



AMA Victoria Submission Parliament of Victoria Inquiry into End of Life Choices

The Australian Medical Association (Victoria) Ltd is the peak body representing doctors in Victoria. AMA Victoria and its members are committed to improving health services and the health of all Victorians.

AMA Victoria is pleased to make this submission in response to the Inquiry into End of Life Choices by the Victorian Legislative Council's Standing Committee on Legal and Social Issues.

In making this submission, AMA Victoria urges the enactment of legislation to provide legal certainty to medical practitioners in connection with the accepted clinical practices of:

- double effect, where the administration of treatment or other action intended to relieve symptoms may have a secondary consequence of hastening death; and
- non-provision of futile care, where medical practitioners are generally not obliged to provide treatments that are considered futile.

While double effect and non-provision of futile care are ethically acceptable practices by the medical profession, many medical practitioners are concerned that they are not adequately protected by the law. As such, many patients may not be receiving the care they wish to have at the end of life because medical practitioners fear prosecution.

AMA Victoria believes that legislative reform as outlined below will provide greater reassurance and confidence to medical practitioners and patients in very difficult circumstances, with the aim of allowing medical practitioners to concentrate on providing good end of life care instead of reacting to the fear of legal consequences.

Background

It is clearly desirable that seriously ill patients in the terminal stage of their lives are able to have their pain or distress properly managed so that they can remain as comfortable as possible for the time they have left. However, concerns sometimes arise about the level of treatment needed to relieve the patient's pain or distress, which may have a secondary effect to hasten his or her death, even where the secondary effect is foreseen.

There is significant uncertainty about the legal situation regarding this in Victoria among medical practitioners. It is commonly believed that doctors face legal limitations on their ability to manage pain or suffering. Furthermore there is a belief that there are many cases in which medical treatment is inadequate because of fears amongst doctors of criminal prosecution in case their actions result in death. Such confusion exists because the legal principles that apply in such settings have not been clearly articulated in legislation.

There is often reference to the common law's response to this in the UK which has been to recognise the doctrine of double effect. This doctrine has its origins in moral theology and its essence is that an act performed with good intent can still be moral if it has bad side effects.

In addition to being recognised by the common law, this is also generally accepted by the medical profession.



The essence of double effect and the non-provision of futile treatment is reflected in the AMA's Position Statement on the Role of the Medical Practitioner in End of Life Care 2007 (as amended in 2014). In effect the AMA recognises that all patients have a right to receive relief from pain and suffering, even where that may shorten their life; and if a medical practitioner acts in accordance with good medical practice, the following forms of management, at the end of life do not constitute euthanasia or physician assisted suicide:

- not initiating life-prolonging measures;
- not continuing life-prolonging measures;
- the administration of treatment or other action intended to relieve symptoms which may have a secondary consequence of hastening death.

The AMA's Code of Ethics clearly recognises the rights of severely and terminally ill patients to receive pain relief, even if it might hasten death.

The Need for Legislative Intervention

In Australia there is no case law directly on point relating to the double effect doctrine. Although some legal commentators argue that there seems little doubt that the double effect principle at common law forms part of Australian law due to its acceptance in other jurisdictions, the legal recognition has been widely criticised as being inconsistent with criminal law principles. Consequently it is, at best arguable, that the law in Australia is not clear. Medical practitioners who follow current best practice by providing whatever care is needed to alleviate pain and distress cannot be confident that they would be protected from criminal law prosecution for murder, manslaughter or aiding and abetting suicide.

Other Australian States have enacted a modified version of the doctrine of double effect to provide certainty to practitioners. AMA Victoria supports such an approach in Victoria with the aim to exclude criminal and civil responsibility in appropriate circumstances.

AMA Victoria requests the following principles, which are consistent with those in section 17 of the *Consent to Medical Treatment and Palliative Care Act 1995* (South Australia), are incorporated in any new Victorian legislation:

1. the protection relates to measures directed at maintaining or improving the comfort of a person who is, or would otherwise be, in pain and distress (to be defined as "palliative care");
2. there must be an existing doctor patient relationship;
3. the patient is in the terminal phase of a terminal illness;
4. the protection relates to a medical practitioner or his/her agent if the medical practitioner is responsible for supervising delegated care;
5. the protection relates to the provision of palliative care (as defined above) or the non-provision of futile medical treatment;
6. there is no civil or criminal liability if performed in accordance with good medical practice and with the intent of relieving pain or distress.

AMA Victoria believes that such legislation should effectively address the main uncertainties in the existing circumstances surrounding end of life medical care, and are modest and prudent.



At the same time, AMA Victoria believes that such reform will go a long way to provide greater reassurance and confidence to medical practitioners and patients in very difficult circumstances, with the aim of allowing medical practitioners to concentrate on providing good end of life care instead of reacting to the fear of legal consequences.