



# VESV REPORT

VOLUNTARY EUTHANASIA SOCIETY OF VICTORIA INC.

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Member of the World Federation of Right to Die Societies

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## Withdrawal of tube feeding: A 'dignified' death?

ON MAY 29, Justice Stuart Morris ruled in the Victorian Supreme Court that artificial food and hydration provided via a PEG (percutaneous endoscopic gastrostomy) tube constituted medical treatment rather than palliative care, and could therefore be refused.

Justice Morris ruled that it was not the intention of parliament when it passed the *Medical Treatment Act* (1988) that dying people would be forced to consume food and water. He added that parliament did not intend palliative care to include artificial feeding and hydration but only ordinary provision of food and water – artificial feeding, he said, is a procedure to sustain life rather than a procedure to manage the dying process so that it results in as little pain and suffering as possible. This ruling resolves any ambiguity in the law and should provide clarity for doctors and hospitals in Victoria in the treatment of their patients.

The Public Advocate, Julian Gardner, the guardian of a 68 year-old woman, known only as BWV, who had been kept alive for three years by artificial feeding, had applied to the Court, and the Victorian Attorney-General, Rob Hulls, had intervened to ensure that all sides of the argument were heard. Following the ruling, the Catholic Church and the Right to Life movement who had opposed the application and made submissions to the Court against the removal of the feeding tube, stated their concern that the judgement would place vulnerable people at risk and that the carers in Catholic-run hospitals and nursing homes would be forced to do things contrary to their beliefs and principles.

VESV applauds the Court's ruling in declaring that tube feeding is a medical treatment and can, therefore, be refused by a competent person or by an agent appointed by the person and cognizant of the person's views and wishes. The Judge accepted the views of the husband and family of this patient as to her prior expressed views, and those of medical experts who stated that the tube feeding had no prospect whatever of improving her condition and in reality was merely postponing the natural dying process.

However, this landmark ruling in no way ensures that a person will 'die with dignity' – with a minimum amount of pain and suffering. The removal of a feeding tube will lead to death by dehydration and starvation, a process which can take two to three weeks. The 68 year old woman who was at the centre of this case has been unable to move for the past three years, unable to communicate, and with no intellectual or emotional capacity; however, she is not

(Continued Page 5)

Inside:	Page
• President's Message	2
• No Crime at All?	3
• Spreading the Word	3
• <i>Killing Me Softly: Love, Death and Dying in Australia</i> Conference	4
• Packed House at Mornington Meeting	5
• Peaceful Presence to Resume on Parliament House Steps	6
• Ongoing Refinement of ADs	6
• Speaking Opportunities Sought	6
• "...to die like a dog..."	7
• Near and Far	8

## President's message

*PEOPLE FREQUENTLY ask me if we are making any progress and will we ever see legislative change. This is natural as from day to day, very little does seem to happen. However, looking at change over a long period, it is clear that there is significant change.*

*Newsletter No.83 reviewed the first 20 years of VESV. They were years of establishment of the Society as a responsible voice and of education of the public. By that time VE had become a matter of serious public debate.*

*In 1992, VESV moved up a gear with the establishment of our own office and the appointment of an Executive Officer. In 1993, we developed model legislation for physician-assisted suicide. This was to form the basis of Marshall Perron's Northern Territory Rights of the Terminally Ill Act, and has been regularly updated. In 1994, we held a 20<sup>th</sup> anniversary public meeting with guest Dr Gerrit Kimsma from the Netherlands. A research project showed the ineffectual use of the Medical Treatment Act (MTA) in Victorian hospitals. In 1995, we provided advice and support for Perron in the passage of his unique legislation. At that time the 'Melbourne Seven' were organized, and 70 doctors wrote on behalf of VE to the Victorian Premier.*

*In 1996, VESV hosted the World Right to Die Society conference in Melbourne. 1997 saw the first challenge to the Coroner over the reporting and use of terminal sedation in end of life care, an activity that continued over the next three years. In 1998, a major effort was the first Menzies campaign in which we organized Philip Nitschke's challenge to Kevin Andrews, and demonstrated strong support for VE. Further political campaigns were organized in 1999 in the State seat of Prahran, and again in Menzies, to a lesser degree, in 2001.*

*Following the Menzies campaign, we began working in a more politically directed manner, and established an influence on Labor policy ideas, which led to Labor policy to establish an Inquiry into the MTA. Continued pressure on the Department of Human Services led to a fuller understanding of the deficiencies of this Act, and our becoming a stake-holder in the Department's campaign to increase public awareness of the MTA. In 1999, we developed our first "Advance Directive" (AD) of a general nature, and we have followed this with specific ADs re dementia, motor neurone disease, and nursing homes. We have strongly argued the case for legalisation of ADs with the Government. Through our counselling work, the BWV tube-feeding matter was taken up to the Supreme Court, further emphasizing the need for ADs and changes to the MTA.*

*Since Menzies, we have focussed on the Parliament, building support there for change. In 2000, we began forming country groups, which have exerted significant influence. In 2001, we started our 'peaceful presence' on the steps of Parliament House, and began visiting Members of Parliament, educating and lobbying. In 2002, we organized a Gallup Poll that established that support for VE remained very strong in the community, and followed that with a petition to Parliament. Throughout 2002-2003, we have joined other VE organizations in a campaign of education and influence within the AMA, and the medical profession.*

*Over the last 10 years, we have consolidated community support for VE and continued public education – VE is now better understood, and is a common topic of conversation, and of great media interest. We have developed practical resources, increased services for members, and taken advantage of the politicization of VE following the Andrews bill. We know there is Parliamentary support for VE. Much of this work is not obvious to members or the public, but it is essential to progress. Have no doubt that considerable progress has occurred over the last 10 years. Remember that in the Netherlands, it took 25 years of sophisticated public debate before legislation was achieved. Ours is not an easy task. Advances may come about quite unexpectedly, as in the Northern Territory, but will occur more readily if the groundwork is in place.*

Rodney Syme

## No crime at all?

ALEX MAXWELL placed a plastic bag over the head of his sleeping wife (she had taken an overdose of sleeping tablets), at her request, and arranged for helium gas to fill the bag, thus assisting in his wife's suicide. Originally charged with murder, he pleaded guilty to the lesser charge of aiding and abetting suicide. On 25 July, Justice Coldrey, of the Supreme Court of Victoria, sentenced Maxwell to an 18 months totally suspended sentence.

Justice Coldrey confirmed that Margaret Maxwell had incurable breast cancer that was causing intolerable physical suffering (not to mention psychological and existential distress) and she was terminally ill. He acknowledged that she was rational and making a considered decision to end her own life. She was strong-willed and determined to be in control of her own destiny – she rejected traditional medical care including palliative care.

Justice Coldrey accepted that Maxwell acted from motives of compassion, love and humanity, and had no ulterior motive. He acted in his wife's best interests, and at her request, because he believed that such action was necessary and he made no attempt to evade the course of justice. The judge referred to a spectrum of circumstances in which assisted suicide could occur, from those in which no punishment should be incurred to others where unacceptable motives were present. The former included the following features:

1. The 'victim' was rational, was making a persistent request for assistance, because of intolerable suffering.
2. The 'criminal' was acting out of necessity, and because of love, compassion and humanity. He was acting in the best interests of the sufferer.

Justice Coldrey indicated that there were clear precedents for a non-custodial sentence, effectively indicating that the 'crime' did not require any punishment, and signalling that the law was out of synch with community attitudes. He said that "it was not the function of this court to enter upon any debate on the subject of euthanasia", but at the same time, he was finding a man, who had committed an act bearing all the hallmarks of an act of euthanasia, not guilty of a serious crime. It would not be surprising to believe that Justice Coldrey did not think, like the vast majority of Victorians, that Maxwell had committed any crime in reality.

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*The rightness of an action must be judged in relation to the situation in which it takes place.*

Professor Gab Kovacs, Monash University I.V.F.

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## Spreading the word

"EUTHANASIA EXPLAINED" is the theme of advertisements VESV is inserting in selected publications.

Double – column advertisements encourage readers to contact VESV for information about euthanasia, including important aspects such as medical enduring power of attorney and how to refuse medical treatment. Benefits of membership are also outlined to them.

Our advertisements have appeared recently in *The Senior*, *Fifty Plus* and *The Phillip Island and San Remo Advertiser*. One will be featured in the next issue of *The Probian*, which is distributed to all Probus Club members in Victoria.

Naturally, we would like to afford larger advertisements, in more publications, but our budget is limited.

## Killing me Softly: Love, Death and Dying in Australia Conference

THIS SECOND EXIT Conference was supported by the Voluntary Euthanasia Society of New South Wales. Its aim was “to bring together people with diverging views and attitudes to voluntary euthanasia from all states of Australia and overseas so that a useful exchange of ideas can take place”. This it did most successfully with a wide range of speakers and topics.

Professor Peter Baume AO, Patron of the VE Society of New South Wales, opened the Conference stating that there are different ways of achieving a change in laws and attitudes, and that everyone can and does respect each others’ ways.

Professor Baume also said that in seeking VE legislation the VE movement had to realise that politicians think differently to the rest of the community. They use ‘electoral logic’ rather than ‘issue logic’ with their decisions coloured by whether or not they can afford to lose the votes of the 8-10% minority that oppose VE legislation. He went on to say that perhaps change will come through the courts which look at the logic of issues not their electoral impact.

Kep Enderby, President of the VE Society of New South Wales, past federal Labor Attorney-General, supported Professor Baume. He said that he believes that VE legislation is inevitable. Medical practice and social attitudes have changed enormously in recent years and that the law needs to change to reflect this.

Another issue raised by Mr Enderby, and supported by Philip Nitschke was that federal legislation has been introduced or ammended to

restriction the flow of information and devices for assisting a suicide thereby effecting the activities of EXIT Australia. The Conference participants strongly supported action aimed at having this legislation repealed.

Dr Nitschke stated that he fully supported the need for good VE legislation, however in its absence he had to provide something for those in need now. EXIT Australia was working in this area with the development of EXIT bags and the CO Generator.

At the Conference Dinner journalist Derryn Hinch interviewed three accused “murderers” – New Zealanders Lesley Martin and Ralph Vincent and Fred Thompson from New South Wales. All spoke poignantly about the death of their loved one and each related their current position with regard to legal prosecution. An account of Lesley Martin’s story is located on page 7 of this newsletter.

Queensland VES Gold Coast Convenor John Edge, was the recipient of the The Bob Dent Award for his support of Nancy Crick and his leadership of ‘The 21’ who were with Nancy when she ended her life in May, 2002.

The day before the Conference opened the Victorian Supreme Court had brought down its finding on *BWV* and tube feeding. The decision was referred to frequently throughout the Conference with its significance being noted. When I spoke on the final day I was able to inform those present the strategic role VESV had played in the decision, and to demonstrate how sound, rational argument can bring about change.

*Lindy Boyd*



*VESV was represented at the Conference by our Executive Officer, Lindy Boyd, pictured here with VESV members, from left, Gus Leitch, Joan Nicholas, Ruth Leitch and Eva Jones.*

## Packed house at Mornington meeting



*Rodney Syme and John Anderson answer questions at the Mornington Public Meeting*

EVERY SEAT was taken when 85 people attended a VESV public meeting at Mornington in June.

A highlight of the evening was an address by our President, Rodney Syme, who outlined the current situation regarding the VESV's ambition to have the *Medical Treatment Act* amended by the Victorian Government, to enable doctors to assist in the process of voluntary euthanasia.

During question time he also provided details regarding medical enduring power of attorney and how people can refuse medical treatment.

Vice-President John Anderson, who chaired the meeting, guided the re-establishment of a VESV Country Group in Mornington. Its co-ordinator is Pat Scrivenor, who can be contacted by phoning 5974 1580.

*The Mornington Peninsula Leader* newspaper published two stories prior to the event. One of them was based on an interview with Rodney Syme.

John Anderson, who co-ordinates our country groups, congratulated locals John and Judith Edwards on their excellent work in organising the meeting.

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### Withdrawal of tube feeding:

#### A 'dignified' death? (Continued from Page 1)

unconscious, is hopelessly rather than terminally ill and may not be totally insensate. When the tube feeding is stopped, it is to be hoped that she will be adequately sedated, kept asleep until she dies, thereby granting "maximum relief from pain and suffering" as the *Medical Treatment Act* preamble requires. The process inevitably causes great distress to the family and carers and is an area inadequately dealt with in the Act.

Justice Morris drew a parallel between the removal of a feeding tube and the withdrawal of ventilation which has been a common practice for some time. They are alike in that both are artificial life support systems, but there is a vast difference between the usual quick death when ventilation is withdrawn and the slow and

undignified death from dehydration and starvation which occurs with the withdrawal of a feeding tube. This is not euthanasia, essentially because the process is entirely lacking in dignity, and is an area which must be addressed by the Government.

There are serious problems with the structure, administration and implementation of the *Medical Treatment Act*, and it is time for another all party Committee of Inquiry into Dying with Dignity to address these and other issues.

*Postscript:* BWV died peacefully of natural causes on June 21, two weeks after artificial nutrition and hydration ceased.

## Peaceful presence to resume on Parliament House steps

VESV'S PEACEFUL PRESENCE on the steps of Parliament House is to resume for the Spring Session. Our political advisers feel that now is an appropriate time.

In 2001 this presence, simply sitting peacefully on the Parliament House steps on the days that Parliament sat, proved very successful. Our members were able to draw the attention of politicians and passers-by to the lack of choice available to Victorians regarding the manner, timing and place of their death.

If you would like to become a “peaceful presence person” please complete and return the form contained in this newsletter. Volunteers must be able to travel to the city and sit for two hours at a time.

**Your support is vital to the on-going success of this initiative.**

### Ongoing refinement of Advance Directives

OVER THE last five years VESV has developed a number of Advance Directives to provide information to your medical enduring power of attorney regarding your wishes. During that time members have made suggestions to improve these documents and we thank them for their ideas which we have considered as the documents have been reviewed and refined.

VESV's Advance Directives serve as a guide only, feel free to alter them to suit your needs.

### Speaking opportunities sought

IF YOU belong to a community organisation – Lions, Rotary, U3A or Probus for example – and think your associates could benefit from learning more about voluntary euthanasia, medical enduring power of attorney and refusal of treatment through a talk contact Lindy at the office. VESV has a number of excellent speakers available to talk to groups.

### *Calendar Girls*

ENJOY THIS true story about a group of middle-aged women in rural England who band together to shoot a **nude calendar**, all in the name of charity! Their Woman's Institute encourages the ancient arts of knitting, jam making and flower arranging – so when 11 members create a calendar with a difference – then the fun begins.

**This promises to be the best “feel-good” comedy movie of 2003, perhaps even a successor to *My Big Fat Greek Wedding* which we all enjoyed last year!**

A booking slip for this VESV fundraising activity is enclosed.

**Tuesday, 14 October, 2003 at 11.00 am  
Film and Basket Luncheon  
Balwyn Palace Cinema**

## “...to die like a dog ...”

“...to die like a dog...” by Lesley Martin is a book for those of us already supporting voluntary euthanasia and one we could lend to friends who are not.

It was surprising to be told that the story of Lesley's experiences had been written in the form of a film script. After spending the two hours she asked the reader to set aside to read the script it seemed an inspired choice. How else could she have shown us so much in so brief a time? She accepted that pain is not something we can describe adequately to others but a screenscript gives us the story and leaves us with choice about how deeply we become involved emotionally as we read.

She showed us so much. We saw the stages that her mother and family members passed through during the long terminal illness. We saw how family members vary in their ability to face the realities and how relationships can be strained to breaking point.

Lesley is a nurse and nursed her mother, so we see how protected most of us are from the realities of terminal illness. The tidy bed, the brushed hair, the welcoming smile allow us to go away and believe it is like that 24 hours a day if we choose.

We encounter the issue of palliative care which cannot always meet the needs of a dying person. Joy, nursed by a loving and loved daughter, probably was able to cope longer with her illness but eventually she said “Don't let this go on”. We see the dilemma for the carer when euthanasia is illegal. We see a variety of reactions after Lesley keeps her promise to her mother from the police and from the law.

Outside of the script Lesley knows she cannot adequately describe her own lasting pain. After the long illness there were months of uncertainty about possible prosecution. So she tells us the things she did and the time it took and leaves it to us to imagine her feelings.

Lesley might have said "Enough". Instead she chose to campaign for changes in the law. And in a practical way her book tells us how it was done briefly in the Northern Territory and includes a guide to the Dutch legislation.

Finally, she invites others to share their stories through her own company, M-Press Ltd. In every way it is a courageous book.

“...to die like a dog...” is available from the VESV Office for \$25.00 (including GST). Proceeds go towards Lesley's Defence Fund.

*Jean Youatt*

### Did you know?

SIGMUND FREUD suffered from inoperable cancer in his mouth. After one of his dogs turned away from him because of his mouth odour he decided to end his life, and asked his doctor to help him.

Freud's family gathered around him and he was given a heavy morphine injection. He died on September 23, 1939.

### Annual Membership Fees Now Overdue

MEMBERSHIP SUBSCRIPTIONS were due on July 1 for those members who renew annually. If there is a membership renewal form enclosed in this newsletter, your membership fee is now overdue and immediate payment would be appreciated.

## Near and Far

CURRENTLY 38 societies in 23 countries are active members of the World Federation of Right to Die Societies.

### The Netherlands

At their 2003 annual meeting, NVVE (the Dutch Voluntary Euthanasia Foundation) voted for changes to their constitution, incorporating a new name and revised objectives. These were felt necessary as a result of the social acceptance and legalisation of voluntary euthanasia. The new name, **Dutch Association for a Voluntary End of Life**, indicates that the society's future objectives will be broader than euthanasia and assisted suicide alone, and the retention of 'Voluntary' in the name emphasizes that the wish of the individual is essential and instrumental. The revised objectives are:

- ❖ To promote as broadly as possible application and social acceptance of the existing possibilities of a voluntary end of life.
- ❖ The pursuit of recognition of the choice for a voluntary end of life and the assistance of this as a human right.

NVVE has also proposed to alter the name of the Drion Pill to the Lastwillpill, thereby promoting the possibility of euthanasia for special groups (psychiatric patients, demented persons and patients with chronic diseases). This is to make clear the distinction between euthanasia as a possible solution to a medical problem and Lastwillpill as a possible solution to a social problem.

### New Zealand

On July 30, New Zealand politicians voted narrowly (60 – 57) against The Death with Dignity Bill which would have allowed the seriously ill to ask a doctor to help them to die. If it had been passed it still had to be supported by a majority of New Zealand voters in a referendum for it to have become law. This is the second VE bill to have been defeated in New Zealand in the last eight years.

### United States of America

#### **Arizona, Hawaii, Vermont and North Carolina**

Physician-assisted suicide bills were introduced in the above four States, and in each did not get beyond the chamber of introduction although doctors on both sides of the issue became involved in the law-making process. The Arizona, Vermont and Hawaii Bills called for legalizing the practice of euthanasia while the North Carolina bill (introduced by two physician legislators) called for banning it.

#### **Oregon**

The Fifth Annual Report since the introduction of the *Death with Dignity Act* was released in March 2003. Its implementation continues to be positive, with no evidence of 'slippery slopes' nor of a single irresponsible physician issuing certificates in inappropriate cases. In 2002 33 physicians were involved in writing prescriptions for lethal medications for 58 terminally-ill patients who qualified under the existing strict guidelines. Of the 58 36 chose to end their lives.

### Luxembourg

On March 12, 2003, the Luxembourg Parliament defeated by one vote a Resolution calling for the decriminalization of voluntary euthanasia under specific conditions. Although the Prime Minister had stated that the matter was one of a personal rather than party nature, every member of the ruling Catholic Party cast a negative vote. An election is pending in June 2004, and there is a possibility that the incumbent coalition will be replaced by one more favourable to the proposed legislation which would then be reintroduced.