

Submission to House of Assembly Standing Committee on Community Development

Attention: Todd Buttsworth (Secretary)

*Re: Inquiry into Palliative Care in Tasmania*

Thank you for the invitation to make a submission to the Inquiry into Palliative Care in Tasmania. Having reviewed the Terms of Reference for this Inquiry, there appears to be a close association with Madeline Ogilvie's private members bill, *The Dying with Care Bill* for which I wish to register my in principle support. Although I am on the record for advocating for reforms which go further (to allow doctor-assisted dying), I can see the merit of comprehensively addressing the middle ground on which a consensus position is much more likely to be reached and thereby delivering real change that can potentially improve the quality of life of many people, particularly for those at end of life.

I am aware of the South Australian legislation on which this bill has been based and I am supportive of the goal of codifying the current common law position. This would be an important step in clarifying rights and duties of relevant parties, particularly with regard to difficult issues in relation to administration of pain-relieving drugs which have the foreseeable effect of hastening death. The common law position, based on the UK *Adams Case*, is assumed to apply but sits uneasily with the very specific provisions of the *Criminal Code* in this state. I know from anecdotal information that some medical practitioners see pain relief which may incidentally hasten death as a grey zone and not infrequently concerns are raised about engaging in this practice for fear that it might be interpreted as euthanasia/unlawful killing. This is obviously problematic if it means that some doctors feel inhibited in the pain relief that they can administer, out of fear of legal repercussions. Clarifying the law in this area as has been done in South Australia and also Queensland would, in my opinion, be an important reform.

Also significant would be the clarification of the legality of any act or omission by a medical practitioner in the course of treatment of a patient provided that it is done in good faith, in accordance with proper professional standard of medical practice etc. This would overcome lingering concerns in some quarters regarding the withdrawal of medical treatments which are no longer medically indicated (particularly in circumstances where there may be family members who are objecting to the withdrawal of such treatment.)

Making legislative provision for advanced care directives would also be an important reform, strengthening the rights of individuals to exercise autonomy in relation to the manner of their dying in the event that they lose decision-making capacity.

I am also supportive of the other underpinning features of the bill including equity in decision-making, providing protection from medical treatment that is intrusive, burdensome and futile, the need to recognise that issues related to the manner and quality of dying arise across the whole age spectrum and the proposed new role of Public Advocate that can serve as a contact point and facilitate decision-making in difficult cases. These are all important and timely initiatives and there is a real opportunity to progress these matters through this bill in a manner which will garner mainstream support. The day to day relevance of these issues has been highlighted by research recently in the media which confirmed that there is widespread use of non-beneficial treatments (i.e. unnecessary or excessive) for patients in hospital at the end of life - Cardona-Morrell et al, 'Non-beneficial treatment in hospital at the end of life: A systematic review of the extent of the problem' June 2016 *International Journal for Quality in Health Care*.

I would be happy to provide more detailed feedback if that would be of assistance (either in writing or in person).

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Otłowski', with a stylized, cursive script.

Professor Margaret Otłowski

Law Faculty, University of Tasmania