



## VOLUNTARY ASSISTED DYING - THE BASICS

### ISSUES FOR MPs

The question about voluntary assisted dying legislation is no longer 'why?' but 'why not?'

The core issue for Members of the Tasmanian Parliament when considering this question is their response to the people at the end of their lives with intolerable, unrelievable suffering, due to advanced, incurable and irreversible medical conditions and with no chance of recovery, and who want respect for their choice to end that suffering through a legal, peaceful and dignified death with their doctors' agreement and help.

There have been significant changes since the last time a Voluntary Assisted Dying Bill was debated in the Tasmanian Parliament in 2013. More Parliaments<sup>1</sup> have passed assisted dying legislation, most recently Canada and California. There have been more judicial and parliamentary reviews<sup>2</sup>, with the Victorian Parliamentary inquiry into end of life choices<sup>3</sup>, which reported in June 2016, as the most recent and the most relevant to Tasmania.

All these thorough, independent reviews have found consistently that, based on quality evidence:

- Laws in a number of Western democratic countries and states, for regulated, monitored, doctor-provided voluntary assisted dying in restricted circumstances, are safe, responsible and valued.
- The laws are meeting the needs of some people at the end of their lives who are experiencing great suffering that will only effectively end with their death.
- The laws are principles-based, reflecting respect for competent adults and their doctors making voluntary, informed choices.
- They also address what are serious deficiencies in our current laws, and resulting medical practices, which are inconsistent, ineffective and causing harm.

There are sound reasons to believe that a law for doctor-provided voluntary assisted dying, with its multiple safeguards, will achieve the same benefits for Tasmanians, with the same safety and prevention of abuses.

### EVIDENCE

There are many sources of sound evidence of the value of voluntary assisted dying legislation and which refute claims made by opponents. The most recent, relevant evidence is from the Victorian inquiry, which led to its recommendation in favour of a legal assisted dying framework.

Data from the Palliative Care Outcomes Collaboration<sup>4</sup> is important when considering mistaken claims that palliative care has advanced enough to relieve all end-of-life pain or suffering. The project at the University of Wollongong is federally funded and now includes data collected from a large number of palliative care services in all States. The data shows that, although palliative care continues to improve, not all pain and other suffering (eg breathing problems) is being relieved, despite the skills and efforts of doctors and services. For example in the July-December 2015 report, only about 50% of patients who had moderate/severe pain and distress from that pain at the beginning of an episode of palliative care reported mild or no pain or distress at the end of that episode.<sup>5</sup>

The personal experiences and testimonies of many people add to this data, showing the human face and reality of the end of some people's lives. There are many in submissions and evidence to the Victorian inquiry, some included among the 72 testimonies in *Damage Done*<sup>6</sup>. There were many more that could have been included from DwDTas members and Committee and other Tasmanians.

They make harrowing reading but are important to show the adverse effect of current laws on the community. As the Victorian Committee concluded: "*The Committee rejects maintaining the status quo as an inadequate, head-in-the-sand approach to policy making and the plight of the Victorians discussed in this Report.*" (pxxvii)

The 'Go Gentle Australia' organisation, initiated by Andrew Denton, in cooperation with organisations like DwDTas and other advocates of voluntary assisted dying laws, is also providing information resources in support of such laws. Another independent resource is the Australian Centre for Health Law Research at QUT<sup>7</sup>, including the new End of Life Law site<sup>8</sup>.

Key findings of the Victorian inquiry are set out below with page numbers from the report for follow-up to get more detailed information.

### YOUR RIGHT TO CHOOSE

## Report of Victorian inquiry into end of life choices

### 1. Real people, real suffering

- *Prohibition of assisted dying is causing some people great pain and suffering. (page xx)*
- *The Committee received compelling evidence that the nature of dying for people with terminal illness and chronic and degenerative diseases under Victoria's existing end of life legal framework can be difficult and sometimes harrowing for individuals, their families and communities and for law enforcement. (p193)*
- *People suffering from terminal illness and serious chronic and degenerative diseases gave evidence about the angst and frustration they feel at being unable to choose to end their irremediable pain and suffering, and to die at home surrounded by loved ones. (p193)*

### 2. Desperate people, desperate measures

- *Some people are choosing to stop having treatment, knowing that this will result in their imminent death.*
- *Others spoke of the trauma of watching seriously ill loved ones refuse food and water to expedite death and finally relieve their suffering.*
- *Family members, the Coroners Court of Victoria and Victoria Police gave evidence about how people experiencing an irreversible deterioration in health are taking their own lives in desperate but determined circumstances.*
- *Research shows that some doctors will do what they consider to be necessary to end a patient's suffering when they are at the end of life. This may be through continuous palliative sedation or intensified alleviation of pain, even if this may unintentionally result in death. (All p193)*

### 3. Overseas voluntary assisted dying laws are providing a safe, effective and valued option

- *We found no evidence of institutional corrosion or the often cited 'slippery slope'. (pxvii)*
- *The Committee is satisfied, through its research into international jurisdictions, that assisted dying is currently provided in robust, transparent, accountable frameworks. The reporting directly from such frameworks, and the academic literature analysing them, shows that the risks are guarded against, and that robust frameworks help to prevent abuse. (p212)*
- *The Australian Christian Lobby, the Catholic Archdiocese of Melbourne, Doctors Opposed to Euthanasia, the Australian Catholic Bishops Conference, and the Australian Family*

*Association, amongst others, suggested that safeguards in assisted dying frameworks cannot provide adequate protection for the vulnerable. (p216)*

- *The data from these jurisdictions, the academic literature, and what the Committee learned by meeting with doctors and other experts shows that the concerns about abuse have not eventuated. The eligibility criteria and safeguards are restricting access to only those who qualify, and protecting vulnerable people. (p216)*
- 4. **The law and its application are inconsistent, unfair and with negative effects**
  - *Laws regarding providing assistance to die are inconsistent. On one hand, doctors, on a patient's request, can withdraw life sustaining treatment with death the certain outcome, while they can also deliver lethal doses of morphine and other drugs, as long as the intent is to relieve pain. On the other hand, a loving husband who assists his frail, suffering and near death wife to die could be guilty of murder, while a person near death and in unacceptable pain, cannot receive help to end their own suffering. (pxvi)*
  - *While the outcome achieved may appear just on a case-by-case basis, the reliance on individual discretion to achieve just outcomes rather than the systematic implementation of the law threatens to undermine public confidence in the administration of justice and bring the law into disrepute. (p173)*
  - *The state of the rule of law is compromised where there is a considerable gap between the law in theory and its application in practice. (p176)*

<sup>1</sup> In another Issues Paper, we will identify the details of all existing legislation and legal provision for assisted dying in comparison with the draft Tasmanian Voluntary Assisted Dying Bill 2016. The national Canadian legislation was passed in June 2016 and the Californian *End of Life Option Act* was signed into law by the Governor in October 2015.

<sup>2</sup> Judicial and parliamentary reviews with consistent findings have been done by the Supreme Court of Canada, the Quebec Dying with Dignity Parliamentary Committee and the Joint Select Committee of the Canadian Parliament, as well as the Victorian inquiry into end of life choices. Other reviews have included those of the Canadian Medical Association, the Royal Society of Canada and the UK Commission on Assisted Dying.

<sup>3</sup> Details of the inquiry, including the final report, a summary report, over 1000 submissions, and evidence at hearings (including from the Coroner's Court) are available at

<http://www.parliament.vic.gov.au/lsic/inquiry/402>.

<sup>4</sup> See <http://ahsri.uow.edu.au/pcoc/index.html>.

<sup>5</sup> See the report for Jul - Dec 2015 -

<http://ahsri.uow.edu.au/content/groups/public/@web/@chsd/@pcoc/documents/doc/uow213151.pdf>

<sup>6</sup> Publication of 'Go Gentle Australia'. Hard copies will be made available for all MPs. A copy and other material (eg podcasts) can be downloaded from [http://www.gogentleaustralia.org.au/the\\_damage\\_done](http://www.gogentleaustralia.org.au/the_damage_done).

<sup>7</sup> <https://www.qut.edu.au/research/our-research/institutes-centres-and-research-groups/australian-centre-for-health-law-research>

<sup>8</sup> <https://end-of-life.qut.edu.au/>