SUBMISSION TO
THE STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES
(Legislation and References)

Terms of Reference
58th Parliament
Inquiry into End of Life Choices

On 7 May 2015 the Legislative Council agreed to the following motion:

That pursuant to Sessional Order 6 this House requires the Legal and Social Issues Committee to inquire into, consider and report, no later than 31 May 2016, on the need for laws in Victoria to allow citizens to make informed decisions regarding their own end of life choices and, in particular, the Committee should —

1) assess the practices currently being utilised within the medical community to assist a person to exercise their preferences for the way they want to manage their end of life, including the role of palliative care;
2) review the current framework of legislation, proposed legislation and other relevant reports and materials in other Australian states and territories and overseas jurisdictions; and
3) consider what type of legislative change may be required, including an examination of any federal laws that may impact such legislation.

Dying with Dignity ACT Inc. makes the following submission to the STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES of the Parliament of Victoria based on its analysis of the ACT Human Rights and the ACT Crimes Act which it knows to be similar to these Acts in Victoria. We also submit a proposal for a change to the current law which would result in the need for a change to the federal law that makes it unlawful to provide Nembutal for human use. Our submissions were lodged with the ACT Human Rights commission over a number of years and we attach the letter of response from the ACT Human Rights Commissioner along with this submission. See Attachment 1

We have since gained the agreement of Mr Bernard Collaery of Collaery Lawyers to run a case in the ACT Supreme court on the basis of the Human Right: Right to Liberty and Security of person; 1) Everyone has the right to liberty and security of person.

Section 18 of the Crimes Act gives permission to other people to assault a person who wants to end her/his life. Section 17 denies the person wanting to die the liberty to undertake her/his death or to undertake it except by insecure means i.e. self-assault. This provision is surely inconsistent with modern views on the status of the human person.

This right was confirmed as validly giving all Canadians the right to assistance to die by the Supreme Court in Canada this year by a unanimous decision of all 9 judges.

Mr Stephen Kenny of Camatta Lempens Pty Ltd wrote to DWD ACT Inc.

I have had the chance to read your submissions and I agree with your argument.

If Bernard is able to run a case in the Supreme Court I think that is a great idea, and I have no doubt it could end up in the High Court.
SUBMISSIONS 1 AND 2 lodged in 2012

SUBMISSIONS 1

POINTS OF INCOMPATIBILITY BETWEEN HUMAN RIGHTS ACT 2004 AND SECTIONS 17 AND 18 OF THE CRIMES ACT 1900

ACT Human Rights Act
Part 2 Section 7: This Act is not exhaustive of the rights an individual may have under domestic or international law.

Part 3 Civil and political rights
The primary source of these rights is the International Covenant on Civil and Political Rights.
Section 8 Recognition before the law
Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

1. People who want to die are intentionally excluded by section 17 (1) of the Crimes Act from gaining any help whatever, even the normal supports of the ACT health system and they are denied the specific health remedy, i.e. death, they seek for their suffering which is recognized implicitly in section 16 as being something they can lawfully do. They are also threatened by section 18 with the possibility of lawful assault.

2. Article 26 of the international Covenant on Civil and Political Rights states that

‘All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

DWD ACT Inc. believes that Section 17 (1) of the Crimes Act privileges the opinion that people should endure a ‘natural’ death by disease or submit to a degrading and usually painful manner of death or act unlawfully to obtain peaceful means of death and discriminates against those who hold the opinion that they should be able to undertake their deaths in a safe manner within a modern health system at a time of their choosing. The belief in the right to determine your own death is a long held cultural belief in Western and some Asian cultures evidenced in literature thousands of years old which should be respected but is treated with contempt by the cultural assumptions behind Sections 17 (1) and 18 of the Crimes Act.

Section 17 (1) of the Crimes Act is intentionally designed to make the act of ending one’s own life difficult or unlawful because the underlying ideological principle behind the law is that everyone should die of disease. Dying of disease is required for two reasons; 1) criminal; to establish the innocence of those around the dead body i.e. that the person was not murdered by another human being or by their own hand and therefore self-murder/suicide and 2) ideological; to establish that the death was a result of the action of God or nature.

Human Right: Protection from torture and cruel, inhuman or degrading treatment 1 b) No-one may be treated or punished in a cruel, inhuman or degrading way.

Section 17 (1) forces people who want to die, to die horribly. Effectively this sanctions state self-assault and Section 18 allows assault by others on a suicide. Many people die bad deaths in hospitals, hospices, nursing homes or at home through neglectful treatment or because their particular diseases ravage their bodies and there is little that can be done by medical staff to alleviate their suffering. This has been documented systematically over time by many people in Australia and elsewhere.
Human Right: Everyone has the right not to have his reputation unlawfully attacked.

Despite the decriminalization of suicide the act of ending one’s own life is actively discouraged by sections 17 and 18 of the Crimes Act. Very few people know that it is not a crime to end one’s own life. The act of suicide is treated as a great shame to be hidden. Suicide is kept quiet. It is discouraged. It is regarded as always a great tragedy. The label ‘suicide’ is demeaning and reflects the general failure by society to understand that to end one’s life is a choice a person can intentionally make in the exercise of their own lawful right. The choice is not respected as a choice that is made like every other choice people make in their lives. The law is deliberately constructed to make ending one’s own life difficult, dangerous and shameful because of its discriminatory basis in the belief that everyone should die of disease and that it is wrong for people to make their own decisions about when they should die. Only nature or God should be responsible for deaths according to this belief system.

Human Right: Right to Liberty and Security of person; 1) Everyone has the right to liberty and security of person.

Section 18 of the Crimes Act gives permission to other people to assault a person who wants to end her/his life. Section 17 denies the person wanting to die the liberty to undertake her/his death or to undertake it except by insecure means i.e. self-assault. This provision is surely inconsistent with modern views on the status of the human person.

Human Right: Human rights may be limited

1) Human rights may be subject only to reasonable limits set by territory laws that can be demonstratively justified in a free and democratic society.
2) In deciding whether a limit is reasonable all relevant factors must be considered including the following:
   a) The nature of the right affected
   b) The importance of the purpose of the limitation
   c) The nature and extent of the limitation
   d) The relationship between the limitation and its purpose
   e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Section 17 is not a reasonable limit on the human right to die expressed by section 16. Swiss law has demonstrated that it is perfectly reasonable in law to assist suicide. One purpose of the limitation posed by the ACT law is to prevent people dying early but it is not effective as people continue to suicide despite the law. The Swiss have demonstrated that it is possible to provide a reasonable less restrictive limitation. They have successfully argued with the European Human Rights Court that it is a human right to end one’s life.

ACT Human Rights Act; Application of human rights to Territory laws
Section 30 Interpretation of laws and human rights
So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.
Section 31 Interpretation of human rights
1) International law and the judgement of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.

Section 17 (1) of the Crimes Act 1900 is incompatible not only with the implicit human right to die expressed by section 16 of the Crimes Act but also with the ‘inherent dignity of the human person’ identified as the source of all human rights in the International Covenant on Civil and Political Rights. The double standards and internal contradictions in these laws must be evident to anyone who thinks through the consequences of these laws. It is no longer a crime to commit suicide but no-one can help a person to die.

The laws have wide ranging detrimental impact on the ‘inherent dignity of the human person’;
1. for the terminally ill; no doctor will help them except to give symptom relief even if they beg for death. Any doctor who does help another to die, and they do, becomes a criminal.
2. for suicides; they are forced to hang, gas, jump off high buildings, poison, drown or shoot themselves and they and their families suffer the indignity of being labelled suicides.

3. for attempting suicides; they are left untreated and unsupported.

4. for families of suicides; they have had to go through the trauma of losing a loved one to a violent death.

5. for people who deal with suicide such as ambulance and medical staff; they are subjected to the trauma of seeing hanged, shot poisoned, drowned individuals.

Section 16 allows that it is lawful to end one’s life so it should be able to be done in a humane and respectful way. Swiss law has shown that it is possible to do that perfectly safely. People who elect their deaths are as entitled to have safe, respected deaths as those who do not so elect.

**SUBMISSION 2**

This submission provides an alternative to current law which could be put in place anywhere in the country.

**ELECTIVE DEATH UNIT**

1. An Elective Death unit would be based on the following principles and definitions in legislation, regulation and communications.
   - It is the responsibility of government to ensure that everyone dies with dignity. No-one should be excluded from having a good death.
   - A good health system should be able to guarantee a good death. A good death is defined as a peaceful, pain free and quick death.
   - A civilized society respects the rights of its citizens to die at the time of their choice.
   - To elect death is a legitimate goal that some people have for themselves.
   - Like birth, death is a matter of individual choice and in the same way it should be supported by the state.
   - Elective death is defined as a voluntary decision to shorten one’s own life.

2. An Elective Death unit would be well-publicized in or linked to a local hospital.

3. The Elective Death Unit would have a) a 24 hour a day service with the resources to make professional personal, financial, and relationship counselling available to clients as well as immediate access to police, the coroner, organ donation and funeral services; b) an education facility designed for all members of the community and targeted for specific age groups and their particular stage of life needs to educate and inform people about death; to assist people to let go of life, to understand what death is and to prepare themselves for death; c) rooms with the facilities to assist those wanting an elective death to die comfortably in the presence of people they select; d) provision of the facilities to enable a peaceful, pain free and quick death to be undertaken independently without the help of other people.

4. The Elective Death Unit would provide any adult ACT citizen with an elective death following a) provision of a reason for the wish for death, b) offers of help through counselling or other assistance as needed, c) a cooling off period negotiated with the person wanting to die. The decision to die would be respected as would the decision to live.

5. On diagnosis of a terminal illness, terminally ill people may request a referral from their doctors to the Elective Death unit for an elective death at the time of their choice. Accessing the counselling services of the Elective Death Unit would be a matter for them.

6. The Elective Death unit would be required to maintain records of the reasons for people requesting an elective death and report regularly to the Assembly on their findings.

7. The ACT Government would co-ordinate public and private health systems to link into the Elective Death unit so that they can refer clients to it.
1. The responsibility for the right to life ultimately lies with every person. Every person has the right to provide all things necessary for the preservation of life including the right to defend her or himself from someone who might want to arbitrarily deprive her or him of life. The decriminalization of suicide in Section 16 of the Crimes Act shows that the right of the person to choose her/his own death is recognized in law if not accepted in practice. The fact that over 30 people elect to die in the ACT each year despite all attempts to prevent them from doing so argues strongly that the people who make this choice perceive themselves as responsible for their right to life. The decriminalization of abortion gives the right to every woman to make a life/death choice about the right to life of her foetus whether it is healthy or not. Ultimately if a person approaches another person with the intention of murdering that person it is the person who has to deal or not deal with the situation.

2. The right to life is not only the right to the life of the body. Every person’s life is the whole trajectory of life from birth to death and includes everything that occurs in between those two states as well as the person’s character, beliefs, ideals, relationships etc. Death is integral to the life of any person. No person has a life that does not include death.

3. The word ‘arbitrary’ has two meanings and we believe that both meanings apply in interpreting this right. It means (1) capricious, whimsical, random, chance, unpredictable, casual, wanton, unmotivated, motiveless, unreasonable, unsupported, irrational, illogical, groundless, unjustified. (2) autocratic, dictatorial, despotic, tyrannical, authoritarian, absolute, uncontrolled, unlimited, unrestrained.

4. Nature arbitrarily (Def. 1) deprives a person of life at the time of nature’s choice. Nature is the most arbitrary depriver of life. No person can predict the whims of nature to deprive her/him of life. No person knows exactly what disease or timing nature will use to bring about death. Nature is also arbitrary (Def. 2) in that it is absolute and we have limited powers to resist it. Eventually it forces us to die. Laws that require the person to die by disease make the person subject to the arbitrary forces of nature to deprive the person of life. The only death that is non-arbitrary i.e. reasoned and non-depriving is a non-punitive, non-violent death that is accepted and freely chosen by the person when the person decides that it is the right time for the person to die; i.e. end their own life trajectory.

5. The State (representing every person) can defend every person from being deprived of life by making it illegal to do so and by punishing people who deprive any person of life. But despite any and all statements about the protection of life and the State's assumed duty to protect it, the State can (Def. 2) arbitrarily claim or arrogate the sovereign power to argue to deprive any person of life and can exercise this sovereign power actually or potentially to deprive a person of life.

6. Death by disease is the means used by the state to test that arbitrary (Def. 1) and (Def. 2) deprivation of life by others has not occurred. All death is treated as suspicious unless it has been confirmed as having occurred by disease. All people around the dead person are potential deprivers unless this confirmation has occurred. However the State cannot guarantee the person the right to live (i.e. defence and protection from others) and in general can only act after a death has occurred to apprehend and punish the life depriver.

7. In asserting that persons must die by disease the State is acting arbitrarily (Def. 1 and Def. 2) because; a) people could die peacefully at a time they elect by medication if they were allowed to and that would not involve the arbitrary deprivation of life by any means. b) it is potentially depriving the person of his ability to defend his right to life and increasing the likelihood that the person will be deprived of life by others. c) The State is arbitrarily (Def. 2) coercing the person to be subject to the arbitrary (Def. 1 and 2) forces of nature to deprive the person of life. d) The State arbitrarily (Def. 2) coerces those who do not want to die by disease and who want to die of their own volition to deprive themselves of life by arbitrary (Def. 1) means. All of this is contrary to this human rights law.

8. Only the person can act to prevent the deprivation of life by others at the time it might be occurring or defend herself from a depraver at the time of the deprivation. The State coercively exploits any illness that has occurred naturally so that the person cannot defend herself. Doctors, hospitals, family members or the State have complete access to the life of the person and can deprive her of it either through legal or illegal means.

9. Given that the State, acting for the person, requires the person by law to die by disease in order to demonstrate that the person has not been deprived of life by some other person, the State is putting the person into the position where the only way the person (who according to human rights law is the prime agent in assuring the right to life) can be completely sure when dying that s/he will not be deprived of life by doctors, hospitals,
family members or the State, is to have control over death. This would mean that the person should be well enough to make a reasoned, non-random, decision free from the dictates of others and other arbitrary factors about when and how to die by medication the person can take by him or herself in a safe environment when ready. In subjecting the person to the arbitrary forces of nature (timing, nature of disease, irrevocable power to deprive the person of life) to deprive the person of life the State itself, is breaching this human rights law.

10. For all the reasons outlined above no State has the right to enact laws which prevent the person from exercising her/his right to life and the right not to be arbitrarily deprived of life. Any State that does is in breach of this human rights law.

Dying with Dignity ACT Inc. asserts that the only way every person can be sure that s/he will have the right to life and not be arbitrarily deprived of life at the end of life by any means including nature, is to have full control over her/his death as described in points 4 and 9. Dying with Dignity ACT Inc. believes that ACT law and Federal Government law is in breach of human rights law on the right to life and the right not to be arbitrarily deprived of life. It asserts that ACT human right law requires the ACT government to remove Section 17 (1) of the Crimes ACT 1900, allow for assistance to die and address with the Federal government to remove Part IV Section 23 (1A) of the ACT (Self Government) Act 1988 to assure this human right is available to all ACT citizens.

Human right: Freedom of thought, conscience, religion and belief

1 Everyone has the right to freedom of thought, conscience and religion. This right includes-
   a) The freedom to have or to adopt a religion or belief of his or her choice; and
   b) The freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as art of a community and whether in public or private.

2. No-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Following below are the aims of Dying with Dignity ACT Inc. This is a statement of the beliefs of the association which has been incorporated in the ACT. We believe that our freedom to practice our beliefs at the end of life or at any time we wish to end our lives are severely limited by the law (Section 17 (1) of the Crimes ACT 1900 and Part IV Section 23 (1A) of the ACT (Self Government) Act 1988); that coercion (we are required to die of disease, hang, gas or perform other violent acts to end our lives) is the preferred practice of death of the ACT Government and it therefore denies us access to peaceful, life ending drugs that would allow us to practice the death we believe we should have.

Dying with Dignity ACT Inc. believes that ACT law is in breach of human rights law on the freedom of thought, conscience, religion and belief and requests that the law be changed to assure this human right is available to all members of Dying with Dignity ACT Inc.

Preamble

We assert that our bodies belong to us as individuals and that we have the right to determine the circumstances of our dying & death as we have in the rest of our lives. We expect our community to support our wishes and provide the facilities required to enable us to have the death of our choice.

Aims

1. To work with the ACT community to create the legal environment in which all adult ACT & region residents can die with dignity at a time and place of their choice with the degree of assistance that they determine is appropriate.
2. To promote the concept of an elective death as an alternative to concepts of suicide or voluntary euthanasia and to encourage support for elective death on Medicare.
3. To promote the idea that those who want to shorten their lives should be able to have a peaceful death.
4. To encourage the use of medication that would provide people with a peaceful, pain free, quick death.
5. To educate the community about the role and work of medical professionals & carers for the dying and to work for their legal protection if they assist a person who has made a reasoned choice to die.
6. To encourage & educate people about dying and death so that they will be fully informed about what will happen to them when they die and to encourage participation in courses which allow people to celebrate their lives, to grieve the loss of their lives and to think positively about death.
7. To support and encourage other like-minded organizations in Australia and internationally to create a legal environment in which people can die with dignity at a time and place of their choice with the degree of assistance that they determine is appropriate.

8. To promote the addition of a right in Human Rights law to a peaceful, pain free, quick death at the time and place of the individual’s choice with the degree of assistance that s/he determines is appropriate.

**Human Right: Every person has the right not to be arbitrarily deprived of their property.**

Section 17 (1) of the Crimes Act arbitrarily deprives people of their right to their most precious property, their bodies. They cannot dispose of their property (their bodies) as they see fit due to the exclusion by law of methods of death other than disease. Due to being required to die by disease they lose the ability to manage and dispose of their bodies themselves. Their bodies then become the property of others due to illness deliberately induced by the law.

**CONCLUSION**

*6/2/2015*

**Murder**

(1) A person commits murder if he or she causes the death of another person—

(a) intending to cause the death of any person; or

(b) with reckless indifference to the probability of causing the death of any person;

In making it difficult for people to elect to die at a time of their own choice Section 17 (1) of the Crimes Act deliberately herds people into dying of their diseases. The law itself is made by human beings and is designed to bring about a particular type of death knowing full well that human beings die of disease eventually. This type of death (by disease) is the mode of death preferred by ACT law, made and maintained by human beings. It is not possible for death to be uncontaminated by human interference as the law asserts. The law is constructed so that death will occur in a particular way because of the false belief that death by disease establishes innocence. In fact death by disease is a construct of the law insisted upon by human beings and is no more innocent of human interference than any other kind of death.

Section 17 (1) of the Crimes Act is recklessly indifferent to the deaths it causes. Every year in the ACT around 30 people end their lives in horrible ways. In refusing to give assistance to die the law is implicated in how these people die yet year after year no solution is offered to the manner of these people’s deaths because it suits the ideology of this law to ensure in fact that these people do die horribly. It makes the general population more convinced that dying of disease is ‘natural’ ‘the will of God’ ‘the right way to die’ and it makes them submissive to all the many unpleasant things they will experience as a result of dying with their diseases.

Section 17 (1) of the Crimes Act has a psychological impact as well as a physical impact. It is designed to make people believe that dying of disease is ‘natural’ ‘the will of God’ ‘the right way to die’ and it makes them submissive to all the many unpleasant things they will experience as a result of dying with their diseases.

Without a real choice about how they die section 17 (1) of the Crimes Act makes the ideological basis of the law clear and implicates the lawmakers as murderers. If people cannot dispose of their bodies (their property) themselves in a humane manner consistent with human rights law and they are forced to die in one way that is preferred on the basis of the opinions and beliefs of a particular group of people in our society, that group of people must take responsibility for the deliberate and intentional manner of the deaths of people governed by the law they have made. Discrimination for a particular mode of death i.e. by disease and against another i.e. an elected death chosen by the individual with the assistance of modern medication, is the basis of this law.

**Murder by the State**

The law intends to cause the deaths of most people by means of disease. We know this because it blocks all other ways people might intend to bring about their own deaths by preventing assistance to die and preventing access to medications that cause death.
The law shows its reckless indifference to the probability of causing the death of another person by denying the possibility that some people want to die at a time that suits them. In refusing to give help to assist with death where people want to die, the law creates the circumstances where people are forced to hide their desire to die from others and they die cruelly because all other means are withdrawn from them intentionally by the law. Every year the State collects statistics about the number of people who commit suicide but it refuses to change the law which is directly responsible for causing these deaths.

The law is also recklessly indifferent to the probable suffering caused by death by disease. For the last thirty years people have been drawing to the attention of politicians the suffering of their loved ones. Politicians ruthlessly insist on their right to bring about the deaths of citizens by disease despite this consistent provision of evidence that this is a cruel death.

The law uses the fact that we all will eventually die of ‘natural causes’ to ensure that happens by making laws that remove choice to die by any other means. If a person wants to die by some other means, in forcing the person to die by disease the state becomes a murderer because it shows intention to bring about the death of the person by disease.

People agree to die by disease because it is the approved way to die. Just because it is approved and people agree, the law is no less murderous because that is how it ‘intends’ death to be caused. The only way the law can free itself of a charge of murder is if it removes itself completely from how death is caused by making the decision about their deaths a decision people make for themselves rather one the State makes for them.
Ms Jeanne Arthur  
President  
Dying with Dignity ACT  
PO Box 55  
Waramanga ACT 2611

Dear Ms Arthur  

We refer to your email of 10 July 2014, regarding Dying with Dignity ACT. Thank you for raising with us your concerns with the current ACT law and your analysis of the human rights implications.

In your letter, you seek to make a complaint to this Commission regarding the issues of incompatibility of ACT and Commonwealth law with International human rights instruments, most particularly the interaction between the Commonwealth Australian Capital Territory (Self-Government) Act 1988 and ACT Human Rights Act 2004. While s.30 of the ACT Human Rights Act does require that all ACT laws be interpreted consistently with human rights, the Commission does not have the jurisdiction to take complaints of alleged breaches of the HR Act. Such matters against public authorities must commence in the ACT Supreme Court. We understand that staff from the Commission have attempted to assist you gain legal advice on how to commence such proceedings.

You refer to the Australian Capital Territory (Self-Government) Act 1988 being in conflict with the ACT Human Rights Act 2004. As an ACT Government statutory authority, our Commission does not have the jurisdiction or expertise to provide legal advice on matters of Constitutional law, but it is likely that as the ACT HR Act is an Act of the ACT Legislative Assembly, the Commonwealth ACT (Self-Government) Act would prevail if there were any inconsistency.

Thank you also for your analysis of the obligations of ACT Government under international human rights law, particularly the right to life. As outlined above, at present the Commission does not have the jurisdiction to consider this matter in detail, however we do note that the question of whether the
right to life includes a right to determine the manner of death is not a settled one internationally. See for example the European Court of Human Rights cases of Gross v. Switzerland and Pretty v United Kingdom, and the House of Lords decision in R (Purdy) v DPP [2010] 1 AC 345.

As law reform to both Commonwealth and ACT legislation is your desired aim, it appears than discussing these matters with both the ACT and Commonwealth Attorneys-General may be the most appropriate avenues to seek change. Alternatively, you may like to seek legal advice regarding your concerns that ACT Government policies, practices and legislation are unreasonably limiting your rights, including your freedom of thought, conscience, religion and belief.

We have included a brochure with several options for seeking legal advice in the ACT. We note that the Purdy case above concerned policies of the Director of Public Prosecutions in Britain, and it may be that you wish to discuss these matters with the ACT DPP also.

Thank you again for raising these matters with us. Yours sincerely

Helen Watchirs
Human Rights and Discrimination Commissioner

26 August 2014
Mary Durkin Health Services Commissioner