surveys show that 82% of Victorians believe a hopelessly ill patient experiencing unrelievable suffering with no chance of recovery who asks for a lethal dose from a doctor should be allowed to receive it.[9] Just 13% of Victorians oppose. This opinion has been in the majority for more than 25 years. Clearly, legislation lags significantly behind the will of the people.

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[4] *Australian Bureau of Statistics* catalogue 3309.0.55.001 Suicide—Recent Trends '93 to '03.
[5] Baume P, O'Malley E. Euthanasia; attitudes and practises of medical practitioners, *Medical Journal of Australia*. 1994; 161: 137-144
[6] Wilson I, Kay B, Steven I. General practitioners and euthanasia, *Australian Family Physician* 1997; 26: 399-401.
[7] Neil DA, Coady CAJ, Thompson J and Khuse Helga, *Journal of Medical Ethics*, 2007; 33: 721-725.
[8] Douglas C, Kerridge I, Rainbird K, McPhee J, Hancock L, Spigelman A. The intention to hasten death: a survey of attitudes and practices of surgeons in Australia. *Medical Journal of Australia* 2001; 175.
[9] Details of the 2007 Newspoll national survey of 2,423 respondents can be found at http://www.dwdv.org.au/Surveys.html.

What the Bill Does **Not** *Permit*

The Act -

- Does ***not*** permit PAD for minors;
- Does ***not*** permit PAD for non-Victorian residents;
- Does ***not*** permit PAD for those not currently of sound mind (e.g. suffering dementia);
- Does ***not*** permit PAD without full consultation, information and multiple supportive medical opinions, plus a cooling off period;
- Does ***not*** permit assistance by direct injection into the patient (rather, by the patient imbibing a drug);
- Does ***not*** permit *involuntary* or *non-voluntary* physician assisted dying for any reason in any manner;
- Does ***not*** permit anyone who signs, countersigns or witnesses patient documents or unduly influences the request for assistance to die under the provisions of the Bill to benefit financially or otherwise, directly or indirectly from such death.

Precedent

While physician assisted dying is not legal in any Australian jurisdiction, precedents are available overseas. This bill follows the conservative approach used in the State of Oregon in the USA, where physician assisted dying has now been available for ten years. (This Bill does ***not*** follow more liberal approaches used in the Netherlands where, for example, non-voluntary euthanasia is permitted.)

Formal reports to the legislature in Oregon each year since their Act came into effect clearly and unambiguously show:

- There is no slippery slope or "avalanche" of requests. Requests that qualify the rigorous procedures to gain assistance (provision of a drug) are modest in number;[8]
- Fully one third of patients who receive such assistance eventually never take the drug, showing that there is no need to act precipitously once a dignified alternative is at hand for the worst circumstances, and that provision of the drug is itself good palliative care;[10]
- Therefore, these reports provide evidence that the safeguards and regulations provided by the Act are working and that only those for whom the Act was intended are making use of it.[11]
- Hospice care in Oregon is rated as one of the best in the United States and physicians in Oregon have attributed their Act to an increased knowledge in palliative care. More than any other United States state, Oregonians suffering from terminal illness are dying in the comfort and security of their own home with the aid of hospice care.[12]
- A study specifically aimed at doctors' attitudes about and experiences with end-of-life care since the enactment of the Oregon Act, concluded that rather than the availability of physician-assisted dying diverting attention from efforts to improve care for dying patients, most Oregon doctors who treated the dying had endeavoured to improve

[10] The State of Oregon's own official statistics and as reported in the Christian Science Monitor: http://www.csmonitor.com/2007/0312/p03s02-ussc.htm.

[11] A view supported by commentators: Boyle B., "The Oregon Death With Dignity Act: A Successful Model or a Legal Anomaly Vulnerable to Attack?", *Houston Law Review,* Spring 2004, 1387-1421 at 1392.

[12] Tolle S. et al, Oregon's Low in Hospital Death rates: What Determines where People Die and Satisfaction with Decisions on Place of Death?, 130(8) *Annals of Internal Medicine*, (1999), 681– 685.

their ability to treat those patients.[13] A statutory authority, the "Pain Management Commission"[14] was established to administer pain management education programs for licensed health care professionals who treat patients for chronic or terminal pain.

- Most hospice professionals in Oregon do not believe that physician assisted dying and hospice enrolment are mutually exclusive alternatives, [15] and 91% of Oregon psychologists are also supportive.[16]
- While many would expect the religious to universally oppose PAD, 40% of hospice chaplains in Oregon now also support physician assisted dying;[17]
- The debate about physician assisted dying has forced healthcare professionals generally to improve the quality of palliative care in the USA.[8]

Conclusion

This Bill provides choice to adult Victorian residents suffering from a terminal or advanced incurable illness with no reasonable chance of recovery, to request and receive medical assistance to die peacefully by their own hand and at a time of their own choosing. There is clear and irrefutable evidence that:

- A very significant proportion of the medical profession believe that such an approach is reasonable, realistic and desirable;
- Availability of such a choice *prevents* rather than promotes a patient acting precipitously;
- Safeguards within the Act are effective and have been proven so in other jurisdictions such as Oregon in preventing abuse of the process;
- Palliative care can and will continue to improve;
- There is overwhelming public support for legalisation of assistance.

Bill co-sponsors: *Colleen Hartland*, Member for Western Metropolitan; *Hon. Ken Smith*, Member for Bass.

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[13] Ganzini L., *et al*, "Oregon Physicians' Attitudes About and Experiences With End of Life Care Since Passage of the Oregon Death With Dignity Act", 285(18) *Journal of the American Medical Association*, (May 9, 2001), 2363 – 2369.
[14] Oregon Revised Statutes 409.560 (2003).
[15] Miller LL, Ganzini L, Delorit MA and Jackson A, Attitudes and experiences of Oregon hospice nurses and social workers regarding assisted suicide, *Palliative Medicine* 2004; 18: 685-691.
[16] Fenn S and Ganzini L, Attitudes of Oregon psychologists toward physician-assisted suicide and the Oregon Death With Dignity Act, *Professional Psychology: Research and Practice*, Vol. 30 No 3: 235-244.
[17] Carlson B, Simopolous N, Goy ER, Jackson A and Ganzini L, Oregon Hospice Chaplains' Experiences with Patients Requesting Physician-Assisted Suicide, *Journal of Palliative Medicine*, Vol 8 No 6, 2005, pp 1160-1166.