

# HOUSE OF ASSEMBLY

20<sup>TH</sup> OCTOBER 2011

## CRIMINAL LAW CONSOLIDATION (MEDICAL DEFENCES—END OF LIFE ARRANGEMENTS) AMENDMENT BILL

**Mr PEDERICK:** I want to make a general contribution with regard to clause 3, if that is appropriate. I think clause 3 is fairly general—

**The CHAIR:** Clause 3 seems to a giant megalith sort of clause. It would be good if, as you are going along, you could tell me what specific bits of clause 3 you are referring to—if possible.

**Mr PEDERICK:** I want to speak about the bill in general terms, and I think clause 3 gives me that leeway. I would like to bring members' attention to the Consent to Medical Treatment and Palliative Care Act 1995. I am sure many members in this house and in the other place have researched this act and what it does in terms of the arrangements for medical care or treatment for people, whether they want to give forward directives on what

care they do or do not require should they not have the capacity to make that decision. Part 2—Consent to medical treatment, division 2—Anticipatory grant or refusal of consent to medical treatment goes through a whole raft of clauses about what can be done there.

To cut to the chase, in the palliative care act are the arrangements we are obviously talking about, in the bill before the house, about the protections for doctors and medical personnel in case they be charged with some form of criminal offence if a member of the family wants to bring that on. I just bring to the attention of the house Division 2—The care of people who are dying. Section 17 states:

(1) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress.

I think that is a very important part of the current act.

Subsection (1) continues:

(a) with the consent of the patient or the patient's representative; and

(b) in good faith and without negligence; and

(c) in accordance with proper professional standards of palliative care,

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

Section 17 then states:

(2) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, is, in the absence of an express direction by the patient or the patient's representative to the contrary, 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 in a moribund state without any

real prospect of recovery or in a persistent vegetative state.

(3) For the purposes of the law of the State—

(a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1) does not constitute an intervening cause of death; and

(b) the non-application or discontinuance of life sustaining measures in accordance with subsection (2) does not constitute an intervening cause of death.

Section 18, the saving provision, states:

(1) 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.

(2) This act does not authorise a person to assist the suicide of another.

I may be wrong and I am not a lawyer, but in reading the Consent to Medical Treatment and Palliative Care Act 1995 I would have thought that there are sufficient safeguards in our current law to protect those in the health profession, especially doctors and specialists, from any criminal liability if someone chose to go down that path. In fact, I repeat section 17(1):

A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress.

I have witnessed this. I witnessed my father-in-law passing away a couple of years ago, and it was pretty tough; but, at the end of the day, we knew that he was getting the best of care at Ashford Hospital. We were told at the end, and I knew the day I saw him for the last time, that he might have three weeks to live, but I think

for his benefit, because he had had enough, he slipped away in the next week and a half.

I still do not condone endorsing euthanasia, because I think the doctors know damn well what they are doing. They know that a side effect of giving treatment may be death and I believe under the current act they are fully protected. I would like to read a letter from the Australian Medical Association of 19 October:

Dear Politician

Re: Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill 2011

The AMA(SA) remains concerned in regard to the latest amendments by Gardner to the Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill 2011 (proposed by Hon Stephanie Key MP).

The amendments propose that prior to patients receiving 'end of life' treatment that may hasten death they are to be reviewed by two independent specialists, one of whom needs to be a psychiatrist. This is in order to

increase the legal defence for a doctor should they face a criminal action. The reason this is seen as necessary of course is that the true underlying purpose of the Bill is the loosening of the present access criteria to effective palliative care to allow patients who do not have a terminal illness to receive treatment that may hasten death. This is seen by the AMA(SA) to amount, on any reasonable objective view, to euthanasia.

The proposal also ironically creates additional barriers to the provision of palliative treatment than presently exist under the current Consent to Medical Treatment and Palliative Care Act. The only logical reason for this increased 'defence' is that the actions and intent of the doctor will become more blurred in the eyes of the public and the legal community, again due to the underlying purpose of the Bill.

The proposed amendments not only present a significant additional burden on patients and the doctors providing care in this area, they are logistically unworkable due to the psychiatric resources in this state. The psychiatric community would also be loath to

be involved in such activity given the obvious difficulties of assessment of patients, many who would present with confusion related symptoms. The legal risk upon the psychiatrists as a critical part of the decision making clinical team would also be a deterrent.

The AMA(SA) has previously stated the Bill needs to be debated under its true purpose of allowing euthanasia and clearly differentiated from palliative care. The amendments if accepted will be a deterrent to many doctors being involved in palliative care.

The AMA(SA) supports the principles of patients having access to high quality palliative care. We support the autonomy of doctors to provide this treatment free from the risk of being accused of aiding and assisting suicide, conducting manslaughter, or partaking in any other form of criminal activity where death is hastened as a result of quality palliative treatment. We support the privacy of the patient-doctor relationship and engagement with their families at the time of discussing treatment. We support legislation that supports these principles in the domain of palliative care.

In summary, this remains a Euthanasia Bill that will damage palliative care in South Australia and the AMA(SA) opposes it.

I support that. I also want to make some comments from a letter that Right to Life Australia has written to me.

Dear Mr Pederick,

I am writing to you to express my utmost concern at the thought of the S.A. parliament legislating to give to one group in the community—doctors—the power to end life—a power not even possessed by our Supreme Courts!

The Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill 2011 is nothing short of a passport to suicide—physician assisted suicide.

As you must be aware the bill changes the law on homicide to allow a treating doctor to give a deliberate lethal dose to a patient aged 18 years and over where the patient claims to have a medical condition that makes life 'intolerable' for them.

This encompasses a whole range of medical conditions both major and minor. Of particular concern is the category of mental illness.

On the one hand the community demands of governments that more be done for those who are mentally ill, especially those with depression. The level of suicide is alarming especially amongst young men. Interviews with their parents reveal their agony at the loss of a beautiful child to suicide.

Yet here we are preparing to legislate to allow a physician to comply with a request to end the life of someone over 18 years , who may be very depressed or have bipolar disease or schizophrenia or whole range of medical conditions.

To legislate in this fashion is to embrace the principle of the life not worthy to be lived. Why strive to provide good medical treatment for people when they can ask for an early death ?

Ultimately, the so-called right to die, if allowed, will ultimately become a duty to die. I urge you to reject the bill.

Yours sincerely, Margaret M. Tig h e, Vice President.

I endorse those comments. I have some major concerns that there may be instances, for a whole range of reasons, where people believe their life is not worth living; yet I have heard of various cases where people have been in that very situation and then pulled through with proper medical treatment and lived for quite a few years.

In fact, one of my uncles was a World War II veteran. I got a call that he had been admitted to the Mary Potter Hospice and that he was leaving this world. I thought, 'Poor old uncle Les. He's fought cancer over many years, various forms. And you know what? He came out and he is still alive today,' and that was several months ago. So, tough as he was when he was on the *Shropshire* cooking for the troops. This is a conscience vote. People can vote how they want, but please think about your conscience if you vote for this bill.