



VESV REPORT

VOLUNTARY EUTHANASIA SOCIETY OF VICTORIA INC.

Reg. No. A0006974B

Member of the World Federation of Right to Die Societies

Number 126

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Proposed Federal legislation targets suicide promotion material

THE FEDERAL GOVERNMENT is proposing legislation, the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (2004)* (in the draft stage) to prevent the use of the internet to display child pornography and also to prevent the use of the net for suicide promotion material (explicit details, kits etc.).

Philip Nitschke, Director of EXIT, acknowledges that this bill is specifically directed at the activities of EXIT, and he is obtaining an expert legal opinion on the implications of the bill, which it is hoped he will share with the VE societies whom he thinks are at risk from the legislation.

The latest EXIT newsletter states that "Under the legislation every supporter of Voluntary Euthanasia is at risk". This appears to be a gross exaggeration, and appears designed to create a situation where EXIT and the VE societies unite for a co-ordinated and expensive campaign of opposition to the bill. However, given that most of the public and politicians would be supportive of the broad aims of the bill, this would be counter-productive. A quieter approach to persuade certain politicians to amend offensive clauses that might censor debate would be more effective.

VESV does not at any time display specific advice re suicide. We do argue for the legalisation of medically assisted dying, which includes terminally and hopelessly ill people taking their own lives with medical assistance. This is a very different matter.

The only potential problem for VESV is with the way the legislation is written – it is just conceivable that a certain clause could be used to censor debate on medically assisted dying, but this is exceedingly unlikely.

VESV will continue to lobby Federal politicians on this matter and to monitor the situation.

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Australian Democrat introduces bill to repeal the "Andrews' Bill"

IN MARCH, Victorian Australian Democrat Senator Lyn Allison introduced a private member's bill to repeal the *Euthanasia Laws Act 1997*. This Act, known as the Andrews' Bill, overrode the Northern Territory's *Rights of the Terminally Ill Act 1995* which allowed for voluntary euthanasia under strict guidelines. Ms Allison said "In my view individuals should have the right to die at a time and by a means of their own choosing. I invite my Parliamentary colleagues to again engage in the voluntary euthanasia debate and to deliver compassion to the suffering."

President's message

THE VICTORIAN MEDICAL TREATMENT ACT, developed following recommendations from an all-party Parliamentary Committee of Inquiry, was narrowly passed in 1988. The essential elements of the Act were to give statutory legality to the existing common law right of competent, informed persons to refuse any or all medical treatment, and to give statutory legality to the formally appointed agent of a person to refuse treatment on their behalf if they became incompetent. Previously, doctors would have sought and noted the wishes of next of kin, but they were not legally bound to comply.

In practice this was not a major change, except that it gave clear recognition to patient autonomy, and stable legality to patients' decisions where previously this had been only vaguely available by way of tortuous and expensive common law. Even so, the Australian Medical Association of the day opposed the Act.

However there were some serious flaws to the Act. Firstly, it only allowed a person to refuse treatment for a "current condition" (not defined) – thus they were not able to clearly set out their wishes in an advance directive for future medical events, with statute certainty that such a document would be respected. A second problem was the lack of clarity as to whether artificial hydration and nutrition via tube feeding was medical treatment or palliative care. Many unfortunate people suffered from unnecessary and unwanted tube feeding until VESV's support of BWV saw this matter resolved in the Supreme Court in May last year. But until the matter is addressed in the Act, others may have to follow this expensive process in the courts.

Further the community's awareness of the Act and its benefits has been negligible, and even the medical profession's understanding of it is appalling. Many hospitals fail to record the presence of an agent or an advance directive, and some hospitals have obstructed the formal completion of refusal of treatment certificates.

Possibly the most important part of the Act has been overlooked. In the preamble to the Act, the Parliament said "it recognizes that it is desirable to ensure that dying patients receive maximum relief from pain and suffering". Surely no one could argue with this, but, in practice, such sentiment is not always applied because doctors and nurses are fearful of legal consequences, if, in providing maximum relief of pain and suffering, they should coincidentally hasten death. This occurs despite the widely held criminal law opinion that this would not be so, and the fact that the AMA "supports doctors whose primary intent is to relieve the suffering and distress of terminally ill patients, in accordance with the patients' wishes and interests, even though a foreseen secondary consequence is the hastening of death". The Act needs to be strengthened to protect doctors so that they can fulfill the sentiment of the preamble.

VESV has been active for some time to persuade government to amend the Act in the following ways:-

- 1. To give statutory recognition to advance directives*
- 2. To create a computer register of agents and advance directives*
- 3. To make health care institutions record agents and advance directives*
- 4. To clarify that artificial hydration and nutrition is medical treatment*
- 5. To give clearer protection to doctors who provide maximum relief of pain and suffering even if it should coincidentally hasten death*
- 6. To ensure that the public and the medical profession is properly informed of these changes.*

It would be valuable if all our members wrote to their State Members of Parliament to support these aims.

Rodney Syme

Assisted death cases:

New Zealand and Victorian courts differ in sentencing



New Zealand nurse Lesley Martin

A NEW ZEALAND NURSE found guilty recently of the attempted murder of her mother was sentenced to 15 months imprisonment. In Victoria last year, Alex Maxwell assisted his wife to die and was sentenced to 18 months, wholly suspended.

Lesley Martin can consider herself unlucky on two counts: police, who knew of her action at the time, did not act until three years later, when she published her book *To Die Like A Dog*.

And her judge said he would “show mercy” as she faced a maximum sentence of 14 years, but had a duty to punish her.

“You do not view yourself as a criminal”, Judge Wild said. “You seem in some ways to believe you are above the law.”

Lesley Martin had been faced with the virtual total care of her mother. She had promised to help her die quickly from her terminal bowel cancer. The mother was suffering from progressive loss of weight, energy and appetite.

In Victoria, a significant number of Victorians have been charged with murder, attempted murder, and assisting a suicide in the past 15 years.

In all these cases the “victim” was making a personal and rational request for assistance in hastening their death. The “criminal” was acting out of necessity, and because of love, compassion and humanity.

None have been sent to gaol.

In the case of Joseph Mohr, in 1997, when a “not guilty” plea was entered, despite the evidence strongly suggesting otherwise, the jury found Mohr not guilty.

In all other cases in Victoria where a guilty plea was given, or a guilty verdict was reached, the judge essentially delivered a negligible sentence – in essence a “serious crime” without a punishment.

To add to the misfortune of Lesley Martin, Melbourne’s *Sunday Herald Sun* newspaper on May 2 published a heart — rending story of how, in Melbourne, Ross Anderson assisted in the death of his wife, Irene, who had been diagnosed with inoperable and terminal pancreatic cancer.

A series of photographs graphically illustrated her painful decline.

Irene had told Ross: “Don’t let me die in hospital. Promise me! When I can’t handle it

New Zealand and Victorian courts differ in sentencing (Continued)

any more, when there is no quality of life and before I lose all dignity promise me you will help me.”

Ross resorted to two syringes: one filled with a diluted paste of morphine tablets and liquid morphine, and the other filled with crushed pain-killing drugs, liquid morphine and tequila, one of Irene’s favourite drinks.

He, too, has published a book, but he has not been arrested and charged.

In New Zealand, Lesley Martin wrote that she injected her mother, 69, who had rectal cancer, with 30mg of morphine. An autopsy showed she

died of respiratory arrest, either because of an overdose of morphine, or because of broncho-pneumonia.

Strangely, Melbourne’s news media gave little coverage to Lesley Martin’s legal ordeal. However, Ross Anderson’s forthrightness hopefully will help influence our politicians to finally take positive action. Or will they continue to sit back and let the courts cope with individual cases, adding to the trauma inflicted on people involved?

Footnote:

Ross Anderson’s book is titled *The Quality of Mercy*, Allen and Unwin, rrp \$22.95.

Dying is personal, and it is profound. For many, the thought of an ignoble end, steeped in decay, is abhorrent. A quiet death, bodily integrity intact, is a matter of extreme consequence.

Justice Brennan, US Supreme Court, 1990 – Cruzan v. Director

Medical Treatment Act ignored

SEVERAL MEMBERS have recently contacted the VESV Office concerned that the hospitals, where they were receiving treatment, failed to make available, or misplaced forms provided, relating to the *Medical Treatment Act*. On each occasion the member wrote to the hospital’s administration, with a copy to the Minister for

Health, to re-inforce the Society’s premise that the *Medical Treatment Act* is poorly understood within the medical community.

If you have experienced or know of similar situations please let the Office know, as each instance helps to build our case.

Ballarat Group holds public meeting

ON APRIL 27 the Ballarat Group held a very successful and informative public meeting. Rodney Syme, VESV’s President, was the guest speaker, his topic *Euthanasia Explained*. In his talk he traced the development of voluntary euthanasia legislation around the world and outlined the situation in Australia. He said that in his opinion the best way to present the case for

legislative change was in terms of changes to palliative care. He believed that medically assisted dying should be a final palliative care option.

The Ballarat Group would like to thank Dr Syme and the *Ballarat Courier* for their support of the event.

Report on our Thirtieth Annual General Meeting

VESV'S ANNUAL GENERAL MEETING, held on Sunday, 15 February, 2004, was attended by about 50 people.

Speaker

Mr Jennings started his address by stating that he had a personal commitment to choice and dignity in dying. However he was a member of a government which was not sympathetic to voluntary euthanasia, and that was the challenge for the Society and the community — to change prevailing attitudes and give members of parliament the courage to enact legislation.

He said that the Labor government acknowledged that there was a lack of information and understanding of the *Medical Treatment Act*. To that end, the Minister for Health, whose responsibility it was, was pursuing a communication project to better inform the community, in particular the medical sectors of its provisions.

He referred to the *BWV* decision in the Victorian Supreme Court finding that tube feeding was in fact medical treatment, which could be refused under the *Medical Treatment Act*. He said this decision re-enforced the essence and intention of the Act and lamented that there had not been more community discussion of the finding.

He read with approval an extract from a letter by Dr Rodney Syme in which it was argued that

even though a patient could refuse artificial feeding, the patient would subsequently die a slow and uncomfortable death unless drugs could be used to prevent such an outcome.

He acknowledged that there was wide community support for voluntary euthanasia and wondered how the timidity of otherwise supportive MPs might be overcome. He suggested that it would be advantageous to find independent third parties in the media whose favourable influence might persuade nervous MPs to support change.

He suggested that a more favourable climate for change might be engendered by seeking common ground with the more moderate opponents of change. Unquestionably there was a need for more community information and discussion on the topic to allay community fears.

He said that he thought the work VESV had done to date was outstanding, showing a resolve rarely seen. He stated that political action usually results from a number of things coming together concurrently.



The Hon. Gavin Jennings, MLC speaking at the Society's AGM

Report on our Thirtieth Annual General Meeting (Continued)

Reports

OUR PRESIDENT, Rodney Syme, reported to the Meeting on the Society's activities throughout 2003, which he described as "an important year". He stated that our activities were bearing fruit, however progress will be slow.

He spoke of the Society's political activity stating the the issue of voluntary euthanasia was now firmly in the political arena. He outlined the roles VESV had played in the *BWV* matter, whereby the Supreme Court found that artificial tube feeding was medical treatment and therefore could be refused under the *Medical Treatment Act*, and in the Department of Human Services instigation of a communication campaign to draw attention to the provisions of the *Medical Treatment Act*.

He said that during the year the Society had revised its model "Bills" and its Advance Directives, had provided talks to over a dozen groups and had held six workshops. Individual counselling was provided to 37 people (members and the general public).

He thanked members for their donations, both large and small, which have allowed the pursuit of new options including a research project due to come to fruition in 2004.

He thanked the Committee members and the Office staff for their loyalty and dedication throughout 2003.

The Treasurer, Joanna O'Brien, reported that the Society's finances were in line with expectations for the year. She stated that there was a small

net profit due to the generosity of members' donations. Despite that however she recommended that there be a small increase in the annual fees, which was accepted by the Meeting.

Election of VESV Committee

10 nominations were received for the Committee and as that number was fewer than the possible 13 permitted, each was declared elected.

2004 VESV Committee

Dr Rodney Syme - President
Mrs Betty Teltscher – Vice-President
Mr Noel Sanderson - Secretary
Ms Joanna O'Brien - Treasurer

Mr Howard Bull
Ms Janette Collier
Dr Helga Kuhse
Ms Christa Momot
Ms Belinda Morieson
Ms Jillian Paterson

Appointment of VESV Auditor

Ross Collier of Ross Collier and Associates was re-appointed as Auditor for 2004.

President thanked

Our President was thanked by those present for his continuing hard work on the Society's behalf.

Annual Membership Fees Now Due

MEMBERSHIP SUBSCRIPTIONS are now due for those members who renew annually. Please find enclosed your renewal form, which should be returned with your payment by 1 July, 2004. If no renewal form is enclosed your membership is current.

Appeal for parental stories

PATTY ROSEN, a retired US nurse, is in the process of gathering stories of parents who have assisted their child's death so that she can publish a book to be entitled *The Greatest Act of Love: Assisting the death of your terminally ill child*. Ms Rosen assisted the death of her 25 year old daughter, Jody, and because of the need for secrecy and silence at the time always felt she would someday share her story in order to help others. Recently she met some other parents who had also been through this trauma and now wishes to publish their stories so that "another wall of silence regarding death with dignity will be broken down".

Ms Rosen can be contacted at pattyrosen@bendcable.com or 60734 Bristol Way, Bend, Oregon 97702-9474 USA. All responses will be kept totally anonymous and every effort will be made to hide the identity and whereabouts of the parent(s).

Mark Latham a VE supporter?

RECENTLY ELECTED Federal Labor Party Leader, Mark Latham, is on record as a VE supporter. During debate on the *Euthanasia Laws Bill 1997* he said "History tells us of the folly of governments whenever they have sought to impose the morality of one part of society on a majority of their citizens. This points to the central dilemma of the euthanasia debate. It should not be about forcing terminally ill people to judge life itself through the prism of someone else's moral code. The only way religious questions have been successfully dealt with in public policy is by fostering choice ... Terminally ill citizens deserve nothing less than liberty in determining the manner by which their lives might end."

The *Weekend Australian* earlier this year however reported that Mr Latham has "changed his mind" about some issues now that he is the ALP Leader. In regard to euthanasia, he now says "I've got to say I've been rethinking it ... I'd want to have a long think about it if the matter came before Parliament again."

Invitation to Australian Humanist of the Year Presentation Dinner

VESV MEMBERS have been extended an invitation to attend the Presentation Dinner of this year's Australian Humanist of the Year — Professor Peter Singer, the eminent bioethicist and philosopher. Each year the Council of Australian Humanist Societies honours an Australian who has demonstrated exemplary humanistic qualities that are needed to benefit humankind. The Dinner is to be held on Wednesday, 21 July at 7.00 pm at the Dallas Brooks Centre in East Melbourne. Cost is \$38.00 per person for a three-course vegetarian meal. If you would like to attend, please forward your name, address details and cheque or money order to the VESV Office by Friday, 25 June, 2004.

Volunteer help needed for the VESV Office

VESV NEEDS assistance in the office to help Lindy Boyd, our Executive Officer, with the increasing amount of activity that we are undertaking. This has become a matter of high priority, as the office has been under strain for some time. Ideally we are looking for two volunteers who could commit to a regular morning or afternoon session each week (time may vary from 1-4 hours depending on need), but the essential factor is reliability, so that Lindy knows that she can rely on assistance with certain tasks (not computer-based). This will lighten her load, and allow her to be more proactive in our promotional work. This is an ideal task for a retired person who wishes to contribute more actively to our goals. Please ring Lindy on 9521 3297 if you feel you can help.

Near and Far

United Kingdom

RETIRED PHYSICIAN AND EUTHANASIA ACTIVIST Dr Michael Irwin of Surrey, England, believes authorities did not proceed against him with charges of conspiring to assist a suicide because a court case would have generated media attention and helped change the Isle of Man laws regarding physician-assisted dying. The Isle of Man has its own parliament with the power to pass internal laws.

Although Dr Irwin had agreed to provide Patrick Kneen with medication for him to use to commit suicide, he died of prostate cancer before they were supplied.

As his disease had progressed, Patrick Kneen campaigned to get the Isle of Man Parliament, the Tynewald, to legalise physician-assisted dying. A month after his death and before the February 13 deadline for formal charges to be laid against Dr Irwin and Mrs Kneen, a survey of 500 Isle of Man residents showed 75% support for legalised assisted suicide.

United States of America

ROMAN CATHOLIC hospitals in the US are reassuring patients that they will continue to defer to the “Ethical and Religious Directives (ERD’s) for Catholic Health Care Services” while Bishops study what Pope John Paul II meant when he said, “...administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act.” The Pope also stated that withdrawing feeding tubes constitutes ‘euthanasia by omission’. According to ERD guidelines, feeding tubes for people in chronically vegetative states are ‘medical treatments’ that can be either continued or halted. Roman Catholic hospitals will continue to honour ‘living wills’ and follow ERD guidelines while the Pope’s statements are studied and debated.

The Netherlands

HUIB DRION, the former Dutch Supreme Court justice who was a major force behind the legalisation of euthanasia in the Netherlands, has died aged 87.

His essay, “Voluntary Death for Old People”, which was published in 1991, sparked debate that led to The Netherlands becoming the first country to legalise euthanasia for certain terminally ill patients.

Early in the debate, the Dutch media coined the term “Drion Pill”, which remains synonymous with doctor-assisted suicide in The Netherlands.

“Relevant”, the Dutch Right to Die magazine has reported that a majority of its members are in favour of having a “Drion” or “Last Wish” pill at their disposal to use at their own discretion.

This view is shared by only 50% of the general population and “Relevant” predicts that an available-on-demand “Last Wish” pill is decades away.

Dutch right to die activists found some of their Queen’s Speech at the opening of the parliamentary year disquieting. Referring to proposed changes to social security she said “In 2004 the euthanasia and abortion legislation will be re-evaluated. Basically, the existing rules should be observed.”

The problem is that the cabinet is divided on medical/ethical questions and while the traditional conservative Christian Democrats cannot change the euthanasia law, they could tighten controls and frustrate the search for legal margins.

Switzerland

THE SWISS ACADEMY OF MEDICAL SCIENCES has told doctors they can help terminally ill patients to die but only under strict conditions. The Academy said the Swiss authorities should respect the decisions of doctors who supply lethal drugs to terminally ill patients but it did not support active euthanasia, where the doctor actually administers the drugs.

Active euthanasia is illegal in Switzerland, although it is well known that authorities turn a blind eye to cases of assisted suicide.