



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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Ethical Rights

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

KM4. Many people 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. Ethical Rights and many people 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 Ethical Rights' 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 If the Euthanasia Laws Act (or relevant sections) could be repealed, then the introduction of euthanasia regulation in the ACT could give people the option of dying a peaceful death, consistent with their wishes.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. Ethical Rights 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. Ethical Rights 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. Ethical Rights 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.

INTRODUCTION

2. This submission from Ethical Rights^{1,2} 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. Control over one's life and death should be a fundamental civil right from which no one of sound mind should be excluded.

KM1. Ethical Rights 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. Ethical Rights considers that all people, including 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 individuals 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 as 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, economic and ethical 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 to die has raised it to prominence in public debate. There is now a more informed and educated citizenship. Times have changed, and dying is now talked and thought about very openly,

¹ Ethical Rights is an ethics, science and public policy consultancy company, see <https://www.ethicalrights.com>.

² Ethical Rights' voluntary euthanasia principle and values are at Appendix 1.

especially as many people can die in distress. 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. This submission is similar to that from Exit ACT (ACT Chapter of Exit International). The main difference between the submissions is that this submission includes an additional appendix.

- Appendix 1 comprises Ethical Rights' voluntary euthanasia principle and values.
- Appendix 2 addresses many of the regulatory concerns and risks raised by euthanasia's opponents. For example, the arguments that vulnerable or other people, including disabled people, could be coerced to have euthanasia, are not supported by evidence overseas, and can be addressed by legislation.
- Appendix 3 is new. It includes arguments for euthanasia and rebuts the most common arguments against euthanasia. That appendix, as well as a substantial list of responses to frequently asked questions about euthanasia (see <https://www.ethicalrights.com>), contain substantial information, and address many of the questions posed by concerned people and euthanasia's opponents. As such, they are good reference documents.

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

10. Ethical Rights is willing to assist the ACT Legislative Assembly and ACT Government in its efforts to regulate voluntary euthanasia.

Additional notes on Ethical Rights and this submission

11. I am a scientist, ethicist and director of Ethical Rights Pty Ltd, as well as ACT Chapter Coordinator for Exit International. Exit International is Dr Philip Nitschke's euthanasia advocacy and research organisation, see <https://www.exitinternational.net>. Dr Nitschke was the first doctor to make use of voluntary euthanasia legislation in the world, using the now repealed Northern Territory legislation.

12. I have been a strong advocate for individual rights and voluntary euthanasia since the 1990s. In this time I have been disappointed by the attitude, even arrogance, of those who think they know what is better for patients than the patients themselves. Whether or not I ever have the desire to request voluntary euthanasia, I want the option of voluntary euthanasia. Voluntary euthanasia is ethically right, it is possible to regulate, and it will meet the needs of individuals whose personal circumstances are dire.

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

13. 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.

14. People should not need 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.). People 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.

15. Many people 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. Many people are more concerned about the quality, rather than the quantity aspects, of their lives.

16. 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.

17. 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 and individuals. 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.

18. 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.

19. 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

20. Ethical Rights would welcome government regulated voluntary euthanasia in the ACT that meets the needs of all ACT residents. However, many people 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.

21. Ethical Rights and many people 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. Ethical Rights and many people 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.

22. 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.

23. The human rights model can be regulated successfully and it is Ethical Rights' 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 Ethical Rights' 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.

24. 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.

25. Ethical Rights 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.

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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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.

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

32. 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. Appendix 3 provides ethical and other arguments in support of voluntary euthanasia and rebuts the main arguments against voluntary euthanasia

33. 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.

34. 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.

35. 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.

36. Ethical Rights 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

37. 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.

38. 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.

39. Ethical Rights 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. Ethical Rights 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.

40. 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.

41. 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).

42. 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.

43. 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.

44. 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.

45. Ethical Rights 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. Ethical Rights 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

46. 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.

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

47.1. *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.

47.2. *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.

47.3. *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.

48. The circumvention solution described in paragraph 47.3 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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

54. 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.

55. 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.

56. 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.

57. 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.

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.

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.

Conclusion

58. Ethical Rights 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.

59. 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.

60. 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.

61. 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.

62. Ethical Rights 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.

63. Consequently, Ethical Rights 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. Ethical Rights 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. ETHICAL RIGHTS: VOLUNTARY EUTHANASIA PRINCIPLE AND VALUES

ETHICAL PRINCIPLE FOR VOLUNTARY EUTHANASIA

That every person of sound mind[1] has the right to implement plans for his or her end-of-life so that their death is reliable, peaceful and at a time of his or her choosing.

EUTHANASIA VALUES

1. Individual rights

Every individual[2] has the right to:

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

Ethical Rights rejects the notion that some organisations' moral values, including those of many religions, must be accepted and apply to other people.

2. Information provision

Information on end-of-life matters should be provided to individuals on request, as appropriate.

3. Individual empowerment

An individual should have the right to procure drugs and equipment for their end-of-life purposes.

4. Regulatory reform and objective debate

A regulatory system that legalises assisted suicide and voluntary euthanasia should be developed. Ethical Rights supports objective debate on voluntary euthanasia and rational suicide to:

- ensure individual rights are upheld
- advance regulatory options to further protect vulnerable individuals

- consider regulatory options so that voluntary euthanasia is available to all persons of sound mind, including terminally and chronically ill individuals.

VOLUNTARY EUTHANASIA

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

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.

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://www.ethicalrights.com>, accessed 19 March 2018)

[1] A person need not be an adult. A determination would need to be made whether a non-adult could make a well-informed and cogent decision, if for example, they were terminally ill.

[2] An individual must be of sound mind.

APPENDIX 2. SOME FREQUENTLY ASKED QUESTIONS ABOUT MANAGING REGULATORY RISKS⁸

Shouldn't modern societies protect the vulnerable?

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

65. 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.

66. 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.

67. 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.

68. 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?

69. 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.

70. 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.

71. 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?

72. 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?

73. 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.

74. 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?

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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?

81. 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).

82. 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?

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

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

APPENDIX 3. ARGUMENTS IN SUPPORT OF EUTHANASIA AND A REBUTTAL OF ARGUMENTS AGAINST EUTHANASIA

INTRODUCTION

90. If the ACT were to seek to have the Commonwealth of Australia's *Euthanasia Laws Act 1997* repealed, or circumvent the regulatory restrictions placed on it by that Act, it would join Victoria and many jurisdictions overseas in having a regulated regime for voluntary euthanasia. These jurisdictions recognise the right of people to end their lives peacefully, humanely and with dignity. This would be an important step towards a moral and civilised outcome for all of Australia.

91. The ethical arguments for voluntary euthanasia, including a regulatory regime in the ACT, are compelling if they are considered on their merits, as rights issues. Regulatory issues can be addressed, and have been successfully addressed overseas. This appendix considers the major ethical and regulatory issues that have been raised in voluntary euthanasia discussions.

92. The ethical considerations could be simplified to a matter of individual choice for people of sound mind. Consequently, those who oppose euthanasia, especially conservative religious groups, should not be able to deny other Australians the right to choose. Only each individual knows how much pain, suffering or indignity he or she can bear. A denial of rights through imposing one's religious beliefs on others is a policy that even Barack Obama, using abortion as an example, deplored. He said

‘if I seek to pass a law banning the practice, I cannot simply point to the teachings of my church or evoke God’s will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all’⁹.

93. A similar argument applies to voluntary euthanasia.

94. In Part A of this appendix, I examine arguments in support of voluntary euthanasia, supporting the rights of individual citizens and the desirability of a supportive regulatory regime. In Part B, I rebut the main arguments against voluntary euthanasia.

95. These arguments stand on their own if they are considered as much as possible with an open mind, objectively and devoid of cultural and religious bias. The consequence of this is that individual rights should be upheld and the ACT Government should work to develop a more supportive environment for people at the end-of-life.

⁹ See ashbrook.org/publications/oped-knippenberg-08-obama/, accessed 29 January 2018.

PART A. ARGUMENTS IN SUPPORT OF VOLUNTARY EUTHANASIA

A.1 Rights of individuals in a democracy

96. John Stuart Mill, one of the architects of democratic doctrine, advanced the principle that ‘the only purpose for which power can be rightly exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant’. Accordingly, democratic societies can make laws to prohibit murder and robbery, but should not make laws to prohibit sex before marriage, gay marriage, mandate religion, or prohibit voluntary euthanasia. This is because patients who desire euthanasia for themselves are not physically harming other people.

97. Mill’s philosophy can be reduced to the statement that, ‘in any legal issue between an individual and the state, the burden of proof for showing that an individual’s behaviour is undesirable, always rests upon the state, not upon the individual’. The onus is thus on those opposed to euthanasia to substantiate why voluntary euthanasia is fundamentally flawed.

98. The concept of individualism is fundamental to democratic political theory. In a democratic society, individualism posits that latitude be given to individuals to behave as they wish, and to develop and satisfy their interests. Mill stated that ‘Over himself, over his own body and mind, the individual is sovereign’. To deny a person the right to live his or her life as he or she wishes implies that each individual does not know what is best for himself or herself.

99. Mill rightly acknowledged that that principle was only meant to apply to people in the ‘maturity of their faculties’. That is, only those who are mentally competent, which excludes patients with dementia and those with clinical depression (while these conditions persisted), would be able to make a well-informed decision about voluntary euthanasia.

100. Individuals can make important decisions about their bodies when they are young, for example, they can decide to participate in dangerous sporting activities. Women can choose to have an abortion. Perversely, as voluntary euthanasia is illegal in many jurisdictions, it would seem that somewhere between the ages of twenty (when some women might have an abortion) and seventy (the age of some terminally ill patients) women lose legal control of their bodies.

101. The clergy, who seem to be the most vocal opponents of voluntary euthanasia, has imposed their values on other individuals through their opposition to a right to die, but I suspect that they would not entertain a reciprocal arrangement that impinged on their individual freedoms. A person’s right to choose their religion is no more valid than a person’s right to choose their end-of-life option. In the spirit of Voltaire, the clergy and other euthanasia opponents most certainly can remonstrate with people requesting euthanasia to change their minds, but they ought not to be able to compel them by insisting on a legislative fiat in a democracy. Voluntary euthanasia is morally just precisely because it is voluntary.

102. On the other hand, voluntary euthanasia advocates do not mandate that all people must have voluntary euthanasia, but rather that everybody be permitted to have the choice. For an issue as personal as one’s own life and death, the choice of how you might die is one of the most personal decisions an individual should make. To be denied the right to make this decision is a blight on modern democracy.

A.2 Whose life is it anyway?

103. In English speaking countries, the euthanasia cause reached legal prominence in the early 1990s. Sue Rodriguez was a Canadian who died in 1994 from Lou Gehrig's disease, but not before taking her case to the Canadian Supreme Court in an attempt to gain permission for her own legal euthanasia. In explaining her situation, she questioned that if she cannot give consent to her own death, then whose body is it? 'Whose life is it anyway?' After passage of the Euthanasia Laws Act in Australia, a majority of Australians would have asked the same question.

104. Bob Dent, the first of four people to die under the Northern Territory's Rights of the Terminally Ill Act, was adamant that the beliefs of others should not be forced on individuals. He said 'What right has anyone, because of their own religious faith to which I do not subscribe, to demand that I must behave according to their rules'.

105. Sue and Bob reflected what most people think: that a well-informed, mentally competent patient is best placed to make a decision about their own body. How could anybody, or any government, deny that simple fact?

A.3 Popular opinion in Australia

106. The fact that many people favour a particular policy does not make it ethically 'right'. However, when it comes to public policy, and a choice of what people want for themselves (rather than others in the population), popular support for a policy is a strong political argument in its favour.

107. Public polls have shown that from 66–85% of Australians¹⁰, with an average of about 75%, support the option of active voluntary euthanasia. The nature of the question often asked in these polls was 'If a hopelessly ill patient, experiencing unrelievable suffering, with absolutely no chance of recovering, asks for a lethal dose, should a doctor be allowed to give a lethal dose or not'.

108. The same polls show that voluntary euthanasia is opposed by less than one in six Australians. A voluntary euthanasia regulatory regime is one way to give effect to Australians' overwhelming preference for a voluntary euthanasia regulatory framework. The other is to retain the status quo, but this limits options of a peaceful death to those with the information, capital and means.

A.4 The current Australian situation

109. There are a number of organisations in Australia that advocate for voluntary euthanasia. Legislative reform is the main objective of the state and territory based Dying with Dignity organisations, which do an important job. Their work is complemented by Go Gentle Australia, which was created in 2016 to spark a national conversation about voluntary euthanasia laws.

110. While legislative reform is also a desired objective of Dr Nitschke's organisation, Exit International, the majority of Dr Nitschke's time, however, is devoted to complementary

¹⁰ See <https://theconversation.com/factcheck-qanda-do-80-of-australians-and-up-to-70-of-catholics-and-anglicans-support-euthanasia-laws-76079>, accessed 29 January 2018.

activities, in particular undertaking research and providing information on end-of-life options to the elderly and seriously ill.

111. His information and guidance not only fills the regulatory gap left by politicians who have been unable to regulate voluntary euthanasia, but 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. Acting on information provided by Dr Nitschke, thousands of elderly Australians, and many hundreds of Canberrans, have acquired their means of effecting a peaceful death (stashed well away from inquiring eyes) or other equipment. That's also why so many support him. People, including many average elderly Australians, need information on drugs now and cannot wait for politicians to legislate for voluntary euthanasia.

112. Other Australian doctors have admitted to assisting with voluntary euthanasia. Voluntary euthanasia campaigner and Victorian urologist Dr Rodney Syme admitted in early 2014 to giving a dying man (with oesophageal cancer) the drug Nembutal two weeks before the patient killed himself with it. Yet no legal action has been taken against Dr Syme and nor should it be. He acted in the best interests of his patient.

113. Australian doctors have been assisting patients with voluntary euthanasia for many years (a survey indicated more than a third of doctors have done so), albeit in an illegal environment. All of this activity is unrefuted, and no serious efforts are being made to stop any of this activity.

114. These matters suggest the following perplexing question. If governments are not intending to prosecute doctors who humanely assist with voluntary euthanasia when it is illegal, why do governments object to its legalisation?

115. Furthermore, many politicians have objected in the media to Dr Nitschke and other physicians operating in an unregulated environment. It would be preferable if politicians regulated voluntary euthanasia, rather than complaining about what's happening in an unregulated environment.

116. In the words of Marshall Perron, the former Northern Territory Chief Minister, who helped introduce the Northern Territory's Act, 'It is surely preferable to have voluntary euthanasia tolerated in particular circumstances with stringent safeguards and a degree of transparency, than to continue to prohibit it officially while allowing it to be carried out in secret without any controls'.

A.5 The issue of rational suicide

117. The different voluntary euthanasia regulatory systems in numerous jurisdictions worldwide all seem to require that only people with a terminal illness are eligible. However, there have been a number of recent situations where elderly Australians, who have not been terminally ill, have committed suicide with the aid of Nembutal. I categorise such deaths as 'rational suicide' because these decisions have been made, it seems, by mentally competent people who are neither depressed nor terminally ill. Rational suicide is not a new issue in Australia, but the level of public debate on the issue is immature.

118. For three years, Lisette Nigot warned Dr Nitschke that she would take her life at 80 because she will have had enough by 80. A movie (*Mademoiselle and the Doctor*) documented her case. Iris Flounders chose to take her life when her terminally ill husband, Don, took his life with Nembutal. Neither Iris nor Lisette were terminally ill, nor were they depressed. In both

cases, the women emphatically told Dr Nitschke, friends and relatives to mind their own business.

119. There was barely any adverse commentary in the press on these matters, although there were ructions in the pro-euthanasia community regarding Lisette Nigot's case, particularly around where the line ought to be drawn. It is worth reiterating that while many people commit suicide, it is legal—perversely, voluntarily gaining assistance with suicide is illegal. It was not possible to dissuade these women from their suicides, and regrettably or not, this will sometimes be the case.

120. Rational suicides such as those above would seem to be consistent with Mill's philosophy on the rights of an individual. I personally know many people who are not terminally ill, but who would consider taking Nembutal if a number of untreatable chronic illnesses, debilitation or other personal circumstances were such that they were to adversely affect their dignity or quality of life. Current regulatory systems will not address their concerns about their quality of life, which are no less valid because of their lack of terminal illness. Rational suicides will continue to occur in an unregulated environment, and probably also in a regulatory environment that places a strong emphasis on the involvement of the medical profession in end-of-life decisions.

121. In any civilised society, people do not want the option of euthanasia to be made available to those with impaired mental faculties, including the depressed. Good voluntary euthanasia legislation must set the limits so that only people with serious illnesses or poor quality of life—this could be broadly defined—can access drugs such as Nembutal, and that people who are depressed or anxious, or otherwise not of sound mind, cannot access voluntary euthanasia. Any proposed legislation in Australia would, in the short term, probably draw the line at the patient being terminally ill. That is a wonderful start, but ethically, it leaves many Australians in the position where they will still be aiming to obtain drugs illegally, just in case their circumstances worsen. In regulatory terms, more needs to be done.

A.6 Tolerance in Australia's multicultural society

122. Over many years there has been public debate on Australia's diverse and multicultural society. Tolerance of the others' values is an important element of multiculturalism, however it is defined. To avoid a 'tyranny of the majority' situation, the values of different cultural, indigenous, ethnic and other minority groups must be respected, so long as they are not imposed on others.

123. It would surely be hypocritical to claim that one is tolerant of others but simultaneously insist that their values about how they live their individual lives, such as a desire for the option of voluntary euthanasia, are wrong and cannot be practised. If some people object to voluntary euthanasia, they need not ever request euthanasia.

124. People can believe what they will; freedom of belief is important. However, if certain groups are proposing their belief system as a basis for public policy, including on euthanasia, it needs to be assessed, analysed and rejected if found wanting. If the underlying values of these groups are unethical, particularly if they are discriminatory or hypocritical, they should be challenged and criticised. Some religious people choose to worship a god that, according to their scriptures, has murdered people. They choose to belong to religions that discriminate against women and homosexuals (despite claiming forms of equality). With such perverse and

discriminatory values, they cannot take the moral high ground and demand that other people must conform to their values and eschew the option of voluntary euthanasia.

125. Tolerance does not mean forcing one's views on others. Tolerance for other people means people have the right to believe and act on their beliefs, so long as these beliefs do not adversely affect the rights of others.

A.7 Freedom of religious expression

126. An argument relates to s.116 of the Australian Constitution. Section 116 states that the Commonwealth shall not make laws 'for prohibiting the free exercise of any religion'. The clergy and most other euthanasia opponents rely on Christian ethical values. Clearly, those who support euthanasia rely upon different ethical values, such as might be compatible with a 'religion' based on the primacy of the quality of life, rather than, for example, a Christian 'existence for its own sake'. It could be argued that legislation that prohibits people from practising euthanasia could be in contravention of s.116. This hasn't yet been challenged.

127. It could be argued that Jainism and some other religious denominations support euthanasia, and if so, full practice of some religions could be prohibited by an unconstitutional law.

128. Despite the more liberal views of many Christians, the clergy has been particularly outspoken against voluntary euthanasia. It is regrettable that their views do not reflect church membership and have been manifested in legislation that affects people who do not share their religion. The rights of individuals to live their lives as they wish, without being constrained by the religious values of others, must be upheld.

A.8 Economic arguments

129. There are limited resources available for health care in the Australian economy. Governments are frequently engaging in cost-cutting exercises, which are their prerogative, and this places further pressure on the health budget.

130. If people who want voluntary euthanasia are unable to obtain it, then Australian taxpayers' money is being spent to keep them alive when that outcome is not wanted or appreciated. It could otherwise be available for additional infant care, cancer therapy or emergency services, where it could save lives and improve the quality of life for others who want it. Such health budget savings, possibly of the order of \$100 million per year, could also be spent on additional palliative care.

131. One must question, as a serious matter of public policy, why public money should be spent on keeping patients alive who do not want to live, in preference to patients who do.

A.9 The human factor

132. Throughout this paper I have been referring to the 'patient' or the 'terminally ill patient'. These are rather impersonal terms, disguising the fact that patients are people—they are people with feelings, and they are loved by friends and relatives. These people must be treated in a humane and compassionate way. Australians are now living longer, and our ailments are often well treated with drugs. But for some people these drugs do not provide a good quality of life,

and they may suffer from continuous pain, discomfort or loss of dignity. Some people would like to choose the option of euthanasia.

133. To deny terminally ill patients the right to euthanasia is to condemn them to a miserable existence, contrary to their wishes. It is hard to establish any difference in moral character between someone who denies a legitimate request for voluntary euthanasia, and who subsequently watches that person die a slow and painful death, and someone who watches a cancer-ridden pet writhe in agony without having it put down. Most people—around 75% of Australians—would argue that if you are terminally ill, are of sound mind and not clinically depressed, and choose euthanasia, then it is morally right. Many others argue that this right should be extended to include some who are not terminally ill, but perhaps seriously ill, or with many ailments, but who make a well-informed, rational decision about their end-of-life options. After all, it is their life. Nobody would want anyone else interfering with his or her own life.

134. For acts such as voluntary euthanasia that impact directly on an individual, the moral and humane thing to do is what is right for the individual, and only each individual knows what this is. Voluntary euthanasia is moral and humane because it is what the individual wants. That accords with common sense. It is difficult to deny patients the option of voluntary euthanasia when the patient considers voluntary euthanasia is in their own best interest.

135. In summary, not providing the option of voluntary euthanasia is inhumane and callous. In a humane society the prevention of suffering and the dignity of the individual should be uppermost in the minds of those caring for patients. When the quality of life is more important than the quantity of life, voluntary euthanasia can be a good option.

PART B. A REFUTATION OF SOME ARGUMENTS AGAINST VOLUNTARY EUTHANASIA

B.1 Possible abuse of euthanasia legislation

136. Euthanasia opponents often claim that legislation would be abused. To assess whether voluntary euthanasia legislation could be abused, it is useful to consider previous legislation. Four people made use of the Northern Territory's Rights of the Terminally Ill Act before it was overturned. There were significant measures in that Act to ensure that patients were not improperly coerced into euthanasia.

137. Marshall Perron neatly encapsulated some of the more important measures in the Northern Territory's Act to ensure it was not abused. Most of these measures seem to have been, incorporated in voluntary euthanasia regulatory regimes that currently exist. Mr Perron said

'Voluntary euthanasia is patient driven. The Northern Territory law dictates that the patient must personally initiate the process, consider the options for treatment and palliative care, be psychologically assessed, sign a request, obtain second opinions, consider the effect on the family, use qualified interpreters if necessary and endure a cooling off period. The patient can of course change their mind at any time and stop the process instantly. Additionally, detailed records must be kept. Government regulations must be followed. The Coroner must be informed and has a statutory responsibility to report to the Attorney General and

parliament any concern regarding the operation of the legislation. To kill another without these conditions being fulfilled is to commit murder under the Northern Territory Criminal Code—penalty being mandatory life in prison.’

138. Mr Perron also said that although more elaborate safeguards could have been put in place, the safeguards in the Northern Territory’s Act ‘prevent people who might opt for voluntary euthanasia simply because they are temporarily depressed, or who are being coerced by others, from being legally able to be assisted’. Any patients who request euthanasia under duress will not convince a jury of doctors that their decision has been made ‘freely, voluntarily, and after due consideration’, as the Northern Territory Act requires. Consequently, such patients will be considered ineligible for euthanasia.

139. No worst-case scenario is impossible, but it is unlikely that voluntary euthanasia legislation could be abused. Most Australian doctors would consider it improbable and an insult to suggest that, for example, a group of three doctors would maliciously collude to arrange the death of a terminally ill patient without the patient’s consent.

140. We would no more consider removing murder and theft from the criminal code because some people murder or steal. We prosecute offenders who do not meet the conditions or behavioural standards outlined in legislation. And so it would be for voluntary euthanasia, as breaches of strict guidelines would be punishable by law.

141. A legislated regime must be preferable to the unregulated voluntary euthanasia activity that occurs now without any controls. If voluntary euthanasia is not regulated, that will mean that politicians are effectively sanctioning the illegal activities of the thousands of Australians, and hundreds of Canberrans, who have been importing, and will continue to import, illegal drugs (to have available as a means of achieving a peaceful death).

B.2 Patients being a burden

142. Possibly the most pervasive, but not persuasive, argument against voluntary euthanasia, in terms of popular use by those who oppose euthanasia, is that of patients ‘being a burden’. This includes people who might not want voluntary euthanasia being encouraged to request it. This argument seems to be a catch-all for voluntary euthanasia opponents. The argument comes in a number of forms.

143. First, there are concerns that those who are vulnerable, possibly the elderly, disabled, members of certain racial or ethnic groups, and the poor, will be under pressure to have euthanasia, possibly because these people might not have appropriate access to medical, psychological or palliative care services. This argument is unfounded, because international experience is that this doesn’t occur. Appropriate safeguards have been established in international legislation to mitigate this risk.

144. Most voluntary euthanasia regulatory regimes involve a number of medical practitioners, one of whom could be a qualified psychiatrist. Medical practitioners are required to ascertain that they are satisfied that the terminally ill person’s decision to end his or her life has been made freely, voluntarily and after due consideration. It is improbable to imagine that a terminally ill person who wants to stay alive (but feels compelled to request voluntary euthanasia because society is not supporting them or that they otherwise feel pressure) could convince three medical practitioners that their euthanasia decision was made without pressure, coercion, or otherwise was not voluntary.

145. Second, an argument that has often been raised is that unscrupulous relatives, in attempting to rid themselves of a terminally ill parent or relative, will apply pressure to the terminally ill person to seek euthanasia. Such a scenario is highly improbable. Most people's experience is that loving relatives are distressed by the fact that their relative is terminally ill. If unscrupulous relatives did exist, why would they provoke the possible ire of their terminally ill loved one, and possibly risk any possible inheritance, by implying that the person is a burden, or suggesting euthanasia when it isn't wanted? In this case their loved ones would literally be unloved. The safeguards noted above still apply.

146. Third, in current regulatory regimes, only terminally ill people can access voluntary euthanasia. Of course, whether the line ought to be drawn at terminally ill, seriously ill, or having a poor quality of life is another matter. The point is that current regulatory systems, and future systems in the short term, draw the line so that only people who are terminally ill will be able to access voluntary euthanasia.

147. Can there be an ironclad guarantee that the legislation, if enacted, won't be abused? As with any similar legislation, such guarantees are impossible to make. Legislation prohibiting murder does not guarantee a society free of murder. Under voluntary euthanasia regulatory regimes overseas, medical practitioners are required to keep a range of documentation. If the appropriate documentation is not retained, then there are penalties.

148. Why should a more stringent standard be applied to voluntary euthanasia for terminally ill people who need assistance to die? Terminally ill people on life support can request the removal of life support, and there is not the same level of regulatory oversight to confirm their mental well-being, and confirm that they are not being coerced to die.

149. If being a burden were really a concern that would drive terminally ill people to seek legalised euthanasia, then many people should be considering legalised suicide now because, according to some measure, they could be considered a burden. Everyone who obtains some benefit from others, whether it is people who are being cared for, children, elderly, unemployed, pensioners, etc., is theoretically a burden on other people or society. But we do not find pensioners, and nor should we, claiming 'since I am a burden on society I should commit suicide'. It is possible to address the patient is a burden argument.

150. Many people might say that if they are ever terminally ill, then they will evaluate all possible information, including whether they are a burden on family or society. If they want to stay alive, then their quality of life could be their primary concern. The key consideration is that the choice must be for patients to make. Even if somebody were to make a poor decision about their own life, it is their own life. Most people would rather all decisions about their lives, good or bad, were made by themselves, rather than having the values of other people forced on them, denying them the option of voluntary euthanasia if they were to choose it. The approximately 75% of Australians who support voluntary euthanasia have a similar view.

B.3 International experience

151. Some forms of voluntary euthanasia are legal in the Netherlands, Belgium, Luxembourg, Switzerland, Germany, Colombia, Japan, Canada, the US jurisdictions of Washington State, Oregon, Colorado, Vermont, Montana, Washington DC and California, as well as Victoria in Australia. It seems legislators are starting to respond to the needs of terminally ill patients. Importantly, the legalised use of voluntary euthanasia in these jurisdictions is not out of control

as has been claimed by those opposing voluntary euthanasia. Interestingly, but not surprisingly, the rate of euthanasia in the Netherlands has decreased rather than increased. This is probably because, amongst other things, people are aware that a voluntary euthanasia option is available if they need it, so non-voluntary euthanasia, and suicide by premature access of more drastic and less dignified options, is not required.

B.4 The 'right to life' and 'sanctity of life' arguments

152. The right to life argument in the context of voluntary euthanasia has no ethical merit. The 'right to life' is no more than a 'right'. The right to life is not an obligation to live. The right to life does not demand that it must be exercised.

153. Similarly, people have the right to stand on their heads in their back yard if they want to, but there is no compulsion to do so. Terminally ill patients who want euthanasia for themselves choose not to exercise their right to life. The clergy and other opponents of euthanasia might not understand this choice, but it is the choice of those who want voluntary euthanasia.

154. An often-touted argument deals with the sanctity of life. A problem is that the word sanctity only has meaning for those with particular religious beliefs. And it seems to be applied selectively. The Christian Bible is littered with instances of murder, sacrifice and torture, including of women and children, so the sanctity of life argument is not even respected by the Christian clergy.

155. It could be ironic that many religious people, whose moral values permit them to worship a god that they consider has murdered thousands/millions of people (according to religious texts), want to deny others the right to take their own lives and end their suffering when they are terminally ill. Surely this is a morally perverted standpoint.

156. People with other beliefs, such as those who might, for example, have an objective of 'to live my life as long as I am happy and healthy, and, if that is not possible, then to die with dignity' are discriminated against by the sanctity of life argument.

157. If life were sacred, there would also be strong arguments against the withdrawal of life support (passive euthanasia), self-defence and suicide. It would follow that society should do its utmost to ensure that everyone stays alive no matter what the circumstances. Many would find this unacceptable. Ironically, and perversely, there are right wing groups who support capital punishment but object to voluntary euthanasia.

B.5 An incorrect patient diagnosis

158. Some euthanasia opponents claim that a terminally ill patient could be incorrectly diagnosed, and could possibly recover, so euthanasia should be forbidden.

159. It is foolish to claim that incorrect diagnoses and prognoses could never occur. But for all practical purposes, they can be ruled out. Dr Alistair Browne has remarked that 'it is frequently beyond all reasonable doubt that the diagnosis is correct or some cure will not be discovered in time to help, and it is not clear why this should not be sufficient. The law has never taken a "pigs might fly" attitude towards the risks attendant on any activity. We only need to establish "guilt beyond reasonable doubt" to send a person to prison or even to his execution, and it is not possible to require more without making the enforcement of the law impossible. Why a more

stringent standard should be demanded in the cases of assisted suicide and active voluntary euthanasia yet needs to be explained.’

B.6 The slippery slope argument

160. The slippery slope argument is a common sensationalist argument of the clergy and other euthanasia opponents. It claims that if a right to assisted suicide and active voluntary euthanasia were instituted, it would lead to an increased rate of non-voluntary euthanasia, then euthanasia of those who are not attractive to society, those with fanatical political beliefs, extreme religious or cultural values and so on. Thus if we do not draw the line where it is, we will not be able to prevent substantial harm to others.

161. This argument has no merit. For there to be evidence of a slippery slope there would need to be evidence of more non-voluntary deaths within a tolerant, legalised voluntary euthanasia framework.

162. International studies have found that a ‘group of people being helped to die without consent existed in all surveyed countries, irrespective of whether there was an environment of decriminalisation or harsh legal sanction’. Moreover, it seems that a tolerant environment for voluntary euthanasia, decreases, rather than increases, the number of non-voluntary deaths. This has certainly been the case in the Netherlands. If there were a slippery slope, it is going the wrong way for those opposing euthanasia.

163. The line on what will be permitted will be drawn by the enactment of any legislation. Voluntary euthanasia will then only be available to mentally competent patients who are terminally ill under specified conditions. Despite scaremongering, there will be no slippery slope—parliaments will decide where the line is drawn. Good governance demands legislative oversight of voluntary euthanasia.

B.7 The palliative care option

164. The clergy and other euthanasia opponents argue that assisted suicide and active voluntary euthanasia are unnecessary because of the extraordinary developments in palliative care and pain control. Angelique Flowers would have disagreed, but she suffered. She recorded a compelling video to then Prime Minister Kevin Rudd, yet her plea went unanswered, see <https://angeliqueflowers.wordpress.com/angeliques-story/>.

165. Advances in palliative care are always welcome. In some, perhaps many cases, the need for assisted suicide and active voluntary euthanasia will be reduced through developments in palliative care. But these developments do not obviate the need for voluntary euthanasia nor can they control all aspects of a patient’s illness to the level desired by all patients. There are still numerous illnesses or conditions for which pain, extreme suffering, and loss of dignity are difficult or impossible to eliminate. Some patients will suffer the terror of breathlessness or vomit uncontrollably, others will be choking continuously or unable to swallow, others will be paralysed, and still others will be helpless, weak, incontinent and totally dependent on others. Even if pain and distress are not the major problems, there is often a strong fear of the dependency that would result if all bodily functions, mental and physical, were sufficiently impaired.

166. Palliative care is not an option for all people, since no amount of palliative care can relieve all distress. Voluntary euthanasia is a reasonable alternative for those who want it. Clearly, around 75% of Australians, including the many thousands of members of Exit International and the Dying with Dignity organisations, want voluntary euthanasia as an option.

B.8 The concept of harm

167. Some who argue against voluntary euthanasia claim that doctors must ‘first, do no harm’. Leaving a person, such as Angelique Flowers, to suffer when palliative care has not provided adequate respite from pain and suffering, is simply unacceptable. For many people, particularly terminally ill people, staying alive is doing harm. The option of a peaceful death, before one might vomit faecal matter, is preferable for many people, including for those terminally ill people with colon cancer. They should not be denied the right to have a peaceful death, a right that does not directly affect others.

168. It is arrogant to impose one’s belief systems on another individual, effectively denying the other the right of equality. Only individuals themselves know what harm is. Those who opt for quantity of life regardless of the pain or suffering might not want voluntary euthanasia, and they need never request it. However, as many patients, particularly terminally ill patients consider that the quality of their life is more important than staying alive, the option of a peaceful death to alleviate their pain and suffering is a more humane and desirable alternative.

169. Denying an individual’s right to die could be reasonably construed as arrogance. Other Australians should have the right not to have others’ values and perspectives forced on them.

PART C. THE RIGHT TO DIE WITH DIGNITY IS JUSTIFIABLE

170. I have provided substantial arguments in favour of voluntary euthanasia and the rights of an individual to choose how they should die and rebutted the major objections to voluntary euthanasia. Australia’s current legislative regime for euthanasia violates an individual’s fundamental rights, is inappropriate in a multicultural society, runs contrary to popular opinion, is economically unsound, causes unnecessary pain and suffering, and is inhumane. It denies individuals the rights to their own lives.

171. If the status quo were to remain in the ACT and Australia outside Victoria, it would have a deleterious effect upon those patients who would like to have the option of voluntary euthanasia. The right to die might be a right that is only ever exercised by a small minority of the population: terminally ill patients for whom palliative care is inappropriate, or perhaps people who might choose the option of rational suicide. However, those opposed to voluntary euthanasia should not, including by legislative fiat, deny individuals the right to die with dignity.

172. The arguments I have presented stand on their own if they are considered with an open mind, devoid as far as possible of any cultural, religious or other bias. They lead to the conclusion that regulated voluntary euthanasia can be a desirable outcome. If all individuals are to be respected, then Australia, and its states and territories must observe the right to die with dignity. Despite the claims of those who oppose voluntary euthanasia, they do not know what is better for terminally ill patients more than the patients themselves. The rights of an individual are paramount and must prevail.

