

JOINT SELECT COMMITTEE ON END OF LIFE CHOICES

**INQUIRY INTO THE NEED FOR LAWS IN WESTERN AUSTRALIA
TO ALLOW CITIZENS TO MAKE INFORMED DECISIONS
REGARDING THEIR OWN END OF LIFE CHOICES**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 8 MARCH 2018**

SESSION TWO

Members

**Ms A. Sanderson, MLA (Chair)
Hon Colin Holt, MLC (Deputy Chair)
Hon Robin Chapple, MLC
Hon Nick Goiran, MLC
Mr J.E. McGrath, MLA
Mr S.A. Millman, MLA
Hon Dr Sally Talbot, MLC
Mr R.R. Whitby, MLA**

Hearing commenced at 11.29 am [11:29:15 AM](#)

Rabbi DAVID JOHN FREILICH

Emeritus Chief Rabbi, Perth Hebrew Congregation and Western Australia, examined:

The CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to the end-of-life choices inquiry. My name is Amber-Jade Sanderson and I am the Chair of the joint select committee. The committee members are: Mr Simon Millman; Hon Dr Sally Talbot; John McGrath; Dr Jeannine Purdy, our principal research officer; Hon Colin Holt; Hon Nick Goiran; and Hon Robin Chapple. The purpose of today's hearing is to discuss the current arrangements for end-of-life choices in Western Australia and to highlight any gaps that might exist. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you may say outside of today's proceedings. I advise that the proceedings of this hearing will be broadcast live within Parliament House and via the internet. The audiovisual recording will also be available on the committee's website following the hearing.

Could you please introduce yourself to the record?

Rabbi FREILICH: My name is David Freilich. I am now the Emeritus Chief Rabbi of the Perth Hebrew Congregation. When I made the submission, I was the Chief Rabbi of the Perth Hebrew Congregation. I am here in that capacity representing the Jewish community.

[11.30 am]

The CHAIR: Have you got any questions about your attendance here today?

Rabbi FREILICH: No, not at all.

The CHAIR: Before we begin with questions, did you want to make a brief opening statement?

Rabbi FREILICH: I would like to. How long do I have to make this? I just want to set out, just in a brief statement, our philosophical views on this.

The CHAIR: We have set aside about 45 minutes for this hearing.

Rabbi FREILICH: I am going to start as follows. I have actually made a prepared statement that I want to say before I start.

The CHAIR: That is fine.

Rabbi FREILICH: Life is sacred. It is God's gift, not ours. It is a doctor's responsibility to heal, not to harm, even if a patient requests it. Jonathan Sacks, who was the Emeritus Chief Rabbi of the British Commonwealth and who is known for his ethical works, says —

Despite Judaism's ... emphasis on human choice, free will and personal responsibility, we believe there are certain things we may not do, even out of great compassion.

What do we mean when we say that life is sacred? Sadly, the words we need to explain it have largely gone out of circulation—words such as humility and reverence. Humility is a forgotten virtue. Reverence is in short supply. Awe is not as awesome as it once was. Perhaps the easiest way of explaining that things are sacrosanct is that they are not ours to do with as we wish. The environment is one. Personal dignity is another. Human life is a third. These are three keys which we believe are in the hands of a higher source, no matter what you want to describe that source as

and whether you call it God or anything else. They are beyond our control. The wisdom of the ages has taught us not to regard these things as if they were our personal possessions. Why? Rabbi Jonathan Sacks quotes from a book, which I have now looked at myself —

The self-professed agnostic Friedrich Hayek explained it ... in his ... book *The Fatal Conceit*. He pointed out that human intervention in history has often been catastrophic.

Let me say this: those who came before us were not foolish. How come they made in retrospect such disastrous decisions? Hayek's answer was the law of unintended consequences, which says that whatever you foresee as the result of your choice is only a small part of the story. Decisions have ripples of consequences that no-one can predict at the time. Our knowledge of the future is unlike our knowledge of the past. We can see clearly in hindsight, but in the case of the future, we can hardly see more than a few metres in front of our eyes. Hayek held in his book that the simplest way of avoiding catastrophe is to keep to a few simple rules—rules that have proved their worth by ensuring the survival of the cultures that kept them. By far the longest-lived cultures are the great world faiths, and their rules are often in the form of basic prohibitions: "You shall not".

To legalise assisted dying is fraught with dangers, chief of which is the deconsecration of life. The history of societies that have sanctioned euthanasia in the past, let me tell you, is not an encouraging one. Look at the ancient Greeks—not encouraging. In part, Judaism and Christianity were protests against ages in which human life was held dispensable and disposable. Those who are supporting the proposed legislation no doubt may be doing so from the highest of motives, but purity of motive has never guaranteed rightness of outcome. Often, let me tell you all, it has been the reverse. To give the dying dignity, using all possible means to treat their pain, is one thing; to allow medically assisted suicide is another. If we lose our reverence for human life—excuse me if I get very emotional—we will one day lose much more besides. Thank you for listening to my statement.

The CHAIR: This inquiry is looking at a range of things, including the current legal framework and whether that should or should not be expanded to allow those choices. But with regard to current choices around palliative care, do you think the current arrangements for palliative care adequately relieve pain and suffering at the end of life?

Rabbi FREILICH: From my limited experience of visiting palliative care institutions, I think they do a wonderful job. Personally, I do feel more can be put into it—I am talking financial assistance and other ways of trying to do more to relieve the suffering of those who are in pain. But from my limited experience of visiting various institutions, I give them full praise.

Hon ROBIN CHAPPLE: Thank you very much indeed, Rabbi. A lot of what you have set out in your submission I totally support. Having said that, quite clearly there are religious views in relation to the end of life, whether that be an Aboriginal cultural view or whether it be Judaeo-Christian, Islamic, Buddhist or whatever. Their desires must be respected. I believe you are a very wise person.

Rabbi FREILICH: I do not know about that!

Hon ROBIN CHAPPLE: I actually do think that what you had to say set out many good social directions. What in your view is the right of any religious institution or culture to determine the direction of others who are not of that faith or of that culture?

Rabbi FREILICH: Let me point one thing out here, and I am here of course as a rabbi: this state has many, many different religions and different cultures, and I believe all of them are to be respected. As I said, I actually sometimes feel a little embarrassed when it comes to people coming and asking me to sign various forms about government legislation on things, because, let us face it, as a Jew, of course I have certain values because they have been brought down to me by my religion, but it is not for me to force my values on other people.

In fact, I think it is incorrect to do that—absolutely. So therefore sometimes I am very reticent, even in coming to this committee, because this committee is representing Western Australia. I am giving my Jewish views here, brought down by my Jewish values. However, let me say one thing here, interestingly enough: from my experience as a rabbi over 30 years in Western Australia, much of what I have said regarding these values have actually been reinforced by experiences I have had with this. I want to share with you a few of those experiences in a minute, but I say that every culture should have its right, unless of course it goes against the law of the land. That is different. If something goes against the law of the land, the law of the land prevails. We have a principal in Judaism: the law of the land is law. If we are living here, the law of the land is to be listened to. Unless it goes against the law of the land, people should be allowed to have their own cultures. I am not forcing mine on others.

[11.40 am]

Mr J.E. McGRATH: In Judaism, what is the view to someone who commits suicide for any sort of reason?

Rabbi FREILICH: Let me tell you that we say that somebody has committed suicide—it is interesting, since you asked this. We, of course, do not condone suicide, God forbid. We do not condone suicide. If somebody has committed suicide, we usually say they are mentally not well and that has caused them to do it. Let me tell you an interesting thing. There used to be in Jewish law if somebody commits suicide—they have taken their own life—because they have actually shortened the life which the Almighty has given them, therefore they, in some cases, used to be buried in another section of the cemetery. I changed that completely here. I said, “You’ve got to realise one thing; if somebody’s committed suicide, they weren’t well. You cannot say they have deliberately planned this. There’s something that’s caused them to do it. Therefore, it is a duress on them.” So, that is how I see it. If somebody commits suicide, I do not condemn them. I do not condemn them. There is some duress. You can say to me, “Well, that duress could be pain.” I am predicting your —

Mr J.E. McGRATH: No, I am not. I am just —

Rabbi FREILICH: I am giving you the questions!

Mr J.E. McGRATH: I am just asking you the question, in your faith, would they be looked on by God any differently to someone who just died by natural causes? You said there was a time when they were not buried in the same part of the cemetery.

Rabbi FREILICH: I think that was to discourage people, to make them think twice before they commit suicide, but I cannot judge how God is going to look on them. I do not speak for God. I do not judge what God is going to say. I know, with us, maybe the reason they did that was because they wanted to discourage it, put some fence against it.

Hon ROBIN CHAPPLE: We have obviously been hearing a lot from a wide variety of witnesses, palliative care specialists, people in nursing institutions and all sorts of things. Palliative care is the way of actually helping people through to a good death, in many ways. But, it has become apparent to us that there are many—not a huge percentage; I make that very, very clear—to which palliative care does not deal with the issue. We have heard evidence that even if somebody is totally sedated, they are still grimacing, they are still thrashing about, even under full sedation. We have obviously also heard about the terminology “terminal sedation” where sedation is given to the point where there is what we call the dose of double effect. The sedation, over a period, will actually through lack of food or whatever lead to the person’s demise. Where do you sit in that sort of space?

Rabbi FREILICH: Of course, if somebody is in deep pain, we have no right, as I said before, to actually terminate their life. However—this is definitely Jewish belief—if one has to administer pain relief

that may and possibly will terminate that person's life, the reason it is being given is not for the fact of terminating the person's life—as long as that is the case. Of course, it is very hard to judge what is in a person's mind when they are doing that but, in a court of law, the judges would be able to determine the circumstances that led to that. If it is for the sake of compassion in trying to avoid the person having such pain and, for example, a lethal dose of morphine, not for the fact of killing them, but to ease their pain, that, in Judaism, is acceptable. That is acceptable.

Hon ROBIN CHAPPLE: No worries. I was just trying to make that clarification. Thank you very much.

Rabbi FREILICH: Have I answered your question?

Hon ROBIN CHAPPLE: Yes.

The CHAIR: Rabbi, I have a question about advance health directives. They are also a term of reference of the inquiry. To your understanding, are advance health directives well understood and taken up in the community?

Rabbi FREILICH: Explain, advance health directives—is what?

The CHAIR: Advance health directives are a legal document where an individual will write down their wishes in what they will and will not accept in terms of medical treatment in case they lose capacity.

Rabbi FREILICH: We say that a person actually should try everything. If they say, "I do not want this done to me; I do not want that done to me. I don't want a blood transfusion", that is not our religion. Pikuach nefesh means "the saving of life overrides all" so you cannot write in a document saying, "Please deprive me of food if I have such and such a thing." No, our religion actually says you have got to save life.

The CHAIR: You could have an advance health directive that puts that directive, so, "I want to be resuscitated at all costs. I expect to be treated in every possible way." I think I am hearing from you that the fact you were not really aware of what they were, they are not widely used in the community?

Rabbi FREILICH: They are not widely used in the community. It is actually the first time I have heard the expression, to be quite frank!

Hon ROBIN CHAPPLE: On that, and I am going back to my old perennial here, folks—we have got smiles all round, even from Hansard! There is in hospitals quite often notes taken by the doctor about a patient or, in the old days, on the bottom of the bed, a sign saying "do not resuscitate"—DNR. That almost falls into the same area. So that deliberation, do you think that is permissible?

Rabbi FREILICH: We would not agree with DNR. In fact, can I share with you a story?

Hon ROBIN CHAPPLE: Please do.

Rabbi FREILICH: I was going to actually use it in one of my opening statements. When I came here 31 years ago to be the rabbi here, I came from Maroubra in Sydney, where I was a rabbi for 15 years there. I came here and one of the first questions I had was—a 40-year-old had collapsed and was taken to Royal Perth Hospital. What happened was, he was in a coma for about three weeks. A very young family called me in to the hospital because the doctor had said to them, "Look, we're not going to resuscitate him. We don't think there's any hope here. We're just going to let him die." There were various machines on him at the time. The family called me in and they said to me, "Rabbi, you know, our father and husband, he is quite a religious man. What should we do?" I had never dealt with a question like that before and I am not going to take life and death in my hands. So I phoned up very high rabbinical authorities in London; I was much younger at that time! I phoned

up and I said to them this is the situation. They said to me, “When you take the machines off and the various things that are keeping the person alive, if he’s still breathing by himself for 20 minutes, then he’s still got life in him and don’t terminate it.” So I said, “Okay, I’ll take your advice.” I went back to the hospital—the waiting room—and I gave the verdict of what I had heard. So the doctor comes in and we tell him, “Look, if you take the machine off, and he starts to go down immediately—the breathing—then he’s being just supported by the machines and he’s virtually dead. If, however, he’s still breathing for 20 minutes, then he’s still alive and you’ve got no right to terminate him.” This doctor said, “No, I don’t agree with that assessment. He’s got no quality of life, this man. There’s no quality of life there.” So they had a friend, who was a lawyer, and the lawyer said to the doctor—I will never forget this—“Doctor, look through the window here. There’s a man beside my friend there. If he was to pass out now, what would be your responsibility?” He said, “I’d have to revive him.” “So, why are you saying you wouldn’t revive my friend?” He said, “Because your friend’s got no quality of life.” This lawyer said, “Doctor, you have been trained to save lives. You have not been trained to say who, and who has not a better quality of life. Only one has that, and that is the Almighty. That is not your call.” My fear is that in society you are giving to human beings the call to say who and who does not have a better quality of life. That, I believe, is in the hands of a higher power. It is not us. Hitler thought he had the power to say who and who could not live. That is not us. We are human beings with human fallibility. It is not our role. There is something much higher than that.

[11.50 am]

Hon Dr SALLY TALBOT: Rabbi, what would you say to a person who, let us say for the sake of argument, you deemed had full legal capacity, and who told you that, in their view, they did not have quality of life because they were in pain or they had completely lost any sort of autonomy, and that they wished to die?

Rabbi FREILICH: What would I do? As a rabbi, it is my duty, which I have done a number of times, to explain to them that everybody, in one way or another, has a quality of life and has something to contribute to society—everybody. I would make them clear of that. I have dealt, in 30 years here, a number of times when people have wanted to commit suicide, and I have been called as a rabbi, and I actually tell them that every soul has a quality of life. You might not think so, but you do. That is my stance on it, so I would not give up by saying, “You have no quality of life.” No, I could not do that; I could not, in all conscience, as a fellow human being, do that. So that is my stance on that one.

The CHAIR: In your submission you outlined that a licence to allow assisted suicide gives the wrong message to those who are considering committing suicide.

Rabbi FREILICH: Sorry —

The CHAIR: Sorry, I will speak up a bit.

Rabbi FREILICH: No, that was not the thing, I was getting a bit emotional. I am sorry.

The CHAIR: Your submission outlines that a licence to allow assisted suicide gives the wrong message to those who are considering committing suicide. Can you elaborate on why you think that is the case?

Rabbi FREILICH: If we actually show that people can just have a choice about ending their life, taking their lives, then we give a message to others that life is not all that important, and if you want to take it, you can take it. I just think it gives the wrong message. I say that is an interesting word. Generally, in society, it is people that make the law. In Judaism it is the law that makes the people. In other words, what values we want people to understand and to take into their lives, the law

provides that. If we want people to respect life in society, the laws should be actually there to mould and to actually give that direction to people if we want people to respect life. That is not their own lives; it is the lives of everybody.

Hon ROBIN CHAPPLE: I really have appreciated your evidence to us today. I am not of any faith; I make that clear to you, but way back when I did have relatives of the Jewish faith, and I understand your passion and empathise with it. Thank you.

Rabbi FREILICH: I want to thank all of you for inviting me today because it is something that is very—not just as a Jew, but as a human being—very dear to me. Human life, for everybody, no matter what religion, race, creed, is of extreme value, and can never be replaced, and so every bit of it is precious.

Mr J.E. McGRATH: Just one final question from me. The recent parliamentary legislation that went through in Victoria, and the process, did the Jewish rabbi of Victoria put in a submission like you have, and appear before the —

Rabbi FREILICH: I have no idea.

Mr J.E. McGRATH: You do not know? But would you say the stance would have been the same?

Rabbi FREILICH: Yes—well, it should have been. If it was not, and you hear otherwise, let me know. Are my 45 minutes up? I just want to give you one story here, which also concerns me. I was going to tell the story as well, but I had not, because I thought we were out of time. I went to Charles Gairdner Hospital, where I was called once. It was a woman who was dying. She was quite an elderly lady. She was dying, according to the doctors. I go there to see her, and the doctors say to me, “Look, rabbi, you’d better say the prayers with her. She is in a coma, please go and say the prayers, because I think she has only got a few hours to live; maybe one day.” So I go there, and then, seven years later, at her funeral, I get up and I say—some of the doctors who treated her were there—“I think some of you remember that that, a few years ago you told me that she had one day to live. It’s been a long day.” What I am saying is—another thing is, if we are going to say that a doctor can determine whether or not a person is going to live or die, and will terminate their life because they have only got a day or two to live, it is my experience that you can never determine those things. And last, but not least, one more thing. We had a great rabbinical sage who was here, probably 25 years ago now, and Verity James at the ABC, she wanted to interview him. He actually came from Israel and he had expertise in medical issues. I ran him to the studio, and I am waiting outside to hear what he has got to say. She starts interviewing and she says, “Rabbi Steinsaltz, tell me—what can you tell me about—I believe you are talking about medical ethics at the Perth synagogue tonight. What can you tell me about medical ethics?” So he says, “All doctors are destined for hell, says the Talmud. The best of doctors are destined for hell.” She immediately pricked and she said, “Next you will be telling me all journalists are destined for hell.” To which he answered and said, “Where else will they get a good story?” Why I tell you this, there is a statement like that, because it actually says in the Talmud. What does it mean that the best of doctors are destined for hell? If doctors think that they have life and death in their own hands, they become like gods themselves, so if you give doctors the power to determine whether a person should live or a person should die, that is what the Talmud is actually referring to there, because then you put yourself on a pedestal where you are the orchestrator of who lives, who dies. None of us should have that. Thanks very much for listening to me.

The CHAIR: Thank you, rabbi. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 working days from the date of the email attached to the transcript.

Rabbi FREILICH: Thank you.

The CHAIR: I have just got to do this closing statement. Bear with me for the formalities.

If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections in the sense of your evidence cannot be altered. If you wish to provide clarifying information or elaborate on your evidence, please provide this in an email for consideration by the committee when you return your transcript of evidence. Thank you very much for taking the time to appear before us today, rabbi, we really appreciate it.

Hearing concluded at 12 noon
