This submission is in three parts. Terms of Reference, Recommendation and Discussion.

Terms of Reference

The Terms of Reference for the Committee appear to be quite narrow, seemingly not specifically addressing the fundamental moral aspects of a voluntary death or the view of today’s society on this matter. The first two of the three references may well be of interest, but do not get to the heart of the issue. My submission mainly deals with the pros and cons of voluntary euthanasia and assisted suicide and I hope that the third point of reference allows the Committee to address the key question of whether or not some form of voluntary euthanasia should be recommended to the Victorian Government.

I make just a few brief comments on the first two reference points:

- To the best of my understanding, medical and palliative care for managing people in pain at the end of their lives is better than no care at all. However, based on knowledge and information from other people, the pain is often so severe that even the best palliative care cannot remove. Even where pain can be masked, some people wish to die because their state of existence is zombie-like and often demeaning and stressful. I mention the fate of my mother-in-law and father-in-law in the submission, who begged to be released from the excruciating pain that persisted despite ever larger doses of pain-killers. But the hospital staff and doctors did not oblige.

- The management of the issue, i.e. end-of-life options, as the Committee knows, is in Australia managed by offering patients palliative care and by prohibiting any form of voluntary euthanasia or assisted suicide. I assume that palliative care is as good as it can be, which then puts to focus on euthanasia as an additional option. The position is similar in many other countries, with just a few jurisdictions having legalised voluntary euthanasia or assisted suicide; but the rules vary significantly between countries. A few articles on the internet tend to dramatise some overseas euthanasia cases, but such rhetoric should not influence an evaluation of the fundamental question of whether voluntary euthanasia in some form is desirable; it is then up to Victoria to develop its own rules that suit our society.

Recommendation

I hope that the Committee will, after due consideration, recommend to the Victorian Government that Voluntary Euthanasia and Assisted Suicide be legalised.

The legislation should include a review process resulting in authorisation by a small panel, following an application by the person seeking to be euthanised or for getting suicide assistance. The review process may include a description of the applicant’s medical condition by the person’s General Practitioner and a statement by a psychiatrist confirming that he/she has consulted with the applicant and is assured that there has not been undue pressure from family members or others for the applicant to seek an end-of-life outcome. The process should be transparent, with the applicant receiving a copy of the reports to the Committee by the GP and psychiatrist.

Legal euthanasia or suicide assistance should only be available if the applicant has a long-term or terminal condition that is painful or debilitating. Pain could be defined as a condition that requires pain-killers to be bearable. Examples of debilitating conditions may include a person who loses the ability to walk, talk and is incontinent after a stroke, suffering the effects of motor neuron disease, or a person in the early stages of dementia, knowing that she or he will eventually lose their whole identity.

If the applicant, after the consultation with the psychiatrist still seeks the exit option and the stated conditions are met, the authorisation by the panel should not be withheld.

As people seeking to end their lives are inevitably in a painful or stressful state, the review process should be brief and uncomplicated, say no longer than two weeks. However, in some cases a person with a terminal condition may not wish to die immediately but wait until the pain becomes extreme, typically in a hospital, with possibly only days or few weeks to live. To cater for such a situation it should be possible for the applicant to seek approval at an earlier date for end-of-life action within a stated future period.
Before getting too deeply into this topic it is important to make some distinctions between various forms of an intended death. The word ‘euthanasia’ by itself implies a death brought about with or without the dying persons wishes, as distinct from ‘Voluntary Euthanasia’ where another person, usually a doctor, causes a person to die specifically because that person has asked for the death to occur. Involuntary euthanasia typically occurs when an animal is ‘put down’ because it suffers pain, where the animal’s owners usually fill the role of giving a vet permission to do so.

The only situation where such a situation could, in theory, arise with humans is if a person is in a coma or has a condition that does not enable them to make responsible decisions, such as in advanced dementia or a severe mental illness. In such cases, if it was allowed, close family members could be asked for their permission. It is currently a legitimate course in some countries where a person is mechanically kept alive and the withdrawal of the life-support system would cause death. This action is referred to as ‘Passive Euthanasia’, whilst ‘Active Euthanasia’ applies where a person remains conscious and is able to stay alive without the help of a machine.

The laws around the world relating to euthanasia vary greatly. Generally where a form of assisted death is legalised there are strict conditions and controls, such as only being applicable to terminally ill patients in severe pain, having psychological counselling sessions and executed under medical supervision.

Most countries do not allow any form of assisted death, including Australia. Only three countries permit true euthanasia (where the means of death are executed by another person, usually a doctor giving a lethal injection); they are the Netherlands since 1984 (revised in 2002), Belgium since 2002 and Luxemburg since 2009.

Several other countries allow ‘Assisted Suicide’, also under strict conditions. A medical person will provide the means for a peaceful death, but patients must be able to administer the drug themselves, usually orally and be of sound mind. Thus, this form of suicide may not be available to a person who is completely paralysed, has dementia or a mental illness. Countries in this group include five US States (Oregon since 1997), Switzerland (since 1942) and Colombia (since 2010).

Some countries, such as Denmark, Finland, Uruguay and Japan have no specific mention in the criminal code, but have other means, such as ethics panels, prior court rulings or tentative legal frameworks, but seemingly the medical profession is not questioned too much when giving excessive pain medication. The texts about the rules in these countries are unclear. In the United Kingdom euthanasia is illegal and any person found to be assisting suicide is breaking the law and can be convicted of assisting suicide or attempting to do so. However, the Director of Public Prosecutions has issued guidelines setting out when a prosecution is, or is not, likely to happen.

Switzerland is the only country in the world where non-residents can legally receive suicide assistance, through the organisation Dignitas. (Another such organisation, Exit, provides assistance only to residents.)

Lobbies for and against

Right to Life (Pro-Life) groups strongly oppose any form of assisted death.

Right to Life Australia lists the following reasons for their opposition to voluntary euthanasia:

- It is unnecessary because alternative treatments exist.
- It is rarely free and voluntary.
- It undermines medical research.
- Leads to euthanasia tourism.
- Changes public conscience.
- Violates historically accepted codes of medical ethics.
- Gives too much power to doctors.
- Leads to involuntary euthanasia.

All of the major religions frown on euthanasia or assisted suicide. Christians, Muslims and Jews see life as belonging to God, and so an individual does not have the right to decide to end his or her life. The Buddhists and Hindus also consider such actions as inappropriate, but it seems amongst their adherents there are some conflicting views. Essentially Buddhists see a suicide as being due to the mind not being at peace and the
emphasis should be that through meditation the mind should get into a better state and rise above the physical suffering. The Hindus believe that a forced death will cause the soul and body to be separated at an unnatural time.

Those in support of either euthanasia or assisted suicide argue that it is a human right to decide when to end one’s own life and that it is cruel and inhuman to allow suffering. Legalising euthanasia with appropriate control measures avoids a more haphazard approach, where apparently some doctors surreptitiously cause a gradual death through medicine overdosing.

Arguably, some of the reasons advanced by Right to Life Australia require a long stretch of the imagination. For example it’s difficult to see how a change in euthanasia laws would impact on medical research, as people will still suffer from, say cancer and the vast majority will want to live until life becomes unbearable; a cure would continue to be highly sought and valued. And euthanasia law giving too much power to doctors is an insult to the medical profession which is overwhelmingly dedicated to ease suffering and save lives.

One view often expressed by those opposing legalising any form of euthanasia is that it would lead to abuse, that family members or others could pressure patients leading them to agree to end their lives even though they don’t really want to do so. As far as I can tell, legislation where it exists has strict rules and control measures, which should ensure that any abuse of the system would occur in only the rarest of cases, if at all. We hear on the news about street accidents due to cars being driven erratically or at high speed; should we ban all motor cars, because the use of a car can occasionally be abused?

It is difficult to argue against religious teachings, because for those who firmly believe in the interpretations made by religious institutions of the word of God, the perceived consequences from any form of suicide might be worse than severe physical pain. Any person with such a belief would therefore not be expected to ask for help with suicide, but why punish all those others who do not share this view?

Sanctity of Life

I am a firm believer in the sanctity of life. Therefore, I abhor any form of violence leading to death, including the killing of people during wars, many of them entered into on a vague rationale. Even more abhorrent is taking another person’s life against their will, which is called murder and is rightly punished harshly by the courts.

In ethical terms, I think the most important phrase in the English language is “DO NO HARM”. These are also the key words in the Hippocratic Oath, which most medical training institutions still require their students to take. Similarly, in the Sermon on the Mount Jesus said: “All things whatsoever ye would that men should do to you, do ye even so to them.” If we test any potential action against these criteria we should get a good outcome.

Harm is just a four letter word, but it can mean many things. Imagine for a moment that a person is terminally ill, in excruciating pain that even the strongest pain killers can only barely modify, and not in control of her bodily functions. You are the doctor and the patient begs you, pleads with you from the depth of her soul, to end her suffering. You have the means to do it in a peaceful and dignified way. The question is: are you harming the patient by letting her suffer, making life a living hell, or by giving her a needle that sends her peacefully to sleep?

For me the answer is crystal clear, the harm is caused by allowing her to suffer the pain and indignity of a tortured life. The oath most doctors take, the teachings of Jesus and just plain common sense tell us so, but opinion leaders have chosen to give the words a different interpretation.

If a dog suffers great pain due to a terminal condition; should we allow the dog to live another six months in agonising pain or ask the vet to give a lethal injection? I think that every caring kind of person would opt for the latter type of action. Somehow, when we substitute ‘human’ for ‘dog’ the position changes in the minds of many people. Why? Is the human not worthy of our compassion?

Then why is it that some doctors are against legalising euthanasia; as per some internet articles? I can only speculate that their training in medicine, which focusses on keeping people alive, encourages some doctors to develop a kind of tunnel vision that blocks out the notion that for some people life is no longer worth living.

Many years ago my wife’s parents both died from cancer at a relatively young age. She watched them suffer in agony and although on strong pain medication in hospital it was never enough to mask the terrible pain. They
begged and pleaded with nurses and doctors to give them increasing doses of pain killers and to put them out of their misery, but there was a limit to what the medical staff was allowed to do; presumably because of the law. Why is it that descent people, law abiding citizens who worked hard all their lives and showed love and compassion to their family and others, have to spend the last period of their lives in a “living hell”? Why could they not receive the compassion that we display towards animals? There is a public outrage when prisoners are tortured, but society is silent when terminally ill patients are allowed to be tortured by pain, often despite the best efforts of palliative care doctors.

The key to the debate is not to talk about a ‘life’, but a ‘quality life’. Life loses its special status as something wonderful when it becomes a tortured life, a living hell, comprised of unbearable suffering. Under such circumstances death is a better and more desirable condition than life.

The legal position

Australia is one of those countries where any form of assisted suicide is illegal and authorities seems to execute that position more stringently than many other countries. For example, it is illegal to just speak or write about possible end-of-life options, and in the last year police in Western Australia and NSW have raided the homes of elderly people because they were suspected of having illegally obtained Nembutal (pentobarbital) from overseas, in small quantities for their own use in the event of need. Several cases went to court with two couples being fined. Nembutal is a liquid, that when drunk will induce sleep, followed by a peaceful and dignified death.

Occasionally one hears comments that doctors often make a decision to accelerate the death of a patient with a terminal illness and suffering a lot of pain; usually by overdosing on pain killers. This can put doctors in a vulnerable legal position. Many doctors may not take such risks or their religious beliefs may deter them from doing so. In any case, from the patients’ perspective it’s a lottery whether they are lucky enough to have a willing doctor, whilst there is no provision in the law to allow doctors to euthanise patients.

Interestingly, suicide is legal in Australia (it is illegal in some countries) and people intent on committing suicide can legally acquire many of the means to do so; such as rope, rat-poison, knife, even a gun with a license. They also have the ability to jump off a bridge, a ship at sea or lie on a rail track. All of these means are perfectly legal, but generally gruesome, painful and often slow; certainly not dignified. But it is not legal to obtain a drug that could be taken orally and cause a painless, certain and dignified death.

Whilst suicide is legal, it becomes illegal if another person provides assistance. This other person is subject to penalties under the law, which could be up to 5 years in jail in Victoria (and up to 10 or 15 years in some other Australian States).

In Australia it’s acceptable for people to kill themselves as long as they do it the hard way, with maximum pain and potential for failure that could make their health situation even worse.

It appears that in the case of passive euthanasia, that is where a person is on life-support and there is no chance of a recovery and treatment is considered ‘futile’, doctors in Australia can order withdrawal of life-support. However, where near relatives object to this the situation can become somewhat clouded and the matter may need to be resolved in court.

It is interesting to consider how the law fits in with the Universal Declaration of Human Rights under the auspices of the United Nations, of which Australia is a signatory and was involved in its drafting.

Article 5 of the Declaration states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” If a person undergoes excruciating and constant pain is that not a form of torture, often inhuman and degrading?

Article 18 of the Declaration states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Thought and conscience in a terminally ill person may well be a fervent wish to die; should that person be denied the right to practice what conscience dictates?
The Victorian Charter of Human Rights has similar wording in its sections 10 and 14. Section 9 is also relevant in this context, it states: “Every person has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.” It is of paramount importance in any civilised society that each person has a right to life and it is appropriate that governments have a responsibility to protect life. However, a ‘right’ implies choice; it doesn’t state that it is mandatory for persons to continue living should they not wish to.

Summing up the legal position; the law is designed to punish wrong-doers, yet condemns innocent people to suffer. Is that justice?

Experience of countries that have legalised voluntary death

There have been articles on the internet in recent times which highlight steady increases in the number of euthanasia cases in the Netherlands. Usually the language is emotive and colourful which does not advance rational debate; there is a sprinkling of phrases like “out of control”, “killing fields”, “grizzly statistics” and “appalling increases”. Articles also sometimes focus on one or two supposedly controversial cases, with the implication that these cases are representative of all cases; the writers quite obviously oppose the legalisation of euthanasia.

Let’s deal with this on two levels:

- An increase in euthanasia cases implies a reduction in the total amount of suffering – is that to be welcome or condemned?
- The raw figures don’t tell the full story – what other factors could affect the incidence of euthanasia – for example, with the new law starting in 2002, why did euthanasia cases not escalate up to 2008?

I think it is largely irrelevant whether or not the number of euthanasia cases have increased or not after the passing of the new legislation. What does matter is whether there has been a reduction in people’s suffering. The emphasis should be on the word ‘voluntary’, that is the patient wanted relief from severe suffering and was not subjected to outside influences to end life. The statistics cannot answer that question.

If we follow the Christian principle of “doing to others as we would have others do onto us”, then I for one would wish those that suffer from a painful and/or debilitating and incurable condition relief from their suffering, because it is what I would want for myself.

If more people choose to suffer less, then who is willing to say that this overall reduction in human suffering is a bad thing? Appropriate safeguards in the legislation is the key to ensuring that the death is in fact voluntary and occurs only after due deliberations and professional advice.

Although I consider the statistics on euthanasia in the Netherlands largely irrelevant to the case for or against euthanasia, some comments are warranted because some people will use this as a basis for opposing a voluntary death.

Prior to the change in the law in 2002 euthanasia in the Netherlands was legalised through court decisions. In 1984, the Supreme Court in the Netherlands established criteria to be followed for a physician to cause the death of a person by euthanasia or assisted suicide without fear of prosecution, which led to a widening application of euthanasia.

In 2002, the parliament introduced new legislation on euthanasia along the guidelines that were approved by the successive court decisions. Thus euthanasia and assisted suicide were common before the introduction of these new laws.

A study, based on surveys conducted in the Netherlands sought to identify whether the legalisation of euthanasia increased the amount of times that the practice was used. Published in The Lancet in 2012, it states that rates of euthanasia slightly decreased after the new legislation in 2002, but later increased. The study
included an in-depth analysis of death statistics in 1990, 1995, 2001, 2005 and 2010 and a mailed-out survey with questions to physicians that had attended these deaths.

The findings included that in 2010 euthanasia consisted of 2.8% of all deaths, higher than the 1.7% in 2005, but comparable with those in 2001 and 1995. Ending of life without a patient request was much lower in 2010 (0.2%) than in the earlier years mentioned.

In 1991 a Government study (Remmelink Report) concluded, inter alia, that in the overwhelming majority of Dutch euthanasia cases, doctors – in order to avoid additional paperwork and scrutiny from local authorities – deliberately falsified patients’ death certificates, stating that the deaths occurred from natural causes. It is therefore natural to expect a very significant increase in reported statistics once the practice has become fully legalised and accepted by society.

I have tried to find suicide statistics in the Netherlands (excluding euthanasia or assisted suicide) for the years shown above, as it may provide a wider perspective, but without success. However, it is interesting to observe that according to figures by the World Health Organization, the rate of deaths through suicide for males in 2012 in the Netherlands was much lower than in Australia. Here 16.1 males took their own lives for every 100,000 people, whilst in the Netherlands it was only 11.7, a difference of 38%. The suicide rates for females are lower in all countries, but here too Australia’s figure was higher, 5.2 versus 4.8. It would be easy to draw an inference from these numbers that the more relaxed euthanasia environment in the Netherlands reduces the requirement for people to end their own lives. But I would be doing what those writers do that take raw statistical data and translate this into social behaviour patterns, which we know is influenced by many other variables.

Summary

The Herald-Sun and the ABC reported in November 2012 that The Australia Institute published a report that reveals when asked if a doctor should be allowed to end the life of a person experiencing "unrelievable and incurable suffering", 70.6% agreed euthanasia should be legal. Only 12.4% said no, that it should be illegal, and others remained unsure. A similar poll in Canada in early 2014 found that 84% of respondents are now in favour of some form of legalised euthanasia in cases of unbearable suffering.

If the survey indeed represents the views of Australians, then it is likely that Parliament would vote for it if all major parties gave their members a free vote on this issue. One would expect that members have a fair sense of what their constituents want and would vote accordingly.

Some people when they speak of euthanasia use the word ‘killing’ or ‘murder’ in their rhetoric. This is utterly wrong, even mischievous, because voluntary euthanasia is quite plainly ‘suicide’; the patient is simply asking another person, (usually a doctor), to do what they themselves would gladly do if they could. Killing occurs in a war and murder is when a person kills another against their will.

Palliative care has its place where people in pain want to wait for a natural death, but all those who prefer not to suffer and want caring individuals help them die in a dignified way, should be given that support.

Social attitudes are changing and it is my belief that in the last few decades they have been changing in favour of allowing suffering individuals to have a peaceful death if that is their wish. There is more emphasis on human rights than before and this also means that a person should have the right to manage their own body, provided that this causes no harm to others. Also, when confronted with the reality of severe suffering in another human being, most people would feel compassion and would want to help such a person.

Otto Cornelius

24th June 2015

P.S. I do not wish to appear at the hearing.
I did previously make a submission, but would like to provide additional comment. The essence of my previous submission was to make a case for legalising assisted suicide and voluntary euthanasia, within a framework that minimises the risk of abuse of the system.

Since this submission was made I have noted two developments that prompt me to make further comment, with the intent of being constructive. The two matters are in a sense separate, and for ease of reference I’ll call them “The medical emphasis” and “The qualifications for an early death”.

The medical emphasis

The Committee’s terms of reference and also the topics and the type of participants at hearings so far, suggest that the Committee’s task is focussed on looking at ways to improve palliative care. That is a very worthwhile objective and it is quite appropriate that it receives attention at the political level. However, it is a matter decidedly separate from legalising a voluntary death.

It is clear from the many submissions by people who themselves suffer from an incurable illness or who have witnessed a family member or friend suffer, that palliative care does in many cases not improve life conditions to the extent that life is still better than death.

Several of those making a submission, particularly medical professionals, observe that no form of euthanasia has a place in palliative care, because it is not a “medical option”. That begs the question, what is a medical option? One narrow, but sometimes cruel, interpretation is that it is to keep people alive at all costs, even if it hurts them. Whatever the definition of medical care, I would place the emphasis on the word “care”; caring for and about people. Sometimes the most caring option is to end palliative care.

If I place myself in the shoes of a medical doctor, I can understand why I might feel that causing a person’s death for whatever reason, goes against the principles I was taught at university and executed all my life, where the emphasis was on healing and keeping patients alive. Of course, there are some medical practitioners who take a wider perspective and consider what the patients really want, rather than follow a narrow, and may I say, uncaring doctrine.

Several submissions refer to our kindness to animals that suffer. Indeed it would be cruel to let an animal suffer, but inexplicably we don’t allow humans to escape their misery, even if they desperately want to do so. How can the words “care” (e.g. in palliative care) or “kindness” be applicable in these circumstances?

I hope that the Committee is allowed, given its terms of reference, to rise above the narrow issue of palliative care and allow for forms of voluntary deaths in addition to the current palliative approach.

The qualifications for an early death

Many of the submissions speak of people being in severe pain at the end of their lives and others speak of people enduring a terrible life, sometimes for decades, with or without pain. This raises the question, who should qualify for receiving help to die, if they chose this option? Should it be only old people in the last few weeks of their lives or should it be anybody with a terminal and painful
illness at any adult age? Should it include people with an incurable illness that causes such symptoms as discomfort, incontinence, inability to speak, stress and immobility, but not necessarily severe pain, such as may occur with motor neuron disease or a major stroke? Should the option be available to people with knowledge that they will lose their identity as the illness progresses, such as early dementia patients or people with brain tumours; in which case can they make their wishes known whilst still of sound mind?

There is not likely to be full agreement on the answers, but if compassion for people who suffer is a key criterion, an appropriate consensus becomes more likely.

I believe that every adult of any age, who has an incurable illness, that is severely debilitating or painful, should have the legal right to obtain help to die. Also people of sound mind who have been diagnosed with a personality changing condition, such as dementia, should be empowered to put in writing a legally binding request to die at a defined time in the future.

An assisted death by medical professionals, once given legal status, should not merely consist of withholding nourishment or a slow death by gradual increases in pain medication, but should be by way of a quick acting and painless injection with an appropriate substance.

It is fairly obvious, judging from various surveys and the large numbers of submissions in favour of some form of voluntary euthanasia, that social opinion has shifted over recent decades; now strongly favouring compassion over medical doctrine on end-of-life issues. The Committee has a difficult task to weigh up the arguments on both sides of the debate, but hopefully will give the prevailing social mood due emphasis.

When today’s society in Australia looks back a hundred years or so, at the then existing attitudes to women’s rights, capital punishment and abortion, it generally considers them outdated, unfair and even cruel. I have no doubt that future generations will see current assisted death laws in the same light.

Otto Cornelius

12th August 2015