



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON END OF LIFE CHOICES IN THE ACT

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Submission Cover Sheet

End of Life Choices in the ACT

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Exit International (ACT Chapter)

Submission to the

**Select Committee on
End-of-life Choices in
the ACT**

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KEY MESSAGES

1. This submission is concerned with the right of every adult of sound mind to have choice in his or her end-of-life decision-making and to implement plans for their end-of-life so that their death is reliable, peaceful and at a time of their choosing. Some of this submission's key messages, highlighted throughout the submission, are listed below.

KM1. The ACT Chapter of Exit International (Exit ACT) supports the right of every adult of sound mind to implement plans for their end-of-life so that their death is reliable, peaceful and at a time of their choosing.

KM2. If an individual has a right to determine what is right for his or her own life over many decades, then voluntary euthanasia must be an option for all people.

KM3. Exit ACT strongly encourages the ACT Government to do what it can to support an individual's right to choose euthanasia during its current term.

KM4. Exit ACT members are more concerned about the quality, rather than the quantity aspects, of their lives.

KM5. People are obtaining drugs or other means of peacefully ending their life for possible use in case they make a decision to end their life because of terminal or chronic illness, debilitation or other valid reasons.

KM6. The ACT Government needs to recognise that the use of some illegal drugs is a common option in the ACT to ensure a successful peaceful death for people.

KM7. Exit ACT members, and Exit members internationally, prefer the human rights model for voluntary euthanasia. This model gives autonomy to each individual so that he or she can use their legally acquired drugs at a time and place of his or her choosing.

KM8. The human rights model can be regulated successfully, and it is Exit ACT's preferred option for the regulation of voluntary euthanasia in the ACT.

KM9. If the Euthanasia Laws Act (or relevant sections) could be repealed, then the introduction of euthanasia regulation in the ACT could give people the option of dying a peaceful death, consistent with their wishes. It might also legalise certain currently illegal drugs or give regulatory oversight to some current activities.

KM10. There are risks associated with the possible abuse of any legislation. These risks can be addressed successfully without further reducing access for any people who may wish to take up the legal options. Voluntary euthanasia legislation could specify eligibility criteria, and include compliance and enforcement provisions, penalties to punish abuse and evaluation schemes.

KM11. Exit ACT believes that, realistically, very few if any ACT residents would be able to meet Victoria's requirements and access the assistance provided in Victoria for its residents.

KM12. Exit ACT believes the ACT should have the opportunity to implement its own voluntary euthanasia legislation and that any legislation should not be limited to requiring that eligible persons must be terminally ill.

KM13. The ACT and its Government have three main choices with respect to the Commonwealth's Euthanasia Laws Act: maintaining the status quo, seeking repeal of that Act and acting to circumvent that federal legislation.

KM14. The ACT Government would be justified in making very strong protests about equity and other issues if an anti-euthanasia group in the federal government sought to interfere yet again in ACT politics to overturn an ACT Government direction to the DPP or prevent repeal of the Euthanasia Laws Act.

KM15. Doctors, most notably Dr Philip Nitschke, are providing information on end-of-life options in the ACT.

KM16. The ACT Government may need to find a balance between developing regulatory safeguards to support doctors and individuals without curtailing voluntary euthanasia activity so that it is too hard to pursue.

KM17. Euthanasia has been a complex issue but one that can be addressed if there is the political and community will to do so.

KM18. Exit ACT hopes that the ACT can find a way to regulate or otherwise oversee voluntary euthanasia so that each ACT citizen may choose the end-of-life path that best suits him or her.

INTRODUCTION

2. This submission from the ACT Chapter of Exit International^{1,2} (Exit ACT) supports the right of every adult of sound mind to implement plans for their end-of-life so that their death is reliable, peaceful and at a time of their choosing. Exit ACT believes that control over one's life and death to be a fundamental civil right from which no one of sound mind should be excluded.

KM1. The ACT Chapter of Exit International (Exit ACT) supports the right of every adult of sound mind to implement plans for their end-of-life so that their death is reliable, peaceful and at a time of their choosing.

3. In particular, Exit ACT members strongly believe that ACT residents should have the right to determine what is right for their own bodies and, at a time to be decided by them, have the right to end their own life in a peaceful manner. Many Exit members in Australia and overseas have already obtained drugs such as Nembutal (illegal in Australia), which is used in some European jurisdictions (Switzerland), or other means of peaceful death, to be used when they see fit.

4. The right of people to act on their end-of-life choices, including the option of voluntary euthanasia, is an important social and economic issue for the ACT Government to consider. Many people acknowledge that a peaceful death, especially when one is terminally ill, chronically ill, or debilitated, is more desirable than pain, suffering and indignity. This premise underlies the thinking of those whose end-of-life choices include the option of voluntary euthanasia.

5. If an individual has a right to determine what is right for his or her own life over many decades, then voluntary euthanasia must be an option for all people (and especially as suicide is not a crime). How one lives and can end one's life should be the responsibility of each individual. It should not be dictated by religious and related organisations that oppose end-of-life choices or be determined by a government. The option of real choice is crucial. On that basis, anyone who argues for freedom of choice in religion should correspondingly support freedom of choice in end-of-life decision-making.

KM2. If an individual has a right to determine what is right for his or her own life over many decades, then voluntary euthanasia must be an option for all people.

6. Ordinarily, it would go unchallenged that an individual should be able to determine what is right for his or her life. That voluntary euthanasia crosses a view held by many mainstream religions and challenges a simplistic and oft-held historical belief that people should never want

¹ Exit International is headed by Dr Philip Nitschke and takes a human rights approach to a person's right to determine the time and manner of their passing, see <https://exitinternational.net>.

² Exit International's Vision, Mission and Values are at Appendix 1.

to die has raised it to prominence in public debate. But there is now a more informed and educated citizenship. Times have changed, and dying is now talked and thought about very openly. Our moral standards and expectations about end-of-life rights have been evolving.

7. Voluntary euthanasia is an ethically acceptable and practical option that all individuals should be able to consider and act upon if they so wish. Responsible governments should ensure that any voluntary euthanasia regulatory system could mitigate any risks associated with euthanasia. This is not difficult. Despite claims to the contrary, jurisdictions overseas have implemented effective voluntary euthanasia regulatory systems that work well.

8. Exit ACT strongly encourages the ACT Government to do what it can to support an individual's right to choose euthanasia during its current term. This would be a major achievement that would assist and give hope to many ACT residents, particularly those who are growing older and wish to enjoy a quality life.

KM3. Exit ACT strongly encourages the ACT Government to do what it can to support an individual's right to choose euthanasia during its current term.

9. Exit ACT is willing to assist the ACT Legislative Assembly and ACT Government in its efforts to regulate voluntary euthanasia.

RESPONSES TO THE TERMS OF REFERENCE

1. CURRENT PRACTICES UTILISED IN THE MEDICAL COMMUNITY TO ASSIST A PERSON TO EXERCISE THEIR PREFERENCE IN MANAGING THE END OF THEIR LIFE, INCLUDING PALLIATIVE CARE

10. This submission is concerned with health related and other personal end-of-life matters for people who wish to end their life. Often this is because of terminal or chronic illness, debilitation or other conditions. Some people may not be terminally ill, but be chronically unwell, in pain, unable to move, incontinent, totally dependent on others, or have other personal life conditions that make life unbearable. These reasons constitute a good reason to die for some, but these people are not terminally ill and don't need palliative care. Their reasons for voluntary euthanasia are no less compelling.

11. Exit ACT members have no wish to waste their savings on futile medical intervention and mounting aged care support, nursing home, palliative care and other costs when they wish their funds to be spent on far better purposes after they die, including assisting others (whether family, charities, institutions etc.). Exit ACT members should have a choice about where their hard earned funds should be spent and not be required to have their estates diminished by hefty personal expenditure related to unwanted medical support interventions.

12. Exit ACT members are more concerned about the quality, rather than the quantity aspects, of their lives. If their quality of life is unacceptable, they do not wish to delay the inevitable (whether terminally ill or not), and as policies currently stand, they have to take matters into their own hands. This then raises issues for them and others.

KM4. Exit ACT members are more concerned about the quality, rather than the quantity aspects, of their lives.

13. ACT and Australian medical practitioners are highly qualified. Many hospital and in-care patients at the end-of-life prefer and are given substantial attention in palliative care. Subject to the availability of funds in government budgets, the best possible care should be provided for these people.

14. Two points are relevant. Palliative care:

- does not alleviate all pain, suffering and indignity for those who experience terrible health situations and don't want to endure them any longer. Palliative care cannot adequately address breakthrough pain with cancer patients. For these people, the option of voluntary euthanasia (or physician assisted suicide) needs to be a real and viable option

- should not be mandated or forced upon those who would rather have the option of voluntary euthanasia. Legislated voluntary euthanasia would be substantially cheaper than extended palliative care for governments. On this point, it should be noted that when governments have chosen not to legislate for voluntary euthanasia, then they are effectively choosing to spend scarce health resources on those people who would rather have the option of voluntary euthanasia over palliative care.

15. Exit ACT is aware that throughout Australia, and elsewhere in the world, many people are obtaining drugs or other means of peacefully ending their life. These drugs are for possible use in case a person makes a decision to end his or her life because of terminal or chronic illness, debilitation or other valid reasons. This does not require the intervention of medical or other specialists. In many cases, these people are acting outside of euthanasia regulatory systems or acting in the absence of regulatory systems, as is the case in the ACT. However, this is the only option these people have besides far more gruesome options, which others unfortunately have already fallen back on. There are options that no one should have to consider, let alone try to use.

KM5. People are obtaining drugs or other means of peacefully ending their life for possible use in case they make a decision to end their life because of terminal or chronic illness, debilitation or other valid reasons.

16. The ACT Government needs to recognise that the use of some illegal drugs is a common option in the ACT to ensure a successful peaceful death for people. Legal methods in some medical circumstances are also available and are legitimate options for other people. Note that such legal methods do not obviate the need for supportive legislation, as these methods might require some technical or other expertise, which can be difficult to obtain in a timely manner. To spend taxpayer funds to stop these illegal activities would be a costly exercise that would result in some people having a less than peaceful end, which is unacceptable. Alternatives include:

- working to develop a system where people, who wish to end their life because of terminal or chronic illness, debilitation or other reasons, or perhaps for all people over 70, could have access to currently illegal end-of-life drugs for their own personal use to be used if needed
- a government-supported euthanasia regulatory system (not yet possible in the ACT), or lobbying or other activity to permit a government regulatory system
- other means of circumventing the Euthanasia Laws Act 1997 (see Box 1 below for relevant text to be amended), so enabling ACT residents to access end-of-life options as they wish (and when they are not necessarily on their deathbed). See response to term of reference 5 for details.

KM6. The ACT Government needs to recognise that the use of some illegal drugs is a common option in the ACT to ensure a successful peaceful death for people.

2. ACT COMMUNITY VIEWS ON THE DESIRABILITY OF VOLUNTARY ASSISTED DYING BEING LEGISLATED IN THE ACT

17. Exit ACT members would welcome government regulated voluntary euthanasia in the ACT that meets the needs of all ACT residents. However, many Exit ACT members do not want the medical model³ to be implemented. Such a model requires the involvement of medical practitioners to dispense drugs, attest to one's mental fitness and so on. This is the euthanasia regulatory model that is being legislated in Victoria and has been legislated in many jurisdictions elsewhere, but it is limited, cumbersome, time-consuming and potentially costly for people to access and use. The health and energy possessed by people who would qualify for access to voluntary euthanasia through such legislation may be insufficient to enable them to negotiate the significant regulatory hurdles.

18. Exit ACT members, and Exit members internationally, prefer the human rights model⁴. This model gives autonomy to each individual so that he or she can use their legally acquired drugs at a time and place of his or her choosing. This is the more ethically sound model and aligns with John Stuart Mill's libertarian principle that 'over himself, over his own body and mind, the individual is sovereign.'⁵

KM7. Exit ACT members, and Exit members internationally, prefer the human rights model for voluntary euthanasia. This model gives autonomy to each individual so that he or she can use their legally acquired drugs at a time and place of his or her choosing.

19. There are of course regulatory issues involved here. The euthanasia debate in Australia has been developing but, regrettably, is still immature. Spurious and ill-informed arguments by opponents still attract media attention.

20. The human rights model can be regulated successfully and it is Exit ACT's preferred option for the regulation of voluntary euthanasia in the ACT. However, it is accepted that realistically this may not constitute the ACT Government's first attempt to legislate for voluntary euthanasia, given regulatory models found elsewhere and the difficulty in educating the public and overcoming other hurdles. Society wants assurance that people who are not of sound mind or are not well informed about end-of-life issues do not have ready access to drugs that cause death. Legislation would help provide this assurance.

KM8. The human rights model can be regulated successfully, and it is Exit ACT's preferred option for the regulation of voluntary euthanasia in the ACT.

³ The medical model for voluntary euthanasia involves the medical fraternity being involved in the implementation of individuals' end of life decision-making. This can occur through the administration of drugs, the assessment of a person as terminally ill, or by attesting to the state of mind of the person (in particular, are they of sound mind) requesting euthanasia. The medical model is currently the predominant voluntary euthanasia regulatory model legislated in jurisdictions.

⁴ The human rights model of voluntary euthanasia provides individuals with the rights and means to make end of life decisions about their own lives, without the involvement of medical doctors at the implementation stage.

⁵ Mill, JS 1974, *On Liberty*, Penguin, Melbourne.

21. In the Netherlands, where voluntary euthanasia has been legal since 2002, options being considered include a system that would permit euthanasia for those who are not necessarily terminally ill⁶. The ACT Government should monitor these developments closely with a view to future implementation in the ACT.

22. Exit ACT believes the limitations of a Victorian-style medical model for assisted dying should be recognised publicly by the ACT Government if such a model is ever implemented in the ACT. In addition, it would be desirable if undertakings were made to pursue a broader more inclusive model that best meets the needs of ACT residents as far as practicable in the medium term.

23. Exit ACT runs a stall at the Seniors Expo early each year. From our experience, the very large majority of those visiting the stall support a person's right to voluntary euthanasia. They might not want voluntary euthanasia themselves, but they rightfully acknowledge that they ought not be able to object to another's right to euthanasia if that person so chooses.

3. RISKS TO INDIVIDUALS AND THE COMMUNITY ASSOCIATED WITH VOLUNTARY ASSISTED DYING AND WHETHER AND HOW THESE CAN BE MANAGED

24. Voluntary euthanasia is ethically sound. On this basis, and the successful implementation of voluntary euthanasia legislation in jurisdictions elsewhere, it is appropriate then to proceed to a consideration of associated regulatory issues.

25. Government regulation is often necessary to mitigate risks and manage many areas of human behaviour and activity by establishing eligibility conditions, penalty regimes for non-compliance and evaluation schemes etc. And so it should be for voluntary euthanasia.

26. Currently, the Federal Government's Euthanasia Laws Act prohibits the ACT from legislating for voluntary euthanasia. If that Act (or relevant sections) could be repealed, then the introduction of euthanasia legislation in the ACT could give people the option of dying a peaceful death, consistent with their wishes. It might also legalise certain currently illegal drugs or give regulatory oversight to some current activities.

KM9. If the Euthanasia Laws Act (or relevant sections) could be repealed, then the introduction of euthanasia regulation in the ACT could give people the option of dying a peaceful death, consistent with their wishes. It might also legalise certain currently illegal drugs or give regulatory oversight to some current activities.

27. If the sorts of questions raised in the Australian Government Guide to Regulation are addressed, then the ACT Government has the three options as set out in the response to term of reference 5.

⁶ See story at <https://www.theguardian.com/world/2016/oct/13/netherlands-may-allow-assisted-dying-for-those-who-feel-life-is-complete>, accessed 24 January 2018.

28. Legislation for a medical model of voluntary euthanasia in jurisdictions elsewhere limits eligibility to those who are terminally ill, provides numerous conditions that need to be met (residence requirements, cooling off periods, confirmation of ill health by experts etc.), severe penalty regimes for non-compliance, evaluation schemes and so on.

29. As noted above however, a restriction to being terminally ill will not meet the needs of many Exit ACT members, many of whom prefer the human rights model that does not require the intervention of medical and other professionals.

30. In Appendix 2, many of the concerns and risks associated with voluntary euthanasia regulation (and raised by euthanasia opponents) have been addressed. For example, the arguments that vulnerable people, including some disabled people, could be coerced to have euthanasia, are not supported by evidence overseas, and can be addressed by legislation. These people would have an equal right to access voluntary euthanasia if they so wish, particularly if their conditions deteriorate or impact so negatively on them as to make their life unendurable. Importantly, it will be their choice.

31. There are risks associated with the possible abuse of any legislation. These risks can be addressed successfully without further reducing access for any people who may wish to take up the legal options. But to avoid legislating, for either the human rights or the medical model (see term of reference 2), because of risks that legislation could be abused, is to miss the point of legislation. Voluntary euthanasia legislation should serve and support the majority (although, overseas, only a small percentage use it) who should be able to implement their preferred end-of-life decision with regulatory recognition.

32. Voluntary euthanasia legislation could specify eligibility criteria, and include compliance and enforcement provisions, penalties to punish abuse and evaluation schemes.

KM10. There are risks associated with the possible abuse of any legislation. These risks can be addressed successfully without further reducing access for any people who may wish to take up the legal options. Voluntary euthanasia legislation could specify eligibility criteria, and include compliance and enforcement provisions, penalties to punish abuse and evaluation schemes.

33. The focus of voluntary euthanasia legislation, if it were to be implemented, should be on providing services, access and support to all people who may wish to use a regulated system.

34. Exit ACT believes that the risks associated with not having any supportive legislation are considerable and are likely to worsen, given the desire of a growing number of ACT residents, particularly as they age, for real choices to enable them to bring about their end-of-life in a safe, distress-free and peaceful manner.

4. THE APPLICABILITY OF VOLUNTARY ASSISTED DYING SCHEMES OPERATING IN OTHER JURISDICTIONS TO THE ACT, PARTICULARLY THE VICTORIAN SCHEME

35. The issue of voluntary euthanasia in the ACT should be no more a federal government concern than it is in Victoria. However, Victoria's recently enacted *Voluntary Assisted Dying Act 2017* highlights, from a democratic perspective, a gross inequity between jurisdictions. The Victorian Government has legislated for voluntary euthanasia, yet the ACT, Northern Territory and Norfolk Island are prohibited from doing so. There is no valid reason why a territory should not be allowed to make decisions for the good governance of its citizens when states can do so, including on issues such as voluntary euthanasia.

36. The Victorian Government's Voluntary Assisted Dying Act requires that a terminally ill adult, with less than six months to live, 'be an Australian citizen or permanent resident who is ordinarily resident in Victoria'. Thus, unless ACT residents are expecting to become terminally ill, and can afford to move and settle in Victoria while managing their expected or existing terminal illness, the Victorian legislation cannot benefit terminally ill ACT residents or others who wish to give effect to their end-of-life decisions.

37. Exit ACT believes that, realistically, very few if any ACT residents would be able to meet Victoria's requirements and access the assistance provided in Victoria for its residents. They would need to be wealthy, able to establish residency in a timely way, be judged terminally ill and able to receive appropriate medical treatments at relatively short notice, as newcomers to the state.

KM11. Exit ACT believes that, realistically, very few if any ACT residents would be able to meet Victoria's requirements and access the assistance provided in Victoria for its residents.

38. Therefore, no-one should assume that ACT residents will be able to find ways of accessing the help they need interstate to bring forward the inevitable.

39. This is in itself a major argument for the ACT to develop and implement its own legislation for end-of-life choices. It is a major equity issue for ACT residents, including people who are terminally ill, chronically ill or debilitated, not to be able to access support that is available to others simply because of the Australian Government's prohibition of any ACT legislation that would enable a supportive environment in the ACT for end-of-life advancement (please see discussion under term of reference 5).

40. Regarding jurisdictions outside Australia, a few Australian residents have travelled overseas to be assisted by Dignitas in Switzerland. Such options are very expensive, and beyond the reach of all but the most determined and well-off terminally ill people. It is unacceptable that some terminally ill people should need to seek out options overseas, including under supportive regulatory regimes, so that they can have a peaceful death. Their wishes should be respected.

41. Again, the inability of most to be able to access end-of-life support overseas is a major equity issue. It can be addressed through legislation or other measures designed to support ACT residents locally.

42. The choices available to the ACT Government to address end-of-life matters are outlined in the response to term of reference 5. The covert and legally hazardous nature of activities currently occurring will continue unless the Commonwealth's prohibitions on euthanasia in the ACT can be overturned, or circumvented.

43. Exit ACT believes the ACT should have the opportunity to implement its own voluntary euthanasia legislation and that any legislation should not be limited to requiring that eligible persons must be terminally ill. The preferable position is that any legislation not be limited to defining terminal illness as the only condition warranting consideration for end-of-life assistance.

KM12. Exit ACT believes the ACT should have the opportunity to implement its own voluntary euthanasia legislation and that any legislation should not be limited to requiring that eligible persons must be terminally ill.

5. THE IMPACT OF FEDERAL LEGISLATION ON THE ACT DETERMINING ITS OWN POLICY ON VOLUNTARY ASSISTED DYING AND THE PROCESS FOR ACHIEVING CHANGE

44. Any changes to the Commonwealth's Euthanasia Laws Act would preferably be its repeal, or at least the amendment of relevant schedules such as that shown in Box 1. Both options are straightforward and non-contentious from an administrative perspective.

45. The ACT Government has three main options with respect to the Commonwealth's Euthanasia Laws Act (see Box 1 below). The ACT Government can:

45.1. *retain the status quo*. This will mean many ACT citizens will continue to suffer and lead unnecessarily prolonged lives against their wishes. Furthermore, other ACT citizens, including many elderly, frail and chronically ill, could find they might have to act outside the law to procure illegal drugs so they have something to mitigate any possible end-of-life pain, suffering and associated difficulties that might arise. Little help will be available.

The 'retain the status quo' option will do nothing to assist the slowly ageing ACT population. The health, social and economic circumstances for many ACT residents create increasing and distressing financial and other costs when terminal illness, chronic illness, debilitating health conditions or other personal life conditions are experienced.

The ACT population is highly educated and aware of social change and its impacts elsewhere, including overseas, and would expect its elected government not to continue to accept the status quo forced upon them by the then very conservative and uncaring federal parliament.

45.2. *act (through lobbying) to seek the repeal of the Commonwealth's Euthanasia Laws Act*, so that the ACT can then develop and enact its own legislation governing voluntary euthanasia for ACT residents. This is a recommended option.

Box 1. Excerpt from the Commonwealth's Euthanasia Laws Act.

Schedule 2—Amendment of the Australian Capital Territory (Self-Government) Act 1988

1 After subsection 23(1)

Insert:

- (1A) The Assembly has no power to make laws permitting or having the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.

45.3. *circumvent the Euthanasia Laws Act*, via a direction to the Director of Public Prosecutions (DPP). The main author of this paper raised this option with Chief Minister Jon Stanhope many years ago (he rejected this option; he was personally opposed to euthanasia). This option has legal merit as Professor Ben White, a law professor at the Queensland University of Technology, again raised it at a recent euthanasia forum in Canberra hosted by former MLA, Mary Porter. This is also a valid option.

KM13. The ACT and its Government have three main choices with respect to the Commonwealth's Euthanasia Laws Act: maintaining the status quo, seeking repeal of that Act and acting to circumvent that federal legislation.

46. The circumvention solution described in paragraph 45.3 is as follows. Under section 20 of the ACT's *Director of Public Prosecution Act 1990* (see Box 2), the ACT Attorney-General has the power to direct the ACT DPP not to prosecute persons (doctors) who may assist with voluntary euthanasia (this would include physician-assisted suicide). Conditions could be set out, even if they meant that the doctor had to comply with for example, the rather conservative, but parliamentary-approved, conditions in the Victorian assisted dying legislation.

47. Such an outcome would not be inconsistent with Schedule 2 of the Euthanasia Laws Act (see Box 1). That Act removes the power of the ACT Legislative Assembly to make laws. However, the direction to the DPP would not be a law. It would simply be a direction (to the DPP) not to prosecute those doctors, or others, who assist with euthanasia according to specified conditions. These doctors would be technically guilty of a crime (though no-one would recognise them as criminals), but would not be prosecuted.

48. This is not ideal, but makes some sense. It can be justified on the basis that trying to convict any doctors or other people who assist with euthanasia would be expensive, time consuming and unlikely to result in a conviction. Such a direction would certainly concern those in the federal parliament who introduced and supported the Euthanasia Laws Act. It would also require that at least one local doctor is willing to act under such an arrangement to assist others. Protection from anti-euthanasia protestors for any supportive doctors might also be required.

Box 2. Excerpt from the ACT's Director of Public Prosecutions Act.

20. Directions and guidelines by Attorney-General

The Attorney-General may give directions or furnish guidelines to the director in relation to the performance or exercise by the director of his or her functions or powers.

Without limiting the generality of subsection (1), a direction or guideline may relate to—

(a) the circumstances in which the director should institute or conduct prosecutions for offences; or

(b) the circumstances in which undertakings should be given under section 9.

A direction or guideline shall be of a general nature and shall not refer to a particular case.

49. While such a direction to the DPP could theoretically be overturned in the federal parliament, this would be unlikely and unwise. Victoria now has passed assisted dying legislation, and to deny ACT residents a right that can be exercised, not just hypothesised, for residents of Victoria and potentially in other states, would clearly be arguable as inequitable treatment for ACT Legislative Assembly and hence its residents.

50. In addition, in order to overturn an ACT Government direction to the ACT DPP, another Federal Government debate would need to be led by some of the same socially conservative federal politicians who pushed the first debate over 20 years ago. They might be able to co-opt some additional support now from non-politicians, but such a rear-guard action would be less palatable to a different federal government. It would also likely be rebuffed by both the ACT and wider electorates, which have now endorsed successful social change via the same-sex marriage plebiscite and the consequent legislative change.

51. The ACT Government would be justified in making very strong protests about equity and other issues if an anti-euthanasia group in the federal government sought to interfere yet again in ACT politics to overturn an ACT Government direction to the DPP or prevent repeal of the Euthanasia Laws Act.

KM14. The ACT Government would be justified in making very strong protests about equity and other issues if an anti-euthanasia group in the federal government sought to interfere yet again in ACT politics to overturn an ACT Government direction to the DPP or prevent repeal of the Euthanasia Laws Act.

6. ANY OTHER RELEVANT MATTERS

Doctors assisting with or providing information on voluntary euthanasia

52. Doctors are assisting with and providing information on voluntary euthanasia in Australia now. Doctors may be assisting with euthanasia in the ACT. Doctors, most notably Dr Philip Nitschke, are providing information on end-of-life options in the ACT.

KM15. Doctors, most notably Dr Philip Nitschke, are providing information on end-of-life options in the ACT.

53. Without legislation, it is likely that the current situation will continue or evolve, and this is less than ideal for people wanting to exercise their right to a peaceful death. In April 2014, Dr Rodney Syme, a Victorian doctor, publically admitted⁷ that he gave a dying man the drugs needed to end his life. From all accounts, Dr Syme is a good man, who cares for his patients. If he is not to be prosecuted (and he should not be), surely it is far better to develop a euthanasia regulatory framework rather than pretending that such activities might not or do not occur. In the ACT, if doctors were to be assisting with voluntary euthanasia now, they, like Dr Syme, would be unlikely to be prosecuted.

54. Similarly, Exit International's director, Dr Philip Nitschke cares for people and their wishes and is a source of valuable information to many Australians and people overseas on end-of-life issues. His information and guidance not only fills the regulatory gap left by many governments around Australia that have refused to legislate (or in the ACT's case, been banned from legislating), but it is also immensely comforting to the many thousands of Exit members in Australia and overseas who attend his workshops and read his books on end-of-life options.

55. The ACT Government may need to find a balance between developing regulatory safeguards to support doctors and individuals without curtailing voluntary euthanasia activity so that it is too hard to pursue or only ends up assisting very few. This will be challenging, but it is achievable and manageable.

⁷ See www.theage.com.au/victoria/doctor-admits-giving-dying-man-the-drugs-to-end-his-life-20140427-zr07i.html, accessed 1 February 2018.

KM16. The ACT Government may need to find a balance between developing regulatory safeguards to support doctors and individuals without curtailing voluntary euthanasia activity so that it is too hard to pursue.

Conclusion

56. Exit ACT proposes that the ACT Government should develop a system and processes that give ACT residents the option of voluntary euthanasia. There are no serious impediments to what would be groundbreaking social reform in the ACT.

57. The ACT should aim to improve upon the Victorian legislation and consider a wider remit for voluntary euthanasia options and support. ACT residents will continue to develop, manufacture or import devices or substances that will give them their own end-of-life choice if other options and support are unavailable.

58. Euthanasia has been a complex issue to date, but one that can be addressed if there is the political and community will to do so. There is a great deal of deliberately misleading information from euthanasia's opponents about voluntary euthanasia, but more of the consequences of refusing the right-to-die to many in highly undesirable circumstances are now being brought to light.

KM17. Euthanasia has been a complex issue but one that can be addressed if there is the political and community will to do so.

59. Unfortunately, some media coverage still argues for and seeks prohibition of any moves to improve real access to end-of-life choices. It is becoming more balanced and informed overall and this should be encouraged and supported by the ACT Government in any of its endeavours to improve options for ACT citizens. Considered, factual and well-researched discussion and debate is required. Too often in the media, regulatory questions are posed in response to ethical questions. For example, a discussion about a person's right to die (an ethical issue) is often met with a question such as 'but how will you protect certain groups of people' (a regulatory issue). This logical mismatch does not permit considered debate and can lead to confusion and poor consideration of evidence and facts about the issues.

60. Exit ACT believes there is a compelling case for voluntary euthanasia, that it can be regulated, and that individuals of sound mind should have the right to choose it if they wish.

61. Consequently, Exit ACT wants the ACT to find a way to regulate or otherwise oversee voluntary euthanasia so that each individual may choose the end-of-life path that best suits him or her.

KM18. Exit ACT wants the ACT to find a way to regulate or otherwise oversee voluntary euthanasia so that each ACT citizen may choose the end-of-life path that best suits him or her.

APPENDIX 1. EXIT INTERNATIONAL'S VISION, MISSION AND VALUES

VISION

That every adult of sound mind has the right to implement plans for the end of their life so that their death is reliable, peaceful and at a time of their choosing.

Exit believes that control over one's life & death to be a fundamental civil right from which no one of sound mind should be excluded.

MISSION

To inform members & support them in their end-of-life decision-making.

EXIT VALUES

1. Individual rights

Exit supports an individual of sound mind's right to:

- choose & implement a peaceful death at a time of their choosing
- accept or reject any doctor's involvement in an end-of-life action
- accept or reject palliative care
- request & be granted assistance with suicide if necessary.

Exit rejects the notion that some organisations' moral values, including those of many religions, must be accepted & apply to all other people.

2. Information Provision

Exit provides information on end-of-life options to its members.

3. Individual Empowerment

Exit supports individuals' right to procure drugs & equipment for their end-of-life purposes. Exit does not provide individuals with illegal drugs or equipment.

4. Membership

Exit provides membership on an annual or lifetime subscription basis for people over 50 or who are suffering from serious illness. Other membership is provided at the discretion of the Exit International Director. Membership shows members' commitment and support for voluntary euthanasia.

5. Appropriate Checks

Exit makes reasonable efforts to ensure that members who attend workshops are of sound mind. Exit requires every workshop attendee to complete and sign a disclaimer form.

6. Regulatory Reform & Objective Debate

Exit advocates a regulatory system consistent with the above values that legalises assisted suicide & voluntary euthanasia. Exit supports objective debate on voluntary euthanasia & rational suicide to ensure individual rights are upheld & vulnerable members of the community are kept safe.

Voluntary Euthanasia—Definition

Voluntary euthanasia is a deliberate act intended to cause the death of an individual, at that individual's request, for what he or she sees as being in his or her best interests.

Rational Suicide—Definition

Rational suicide is suicide by mentally competent individuals who are suffering from a serious medical illness or who reasonably envisage a future quality of life that they deem unacceptable.

(This appendix is an extract from <https://exitinternational.net/about-exit/our-philosophy/>, accessed 11 March 2018)

APPENDIX 2. SOME FREQUENTLY ASKED QUESTIONS ABOUT MANAGING REGULATORY RISKS⁸

Shouldn't modern societies protect the vulnerable?

62. Yes. Current voluntary euthanasia regulatory systems require that only terminally ill people are eligible for voluntary euthanasia.

63. People who are vulnerable, not of sound mind, or who might have a depressive illness (for example, a young person who has financial and relationship problems) must be protected in any voluntary euthanasia regulatory regime. They need help and support, and efforts ought to be made to discourage them from suicide. Most people would understand that people in these groups ought to be directed to medical professionals, or organisations that support such people. In Australia, such organisations include Beyond Blue and Lifeline, as well as a range of support organisations targeting particular at-risk groups such as young people grappling with gender/sexuality issues.

64. Many depressed people will have good times ahead in their lives. We ought to do all we can to ensure that they have the best counselling to help them through the occasional down times or more chronic depressive illnesses that many people have. Other vulnerable people need protection in a regulatory system to ensure (as far as possible within any regulatory system) that any end-of-life decisions are free of coercion and are made willingly.

65. However, if a person is terminally ill, chronically ill, debilitated or is otherwise living in unbearable circumstances that clearly will not improve, then his or her well-considered and sane request for a death should not be rejected by those who think they know better than him or her.

66. Regulatory protections are required because we would like to be similarly protected in case we were stricken with a depressive illness. Nobody would like the option of euthanasia to be available to a young person who for example, might have occasional financial or relationship problems. Regulatory systems currently address this through a requirement that a person be terminally ill. More liberal regulatory systems are also possible.

Should voluntary euthanasia be made illegal because it is impossible in some jurisdictions to ensure that some people will not be coerced to die?

67. Voluntary euthanasia is ethically sound. Strong regulatory controls, involving checks by doctors, psychologists etc., can be used to ensure that only the people who meet the criteria

⁸ This appendix was extracted from <https://www.ethicalrights.com>, accessed 11 March 2018.

specified in legislation can access the option of voluntary euthanasia. Around the world, eligibility conditions for those accessing current voluntary euthanasia regulatory systems include that they must be terminally ill.

68. All legislative systems address situations where people break the law. People speed in vehicles, avoid tax, steal from and murder others. They do so, despite laws that stipulate that all of these acts are illegal. Wrongdoers are prosecuted, and if found guilty, suffer consequences under the law in each jurisdiction.

69. Similarly, voluntary euthanasia legislation in many jurisdictions sets out requirements for compliance with the legislation, enforcement provisions, and penalty regimes if legislative requirements are not met. In this respect, voluntary euthanasia legislation could have the same fundamental structure as other crime-based regulatory systems.

What about people who are unable to communicate for themselves?

70. If individuals cannot communicate a voluntary decision in any way, they would be unable to request or legally be granted the option of voluntary euthanasia. The only situation that would apply here is if they had voluntarily prepared a valid instruction, an advance care directive, indicating a wish for euthanasia under certain conditions. Advance care directives requesting voluntary euthanasia in certain medical instances might not be legal options in many jurisdictions.

What are some of the common myths surrounding euthanasia and assisted suicide?

71. Possibly the most unsupported contention is that once voluntary euthanasia is permitted, then non-voluntary euthanasia will be allowed. This slippery slope argument is not supported by evidence. Regulation sets boundaries on what is permitted and what is not. This is what regulatory systems (particularly laws) do.

72. Boundaries of what is acceptable will change with time, but this is expected, encouraged, and should occur in modern democracies. It has happened with moves away from slavery, restricted immigration, tariff controls, as well as improvements in social equality and the rights of minorities. Opponents of many such reforms have commonly claimed that change would throw open the moral flood-gates; the recent postal plebiscite on same-sex marriage featured television commercials suggesting that marriage reform would precipitate damaging outcomes for children. Such claims are unsubstantiated.

Is there a slippery slope, i.e. could legalised voluntary euthanasia lead to non-voluntary euthanasia?

73. The slippery slope argument is suggested as one of two arguments: (a) that legalised voluntary euthanasia will inevitably lead to future legalisation of practices such as non-voluntary euthanasia, or (b) that the incidence of non-voluntary euthanasia will increase.

74. The inference from the slippery slope argument is that there should be no change. This slippery slope argument against voluntary euthanasia is presented without evidence, and

consequently is often used by euthanasia opponents when they cannot produce substantive arguments for their case.

75. The key feature of a democracy is that people elect politicians, who establish regulatory systems that set the limits for what is permissible. If some action does not comply with the conditions specified in a law, it can be subject to regulatory penalty. The limits of what is permissible may change in the future and ought to be expected in a democracy. If change were ever undesirable, we would never have evolved from the dark ages.

76. Internationally, there is no evidence for a slippery slope. Experience from jurisdictions in which voluntary euthanasia or physician assisted suicide is legal have sufficient compliance and enforcement mechanisms. It would seem that physicians would not need to guess about a person's needs if voluntary euthanasia were to be regulated.

77. Before the introduction of any voluntary euthanasia regulatory system, doctors might have had to second-guess the needs of terminally ill, chronically ill or debilitated people. In Australia, many doctors have been surveyed and have admitted to helping people die without an explicit request. However, after any regulation, doctors will not need to do this, as they will only be able to assist with a request for euthanasia when a person makes the request. Hence, it is likely that the incidence of euthanasia without an explicit request will decrease upon regulation, contrary to slippery slope arguments.

78. Voluntary euthanasia is currently occurring, but remains unregulated in many jurisdictions. As there are risks in this activity, it is surely preferable to regulate it with formal regulatory oversight.

Could suicides increase with legalised voluntary euthanasia?

79. Overseas evidence suggests that the rate of suicide will not increase with legalised voluntary euthanasia. The reported rate of people choosing voluntary euthanasia will necessarily increase (given that at present there is no reporting system in place).

80. In jurisdictions such as Australia, elderly people are committing suicide prematurely, to avoid the risk of a more prolonged and painful death otherwise. If voluntary euthanasia were legal, then such premature suicides would be unnecessary.

Won't people who are deemed a burden be pressured to have euthanasia?

81. There are a number of responses to this question.

82. In developed countries, which are the ones contemplating and debating regulated voluntary euthanasia, nobody should be considered a 'burden'. Civilised societies should care for all citizens. However, certain people, perhaps those who receive, more than they contribute, to the national purse, or for any other reason, could be considered as burdens. On this basis, some children, elderly pensioners, the ill, the disabled and the unemployed could all be considered in this category. But no one in civilised societies is suggesting that any of these people are 'burdens' that ought to be eliminated.

83. Suicide is legal in many jurisdictions now, but there is no evidence indicating that anybody who could be classified as a burden on society, or other people, are committing suicide because it is a legal option. Quite clearly, coercing people to die is difficult. Moreover, if a person were to do so, it would be a criminal offence.

84. Some people express concern that they could be persuaded to feel that they ought to request voluntary euthanasia if it were legally available. This is unlikely, based on overseas evidence. By analogy, same sex marriage is now available in Australia, but that does not put pressure on heterosexual people to enter in a same sex marriage. Similarly, for voluntary euthanasia, it would not be expected that people would avail themselves of that law just because it is a legal option. The legal availability of a course of action does not mean that people must take that action.

85. If voluntary euthanasia were legal, then it can only occur, by definition, in response to a voluntary request. Current voluntary euthanasia regulatory systems require that a person be terminally ill before their request can be granted. If a person were to consider himself or herself a burden, whether or not this was accurate, the doctors and psychologists would not grant his or her request. The person would not qualify for voluntary euthanasia.

86. Finally, and possibly most importantly, the experience in countries where voluntary euthanasia is permitted, regulated, and monitored has indicated that there has been no systemic cases of abuse of anyone. The opposite seems to be true. The regulatory hurdles that must be overcome to obtain permission to have voluntary euthanasia are such that many people have been rejected in their attempts to comply with legislation.

87. While the medical model is the preferred regulatory model in every jurisdiction so far, there are so many hurdles in the medical model that the human rights model is more appealing to many people. However, regulating the human rights model for voluntary euthanasia will require considerably more debate across many societies before it is likely to be available.