

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into end-of-life choices

Melbourne — 16 September 2015

Members

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Witness

Mr Rod Mackenzie, OAM.

The CHAIR — I declare open the Legislative Council’s Legal and Social Issues Legislation Committee public hearing in relation to the inquiry into end-of-life choices. I would like to welcome the Honourable Rod Mackenzie, OAM, who is well known to many in this building as a former member of the Victorian Legislative Council from 1979 to 1992, a former minister in the Cain government and a former President of the Legislative Council. Thank you very much for making yourself available this evening.

Before we start I will just caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. As you would be well aware, Hansard is recording your evidence, and you will be provided with a proof version of the transcript within the next week.

We have allowed half an hour for your presentation and questions. Mr Mackenzie, I invite you to make some opening remarks, and thereafter the committee will have questions. Thank you again for being with us tonight.

Mr MACKENZIE — Thank you very much, Chair. I have to say that this might be just another committee meeting night for you hardworking committee people, but this is a big moment for me — a very auspicious occasion. I have waited 35 years to be able to look at the possibility of legislation being passed to allow people to be assisted to die and to be able to die with dignity.

Also, as a comment apart from that, I would like to pay tribute to the work you do as a committee. As I mentioned to some of you, I do not think it is recognised anywhere near enough, and I would just like to pay my respects and also to thank you on behalf of a lot of people for the hard work you are putting in on this. I know you all have work to do in your electorates, and the time you give up for this work is very much appreciated by me and a lot of people out there. Am I ready to start now?

The CHAIR — Please do. I should add too — sorry to interrupt — that the committee has a copy of your submission, and we have read it as well.

Mr MACKENZIE — From my written submission you will realise that my first involvement with dying with dignity came about with the death of a close relative long before I was in Parliament. This was a woman — a family member — who was very articulate, very well read and very intelligent, and she died a very prolonged death. In the finish she was on a life support system, and when the doctor said that it was absolutely impossible for her to continue the family made a decision that the life support system was to be turned off. That shocked me to think that the family had to make a decision on a loved one’s life. I thought, ‘There has got to be a better way than this’. It should not happen. I do not want my family, my kids, to be in the same position that our family was in. I do not want my kids to tell the doctor to pull the plug. So that was when I first had feelings about the need for a better way of doing this.

In 1976 I joined the voluntary euthanasia society. By a stroke of luck — more by luck than good management — I became a member of Parliament. I had not been a member very long when the members of the voluntary euthanasia society approached me and said, ‘Look, now we have got one of our people in here, we want to do something about this. Let’s see if we can get a private members bill in’. We had some discussions, and I realised that to try to get a private members bill in to die with dignity would be impossible, but we might be able to get something through that would allow for the refusal of medical treatments, which is passive euthanasia, where it is all done just by refusing medical treatments.

The next big step was to get it past the Labor caucus. You might take this as a bit of advice. I realised that if you brought a matter up just as they were about to go to lunch, it was a very good time to get things through. So I waited a time, and just as the chairs were being pulled out for lunch and the chairman of the caucus said, ‘Any general business?’, and they all started to walk out, I said, ‘Oh, just one matter, Mr Chairman. I want to bring in this bill to refuse medical treatments’. He said, ‘Oh, okay. Everyone in favour?’. So it all went through, and to the shock of some of them later I brought in a private members bill in 1980 for the refusal of medical treatments based on a piece of legislation that was put to the South Australian Parliament at the time called the Natural Death Act.

As private members bills do when you are in opposition, the government will let it go through to the second reading and then adjourn it. And of course it never got off the ground. And again in 1981 the same thing happened. Anyway we became government in 1982, and so I immediately went to Tom Roper and said, ‘Let’s

get this underway'. Tom Roper put it before the health advisory council to come back to see if legislation was needed. After about six months they reported that it was. And just as I thought things might get off the ground they changed ministers, and I had to approach David White. David White put it before the Social Development Committee, as you probably know, and as a result of that the recommendation came through that refusal of medical treatments should be allowed in Victoria. So that was a step in the right direction.

That is the main reason that I became involved. But since then I have kept in touch through being a member of voluntary euthanasia, now called Dying with Dignity, with events that have happened overseas and I have followed closely countries where dying with dignity is legal — the Netherlands and the states of Oregon, Montana and Washington. I think now California is very close to passing legislation, and I have got an idea that Canada has also had a committee go through and has discussed it too. I read with a great deal of interest what had been happening there, especially the situation in Switzerland, where they have been able to do that since 1942. It is quite remarkable that this legislation has been in these countries for quite some time. From my reading of it, limited as it is, I have not found any indication that there has been any misuse or any abuse of the legislation that has been passed. They are somewhat different in structure, but from my records there has not been any record of what they call the 'slippery slope' where relatives have forced people to take their own lives. That has been a real eye-opener to me, and it is one of the reasons why I feel so strongly that we should be able to proceed here. We have ideal models; we have excellent models to go to.

I followed the Northern Territory legislation, but I felt that it was far too technical and far too complex to have worked. There were too many loopholes, I felt, in that legislation. I think legislation in the Netherlands and especially in Oregon tend to be working very well. In fact I recently read that in Oregon over the last 20 years they have had something like 1390 applications to die with dignity, and out of that 1300 only 800 have actually proceeded. So when you really look at it, it is not a huge number of members of the population who are looking for this, but that is nevertheless no reason that we should not proceed because it is very important for the ones who need it. We have shown in consistent polls, with Dying with Dignity over the last 20 years and the old Voluntary Euthanasia Society, that 70, 75 to 80 per cent of the population believe that there should be legislation allowing people to die with dignity. Consistent polls have shown that there should be physician-assisted dying.

I would like to speak to you now as someone in the 80s. I think you need to listen to old people like me because life changes. Just to give you a couple of incidents that have made me the way I am and the way I feel about this subject, when I was 20 I had a near-death experience. I was pulling a steel rod up through a manhole and went over the parapet while I was not watching, and it went in between some 22 000-volt power line and all of a sudden I was going up and down on the roof like a yoyo. You hear about people's lives flashing before their eyes in a matter of seconds before they go — well, it does, I can tell you. It does. I thought, 'Well, this is the end of Rod Mackenzie. I've had it'. All of a sudden, this strange feeling of peace — absolute peace and tranquillity — just before I reckoned that the end had come. Anyway, the rod actually broke contact and I was able to drop it, and I am still here today. But that stayed in my mind, this wonderful feeling. I thought, 'That's what death must be like'. When it comes to the final issue of death, it is tranquil, it is quiet, it is peaceful. People come to terms with it.

I had another similar experience when I was in the Antarctic. I went through some thin sea ice and was a bit lucky to get pulled out, and the same thing happened to me there. These things have made me realise that the actual death itself really is not anything to fear. In amongst the 80-year-old contemporaries that I mix with in my retirement village and at the bowls club and Probus clubs where I go now, we 80-year-olds now talk about what is happening and when we see members going off and passing away, but none of us fear death. None of us fear death because when you get to our age you know it is inevitable. When you are your age, you think you are invincible — and I did too. But when you get to our age, you realise you are not, and that one of these days it is going to happen to you. So there is no fear of death. The fear, the real fear, is the manner of death. This is the fear. We see our contemporaries dying in different ways. Some of them die very peacefully and without any problems at all, others die quickly and some die in terrible circumstances. Another terrible fact is that only 14 per cent of people die at home. The rest do not even die at home. I think legislation can change that.

From our perspective, what we are worried about is a loss of dignity and also the strain it will place on our families. My parents lived to a great age. My dad was 96 when he passed away, and his death was terrible because he did not have anything wrong with his heart. It was just that his 96-year-old body had worn out, and his mind was still as alert as it was when he went into the hospital. He was lying there unable to feed himself,

unable to look after his own hygiene, completely dependent — and he was a proud man, an independent man all his life — and he was screaming, ‘Rod, get the doctor to give me an injection. This is too much!’. It really breaks your heart. That just should not happen. Those circumstances should never occur.

My mother went quite differently. My mother suffered from dementia, and that was even more distressing because she did not know me for the last two years of her life. It is a terrible thing when your mother does not know you, and I found that very hard to cope with. These are all the things that compel me to try to lobby and do all I can to bring about changes. I think there is a sort of anger, an anger that I am denied these opportunities, when all the evidence to me seems to say that there is no reason why we cannot have it. There are a number of safe and workable legislation models overseas to follow and, as I said, the vast majority of the public out there are in favour of it.

I would like to read a little quote, if I may. I saw it in *The Conversation* only last week, which I think sums it up. It was written by Michael Wilbur-Ham, who writes for *The Conversation*. I would like to read this to the committee if I may:

When state power compels us to live on well past a point where life became burdensome — perhaps humiliating and joyless, perhaps also agonisingly painful — that is a radical denial of our autonomy. Such laws are disrespectful to us. We have every reason to chafe against this kind of ‘protection’ from our own choices.

The state should not be denying us this choice.

These are the points that I would like to make to the committee. In your deliberations I know you are going to have an enormous task ahead with the number of submissions you have had, but I would like to conclude with another quote. This is from Dr Leslie Weatherhead. He is a long way before your time. He was a famous theologian, philosopher and author in the 1950s, and he wrote a book called *Why Do Men Suffer?*. I have always used this quote when I have been trying to persuade people. Dr Leslie Weatherhead said this:

I sincerely believe that those who come after us will wonder why on earth we kept a human being alive against his (sic) will., when all the dignity, beauty and meaning of life had vanished; when any gain to anyone was clearly impossible; and when we should have been punished by the state if we had kept an animal in similar conditions.

Mr Chairman and committee, thank you very much for the opportunity of fronting up here this evening. I wish you well in your deliberations, and I hope that at the end of it you will see my point of view, naturally. Whatever happens, I will always appreciate the opportunity you have given me to be here and address you tonight.

The CHAIR — Thank you, Mr Mackenzie. As I said in the introduction, as a former minister and President of the Legislative Council, we welcome your interest in the work of the committee and your preparedness to be here tonight. We have time for a couple of questions.

Ms PATTEN — Thank you very much for your piece. I note that you do talk about a number of models that are in place in Oregon, the Netherlands. And you also mentioned that you thought that the Northern Territory model had too many loopholes. Do you have a best model? Is there an example that we could look at that you think is the best model?

Mr MACKENZIE — Yes, I do. There are two models but I think the best one which suits us here is the Oregon model. The way I understand that it operates is a person can sign a form beforehand but if they get into a situation where they are terminally ill and they do not want to have a prolonged illness and they are suffering and the indignity and all the other things that occur in this situation, if they ask the doctor, he will prescribe a dose for them and they can go to the pharmacist. Once they have that they are free to take that when they wish, when the time gets so bad that they need to.

That raises another interesting thing. What I like about this piece of legislation and the way this operates is that it has been found that the people who have reached a stage in their terminal illness and they finally have got the means of ending it and there is a bottle on the shelf, because it is there they are relaxed. Often they live a lot longer than their prognosis because they have got the assurance that when it does get too much they can take it. You can see by the figures that a lot of them do not even finish up taking it. It is just the fact that it is there and they know they are not going to put their families through and they are not going to go through that terrible humiliation that often comes with terminal illness.

Switzerland is interesting, the way I understand that. Their law, as I understand it, is the same as us — suicide is a crime over there and assisting suicide is also a crime. But what they have done over there, you can go to a clinic, the way I understand it, and pass on the wishes. You are examined by the doctor. You have obviously got a terminal illness and the doctors' reports so the doctor says, 'Yes, we will give you a dose when you're ready'. Then you can go there. It is all televised, with the doctor present. The doctor repeats several times, 'Do you know what you are doing? When you take this, within a quarter of an hour you will have passed away'. The family can be present while all this is going on. Then if they are assured, the doctor leaves the dose on the table for them to take and leaves the room. They spend the last period of their life with their family, saying goodbye. They take the potion and in 5 minutes they are asleep and in 10 minutes or a quarter of an hour the doctor comes in and takes their pulse. The police immediately come, but if it can be shown that no-one gained by that person's death, that it was all done with the person's consent and at the person's instructions, any charge against the doctor is never carried on. That seems to me quite a simple way, and it has been operating, as I said, since 1942. They are the two models.

Ms SPRINGLE — We have heard a lot of testimony from different health professionals talking about the need for further resources in disciplines like palliative care, and that if those areas of health care were better resourced, then there would be no need for legislation around assisted suicide or dying with dignity. I would be interested to hear your response to that.

Mr MACKENZIE — I am a great believer in palliative care. My father-in-law died a relatively easy death. It was not very pleasant, but he died fairly quietly and without a great deal of pain. But he was greatly assisted by the palliative care people. I have great admiration for the way they operated. They were very caring and compassionate. A lot of people think that suffering is pain. Pain is a small part of the suffering. The indignity and the stress of the strain you are putting on your family, that is the real suffering. While palliative care can make you comfortable and comfort you in word and in deed, when it comes to the final crunch, they cannot prevent that terrible humiliation that can come. I support palliative care, and the government should be spending more money on it because I saw the help that it gave, but when it comes to those circumstances — —

I might just bring up an instance at this point. We have a chap in our village who has just had both his legs cut off below the knees, with diabetes. He has a lovely, very caring wife. I can see her dying before him now because of the strain. He gets to the situation where because his legs have been amputated sometimes he thinks they are still there and he goes to stand up and this frail woman has to try to get him up. The damage I can see it doing to her, and he knows it is doing to her — it is killing him as well.

Palliative care is a great thing and it should be supported, but it does not provide what is needed in certain circumstances. In some cases yes, but in others no.

Ms FITZHERBERT — On page 2 of your submission you say:

Research carried out some years ago indicated that more terminally patients were assisted to die by their physician illegally in Australia than were legally assisted in Holland.

I was just wondering, what is the source of that?

Mr MACKENZIE — I think Helga Kuhse, when she was president of the Voluntary Euthanasia Society, organised some research by Monash University. If I remember rightly, the results of that research indicated that doctors were helping more people over the edge illegally in Australia than Netherlands doctors were doing it legally. This raises another point. This act, if it comes in, will protect doctors a great deal as well. Doctors need protection too. Doctors are really open to all sorts of things, even just a refusal of medical treatments. You can have three members of the family giving permission, and a fourth member comes in and says, 'What are you doing? How dare you do that? You should have no right to do that. I have made no decision'. If that is correct, that is sort of an indication that we really must do something. We really must do it not only for patients but I think we would be protecting doctors as well.

The CHAIR — Mr Mackenzie, thank you again for your presentation and your evidence tonight and answering of our questions. We wish you all the best.

Mr MACKENZIE — Thank you very much.

Witness withdrew.