

# Dying *with* Dignity Tasmania (Inc)

PO Box1022  
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*your right to choose*

[www.dwdtas.org.au](http://www.dwdtas.org.au)

September 2009

<b>DwDTas Committee</b>	Marian van den Byllaardt
Mike Harris (President)	Alan Cameron
Trish Kershaw (Treasurer)	Helen Cutts
Kay Scurr (Secretary)	Barbara Porter
Beatrice Bentley	Noel Woodrow

If you receive your DwDTas newsletters by post the chances are that you will not be reading this before 2nd October. This is the date by which the Joint House Standing Committee (JHSC) are expected to have released their findings on the Dying with Dignity bill, although it may not become publicly available until some days later. Whatever the outcome, you can sure that the work that has been put in by our members and committee over the last few weeks has provided the Committee with a strong case in support of the bill. In it we have concentrated on addressing opposing arguments with plain factual information, backed up by solid research data and exposing emotive rhetoric that so often forms a part of the voluntary euthanasia debate.

An important part of our campaign has been the contribution made by many of our members in providing their own personal submissions to the JHSC. No reader can fail to be moved by the power that some of these bring to the debate. The DwDTas Committee are most grateful to members for sharing their experiences and views in submissions are greatly appreciate the support.

Looking to the future, whatever the findings of the JHSC, the Bill is likely to come to a debate within the next few weeks or months. This means that we must continue to lobby our MPs, answering questions when needed and presenting our case. Exactly what form this will take depends upon the JHSC findings, but more on that later.

Mike Harris (President)

## **DATES FOR YOUR DIARY**

**PHILOSOPHY CAFÉ LAUNCESTON - Dr Graham Wood's Philosophy Café will focus on the current debate surrounding Dying with Dignity.**

Tuesday - 6<sup>th</sup> October – 6 – 7.30 at the Royal Oak, Launceston

The café structure involves a 10 min introduction from Graham Wood before participants are invited to share views. The Café is delivered as a 'round-table' discussion and is structured to encourage comment and exchange. DWDTas members are welcome to attend. You do not need to RSVP - just turn up at the Royal Oak Hotel on Cnr Brisbane and Tamar Streets.

### **DwDTas forums in Launceston: “Your right to choose: Dying with Dignity legislation”**

Tuesday 20 October 2009, one session from 2.00 – 3.30 pm, and another from 7.30 – 9.00 pm. Both sessions will cover the same material. There will be presentations on the need for the legislation and what is happening in Tasmania, followed by questions and discussion. It is expected that the report of the inquiry by the Joint Standing Committee on Community Development will be available by then and it will be possible to cover its findings and the impact on the debate on the Dying with Dignity Bill 2009.

Both sessions will be held at the University of Tasmania at Newnham. The venue for the 2.00 pm session will be the Faculty of Arts, Room L142. The venue for the 7.30 pm session will be the Raymond Ferrall Centre, Lecture Theatre 5 Both venues have disabled access and there is parking nearby.

### **DwDTas/Exitinternational Annual Barbecue**

Sunday 7<sup>th</sup> February 2009 at 12.00 is the date for this stimulating social event and chance to meet and talk with other members. The Waterworks reserve in Hobart at 12.00 will be the venue. More details closer to the time.

### **INQUIRY INTO THE DYING WITH DIGNITY BILL 2009 AND INCIDENTAL MATTERS**

The inquiry into the Dying with Dignity Bill 2009 is nearing its end, with the Parliamentary Joint Standing Committee on Community Development due to report by 2 October 2009. The transcripts for the three days of public hearings are available at <http://www.parliament.tas.gov.au/ctee/commdev.htm>. A comprehensive written submission was made to the inquiry by the DwDTas Committee on your behalf. We know that many of you put in individual submissions and encouraged others to do so.

We do not know details of all the written submissions but anyone who sat through the public hearings, or has read the transcripts, would not be very optimistic that the Committee will support the Bill. The transcripts give an indication of the thinking of members of the Committee. We have done what we can to ensure that at least it is a much better report than last time. We have made an additional written submission to challenge some of the worst aspects of the negative submissions. We have also written letters. (See below)

The transcripts are very revealing of the arguments and tactics of those opposed to the Bill, including what they think of those of us who support the legislation. We invite humorous suggestions for what AMA President, Dr Chris Middleton, meant when he claimed that those of us who support the Bill “have personal autonomy issues”.

DwDTas made a submission at the public hearings on 24 August and was represented by the President, Mike Harris, Vice-President, Margaret Sing, Committee member, Dr Helen Cutts, and member, Dr Heather Dunn. Our initial time allocation of half an hour was extended to an hour and we were given a very attentive hearing.

In addition to our submission, there were some excellent submissions supportive of the proposed legislation and/or what it represented in terms of individual choice. This was particularly so on 31 August (eg those of representatives of the Neuro Muscular Alliance, Tasmania, Lynsey Spaulding, and of the MS Society of Tasmania, Heather Francis, Dr Roger Hunt, Marshall Perron, Prof Margaret Otlowski and Dr Phillip Nitschke).

We provide brief information below on the submissions on each day. We encourage you to read at least the submissions that are of most relevance to you, particularly if you are a member of an organisation or religious group that made a submission that did not represent your views.

Nick McKim has advised that he will move for debate on the Bill, regardless of the outcome of the inquiry. We encourage you to write to that organisation, or to your MPs, before the debate on the Bill.

## **ACTION SINCE THE PUBLIC HEARINGS**

### **Additional submission DwDTas**

After our public submission we provided an additional written submission to the inquiry, presenting an analysis of other public hearing submissions, principally those on 10 August and 24 August for which transcripts had become available.

In the submission, we gave examples to illustrate our conclusion that many of the assertions and views expressed in the public hearings do not meet the standards of valid evidence, ie, information which is soundly based, accurate, up-to-date, reasonable and relevant. We highlighted major inaccuracies and misrepresentations and the conclusions reached from them that are not logical or reasonable.

We commented on key political tactics such as the use of highly emotive and negative language to influence and manipulate at an emotional level (in contrast to informing at a rational level). For example, the neutral term “hastening death” was used to describe the effect of some current practices but there was repeated use of “kill” or “killing” to describe what the proposed legislation provides for. Among the most extreme language was that of AMA President, Dr Chris Middleton, who used the expression “executioners of our patients”, claimed that euthanasia meant “a doctor putting a patient to death” and claimed that “patients will come to distrust their doctors if they think that the doctor might in fact be able to order their demise”.

Other common political tactics included the exaggeration of the risks of the change and inflating the numbers and vulnerability of those it is claimed are threatened by the change, without any credible evidence. This was particularly the case in relation to the claimed negative impact on the doctor/patient relationship and the likelihood of coercion or pressure on people to choose this option.

We concluded with the following points for the consideration of the Committee in determining its recommendation on the best option for all Tasmanians:

- The recommendations of the 1998 Committee have not been effective in providing a realistic and humane option for people who are terminally ill and with intolerable suffering.
- The needs and wishes of these people should be at the centre of consideration.
- No matter how important it is for palliative care to be improved around the State, even with ‘state-of-the-art’ palliative care, there will still be some people whose suffering cannot be relieved (see Dr Hunt’s evidence).
- There is considerable evidence of improved palliative care in those jurisdictions that have introduced legislation for voluntary euthanasia.
- Passing legislation which requires exploration of palliative care options before any medical action which hastens death is likely to be the most effective political action to improve palliative care.
- There needs to be increased openness and transparency around end-of-life situations in our community, particularly where death is hastened.
- The best option for action will:
  - have the minimum of medical, legal and bureaucratic requirements and of time delays that are consistent with appropriate and realistic safeguards;
  - provide those for whom palliative care cannot provide sufficient relief with the same chance of a peaceful and lucid death that is available to those for whom palliative care provides sufficient relief.
- The Dutch and Oregon experiences demonstrate that legalisation of voluntary euthanasia is and should be only the start of a new process. It needs to be accompanied by careful monitoring procedures and a wide range of other action to support compliance and careful practice. There need to be protocols and guidelines and training and education of all medical personnel.

We concluded that some of the options proposed in the public hearings do not meet these requirements, eg non-legislative options. We also expressed concern that the approach suggested by Dr Nitschke would involve additional legalistic and bureaucratic hurdles and potential time delays and risks that are not acceptable. (See below for a summary of his submission on 31 August 2009.)

## **Letters**

DwDTas has written to the Royal College of Nursing Australia asking them to review, as a matter of urgency, the submission by one of their representatives, Professor McDonald, and whether she was expressing her personal views rather than representing the College's reasonable and even-handed policy on voluntary euthanasia. We were particularly concerned about the view she expressed that people who have chosen to die do not belong in a health facility and her suggestion that there should "perhaps be a death industry" to accommodate them. In response to a Committee member who asked if she was aware of people "who have begged, who have asked, who have requested and haven't been able to be provided with euthanasia", Professor McDonald told an irrelevant but highly emotive anecdote about an 18 year old she had witnessed recently "screaming in pain" and "begging to be killed" for three days because "her boyfriend had dumped her". Professor McDonald's conclusion was: "if pain alone is a reason to kill people, then everyone in labour, everyone with a broken heart, is at risk."

We have also written to Will Hodgman, Leader of the Opposition, expressing concerns about Mr Hidding's submission, including about the inaccuracies and particularly about his denigration of the whole community and misrepresentation of those of us who support the proposed legislation. Mr Hidding claimed that 'professional legislators' are superior to the general population, was derogatory about opinion polling generally and particularly of over 80% of the Tasmanian population who consistently support legislation to provide for voluntary euthanasia. He implied that we lack the capacity to understand and respond to the question asked in polls and/or we will take unreasonable positions that must be resisted by 'superior' legislators.

As extraordinary as these views are, they were supported by Mr Hidding with claims for which there is not the slightest evidence and which are not credible. He stated that after the Port Arthur atrocity, at Agfest, "there were **thousands** of people coming up to me arguing the death penalty" (our emphasis). As you know, support for the death penalty is not an inevitable, nor even a common, response to something like the Port Arthur killings. It is impossible to believe that, of the thousands of people it would be physically possible to speak to in a few days at Agfest, there were thousands who supported the death penalty and sought out Mr Hidding to tell him this.

## **BRIEF SUMMARY OF PUBLIC HEARINGS**

### **10 August 2009**

There were no submissions in favour of the Bill. Submissions that were strongly against the Bill were made by Rene Hidding (Liberal MP for Bass), a Catholic delegation including Archbishop Doyle, Father Freeman and Dr McGushin, and the Australian Christian Lobby (James Wallace and Nick Overton). Our second written submission was prompted largely by the inaccuracies and misrepresentations in these submissions, particularly Mr Hidding's.

Dr Keith McArthur, GP Liaison Officer, North West Regional Hospital, stated that he was not in principle opposed to the Bill and that he supported people's right to choose but argued for much better

palliative care services first, particularly on the North West Coast. He also raised the issues of the difficulties in the NW of someone accessing the GPs and specialists to be able to use the provisions of the Bill and the fact that it will not help a lot of people, eg with dementia.

The Reverend Professor Michael Tate stated he was not making a submission on the basis of his faith (as a Catholic priest). He linked his submission to his lectures on war crimes, crimes against humanity and genocide and argued that the Bill is designed to modify the worldwide moral principle that it is wrong to use lethal, deadly force against a person who is not harming or attempting to harm you. He argued that, rather than have legislation, the DPP and the Courts should continue to exercise their discretion not to prosecute.

### **24 August 2009**

All of the submissions were against the Bill except for Nick McKim's and that of DwDTas. They included submissions from Southern Cross Care representatives (former Premier, Ray Groom, Dr Helen McArdle and Ms C Wallace); the Very Reverend Richard Humphrey Dean of Hobart and representing the Anglican Diocese); Royal College of Nursing, Australia representatives, Ms Debra Cerasa and Professor Tracey McDonald; AMA representatives, Professor Ray Lowenthal and Dr Chris Middleton; and Dr Paul Dunne.

### **31 August 2009**

There were more submissions in favour of legislation on 31 August including those by Lynsey Spaulding, Neuro Muscular Alliance, Tasmania, and Heather Francis of the MS Society of Tasmania. They indicated that, although the organisations they represented do not have a formal position on dying with dignity legislation, there is strong support for their clients to have the choice to make their own decisions and that having this choice may allow some sense of control about their lives.

There were then two submissions opposed to the legislation. The first was by Professor Jeff Malpas, Professor of Philosophy, University of Tasmania, who opposed the legislation and was following up on his joint written submission with Professor Norelle Lickiss. His submission is confusing and he repeatedly stressed how complicated the issues, but the core of his argument seems to be that no individual should have the right to ask someone to kill them because of the burden on doctors of such a request, and families should also have a say.

The second was by phone by Dr Nicholas Tonti-Filippini, the well-known representative on this issue from the Catholic Archdiocese of Melbourne. He stated: "my position is simply that I do not think it is in the interests of people like myself, people who are suffering from a terminal illness, to have the added pressure applied to them of it being possible to end their lives by requesting it. It changes our status in the community. Our lives become contingent upon our continuing to express the view that we want to keep living, and it imposes something of a burden upon us that if we are a burden to others then there is another option that we could end that by requesting the end of our own lives." Later he stated: "We know that the carers and family around us may have in their mind the idea, 'He could end it and basically put himself out of our misery', and that changes the context."

The next submission by phone by Dr Roger Hunt was a very welcome relief, based on his own experience as a palliative care specialist and from the perspective of the organisation, Christians for Choice for Voluntary Euthanasia. There were then two more positive submissions, one by Marshall Perron and another by Professor Margaret Otlowski. All three are well worth reading.

The finer details of the Bill were covered in the submissions and questioning of the Law Society representative, Luke Rheinberger, and Parliamentary Counsel representatives, Ruth Henderson and Katherine Woodward, who expressed major concerns about technical aspects of the Bill.

In the submission by the Royal Australian College of Psychiatrists representatives, Dr Martin Morrissey and Dr Joanna Bakas, there were serious doubts raised about the availability of psychiatrists to meet the requirements of the Bill.

The Coroner's evidence was provided in camera so we have no idea what that was.

Dr Phillip Nitschke provided the last submission of the day. He expressed his strong support for the right of people in certain circumstances to get lawful help to die. He strongly disagreed with the claim by the Australian Christian Lobby that the paper "Seven Deaths in Darwin" showed that it is impossible to legislate for this issue with safeguards. He argued that the NT legislation had worked, and the proposed Tasmanian Bill could too, but he also outlined his view of the difficulties with the NT legislation. There was considerable questioning and responses about what had happened in the NT. He argued that the final decision-making should not be left to doctors but by a non-medical person such as a judge, magistrate or even a committee of peers or a jury.

### **NEWS ON V E FROM AROUND AUSTRALIA**

There are two voluntary euthanasia bills currently before the S A Parliament, one before each House. The aim of each bill is to allow a competent adult to receive medical help for a peaceful death in carefully controlled situations.

W A Parliament will soon also have a bill before it, to be introduced by Greens MLC, Robin Chapple. Premier Barnett will allow Liberal MPs a conscience vote.

DWDV has requested that voluntary euthanasia be referred to the Victorian Law Reform Commission as part of a general review of the Medical Treatment Act (which allows Victorians a statutory right to refuse medical treatment).

### **ADVANCE HEALTH CARE DIRECTIVES**

Two recent Australian legal decisions show the strength of properly executed advance health care directives.

In *Hunter and New England Area Health Service v A [2009]* the Supreme Court of NSW considered the status of an advance health care directive, executed when A was competent, and which refused "procedures involving the medical use of [his] own blood".

The court held that the advance directive compelled the hospital to withdraw treatment:

*If an advance care directive is made by a capable adult, and is clear and unambiguous, and extends to the situation at hand, it must be respected ... (I)t is not necessary, for there to be a valid advance care directive, that the person giving it should have been informed of the consequences of deciding, in advance, to refuse specified kinds of medical treatment.*

The judge added "I accept that the result of withdrawal of dialysis will be to hasten Mr A's death. That is a consequence of the decision that he made [in advance] ...What my orders did was recognize his right to make that decision".

This decision further reinforces the common law that competent people are entitled to make their own decisions about their lives.

In *Brightwater Care Group v Rossiter [2009]* Martin CJ (WA Supreme Court) determined that Mr Rossiter (a quadriplegic) had the mental capacity necessary to make an informed decision in respect of future provision of treatment ... and could do so with a full appreciation of the consequences of that decision.

Martin CJ recognized the well-established common law principle of the right to autonomy or self-determination. He also recognized that an individual with full capacity is not obliged to give consent to medical treatment, even if the failure to treat will result in the loss of the patient's life. This principle applies without regard to the reasons for the patient's choice, and irrespective of whether the reasons are rational, irrational, unknown or even non-existent.

In brief then, an advance health care directive, created by a capable individual, must be respected if it applies to the situation at hand. Further, doctors must provide palliation of symptoms caused by the refusal of treatment, even if that refusal of treatment will be likely to result in death. Finally, a person does not need to be terminally ill or dying to make a decision to refuse treatment which will almost certainly result in his/her death.

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