29 July 2015

Hon Edward O'Donohue MLC
Chair
Legal and Social Issues Committee
Victoria Parliament
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By email to: lsic@parliament.vic.gov.au

Dear Mr O'Donohue

Re: End of Life Choices Inquiry

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) Victorian Branch welcomes the opportunity to make a submission in response to the inquiry being undertaken by the Victorian Parliamentary Legal and Social Issues Committee on the need for laws in Victoria to allow citizens to make informed decisions regarding their own end of life choices (the Inquiry).

Above all, the RANZCP considers that the primary role of medical practitioners, including psychiatrists in end of life care is to facilitate the provision of good quality patient-centred care so as to achieve the best quality of life in the final stages of a person’s illness.

However, the RANZCP supports informed public discussion of the issues surrounding physician assisted suicide (PAS) to enable government and society at large to consider this controversial matter. The RANZCP aims to contribute to this debate through this submission.

Therefore, if PAS were to become legalised in any Australian jurisdiction, the RANZCP believes it is critical that such legislation should provide:

- that all medical practitioners should have the right to choose whether or not they wish to participate in a PAS scenario
- for a mandatory, independent psychiatric assessment of people seeking PAS as they may potentially be affected by both physical and mental illness.

The RANZCP also believes it is important for the Inquiry to examine relevant matters affecting older members of the Australian population, including that:

- if PAS were ever to be legalised, that law must provide for suitable safeguards, especially for older people with dementia
- there is a crucial need to address, and raise community awareness of, common misconceptions about older people, euthanasia and suicide, for instance, that suicide in older people is largely driven by suffering associated with severe or terminal disease.
If you have any queries in regard to this submission, please contact Ms Rosie Forster, Senior Manager, Practice Policy and Projects via [redacted] or by phone on [redacted].

Yours sincerely

[redacted]

Professor David Castle
Chair
Introduction

This submission is made by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Victorian Branch to the Victorian Parliamentary Legal and Social Issues Committee Inquiry on the need for laws in Victoria to allow citizens to make informed decisions regarding their own end of life choices (the Inquiry).

The Victorian Branch represents approximately 1000 Fellows of the College. The RANZCP is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and has responsibility for setting the training program, examining and providing access to Fellowship of the College to medical practitioners.

As the leading experts in the mental illness sphere, the RANZCP also aims to improve the mental health system and patient outcomes through advocating for policy reform on behalf of its over 5000 members across Australia and New Zealand. Part of the RANZCP’s work in this area is to develop positions on important topics in order to encourage clinician and community debate. On this basis, the RANZCP has developed **Position Statement 67 on Physician Assisted Suicide** (the Position Statement). Physician Assisted Suicide (PAS) involves situations where doctors prescribe but do not administer lethal substances to competent, informed patients so that they may end their own lives at a time of their choosing.

It is important to note that the Position Statement does not represent a RANZCP position for or against the legalisation of PAS. Rather, the Position Statement is intended to assist RANZCP members who wish to participate in the current PAS legalisation debate. It is also intended to assist all RANZCP members if PAS becomes legal in Australasian jurisdiction in the near future, and those members who may be practising in jurisdictions outside Australasia that allow PAS.

In 2014, the RANZCP also made a submission to the Commonwealth Parliamentary Inquiry into the Medical Services (Dying with Dignity) Bill 2014. The RANZCP’s current submission is based on these materials.

1. RANZCP’s views on PAS

Above all, the RANZCP considers that the primary role of medical practitioners, including psychiatrists in end of life care is to facilitate the provision of good quality patient-centred care so as to achieve the best quality of life in the final stages of a person’s illness. Palliative care should be adequately resourced and widely available.

Currently, PAS is a criminal offence in all Australasian jurisdictions but it is an issue that has been often debated across Australia in recent years. The RANZCP also notes that PAS may occur within strict legal parameters in some jurisdictions in the USA and Europe, notably in Switzerland and The Netherlands. The Canadian Supreme Court also recently struck down the law that prohibited PAS in Canada (although the ruling does not take effect until 2016). The RANZCP’s view is that its members should take no formal role in PAS while it remains illegal. The RANZCP also considers that there must be further open discussion about the ethical issues involved, including whether psychiatrists can ethically have any role in the process, even if it is legalised.

The RANZCP also does not support the provision of PAS in cases where a patient suffers psychiatric illness alone. The College believes that unrelievable psychiatric suffering is rare and the difficulties in ensuring capacity in these situations so great, that any putative benefits
associated with the introduction of PAS for psychiatric illness, could not be outweighed by
the associated risks.

However, the RANZCP supports informed public discussion of the issues surrounding PAS
to enable government and society at large to consider this controversial matter. The
RANZCP aims to contribute to this debate through this submission.

2. PAS legislation

If PAS were to become legalised in any Australian jurisdiction, the RANZCP believes it is
critical to contain the following elements:

- **Medical practitioners’ choice:** All medical practitioners should have the right to choose
whether or not they wish to participate in a PAS scenario. Therefore, if PAS were to be
legalised, medical practitioners should have the option to refuse to provide PAS services
for any reason and at any time.

- **Role of psychiatrists:** There is a crucial role for psychiatrists in the PAS context
through the identification and treatment of mental illness in patients with terminal
disease, including patients requesting to die. In particular, the capacity of a person with
terminal illness may be affected by both mental and physical illness. If legislation
legalising PAS were to be introduced in Australia, the RANZCP considers that this must
provide for a mandatory, independent psychiatric assessment of the person seeking
PAS.

Further, the RANZCP believes that a psychiatrist’s role should also extend to whether or
not a psychiatrist believes that terminally ill people seeking to end their lives could
respond to psychiatric treatment in a way that could later alter their decisions to seek
PAS.

To determine this, psychiatrists must make an independent assessment of terminally ill
people’s capacity to make decisions, including whether a treatable psychiatric illness
was impacting on their decision to seek access to PAS services.

If a psychiatrist did find that a terminally person was rendered incapable of making
decisions due to a treatable psychiatric illness, that person could then be provided with,
or referred to, appropriate treatment or care. The RANZCP notes that - if terminally ill
people have been affected by a psychiatric illness and subsequently receive treatment
for that illness – they could later change their mind about their decision in relation to
PAS.

Therefore, the RANZCP believes that the role of a psychiatrist in a PAS scenario should
involve not only assessing whether terminally ill people’s capacity to make decisions has
been affected by a treatable psychiatric illness but also include, where relevant, a
comprehensive clinical assessment and suggestions for their broader mental health
management and care.

- **Coverage of psychiatric illnesses:** It is important to note that there are a variety of
treatable psychiatric illnesses - which may or may not involve depressive symptoms –
that can impact on a person’s ability to make decisions in a PAS context.

One example is delirium, which may not be readily identified by other physicians.
RANZCP members are often called to hospital wards to assess whether a person with
delirium who wishes to die is able to undertake advance care planning for their future
medical care.

Therefore, if PAS were ever to become legalised, the focus should not just be on treatable clinical depression but on all treatable psychiatric illnesses, which have the potential to impact on a person’s capacity to make decisions. This point is particularly important given the gravity of the issues under consideration.

3. Older people, suicide and euthanasia

The RANZCP also believes it is important for the Inquiry to examine relevant matters affecting older members of the Australian population. The RANZCP considers that:

- if PAS were ever to be legalised, it must provide for suitable safeguards for older members of the Australian population, especially older people with dementia
- there is a current crucial need to address, and raise community awareness of, common misconceptions about older people, euthanasia and suicide, for instance, that suicide in older people is largely driven by suffering associated with severe or terminal disease.

More detail about these issues are set out below:

**Safeguards for older Australians**

One relevant issue is dementia, an age-related disorder. Due to the absence of effective prevention or treatment strategies, a significant consequence of Australia’s increasing older population will be the disproportionate increase in the number of Australians with dementia. There is also growing evidence to suggest that people who develop dementia under the age of 70 are at increased risk of suicide and might possibly consider PAS. While this might be regarded as a form of ‘rational’ suicide, the question of competence to make decisions is of particular importance in this risk group. The RANZCP submits that effective strategies for this group will need to be informed by further research into, and evaluation of, attitudes towards PAS.

The RANZCP is also concerned about the use of advance care directives in circumstances where older people have dementia. Advance care directives enable people to plan for their future medical treatment and care at a time when they are not competent to make, or unable to communicate, these decisions for themselves. While people with dementia cannot give their consent to the provision of PAS services, they may have previously created an advance care directive requesting access to PAS services at a certain stage of their illness.

The RANZCP strongly opposes the provision of PAS services via advance care directives and takes this view regardless of whether or not these directives provides proxy authorisation for a person’s next of kin or primary carer to make decisions about PAS services. Proxy authorisation for PAS services is not acceptable in any circumstances due to the potential for abuse.

**Misapprehensions about older people, euthanasia and suicide**

Another issue is the need to address misapprehensions about older people, euthanasia and suicide. While the community and media focus is often on youth suicide, Australian Bureau of Statistics figures show that Australia’s oldest citizens, those aged 80 and above, are the most likely to die by suicide.1 The RANZCP is especially concerned that the higher suicide rate of older people has led to a misconception by euthanasia and assisted suicide advocates that:

> suicide in older people is largely driven by suffering associated with severe or terminal illness. It appears rare for a media report about suicide in older people not to
be either framed as an argument for euthanasia, or responded to by advocates suggesting it was a ‘logical act’. We live in a country that rightly celebrates free speech, and the euthanasia debate is a legitimate one, with strong arguments exchanged. However, to use our most vulnerable citizens in this debate is highly problematic, especially when the potential influence of media upon suicide is well known.\textsuperscript{ii}

Therefore, it should not be assumed that older people are making a ‘reasonable decision’ to seek PAS in response to severe or terminal illness. Older members of Australia’s population have an equal right to psychiatric assessment and for the exclusion of treatable psychiatric illnesses or any other factors contributing to their request for PAS. The RANZCP also notes that elderly patients can and do respond as well as younger patients to appropriate psychiatric treatment.

The RANZCP strongly believes that it is unacceptable that older Australians – especially those with treatable mental illnesses - may feel that death is a preferable option due to their stage of life or because they may be facing changing life circumstances such as having to go into a nursing home. The RANZCP considers that the potential impact of the ongoing debate about euthanasia on older Australians is not widely known or acknowledged and it is something that requires much greater community attention.

We also refer the Inquiry to the RANZCP’s media statement on this important issue.
