SUBMISSION OF THE WILBERFORCE FOUNDATION TO THE STANDING COMMITTEE INTO END OF LIFE CHOICES

1. Introduction

The Wilberforce Foundation is a group of practising lawyers and academics who advocate for the preservation and strengthening of common law rights and freedoms.

We are grateful for the opportunity to make this submission to the Committee.

We respectfully submit that by reason of the policy matters set out below, the Committee should recommend the improvement of the provision of palliative care facilities in Victoria and reject the provision of euthanasia in Victoria.

2. Executive Summary

This submission identifies eight policy reasons in support of this approach. These are:

- The Effectiveness of Palliative Care;
- Ethical considerations;
- Accord with Other Nations;
- The Northern Territory Experience;
- The recent Issues with respect to Mr Philip Nitschke;
- The Netherlands and Belgian Experience;
- Disability Rights;
- Indigenous Objections.

3. Effectiveness of Palliative Care

The effectiveness of modern palliative care if properly resourced and provided is such that much of the emotive arguments used in the submissions which have been made to the Committee in
support of euthanasia are unfounded. The audit into palliative care in Victoria released by Auditor-General, John Doyle, in April found that:

- palliative care was not readily accessible for all patients in Victoria;
- a lack of patient management systems adversely impacted on the co-ordination of palliative care;
- there were limited support services for carers.

Reason and the natural law tell us that every human life is equal and deserving of dignity simply because it is a human life: people are important simply because they are people. Those Victorians who are frail and in the end stages of life require adequate and comprehensive pain management, sound medical treatment and advice and palliative care.

4. Ethical Issues

Euthanasia, in whatever form, crosses a threshold of civilized society summarised in the commandment of old “Thou shalt not kill”. As Professor Margaret Somerville, the renowned Canadian lawyer and ethicist said in evidence to the Senate’s Legal and Constitutional Committee in 1997: If you look at the most fundamental norm on which our type of societies are based, it is that we do not kill each other. No matter how compassionate and merciful your reason for carrying out euthanasia, it still alters the norm that we do not kill each other to one that we do not usually but in some cases we do”1.

Parliamentary committees in the United Kingdom and Canada have come to similar conclusions2. The former premier of New South Wales Mr. Bob Carr told the New South Wales House of Assembly in 1996:

“We return to the bottom line that we must face as legislators: is it possible to codify this area while providing for the safeguards we would want to see applied to such a monumental question, the legal taking of a human life in those sorts of circumstances? My bottom line conclusion is that I do not think it is possible”.

That is because once the norm “Thou shalt not kill” is altered, there is no logical or moral point at which to stop. Australians have recently been energised in their opposition to the death penalty by the executions of Australian citizens in Indonesia. Like the death penalty, euthanasia is for life. The maxim used against capital punishment that the chance that one innocent person may be killed is equally apposite here. Unfortunately misdiagnoses occur. And some medical practitioners provide inadequate pain relief or incorrect medication. Once a person has been euthanised, just as when they are put to death by the State executing the death penalty, they are dead – an autopsy identifying a misdiagnosis won’t bring them back.

The Dutch experience referred to by Mr. Carr in the above speech, suggests that the so-called safeguards may be ignored as practitioners become de-sensitised to euthanasia. Legislators are unable to guarantee that such de-sensitisation will not occur here.

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3 Hansard Report of the New South Wales House of Assembly 16 October 1996 page 4857

4 Margaret Somerville described her own father’s experience in this regard when she was informed that her father had developed brain metastases and would die within a few days when in fact on her demand that a pain specialist be called in he was found to be suffering from aspirin positioning: see Margaret Somerville, The Ethical canary (McGill-Queens’ University Press, 2004 138).

5 Ibid: “One of the people who have made submissions to me on this subject is Jim Dominguez, who is in the gallery today. He has provided me with a summary of material on the position in Holland. As I understand it, Holland permits euthanasia not under the protection of legislation but through codified medical practice. He submits that a summary of the situation in The Netherlands is that, first, 72 per cent of doctors admitted that in practising euthanasia it was their custom to falsify the death certificate by certifying that death had occurred by natural causes. This would appear to be confirmation that desensitising can occur once euthanasia is permitted in legislation. He also argues that the material out of Holland suggests that in Dutch practice, the so-called voluntary euthanasia regime, 52 per cent of deaths were non-voluntary. That is further confirmation, it would seem, of the danger of desensitisation. The material suggests that 20 per cent of all deaths in The Netherlands in 1990 were occasioned by euthanasia. Applying the equivalent percentage to Australia, the result would be the death of some 25,000 Australians. Again, those references support my contention that it would be monumentally difficult to codify voluntary euthanasia in statute form”.
One of the compelling reasons for our burden of proof in criminal matters being beyond reasonable doubt is that it is better that 10 guilty men go free than that one innocent man be wrongly convicted. The argument against the death penalty was that it is intolerable that one innocent person hang since there is no redress for a wrongful execution. Similarly, to open the door to the killing of the weak and vulnerable, without any judicial oversight until after the death, opens doors to abuse without proper remedy for which the cure is worse than the (perceived) disease?

Indeed the history of civil litigation proves that professionals do not always follow appropriate standards. Therefore the only safe course is to adhere to the ancient norm which has served society well for thousands of years. “Thou shalt not kill” should remain “Thou shalt not kill”.

Legislating to permit euthanasia, like introducing the death penalty, requires someone to carry out the role of administering the fatal injection or using whichever method of terminating the life. In states where euthanasia has been introduced the burden of administering lethal injections has fallen on members of the medical profession. This raises ethical questions relating to freedom of conscience, belief and religion for those members of the medical profession who object to participating in an act which they believe or reason to be morally reprehensible.

5. **Accord with Other Nations**

Euthanasia is only allowed in the Netherlands, Belgium, in the States of Oregon and Washington in the United States of America and following a recent decision of the Supreme Court of Canada it will soon be required to be allowed in Canada. The concept has not found acceptance in the overwhelming majority of nations in the world\(^6\).

\(^6\) In Switzerland euthanasia is illegal though assisted suicide is permitted.
6. **The Northern Territory Experience**

The operation of the *Rights of the Terminally Ill Act* shows that it is those like Dr. Philip Nitschke who are likely to operate under the legislation⁷. Case 5, in the study by D. W. Kissane et al published in *The Lancet* of the operation of the *Rights of the Terminally Ill Act*⁸, was a case in which the patient suffered from a bowel obstruction and was jaundiced. Dr. Nitschke was required under Section 7 (1) (e) of the *Rights of the Terminally Ill Act* to advise the patient of the medical treatment available including palliative care⁹. However he acknowledged that he had limited experience in these matters as he had not been involved in the care for the dying before becoming involved in the *Rights of the Terminally Ill Act*¹⁰.

The operation of the *Rights of the Terminally Ill Act* is the best guide to how euthanasia legislation may work. We respectfully suggest that “Deadly Days in Darwin” should be closely read before any decision on this matter is made. In addition to the shortcomings noted above, case 4 in the Kissane study concerned a cancer sufferer. There were disagreements among oncologists as to whether the patient’s condition was terminal. In the end an orthopaedic surgeon certified that the provisions of the *Rights of the Terminally Ill Act* had been complied with. Even though this was a breach of the legislation, it was never investigated¹¹.

Critically, it was Dr. Nitschke (and no-one else) that euthanised all seven patients who were killed under the *Rights of the Terminally Ill Act*. Practitioners with a bias towards euthanasia will

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⁹ Section 7(1) (e) of the *Rights of the Terminally Ill Act*.


often treat safeguards as formalities to be overcome. One doctor told the Senate Legal and Constitutional Affairs Committee in 2008 that in the few cases in which the Rights of the Terminally Ill Act was used the safeguards were “blatantly disregarded”. He asked if that occurred in the “springtime” of the legislation what would occur when the spotlight was not on the legislation—at the time of the 102nd death\(^\text{12}\).

The Australian Medical Association does not support euthanasia\(^\text{13}\).

7. **The recent Issues with respect to Mr Philip Nitschke**;

The recent behaviour of Dr. Nitschke which led to his suspension by the Medical Board is testament to the aims of the right to die lobby\(^\text{14}\).

8. **The Netherlands and Belgian Experience**

In the Netherlands there has been an inexorable progression toward both involuntary\(^\text{15}\) and non-voluntary\(^\text{16}\) euthanasia. From 1981 when euthanasia was allowed only for those experiencing unbearable pain which could not be resolved in any other way, to the situation where children aged 12-15 can be killed by euthanasia if they request it and the parents agree, the trend has been one way\(^\text{17}\), such that the architect of the laws has recently been reported as saying that the laws were brought in far too early\(^\text{18}\).

\(^{12}\) Statement of Liberal Senators Hansard 14 April 2008 p68

\(^{13}\) Dr Andrew Pesce AMA President Interview ABC radio 6 October 2010 “I think it basically says that it is considered by our associations that ethical physician behaviour does not allow administering of a treatment whose sole, fundamental purpose is to end a person’s life.” https://ama.com.au/media/transcript-dr-pesce-and-apro-glidewell-mark-colvin-abc-radio accessed 14 March 2012.


\(^{15}\) When a competent person does not want to die but they are euthanased anyway.

\(^{16}\) When a person that lacks capacity is euthanased.

\(^{17}\) Holland’s Euthanasia Laws; http://www.internationaltaskforce.org/hollaw.htm

\(^{18}\) http://www.dailymail.co.uk/news/article-1234295/Now-Dutch-turn-legalised-mercy-killing.html
Infanticide is de-facto legalised in the Netherlands in relation to a new born child with a terminal condition\textsuperscript{19}. The effect of the laws has been a decline in palliative care to the extent that Amsterdam is now served by only 2 hospices\textsuperscript{20}. In 2001 a Dutch doctor found guilty of murdering an 84 year old patient was not given any penalty because it was found that he had acted “ethically”\textsuperscript{21}. Children up to the age of 12, including newborns, may be killed with parental consent.\textsuperscript{22} Lest this be thought to be alarmist consider that the Hon Robin Chapple, a Greens MLC who sponsored a defeated bill in the West Australian Parliament is reported as saying that the bill though restrictive was a “good start, and a step in the right direction”\textsuperscript{23}. If the bill was only a start what was the desired end point?

In 2002 Belgium legalized euthanasia. This year the Belgian Parliament legislated to allow children of any age to have the right to euthanasia\textsuperscript{24}. There is no doubt that once a nation starts on the euthanasia road the pressures from the “right to die” lobby only intensify to include more and more vulnerable. In the Netherlands and in Belgium, this kind of legislation has had many unexpected and undesirable outcomes. Children are now terminated in some cases and the procedures are not always strictly adhered to. Those with power of medical attorney (however that might be framed legally) frequently have a conflict of interest in that they may consent to a death from which they will benefit through inheritance\textsuperscript{25}. This type of law has transformed the


\textsuperscript{20} Ibid.


\textsuperscript{22} [http://www.vatican.va/roman_curia/pontifical_academies/acctlife/documents/rc_pont-acclife_dcs_20040903_euthanasia-netherlands_en.html]

\textsuperscript{23} WAVES News, Vol 30, Issue 1, February 2010, p2.


\textsuperscript{25} [http://www.patientsrightscouncil.org/site/belgium/]
Hippocratic Oath into a mockery and has institutionalised suicide as a solution to all suffering. A society cannot be hypocritical in having programmes to prevent those suffering psychologically from self-termination and at the same time place medical practitioners in the dilemma of making judgments on other types of suffering that justify termination of life.

9. **Disability Rights**

The Dutch experience and evidence from the United States suggests that the disabled have much to fear from any move to legalise euthanasia. From 1977 to 1982, in Oklahoma, a program was conducted which used a “quality of life” formula to determine if babies with spina bifida would be allowed to live. Children from wealthier families were provided a more positive outlook than children from a poorer background and 24 babies lost their lives. The rationale for such conduct is provided by those like Peter Singer who argue that not all human beings are people and so may be killed. The Parliament should reject such a philosophy.

10. **Indigenous Objections**

Evidence was presented to the Senate Legal and Constitutional Affairs Committee in 2008 that euthanasia was contrary to indigenous law.

11. **Conclusion**

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26 Diane Coleman *Not Dead Yet* from the Case Against Assisted Suicide Foley K & Hendin H (ed) Johns Hopkins University Press, 2002, p229 available at [http://books.google.com.au/books?id=9LJAh52mMwEC&pg=PA192&lpg=PA192&dq=Deadly+days+in+Darwin&source=bl&ots=obtmwGNAPs&sig=FyazmcS5/TRLEO8mMD7oJKsIfqc&hl=en&ei=sDhTKXNYduvypQ2InADq&sa=X&ei=DjCBU06AiAwAA#v=onepage&q=Deadly%20days%20in%20Darwin&f=false]

27 Ibid at p 233.

The maxim “Thou shalt not kill” has served society well for thousands of years. The overwhelming majority of nations stand by it and do not accept euthanasia. The Dutch and Belgians are learning of the error of their legislation. To suggest euthanasia as the solution to someone who is physically or mentally ill, someone who is living in the despair of depression, abuse or neglect, in poverty, in a disgusting nursing home, on the street or in squalid conditions or who has lost the control of their bodily movements or their mental capacity in the end stages of their life or otherwise is to ignore their value as a human being and their human dignity. People who find themselves in such conditions need care, love and mercy. People in such conditions may need nursing, monetary assistance, palliative care, medical treatment, pain relief, correct medical diagnoses, advice and prognoses, and where possible cures for their ailments. In short they need respect for their human dignity. Suggesting to such a person that they should agree to be killed – or worse still killing them without their knowledge or consent (informed or otherwise as has been the experience for too many in those nations or parts of nations which have legalised euthanasia) - particularly when they are in pain or suffering from mental illness or under pressure from relatives - does not equate “mercy” or “dignity.” The Committee should recommend a renewed focus on palliative care and adequate resourcing for other services to assist those in the end stages of life. The Committee should reject euthanasia and should hold to the known path, “Thou shalt not kill”.

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