

# TRANSCRIPT

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### Inquiry into end-of-life choices

Melbourne — 7 October 2015

#### Members

Mr Edward O’Donohue — Chair

Mr Daniel Mulino

Ms Nina Springle — Deputy Chair

Ms Fiona Patten

Ms Margaret Fitzherbert

Mrs Inga Peulich

Mr Cesar Melhem

Ms Jaclyn Symes

#### Participating Members

Mr Gordon Rich-Phillips

#### Staff

Secretary: Ms Lilian Topic

#### Witnesses

Detective Inspector Mick Hughes, Homicide Squad, and  
Acting Commander Rod Wilson, Crime Command, Victoria Police.

**The CHAIR** — I would like to welcome Acting Commander Rod Wilson from crime command of Victoria Police and Detective Inspector Mick Hughes from the homicide squad of Victoria Police. Thank you, gentlemen, very much for being here with us this evening.

Before I invite you to make some opening remarks 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. Today's evidence is being recorded. You will be provided with a proof version of the transcript within the next week. The transcript will ultimately be made public and posted on the committee's website.

Thanks again for being here at this hour of the evening. I would invite you to make some opening remarks, and thereafter the committee will have questions.

**Acting Cmdr WILSON** — Thank you, Chair, and members of the committee. As you know, I am the acting commander of the crime command, and my partner here, Mick, is the head of the homicide squad. We have had probably close to 40 years service each in crime command and homicide squad investigations over that period of time.

I just wanted to make a couple of quick opening comments, if I could, Mr Chair. The first thing I would like to say is that at present individuals, including doctors, are at risk of prosecution if they intentionally take the lives of any person suffering an irreversible deterioration of physical health. That is the common-law offence of murder. Additionally any individuals are also liable to prosecution if they incite or aid and abet any other persons to commit suicide or attempt to commit suicide as per section 6B(2) of the Crimes Act. Our position is that, under the current law, we the Victoria Police are duty-bound to investigate such matters referred to us and prosecute accordingly. I might say that between 2010 and 2014 our law enforcement database has only recorded five reported cases of aid and abet suicide. And in my entire career in the homicide squad I have only ever charged one person with aid and abet suicide.

I have obviously been in the hearing today and I have heard the evidence of the various coroners, and I have read the submission that they submitted to the committee. I noted that their research indicates that nearly 50 people per year commit suicide in the context of an irreversible deterioration of their physical health. Prior to my coming to the crime command I was the divisional superintendent for Melbourne and had 800 police under my command. I was regularly briefed regarding our frontline first responder officers who attended these types of suicides. As you heard from the coroners, the desperation and the will of some people to take their lives have exposed our police to fairly horrific scenes of suicide. I think that the police who attend these events, like ambulance officers and others — our police are only fairly junior and inexperienced and quite young — and I think the impact of dealing with the deceased persons at those horrific scenes, and also having to prepare inquest briefs for the coroner and taking statements from family members who are clearly desperate and frustrated with the system, I would just like to say that that does have some impact on our frontline police officers. Thank you.

**The CHAIR** — Thank you very much for that opening statement. If I could ask you, Mr Wilson, to perhaps elaborate a little further on the impact on your members, particularly as you have heard the evidence of the coroner talking about the relatives and others who speak of the wish that there was another way, or perhaps that things had not been this way. Obviously your members, as you said, would be taking witness statements sometimes from those people. Could you perhaps elaborate a bit further on some of the feedback you have had from your members or some of the observations Victoria Police has?

**Acting Cmdr WILSON** — I think, in general terms, the briefings I have had is that the relatives and the family members — I am only talking about the cohort that was at the irreversible stage, where there is no real chance of recovery — and I think the desperation that is coming through from the family members is that there is no other alternative, there is no other place for them to seek help and they are frustrated that the deceased person has had to end their life in such a way. I think that is reflected in the statements they have taken and of course in the reports that are referred to the coroner. It is difficult for police members to deal with that because they are sharing the pain and the frustration of the families of the deceased.

**The CHAIR** — I will just ask one other follow-up question, Mr Wilson. You mentioned five recorded cases of aid and abet suicide. Were there any convictions in relation to those?

**Acting Cmdr WILSON** — I thought you might ask that question. I do not have that information, but I could get that back to you of course.

**Ms SPRINGLE** — I am curious that you talked about doctors also being included in anyone assisting someone to suicide. What about some of these higher profile doctors who have been quite open about the fact that they have assisted individuals to suicide? They have not been charged. How does that work?

**Det. Insp. HUGHES** — Perhaps I could talk to that.

**Ms SPRINGLE** — Yes, if you would, that would be great.

**Det. Insp. HUGHES** — Most of them talk in very generic terms. They are very careful about their language. Regarding one individual in particular, his language is such that he talks about how he provided information for people to take their life. We cannot charge on conversations — they were not under caution. We have certainly looked for a long time at one particular doctor in Victoria, and certainly my view in recent times is that there is not sufficient evidence to prosecute that person. It is a hard line for me because I think his motivation is probably to assist those who are in difficult situations; however, if I thought there was sufficient there to prosecute, I would be duty-bound to prosecute.

I guess part of my function, and perhaps I should have done a little introduction, is that I am responsible for the investigation of all suspicious deaths in Victoria. The homicide squad does not investigate murder-suicides as such. Often we will get a domestic murder-suicide and that will fall back on regional investigators to investigate. But if a regional investigator has said to us that this is a suicide pact, we would probably take primacy of that investigation. We do not have to, but because of the sensitive nature of it we probably would. Or if we were asked by the coroner, or sometimes a pathologist will contact us and say, ‘Look, there are some real concerns about this and the way it unfolded’, we will take primacy then. It is not part of our charter if the murder and the suicide are successful, but if it was to be a suicide pact we would certainly look at it. I hope that answers it.

**Ms PATTEN** — Yes, I appreciate the pain that your officers must feel at that frustration and desperation of the families who are left there, as we heard from the coroners. I was interested that, while you had five aid and abet suicides that you are aware of, you charged one person. Was there something specifically different about that situation?

**Acting Cmdr WILSON** — No, I was referring to my career, and that was back in the 80s. We are both very old, Mick and I — —

**Ms PATTEN** — You don’t look it.

**Acting Cmdr WILSON** — That was a particular case where a nurse injected her partner and he subsequently died. My point was that the OPP only presented her on aid and abet, not the murder charge — they dropped the murder charge and presented on the aid and abet and she received a bond. So we went through a lot of process at the end of the day for not a lot of outcome in terms of the effort and investigation that went in.

**Ms PATTEN** — Just following quickly on from that and the fact that you went through a lot of effort and she escaped with a bond, do you think there is room to change the Crimes Act to be a little more thoughtful about those situations where there is obvious evidence that this was compassionate, this was not; this was altruistic, this was not — —

**Acting Cmdr WILSON** — I hear where you are coming from, but I do not have any discretion in the way that the law is written. The Parliament makes the laws and we enforce the laws. However, if the Parliament decided to change the laws, then we would enforce the laws accordingly.

**Ms PATTEN** — Do you want to give me an opinion?

**Det. Insp. HUGHES** — I, like Mr Wilson, have only had one in my career, and it was very much like the one that Coroner Olle referred to. It was a couple in their late 80s. They lived in a beachside suburb of Melbourne. The wife was critically ill and in considerable pain. The husband was reasonably ill but could certainly have lived a lot longer than his wife. They had been married for 50 years and they decided together that they would take their lives.

He had no advice so he cut an electrical cord, pulled the two wires apart and successfully — after many, many attempts, quite painful attempts — subsequently killed his wife and then tried to kill himself and was not successful. For our attending members, and even for me, at that stage a reasonably seasoned homicide investigator, it is a very difficult situation to walk into when everyone in that neighbourhood and everyone in that family is saying, ‘This is a loving couple who have come to this conclusion themselves’. He was mortified that he had not been able to kill himself.

That matter was referred to the OPP. I had left the homicide squad by the time it had been finalised so I cannot tell you the end result of it, but I certainly could if we went back and researched it, if you thought it was relevant.

**Ms FITZHERBERT** — I just have one question in relation to aiding and abetting a suicide. I understand in general terms what that means, but could you walk me through, from your professional perspective, what constitutes aiding and abetting?

**Det. Insp. HUGHES** — Aid and abet. If I can put it as simply as this: you almost need to be in the room with the person, encouraging, inciting or taking an active part in it, so when you talk about online advice and things like that, straight out it is just not there. So there are some real gaps in electronic media and things like that. Certainly from our perspective, for want of a better word, you have to be active.

**Ms FITZHERBERT** — In the case you mentioned earlier with the nurse who injected her partner and caused his death, why was it that she was charged with aiding and abetting rather than murder or manslaughter?

**Acting Cmdr WILSON** — That is a good question for the Director of Public Prosecutions. However, we charged her with murder and she was committed for trial for murder, but in the time between that and the proposed trial, they plea bargained a plea to aid and abet.

**Ms FITZHERBERT** — What is the current penalty for aiding and abetting a suicide?

**Acting Cmdr WILSON** — It is a maximum of five years for inciting. One part is inciting; the second part is for aids and abets.

**Ms FITZHERBERT** — Could you walk me through inciting? I have a broad understanding of what it means.

**Det. Insp. HUGHES** — Incitement is more encouraging. Again, you have to be present, you have to be active, so I guess it is giving someone the motivation to take their life rather than giving them advice. If I said to you, ‘You’re really ill’, and I am sitting down with you saying, ‘Why don’t you take these tablets; your problems will be over?’, and we were able to capture that evidence — that is another thing we would have to be able to do — we would certainly be looking at incitement. But if I said to you, ‘There are some pills on the table; I understand you’re really ill’, and you take no active role in that, that is how fine the line is.

We would probably look at a situation if someone was present. Perhaps a better example would be if I was on the phone to you and said, ‘Look, I’ve left some pills on your cabinet there. You’re only supposed to take one a day; they are quite toxic pills’ and you got the hint rather than the encouragement, it would not be incitement.

**Ms FITZHERBERT** — How often are people charged with incitement?

**Det. Insp. HUGHES** — It is a difficult charge to prove.

**Ms FITZHERBERT** — My instinct would be that it is extremely rare for someone to be charged with that in relation to a suicide, let alone be found guilty of it.

**Det. Insp. HUGHES** — Yes, extremely.

**Acting Cmdr WILSON** — I think as I said before the data is suggesting only five cases of aid and abet and no cases of inciting.

**Mr MULINO** — We have been focusing on situations of aiding and abetting, situations where there is probably something quite proactive, an action that is intending to grant a certain specific outcome. Another set

of circumstances which is probably more common is where a doctor or a nurse would use medication to relieve pain but that might also have a secondary effect of shortening life span or bringing about death sooner. There was a person who gave evidence early in the proceedings who said that there is a broad acceptance, I think amongst most people, that if somebody is doing something with the intention of relieving pain but it does accelerate death, that that is probably something that is legal, and most people seem to not have so much of an ethical issue with that, but there is arguably some degree of uncertainty. One of the people who gave evidence early in the process thought that it would be useful to clarify that in the law. We have asked a few people in the medical profession whether the degree of ambiguity there causes concern. Some have said no, some have said not much but there is a slight degree of concern in the back of their mind. I am just wondering, does this ever get onto the radar of the police?

**Acting Cmdr WILSON** — I think several years ago a number of doctors came forward to one of the leading Melbourne newspapers saying they were regularly administering large doses of drugs in order to assist people to die. That file was referred to the homicide squad back then. Unfortunately — I think as Mick alluded to — the statements are never black and white, and there is an element of grey around them. We investigated that matter, and when we went to interview the doctors concerned, they made no comment, which is their legal right. That put us in no real position to explore the very things you are talking about. What is the point when the administration of a drug is there to assist someone's pain relief or it is given excessively in order to accelerate someone's death? It is a very fine line, and I am not even sure that a pathologist could determine in a toxicology lab what was the cause of the death, and was the amount of drug issued reasonable in managing the pain of the patient or was it excessive? It is a very difficult area to work in but, again, unless those matters were reported to Mick, as the head of homicide, or reported by the coroner, we would not investigate them.

**Mr MULINO** — It sounds like it is pretty rare that it is raised.

**Det. Insp. HUGHES** — The nurse is the only one that I could recall in our time.

**Acting Cmdr WILSON** — We have not had a referral, and I heard this gentleman here talking about some indication that people might have been given excessive amounts of drugs, but no referral has come to Victoria Police to investigate any doctor in those circumstances.

**Ms PATTEN** — We asked the coroner about Switzerland. I am not sure if you are aware of the situation there, where if someone is assisted in suicide, there are rules and regulations — that it has got to be altruistic and it is friends and there are organisations — but immediately the police and the coroner are called and spoken to. I wondered if you had any knowledge of that system or any comment on that?

**Acting Cmdr WILSON** — I am certainly aware that some voluntary euthanasia does exist in Europe — in Belgium, Switzerland and other countries. As far as I am concerned, it would be something worth exploring, whether or not any of those processes have significant robustness and checks and balances. We could look at something in this country for the very reasons I talked about before, in the cases that were referred here about the irreversible end-of-life situations. I think there is merit in looking at those.

**Ms PATTEN** — Yes. Thank you.

**The CHAIR** — If I could ask Mr Wilson or maybe Mr Hughes, with the impact of some of these scenes and cases have on your members, how do you help your members?

**Det. Insp. HUGHES** — We critically review all these deaths — all extreme deaths — and it falls to local management. I critically debrief my team. It is a matter of monitoring people's welfare. The regional local area police managers do a really good job around the welfare of staff, but it is funny how it will impact on hardened homicide investigators that have been to 100 scenes, and then they will have to go to one and it will impact on them really hard, or it will go to a young member who may have seen their first death and it impacts really hard. There does not seem to be rhyme or reason. We do as much training around it and preparation as we can, but there is no easy answer. We certainly are aware of this.

For example, the homicide squad has Jim Pilmer, who is a retired chaplain. He wanders around the floor once a week and has a chat to the members. He is at the forefront all the time, but we also monitor area staff and make sure that they go to counselling if issues arise or they see a need to or we see a need to. I guess we manage it as

best we can. Nothing that we have talked about here we could control in the current environment. Some of these scenes, as Coroner Olle said, can be quite horrific.

**Acting Cmdr WILSON** — I might just add, Mr Chair, that in the regions there is a database called Safetynet. That records every critical incident that a police officer goes to. If it is a SIDS death, a baby death or a car accident, a death message, one of these deaths or a suicide — all of that is recorded against the member so that their manager can then look and say, ‘Why is X maybe not so well?’, or whatever the case may be, and they can look at the data. Maybe there is a clue there of what that member has been attending and exposed to so that then they can put wrap some welfare or whatever around it.

**The CHAIR** — Thank you for that. Some of the information the coroner has provided to the committee talks about the importation of illegal substances ordered off the internet and the challenges for border control in preventing importation of that sort of material. Obviously at the border level that is for the federal authorities, but from your perspective as VicPol, do you want to make any comment about that issue?

**Det. Insp. HUGHES** — I could probably talk to some of that. I have recently returned to the homicide squad — I have probably been back about 13 or 14 months — but prior to that I served the last four years in the joint organised crime task force. We are looking at some electronic drug movement in the illicit drugs field, but this is equally relevant. A lot of this stuff comes in in very small packages, it comes in through the post and it is really, really hard to monitor. You would know of some of these illicit drug companies. You would have seen them reported in the media. They are hard to investigate. You say, ‘Yes, the federal police — until they hit the border’. These are coming through the post, and they are significant.

In that environment, the joint organised crime environment, we had every law enforcement agency as part of that group — border protection, or customs when I was there; it just changed recently — to try to prevent that. That is around illicit drugs, and there is a lot of robustness around trying to stop that. I think a lot of this stuff would really fly under the radar, to be honest, unless it was brought to our attention. It certainly would not come to my attention as the AC of homicide because what they would be looking at — perhaps this is a drug task force — is what is this particular drug coming through? What is that about? Is it a drug you take for recreation? It might not be until someone says, as one of the witnesses here said, ‘We hear that this is a particular medical drug that is used in suicides’, that it might be brought to our attention. There is a substantial risk there for us.

**Ms PATTEN** — I have just got a few more questions, but they are quite different. We heard from the coroners, looking again at that specific cohort of suicides, and they were suggesting it was about 50 a year on their figures. Would that correlate with your knowledge, or would you think that those figures actually might be slightly higher, given the specificity of the way the coroners detail it?

**Acting Cmdr WILSON** — Having read the report, and through my knowledge of reading the daily reports of the suicides we attend, I would say that is entirely accurate.

**Ms PATTEN** — And one completely different question. We have been looking at advance care planning, for people to really give directives about what happens, and one of them is ‘Do not resuscitate’. As first responders going out there, quite often your immediate response to your officers is to do that. Do you think that there is a system — and I am thinking we are going to need to use technology — that when one of your officers attended a home they did not have to look at the fridge door to say, ‘No, do not resuscitate’, that there would be some alert within your systems that could say, ‘Look, this person has got a do not resuscitate’?

**Acting Cmdr WILSON** — I think you are talking way beyond the expertise of a first responder. That might be something for the ambulance officers, who would obviously be backing the police up at such a scene. But if it is a suicide like these coroners were talking about, it is way beyond that. It is way past that.

**Ms PATTEN** — No, I was not talking about suicide. I guess it — —

**Acting Cmdr WILSON** — I think if it is a do not resuscitate type of situation, we would not be called. I cannot see how the police would get involved in that.

**Ms PATTEN** — I guess sometimes it is daughter comes home, sees father on the ground, rings 000 and sometimes —

**Acting Cmdr WILSON** — They would get an ambulance. I doubt that —

**Ms PATTEN** — the police would be the first ones there.

**Acting Cmdr WILSON** — we would come.

**The CHAIR** — Is there anything else you would like to add for our consideration? The men and women of Victoria Police are in a unique, particular situation, I suppose.

**Det. Insp. HUGHES** — I guess from my perspective, as Mr Wilson said at the start, I am here to enforce the law and I accept the laws of the state. We do that without fear or favour. As the officer in charge of the homicide squad I would have to be pretty straight down the line and say, 'If the law says so, we will enforce it'. As Rod rightly said, we are both getting a little bit older. I am mindful of all these issues, but I do not have that luxury in my position. There are others in the organisation that perhaps could talk about that, but certainly I am not in a position to.

**Acting Cmdr WILSON** — Yes, I want to reiterate what I said before and encourage the committee that if there are other options to be considered around this vexed issue, then I applaud you and encourage you to follow them.

**Ms PATTEN** — Thank you.

**The CHAIR** — To Acting Commander Rod Wilson from crime command and Detective Inspector Mick Hughes from the homicide squad, thank you, gentlemen, very much for your evidence tonight and for being here at this hour of the evening.

**Committee adjourned.**