Editor's comment

... and taxes

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There are only two certainties in life – death and taxes. So why don't we talk about the former? There has been a spate of articles in the *British Medical Journal* in recent months about the lack of planning for end-of-life care by the British medical profession – a serious omission in a country where the majority of people are older than 60 – and we are no different.

The recent launch of a position paper, 'End-of-life decisions, ethics and the law: A case for statutory legal clarity and reform in South Africa', by Willem Landman of the Ethics Institute of South Africa, is a welcome breath of fresh air on what seems to be a taboo topic.

In Landman's words, 'Dying is a natural and inevitable part of life. Unless we die an unnatural death, we will go through a natural dying process. For some, it will be peaceful and dignified; for others it will be filled with pain, distress and suffering. We do not know which it will be.' What we, as a society, need to do, is create the conditions necessary to ensure that, wherever possible, death is a peaceful and dignified event. Unfortunately, not only do medical practitioners and their patients seldom talk about death, the law as it currently stands in South Africa is far from clear on what is permissible in terms of end-of-life care – except in the case of assisted dying, which is clearly illegal.

What is required, in Landman's words, is an 'enabling environment' in the law, that allows for responsible and compassionate terminal care, that might also require the 'potential hastening of death'.

In November 1998, the final report of the South African Law [Reform] Commission Report, Project 86, was published. This SALC Report ('Euthanasia and the artificial preservation of life, Project 86') included a draft bill, titled End of Life Decisions Act 1998, and was tabled in Parliament in 2000, but was shelved by the then Minister of Health Dr M Tshabalala-Msimang. The immediate aim of the position paper is to contribute to the public debate about end-of-life decision-making, specifically around the aims and content of the SALC Report.

In the position paper, four end-of-life decision-making practices are discussed – terminal pain management, withholding and withdrawal or potentially life-sustaining treatment, advance directives (such as a living will) and assisted dying. Controversially, the position paper argues for statutory legal reform decriminalising assisted dying.

Although the first three of the four end-of-life decision-making practices are legal, there are areas that need clarity. For example, appropriate and adequate terminal pain management may have the secondary effect of hastening death. This potentially exposes medical practitioners to criminal and civil liability. The need for legal clarity in this case is to ensure the honest application of the doctrine of double effect, making it legal to manage terminal pain and suffering appropriately, even if the secondary effect is to shorten a patient's life. The legal issues around withholding and withdrawing potentially life-sustaining treatment and advance directives such as a living will hinge very much on the legal definitions of competent persons – either the patient or a substitute. Another important issue is that the law needs to allow medical practitioners to decide unilaterally to withhold or withdraw potentially life-sustaining treatment if the treatment goal is unattainable – even if a patient or a patient's family insists that 'everything should be done'. In the case of a living will, there needs to be clarity on whether this can ever be overidden, either by doctors or by a patient's family.

It is, however, the legal clarity on assisted dying that is the most contentious – and which will capture the public's interest most and be most consistently misinterpreted by the public and the lay media. What needs to be spelled out in any ethical or legal discussion around the law of assisted dying is that those wishing to get the SALC Report back on the table state categorically that 'we are dealing with *free or voluntary choices by competent persons to end their lives. No-one is forced, coerced or unduly influenced to make that decision. So, any tallk of "deciding for (competent) others" that they should die, is totally out of place in this discussion.*'

The position paper argues that there is a strong ethical case for legalising assisted dying based on the values and rights in the Constitution. Legalising assisted dying, like termination of pregnancy and polygamy, is something that will never have the support of everyone in a diverse society – and neither should it. That very diversity of opinion is one of the checks and balances that are necessary in any democracy. But this is something that needs to be given the attention of anyone who cares about upholding the dignity of life, right up to its end.