

End of Life Choice



Newsletter on current debates

Confused law on Assisted Suicide and Assisted Dying

A reasonable interpretation of the current law on medically assisted dying in South Australia reads as follows:

If you have intravenous therapy for pain relief, or if your illness or accident has resulted in the use of a feeding tube or respirator, you can legally obtain medical assistance to die. If your suffering does not involve intense pain or a feeding tube or a respirator, the law says you should continue to suffer.

In South Australia the legal basis for determining that assisted dying is illegal is the *Consent to Medical Treatment and Palliative Care Act (1995)*. Section 18(1) states

"This Act does not authorise the administration of medical treatment for the purpose of causing the death of the person to whom the treatment is administered".

In case there is any doubt, the following clause, S18(2), states

"This Act does not authorise a person to assist the suicide of another".

Despite this apparent clarity in the intent of the Act, there are inconsistencies.

Withholding or withdrawing treatment

S6 states

"A person of or over 16 years of age may make decisions about his or her own medical treatment as validly and effectively as an adult".

The Act does not curtail the right of a person to cease food or fluid intake or to voluntarily cease life supporting medical treatment, which may result in the death of that person. Medical treatment includes medications and life sustaining measures such as a respirator or feeding tube. Assisting death in this way is a personal choice. Suicide is not illegal; no law is broken by a person who makes these choices.

When suicide is not suicide

The Act prescribes that a doctor may not legally assist the suicide of a person. S17(2) (b) says that a medical practitioner, if so directed by a person who is dying, **"must ... withdraw life sustaining measures"**. The choice of a person to stop life supporting measures, either by personal action or by direction to a physician, is consistent with a decision to commit suicide.



Although in complying with the person's decision, the doctor is undertaking an action which may directly assist the death of the person by suicide, this is not classified as assisting **"the suicide of another"**. It is anomalous that the law sees a distinction between assisting suicide by removal of life supporting measures and assisting suicide by the provision of life ending measures. Current law defines one as legal and the other as illegal, even though each is instigated by, and requested by, the patient.

S17(2)(a) deals with the doctor's duty in the care of a person who is dying. It states a doctor

"is under no duty to use, or to continue to use, life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life".

It is anomalous that it is not considered to be Assisted Dying if a doctor ceases life sustaining measures which are prolonging life but it is Assisted Dying, and illegal, if, at the request of the patient, a doctor prescribes life ending measures.

Administering medication for pain relief

Under S17(1), and with the consent of a terminally ill patient, a doctor may administer medical treatment with the intention of relieving pain or distress

"even though an incidental effect of the treatment is to hasten the death of the patient".

This treatment is referred to as Palliative Sedation or Terminal Sedation. It is not

considered to be Assisted Dying. The withdrawal of food and fluid, which must hasten death, is usual when this treatment is instigated.

The legal challenge

Determining whether a treatment is legal or illegal is dependent on the intent for which the medication is given. If the intent is to relieve pain or distress and **"an incidental effect of the treatment is to hasten the death"**, the action is legal and is not Assisted Dying. If the medication is administered to relieve pain or distress and to cause death, it is Assisted Dying and is illegal.

It cannot be guaranteed that the intent of every doctor who elects to administer Terminal Sedation is always clear. The doctor's intent cannot be definitively interpreted by any other person or legal entity. It is anomalous that the determination of the legality or illegality of a death depends on a factor which cannot be independently determined.



The Solution

Despite a majority of South Australians indicating that they believe that Assisted Dying should be a legal choice, there is no legal way of meeting every patient's request for Assisted Dying. Patients do seek help to die, and the desire of doctors to maintain and continue compassionate care for their dying patients means that assistance in dying occurs in South Australia in an unregulated way, and at considerable litigation risk for doctors.

The introduction of legal choice for voluntary euthanasia and Assisted Dying would remove the current inconsistencies under which some people have access to Assisted Dying and others do not.

It is past time for the law to be changed so that everyone whose suffering has become unbearable is treated equally, and for every South Australian to have access to a comfortable and compassionate death at the time of their choosing.

SAVES

South Australian Voluntary Euthanasia Society

saves.asn.au

Compassion for suffering
The freedom to choose
Add your voice to the call



SAVES was established in 1983 to campaign for legal, medically assisted choice in end-of-life arrangements.

The aim is to relieve suffering by providing choice for people at the end of their life. SAVES works in the community and with Members of Parliament to achieve law reform.

SAVE-YA Syndicated Australian Voluntary Euthanasia Youth Advocates

Facebook: Support SAVE-YA Law Reform



A national youth lobby group which aims to provide a youth voice in support of legalising voluntary euthanasia in all States and Territories. Members between ages 18 and 35 are encouraged to join, make contact with their local MP and inform them of their support for voluntary euthanasia law reform.

Christians Supporting Choice For Voluntary Euthanasia

christiansforve.org.au

We are Christians who believe that, as a demonstration of love and compassion, those with a terminal or hopeless illness should have the option of a pain-free, peaceful and dignified death with legal voluntary euthanasia. The overwhelming majority of Australian Christians support choice for voluntary euthanasia.



South Australian Nurses Supporting Choices in Dying

Facebook: SA Nurses Supporting Choices in Dying

We are a group of passionate nurses who believe in our patient's right to choose the end of life care they wish. The group provides a forum for the nursing voice and perspective on legalising voluntary euthanasia and other patient choices in end of life care.



MY BODY MY Choice-VE

facebook.com/pages/MY-BODY-MY-Choice-VE

MBMC provides a voice for people with disability in the VE reform debate. MBMC represents the interests of people with disabilities who wish to exercise choice in all aspects of their life, including choice at the end of life, with the view that choice and control are a fundamental human right for everyone.

MBMC argues that people with disabilities know how it feels to lose personal autonomy through their ongoing fight for self-determination, independent living and disability rights.

MBMC believes that people with disabilities, who have struggled to control their own lives and bodies, must be allowed to maintain control and autonomy throughout their life, especially at its end.



Doctors for Voluntary Euthanasia Choice

drs4vechoice.org



We are a national organisation of Australian medical practitioners, both current and retired, who are committed to having a legal choice of providing information and assistance to rational adults, who, for reasons of no realistic chance of cure or relief from intolerable symptoms, would like to gently end their lives. Assistance may be by doctor provision of medication for the patient to consume, or by doctor-administration.

Lawyers for Death with Dignity

saves.asn.au/lawyers

Lawyers for Death with Dignity acknowledges the need for people with profound suffering to have the legal choice for a medically assisted and dignified death. The current law says suicide is not illegal, but assisting suicide is. People in a terminal state may have profound, unbearable suffering and be in the undignified position of being unable to end their life without assistance. Advances in medicine have improved life expectancy, but South Australian law has not changed to reflect the often forgotten deterioration of quality of life that a longer life expectancy may bring.



BREAKING NEWS BREAKING NEWS BREAKING NEWS

Andrew Denton's podcast series investigating why "good people are dying bad deaths in Australia" has been launched by the **Wheeler Centre**. The podcasts are being progressively released and investigate all sides of the voluntary euthanasia debate. Today's podcast opens with the story of former Tasmanian nurse Cathy Pryor.

In the space of six months, Cathy assisted both her grievously ill parents to die. She was charged with, and found guilty, of attempted murder and assisting a suicide. Cathy went to jail until a judge decided that both were clearly acts of compassion, and allowed her to walk free.

The record shows Cathy is a convicted criminal. But should she ever have faced trial?

According to former Victorian Director Of Public Prosecutions, John Coldrey, it is inappropriate that someone acting out of love should have to go through what Cathy went through.

As a judge, Coldrey has himself been faced with similar crimes. He recounts his emotional decision to let Victorian man Alex Maxwell walk free after assisting his cancer-stricken wife to die.

In a society when there is no law for assisted dying – but where people are being assisted to die anyway – Coldrey is just one of many who believe that our law around assisted dying needs to be reconsidered. (wheelercentre.com)

