DISCUSSION

In September 1993, the Voluntary Euthanasia Society of Victoria launched a Bill to allow medically assisted suicide (see Bioethics News Vol.12 No.5, p.7). The full title is the "Medical Treatment (Assistance to the Dying) Bill 1993". The Bill has not yet been presented to the Victorian Parliament, but is already provoking some comment. In particular, the Bill has been severely criticised by Dr. Brian Pollard, a retired palliative care specialist noted for his opposition to active euthanasia. Included in this "Discussion" section are Dr. Pollard's commentary on the Bill, and responses from some of the authors of the Bill. In order to assist readers, the full text of the Bill is reprinted at the end of this section, on p.58.

A commentary on the Medical Treatment (Assistance to the Dying) Bill 1993

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Philosophical underpinnings

1. The Bill is for an Act to enable doctors to assist terminally ill patients to exercise their right to end their lives. Three elements in that statement require elaboration.

   First, no reasons are given as to why doctors might be selected for the task of assisting suicide. They have no training in how to do away with people. They are no more central to acts of assistance in suicide than any other group in society, and there are many reasons why they should not be involved in any way.1

   Their only agreed roles, given them by society, are to prevent disease, to diagnose, to cure when possible and to care when cure is not possible, to teach, and to engage in medical research. Any other actions they perform are as individual citizens. To confuse the healing role with a destructive one would introduce intolerable tension for them and for the community. A sick patient should never have to wonder what his or her doctor's intentions are. If it is the humane method which is desired, this could be taught to any intelligent person in short time. It is extraordinary that non-doctors are so ready to nominate doctors for the role of assistants in providing intended death, the more so as nobody, themselves included, would seek such a role.

   It is illogical to select those whose professional ethical principles have always strictly forbidden such practices, the reasons being that they are seen as morally wrong and incompatible with their healing obligations. Doctors would have more to lose professionally than any other group, since any undermining of confidence in a doctor's intentions would constitute a grave impediment, especially for those such as the terminally ill, whose care requires confidence and trust of a high order. Reason would suggest that they be totally excluded from consideration. At a time when the good sense is apparent in excluding doctors from such practices as State-initiated torture and capital
punishment, it is retrogressive to select doctors to be involved with the intended death of patients.

Statistically, some of those who may ask to die will have been under the care of doctors who did not know how to relieve their patients' distress and did not seek expert advice, so that pain and distress, which were treatable, were allowed to persist. Having made one error in patient management, such doctors would be enabled by this Bill to compound their mistake by helping do away with the patient altogether. For the sake of reasonable discussion, it would be preferable for the authors of this Bill to nominate another group with nothing to lose, supported by argument, together with suggestions as to how they may be selected.

Second, if a distressed person wished to commit suicide as his or her perceived best solution to a problem, why should assistance be limited only to those whose distress is due to illness? Since victims of social, environmental and personal factors may suffer as much as those who are sick, and if an appeal to autonomy is the justifying principle in assisting suicide, it would be unduly and unfairly restrictive to deny the same opportunities of relief to others in a similar plight.

Third, the right to end one's life is not agreed. In 1989, Mr Justice Fullagar of the Supreme Court of Victoria declared that "There is, in the present circumstances, no legal right to die". Further, the law allows another person to use 'reasonable force' to prevent suicide. It would be contradictory for the law to recognise a right, and at the same time, allow another person to prevent its exercise. It can be concluded also, therefore, that the law does not recognise any right to suicide, even though attempting suicide has been decriminalised. This has been done to recognise the probable state of mind of such persons, as outlined below, which calls for a merciful, rather than a punitive, legal response.

2. The first purpose of the Bill is said to recognise the right of a doctor to provide medical assistance to a competent adult patient who has decided to end his or her life when he or she is suffering from a terminal illness. There is no such right to be recognised. Rights are not created by asserting them.

Reference to rights appears in a number of places in the Bill, so the relationship between the law and rights needs to be clarified. Law based on rights will be ineffective, since rights are not enforceable. Law which seeks to protect rights will identify those rights, assess the need to enact a law to protect them, and be drafted so as to ensure the anticipated outcome will be achieved with the least likelihood of abuse. The more serious the likelihood or nature of possible abuse, the greater is the responsibility for care in drafting. The law will enunciate the duties which the rights place on those who will be involved, and will impose those duties, not the rights, under penalty.

This Bill identifies no agreed rights which would place a duty of respect on others. In fact, a duty to respond is specifically excluded. Where the issue is the taking of innocent human life, a law to allow this cannot rest solely or chiefly on doubtful premises.

Where a right to suicide is claimed, it has also been argued, for example by Professor Charlesworth, that if one has a right to end one's life, then it should be permissible for another to assist. The presence of a second person introduces other potential factors which cannot be ignored, especially when the Bill contains provisions, in its Section 4, which would disallow even an inquiry into possible suspicions of abuse,