Euthanasia in Australia: Should the Right to Assisted Death be given to all Australians

The criticisms levelled at the presumption of Doli incapax do not convince of the need for any weakening of the protection it proides. Even though the presumption took root at a time when the criminal law was more draconian there remains a need for some protection. The system for dealing with young offenders remains embedded in the criminal justice system with its condemnatory nature and possibility of severe penalties. It is also by no means clear that today children more readily understand the wrongfulness of criminal acts than in earlier times. Indeed, there are many indicators that conditions in modern society may be making it more difficult for children to learn what is right and wrong than is commonly thought.

The presumption of doli incapax is a recognition of the fundamental nature of childhood, that children are not naturally equipped with an ability to understand the wrongfulness of criminal acts but develop this gradually, at different and inconsistent rates. The presumption is flexible and practical. The assumption of absolute incapacity for children under ten is an expression of the conviction that they are not ever developed enough to be held criminally responsible. For children aged ten but not yet fourteen, it is acknowledged that some may be able to form a guilty mind. The presumption of incapacity can therefore be rebutted if there is proof to the contrary. This affords protection to those who are not developed enough to be criminally responsible while at the same time allowing the conviction of those who are able to understand the wrongfulness of what they have done.

The claim that the presumption is stopping children from being dealt with by the courts must also be put into perspective. Firstly, the rebuttable nature of the presumption should be borne in mind and, secondly, there is no evidence that the presumption is in fact hindering prosecutions. The objections to the presumption seem to be based on a misunderstanding about the nature of the presumption and about its practical application. It may slow down proceedings in requiring the prosecution to consider the development of the child, but it does not stop prosecution if there is proof of understanding. The presumption is therefore one of the possible methods of ensuring that Australian law complies with Article 37 of the United Nations Convention on the Rights of the Child which requires that criminal proceedings should only be used as a last resort. It is also in line with the United Nations Standard Minimum Rules for the Administration of Juvenile 1.0 JIntroduction

Law reform is the modernisation of legislation: by bringing it into accord with current conditions, the elimination of defects in the law, the simplification of the law and the adoption of new or more effective methods for the administration of the law and the dispensation of justice. According to, (Encyclopaedic Australian Legal Dictionary) It can be said as opinions change, and individuals and communities become more developed constitution must also change with the circumstances and advance to keep pace. Australia has a Commonwealth Law Reform Commission as well as Law Reform Commissions institutions based in each state of Australia. The process for each law reform scheme may differ according to the scope of the inquiry, the variety of key stakeholders, the complexity of the law/s under review, and the period of time allowed for the inquiry .The purpose of this report is to analyse, identify and evaluate if legislation should be reformed to allow for Australians to be given the right to assisted death.

Euthanasia and voluntary assisted death is a legal issue that is constantly debated in society and legislations vary from state to state. The term euthanasia is used to refer to voluntary assisted death and is illegal in all states and territories within Australia except for the state of Victoria.

1.1 Scope of the issue

Although, different terminology is used depending on the nature of the act and the jurisdiction in which the act is set to take place. Euthanasia is a deliberate, intentional act of one person to end the life of another person in order to relieve that person's suffering. (QUT, 2020) There are three most commonly used practices within Australia, voluntary euthanasia, non-voluntary euthanasia, and involuntary euthanasia. The process is as follows, only the individual wanting to access voluntary assisted dying may instigate conversations with health practitioners about euthanasia. A family member, carer, or anyone else for that matter, may not appeal voluntary assisted dying on somebody else's behalf. This is to ensure that the request is completely voluntary and devoid of coercion. The individual must administer the medication themselves, unless they are physically unable to do so, in which case their doctor may assist. At no point in time is a health practitioner or healthcare provider obligated to contribute to the euthanasia process.

2.0 Legislation

Voluntary assisted dying (VAD) is illegal in all States and Territories within Australia except for Victoria, where the legislation states it is lawful so long as all criteria is met. Laws concerning euthanasia within Western Australia have been passed through Parliament and are expected to commence during 2021. Consequently, in all states and territories where it remains still illegal those who assist in another person's death may be charged with manslaughter, murder or assisting suicide including Western Australia until the legislation is processed. Common law rules regulate the doctor-patient relationships and the provision of medical treatment. Advanced legislation in every Australian jurisdiction except for South Australia clearly expresses that common law rights are not dislodged by legislation. In regard to passive voluntary euthanasia, the common law allows a knowledgeable adult to refuse medical treatment, even when that refusal will lead to death. The individuals refusal to a form of treatment is equally deliberate and informed, the decision must be recognized, and medical professionals then must act in accordance to such decisions made by the patient. This then shields them from any form of liability.

Euthanasia laws in Queensland are being considered by the State Government. In November 2018, Queensland Labour Premier launched a 12-month inquiry into the legalisation of voluntary euthanasia as part of a parliamentary inquiry into the delivery of aged care, end of life and palliative care in Queensland across the health and ageing service sector. The inquiry will canvass the Queensland community and health practitioners' views on the desirability of supporting voluntary assisted dying, including changing the law to legalise euthanasia, and safeguards to protect vulnerable people. (Attwood Marshall Lawyers, 2018) Although, as of present the legislation has still not been reformed meaning there will still be consequences for those who unlawfully assist an individual in the euthanasia process.

2.1 Legislation in the state of Victoria, Australia

Victoria is the first state in Australia to pass voluntary assisted dying laws. The Voluntary Assisted Dying Act (2017) provides a safe legal framework for people who are suffering to select the approach and timing of their death.

With comprehensive safeguards and meticulous protections, the process for accessing voluntary assisted dying in Victoria will be the safest and most conservative in the world. (Victorian Sate Government, 2019) The piece of legislation legalising euthanasia within the state of Victoria came into effect on 19 June 2019. After this date, people who meet the set of rigorous eligibility principles will be able to apply for admission to voluntary assisted dying. All people at the end of life will be supported and will receive access to suitable end of life care alternatives.

3.0 Stakeholders

There are two significant stakeholders in cases of euthanasia and assisted death. The first being the patient and the second being the physician. Other key stakeholders includes the relatives and others closely effected to the patient, national government, pharmaceutical and insurance companies. Alternatively, external stakeholders include, the media and society as a collective.

4.0 Cases

A case in which an Australian woman, Kerry Robertson, 61 was the first cancer patient to die under Victoria's euthanasia legislation. This article demonstrates how law reform can positively effect an individual. Robertson was diagnosed with breast cancer in 2010, despite ongoing treatment, the cancer metastasised to her bones, lungs and brain. Further, in March that year it also spread to her liver. The side-effects of her chemotherapy treatment were no longer manageable, and she made the decision to stop all treatments. Robertson was in incredible pain as her body was failing, she was in pain for a long time. The legislation (The Voluntary Assisted Dying Act, 2017) states it is lawful so long as all criteria is met, with Kerry Robertson voluntarily seeking assisted death as she was hopelessly ill and experiencing suffering. There was no chance of the patient recovering. Kerry's daughters after her death stated that her death was "beautiful and peaceful". (The Guardian, 2019) Kerry and her family were able to experience the compassionate death Kerry wanted, not to be beaten by her illness but to have a choice.

Additionally, a landmark case within the Netherlands was the first of it's kind as a 74 year old patient with dementia displayed what were called "mixed signals" about assisted death. In the Netherlands euthanasia is legal, although similarly to the state of Victoria, Australia there are strict safeguards and regulations during the process. The defendant allegedly provided the patient a sedative as the patient's family members held her down, she struggled against the lethal injection. It was stated the physician "acted with the best intentions", although she still failed to ensure consent from the patient, the reported struggle also gave enough evidence to prosecutors that consent was missed. Though, the debate on dementia patients ability to consent to voluntary assisted dying is blurred, as the request for euthanasia legally must be settled before they lose their faculties.

5.0 Issues

To safeguard that euthanasia does not alter society negatively, dynamic input within the government is crucial. Nevertheless, people against assisted death believe that if medical practitioners take the law into their own hands, they will disrupt the two very distinct areas of medicine and law. Combining law into medicine will ultimately effect both. Medicine and law are regulated by two distinct groups of individuals both emphasizing varied values. It can be said that legalizing euthanasia and assisted death significantly distorts the important line between what is legal and what is not. Consequently, a topic as sensitive and imperative as this can easily turn into a human rights issue as both sides must be taken into account, people should not have to suffer unnecessarily and ultimately be able to choose what they believe is right for them although it can be hard to give others such power that can be so easily abused. Much like how in the Netherlands there have been reported cases and inquiries into the deaths of individuals that have potentially breached the strict set of requirements that must be met before following through with assisted death procedures.

A new doctor or physician will pledge the Hippocratic Oath that ultimately requires them to swear to uphold their ethical standards throughout their career. Although, euthanasia and assisted death contradict their pledge to this oath. Creating another moral dilemma. Although, it can be easily argued that currently, people are living longer than ever, with diseases that Hippocrates could never have envisioned. There are numerous diseases out there that have no cure or prevention. It can happen to any individual at any time.

6.0 Recommendations

Occasionally, it is better to end the suffering than to live with it. Ultimately this is their choice. Euthanasia can possibly be a solution to this significantly controversial issue when guided in a safe and controlled manner. The input from the citizens is necessary to address issue. Taking these circumstances into consideration, several doctors have been disputing for a patient's right to choose death, and for doctors to be able to offer the correct medical assistance in the process. It has been stated that those who demonstrate good medicinal practice must understand that you do not have a duty to try to prolong life at all cost. However, you do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that your patients receive appropriate relief. Accepting that patients have the right to refuse medical treatment or to request the withdrawal of treatment already started. (Australian Human Rights Commission, 2018) To conclude, it can be said Australian's should have the right to assisted death. Nationally, the people of Australia have overwhelmingly backed the right of physicians to manage lethal doses to patients in a result that supports the Victorian Government's euthanasia legislation recently passed by both houses of the Victorian Parliament. A large lead of 87% of Australians (up 18% since May 1996) say doctors should allow 'hopelessly ill patients experiencing suffering to die and almost as many, 85% (up 11% since May 1996) say doctors should be allowed to 'give a lethal dose' to a patient with no chance of recovering'. (Figure 1)

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