

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION CONCERNING ITS INVESTIGATION INTO EUTHANASIA AND THE ARTIFICIAL PRESERVATION OF LIFE

The South African Law Commission has completed a [report](#) on all aspects of the law regarding euthanasia and the artificial preservation of life. The report has been submitted to the Minister of Justice.

The report contains various recommendations regarding end-of-life decisions and the treatment of terminally ill patients. In certain instances legislation has been proposed to give effect to these principles in view of current uncertainty in the minds of the general public and medical personnel about the legal position in this regard.

According to the present position in our law it is unlawful to terminate a person's life in order to end his or her unbearable suffering even if it is clear that death is inevitable and that the person is about to die. The intentional termination of such a person's life remains punishable even if the suffering person expresses the wish to die or even begs to be killed. Withholding or withdrawing of life-sustaining medical treatment from a patient who is terminally ill may however be permissible under specific circumstances and subject to certain conditions.

The advances made in medical science and especially the application of medical technology have resulted in patients living longer. For some patients this signifies a welcome prolongation of meaningful life, but for others the result is a poor quality of life which inevitably raises the question whether treatment is a benefit or a burden. Furthermore, increased importance is being attached to patient autonomy worldwide. The need has therefore arisen to consider the protection of a mentally competent patient's right to refuse medical treatment or to receive assistance, should he or she so require, in ending his or her unbearable suffering by the administering or supplying of a lethal substance to the patient. The position of the incompetent patient, as well as the patient who is clinically dead, has to be clarified as well.

Since matters concerning the treatment of terminally ill people are at present being dealt with on a fairly **ad hoc** basis, there is some degree of uncertainty in the minds of the general public and medical personnel about the legal position in this regard. Doctors and families want to act in the best interest of the patient, but are unsure about the scope and content of their obligation to provide care. Furthermore, doctors are afraid of being exposed to civil claims, criminal prosecution and professional censure should they withhold life support systems or prescribe drugs which may inadvertently or otherwise shorten the patient's life, even if they are merely complying with the wishes of the patient.

To clarify the uncertain position the Commission recommends the enactment of legislation to give effect to the following principles:

* A medical practitioner may, under specified circumstances, cease or authorise the

cessation of all further medical treatment of a patient whose life functions are being maintained artificially while the person has no spontaneous respiratory and circulatory functions or where his or her brainstem does not register any impulse.

* A competent person may refuse any life-sustaining medical treatment with regard to any specific illness from which he or she may be suffering, even though such refusal may cause the death or hasten the death of such a person.

* A medical practitioner or, under specified circumstances, a nurse may relieve the suffering of a terminally ill patient by prescribing sufficient drugs to control the pain of the patient adequately even though the secondary effect of this conduct may be the shortening of the patient's life.

* A medical practitioner may, under specified circumstances, give effect to an advance directive or enduring power of attorney of a patient regarding the refusal or cessation of medical treatment or the administering of palliative care, provided that these instructions were issued by the patient while mentally competent.

* A medical practitioner may, under specified circumstances, cease or authorise the cessation of all further medical treatment with regard to terminally ill patients who are unable to make or communicate decisions concerning their medical treatment, provided that his or her conduct is in accordance with the wishes of the family of the patient or authorised by a court order.

As regards active voluntary euthanasia, the Commission does not make a specific recommendation. The Commission is aware of the array of competing interests and the diversity of social, moral and ethical values involved in the issue of active voluntary euthanasia. It has thus not formulated final recommendations in this regard, but submits the following options for further public debate and discussion. These options were identified through comments received in consultations and from responses to two discussion papers which were distributed for public information:

* *Option 1: Confirmation of the present legal position*

Under this option it is recommended that there should be no change to the current legal position in South Africa prohibiting active voluntary euthanasia and physician-assisted suicide. The arguments in favour of legalising euthanasia are not sufficient reason to weaken society's prohibition of intentional killing since it is considered to be the cornerstone of the law and of all social relationships. Whilst acknowledging that there may be individual cases in which euthanasia may seem to be appropriate, these cannot establish the foundation of a general pro-euthanasia policy. It would furthermore be impossible to establish sufficient safeguards to prevent abuse.

* *Option 2: Decision-making by the medical practitioner*

Under this option the practice of active euthanasia could be regulated through legislation

in terms of which a medical practitioner may give effect to the request of a terminally ill, but mentally competent patient to make an end to the patient's unbearable suffering by administering or providing a lethal agent to the patient. The medical practitioner will have to adhere to strict safeguards in order to prevent abuse.

* *Option 3*: Decision-making by a panel or committee

Under this option the practice of active euthanasia could be regulated through legislation in terms of which a multi-disciplinary panel or committee is instituted to consider requests for euthanasia according to set criteria.

The South African Law Commission was established by the South African Law Commission Act 19 of 1973. It is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

ISSUED BY THE SECRETARY: SA LAW COMMISSION, PRETORIA

CONTACT FOR ENQUIRIES IN RESPECT OF MEDIA STATEMENT:

A M LOUW(012) 322-6440