



Australian Government
Classification Review Board

Review meeting: 7 February 2007
Decision meeting: 24 February 2007
23-33 MARY STREET, SURRY HILLS, NSW

MEMBERS:

Convenor: Ms Maureen Shelley
Deputy Convenor: The Hon Trevor Griffin
Members: Mrs Gillian Groom,
Mr Anthony Hetrih,
Mr Rob Shilkin,
Ms Kathryn Smith,
Ms Ann Stark

BUSINESS: To review the Classification Board's decision to classify the publication *The Peaceful Pill Handbook*, by Dr Philip Nitschke and Dr Fiona Stewart, Category 1 – Restricted.

APPLICANT

First applicant Right to Life Association (NSW) Inc (RTL)
Represented by Mr Terry Tobin QC, Mr Damien Tudehope,
Mr Chaing Lim

Second applicant The Attorney-General, the Hon Philip Ruddock MP
Not represented, not present

ORIGINAL APPLICANT: Exit International US Ltd (Exit)
Represented by Mr Simeon Beckett, Dr Philip Nitschke,
Dr Fiona Stewart, Ms Carol Berry

INTERESTED PARTY: NSW Council for Civil Liberties (NSW CCL)
Represented by Mr Stephen Blanks, The Hon Keppel Enderby QC,
Ms Simone Orzepowski

Also present: (assisting the Classification Review Board), Australian Government Solicitor, Classification Operations Branch

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DECISION AND REASONS FOR DECISION

1. Decision

1. The Classification Review Board (the Review Board) in a unanimous decision classified the publication *The Peaceful Pill Handbook* (the publication), by Dr Philip Nitschke and Dr Fiona Stewart, 'RC' (Refused Classification) as it instructs in matters of crime relating to the manufacture of a prohibited drug (barbiturates), including the attempt to manufacture a prohibited drug (barbiturates); the storage of substances being used for the manufacture of a prohibited drug (barbiturates); and gives instructions enabling individuals to "take part in" the manufacture of a prohibited drug (barbiturates).
2. Further, the Review Board determined, in the majority, that the publication instructs in matters of crime relating to the possession of a prohibited drug (barbiturates) and importation of a prohibited substance and the importation of a border controlled drug (barbiturates).
3. Additionally, the Review Board determined, in the majority, that the publication instructs in matters of crimes under Coroners legislation in relation to reportable deaths.

2. Legislative provisions

The Classification (Publications, Film and Computer Games) Act 1995 (the Act) governs classification of publications and the review of classification decisions. Section 9 of the Act provides that publications are to be classified in accordance with the National Classification Code (the Code) and the Guidelines for the Classification of Publications 2005 (the Guidelines).

- 1) Relevantly, Publications 2 item 1(c) of the table in the Code provides that publications that "promote, incite or instruct in matters of crime or violence" are to be classified 'RC'.
- 2) The Code also sets out various principles to which classification decisions should give effect, as far as possible.
- 3) Section 11 of the Classification Act requires that the matters to be taken into account in making a decision on classification include:
 - a) The standards of morality, decency and propriety generally accepted by reasonable adults; and
 - b) The literary, artistic or educational merit (if any) of the publication or film; and
 - c) The general character of the publication or film, including whether it is of a medical, legal or scientific character; and

- d) The persons or class of persons to or amongst whom it is published or is intended or likely to be published.
- 4) Three essential principles underlie the use of the Guidelines (Publications) determined under s.12 of the Act being:
 - i) the importance of context;
 - ii) the assessment of impact; and
 - iii) the six classifiable elements – adult themes, violence, sex, language, drug use and nudity.

3. Procedure

- 1) On January 10, 2007, the Review Board received from Right to Life Association (NSW) Inc an application for review (dated January 11, 2007) of the Classification Board's decision to classify *The Peaceful Hill Handbook* Category 1 Restricted. On the same day, an application was lodged by RTL with the Director for a full waiver of the application fee, which was granted on January 30, 2007.
- 2) On January 15, 2007, the Attorney-General lodged an undated application for review of the publication pursuant to s.42 (1) (a) of the Act stating that the application was lodged "in light of the perceived inconsistency" of the Australian Customs Service seizing copies of the publication as a prohibited import under Regulation 3AA(2)(c) of the *Customs (Prohibited Imports) Regulations 1956* and the classification of the publication Category 1 Restricted by the Classification Board on December 12, 2006.
- 3) The Review Board noted the Attorney-General's reason for lodging his application but noted that the "perceived inconsistency" of legislation is not a relevant consideration for the Review Board in determining the classification of a publication.
- 4) Prior to the review meeting, all members of the Review Board read the publication. After reading the publication, the Convenor sought independent expert opinion from Dr Colin Duke and Associate Professor Janet Hardy. Copies of their responses and biographical information concerning the experts were circulated to all parties prior to the review meeting.
- 5) The Attorney-General advised in his undated letter received January 15, 2007 with the application for review that he would not make any submissions and would not be represented at the meeting.
- 6) The Convenor asked Review Board members at the commencement of the review meeting if there were any reasons why they would not be able to bring an impartial view to the application and review the matter on its merits.

- 7) Ms Stark advised the Review Board and the parties that she had in the past undertaken professional work in the area of palliative care. Ms Stark stated that there was no reason that would prevent her from considering the matter under review impartially. No submissions were made by any party on this issue. Review Board members all confirmed their ability to review the matter on its merits.
- 8) As a preliminary matter, the Review Board satisfied itself that it had received valid applications from both RTL and the Attorney-General. No objections were made by any party as to the validity of the applications.
- 9) Written and oral submissions were made by RTL, Exit and NSW CCL. No objections to the standing of Dr Duke or Associate Professor Hardy as independent experts were made by any party.
- 10) Following the review meeting, RTL, Exit and NSW CCL and the Convenor requested further opinion from Dr Duke. All responses were circulated to all parties and were read by Review Board members prior to the Review Board reconvening on February 24, 2007.
- 11) The Review Board reconvened on February 24, with Ms Smith and Mr Shilkin in attendance by teleconference, to consider the matter.

4. Evidence and other material taken into account

The Review Board had regard to the following:

- i) The publication *The Peaceful Pill Handbook*;
- ii) The applications for review from Right to Life Association (NSW) and the Attorney-General.
- iii) Right to Life Association (NSW) – written submissions and oral submissions from Mr Terry Tobin QC;
- iv) Exit International US Ltd – written and oral submissions, including oral submissions from Mr Beckett, Dr Nitschke and remarks from Dr Stewart;
- v) New South Wales Council for Civil Liberties – written and oral submissions, including oral submissions from Mr Blanks and Mr Enderby, and a written submission from Mr Frank Moorhouse;
- vi) Dr Colin Duke, Senior Lecturer, Faculty of Pharmacy, University of Sydney, NSW – independent expert opinion;
- vii) Associate Professor Janet Hardy, Director of Palliative Care, Mater Health Services, Queensland – independent expert opinion;
- viii) Relevant provisions of the Act, Code and Guidelines;
- ix) The Classification Board's report;

- x) *Brown v Classification Review Board* [1997] 145 ALR 464 (the *Rabelais Case*);
- xi) *Brown v Classification Review Board* [1998] 154 ALR 67 (the *Rabelais Case*, Full Federal Court).

Legislation relating to suicide; border control

- i) *Crimes Act 1900* (NSW) No 40 Division 5 Suicide
- ii) *Criminal Code Act 1899* (Queensland) Schedule 1: Criminal Code Sect 311 Aiding suicide
- iii) *Criminal Law Consolidation Act 1935* (SA) Sect 13A Criminal liability in relation to suicide
- iv) *Criminal Code Act 1924* (Tasmania) Sect 163 Aiding suicide
- v) *Criminal Code Act 1919* (WA) Schedule: Criminal Code Sect 288 Aiding suicide
- vi) *Crimes Act 1900* (ACT) No 40 Sect 16 Suicide etc – not an offence; Sect 17 Suicide – aiding etc; Sect 18 Prevention of suicide
- vii) *Criminal Code Act 1983* (NT) Schedule: Criminal Code Sect 168 Aiding suicide
- viii) *Criminal Code 1995* (Cwth)

Division 474 Telecommunication offences

- Sect 474.29A Using a carriage service for suicide related material
- Sect 474.29B Possessing, controlling, producing, supplying or obtaining suicide related material for use through a carriage service
- Sect 474.30 Defences for NRS employees and emergency call persons

Division 300 Preliminary

- Sect 300.2 Definitions

Division 307 Import-export offences

Subdivision A Importation and exporting border controlled drugs or border controlled plants

- Sect 307.2 Importation and exporting marketable quantities of border controlled drugs or border controlled plants
- Sect 307.3 Importation and exporting border controlled drugs or border controlled plants

Subdivision B Possessing unlawfully imported border controlled drugs or border controlled plants

Division 314 Drugs, plants, precursors and quantities

Sect 314.4 Border controlled drugs

Legislation relating to drugs (barbiturates) and poisons (cyanide)

- i) Customs (Prohibited Imports) Regulations 1956 (Cwth) – Schedule 4 Drugs; Reg 5 Importation of drugs*
- ii) Customs Act 1901 (Cwth) – Sect 50; Sect 51; Sect 233(1) Smuggling and unlawful importation and exportation; specifically Sect 233 (1)(b); Sect 233 (1)(d); Sect 233 (1AB); Sect 233 (2)*
- iii) Health (Drugs and Poisons) Regulation 1996 (Queensland) – Regulation 271 Prohibition on dispensing etc. regulated poisons; Appendix 7 Regulated Poisons*
- iv) Poisons and Therapeutic Goods Act 1966 (NSW)*
- v) Poisons and Therapeutic Goods Regulation 2002 (NSW) – Reg 19 Certain Schedule 7 substances to be supplied and used only under an authority; Reg 100 Unauthorised manufacture and supply of drugs of addiction prohibited*
- vi) Industrial Chemicals (Notification and Assessment Act 1989 (Cwth) - Sect 5; Sect 6; Sect 7A(2); Sect 7(1); Sect 11 Australian Inventory of Chemical Substances; Sect 80B*
- vii) Drug Misuse and Trafficking Act 1985 (NSW) – Sect 6 Meaning of “taking part in”; Sect 24 Manufacture and production of prohibited drugs; Sect 26 Conspiring; Sect 27 Aiding, abetting etc commission of offence in New South Wales Schedule 1 Sections 3(1), 33(4), 44;*
- viii) Controlled Substances Act 1984 (SA) – Sect 13*
- ix) Controlled Substances (Poisons) Regulations 1996 (SA) – Reg 12*
- x) Drugs, Poisons and Controlled Substances Regulations 2006 (Victoria) – Reg 4 Definitions, Part 5 Schedule 7 poisons Reg 65 Controls concerning listed regulated poisons*
- xi) Drugs, Poisons and Controlled Substances Act 1981 (Victoria) – Part V Sect 70 Drugs of Dependence Definitions; Sect 71A Possession of substance, material, documents or equipment for trafficking in a drug of dependence; Sect 71AC Trafficking of a drug of dependence; Part 1 Schedule Eleven, Drug Quantity of pure drug*
- xii) Poisons Act 1964 (WA) – Sect 23; Schedule 7*

- xiii) *Poisons Act 1971* (Tasmania) – Sect 14(1); Sect 37; Schedule 7, Poisons List
- xiv) *Poisons and Drugs Act 1978* (ACT) – Dictionary; Sect 34, Sect 34(2)
- xv) *Poisons and Dangerous Drugs Act 2005* (NT) – Sect 6A, Sect 11
- xvi) *Therapeutic Goods Act 1989* (Cwth) – Sect 52D; Schedule 7 of the Standard for the Uniform Scheduling of Drugs and Poisons
- xvii) *Misuse of Drugs Acts 1981* (WA) – Sect 5 Offences concerned with prohibited drugs and prohibited plants in relation to premises and utensils; Sect 6 Offences concerned with prohibited drugs generally; Sect 11 Presumption of intent to sell or supply.
- xviii) *Drugs Misuse Act 1986* (Queensland) – Sect 4 Definitions; Sect 8 Producing dangerous drugs; Sect 8A Publishing or possessing instructions for producing dangerous drugs; Sect 9 Possessing dangerous drugs
- xix) *Drugs Misuse Regulation 1987* (Queensland) – Schedule 2 Dangerous drugs; Schedule 3 Specified quantities for particular dangerous drugs

Legislation relating to coroners and reportable deaths

- xii) *Coroners Act 1980* (NSW) – Sect 12A Obligation to report death; Sect 13(1)(a) and (c)
- xiii) *Coroners Act 1985* (Victoria) – Part 4 Reporting of Deaths; Sect 13 Obligation to report death
- xiv) *Coroners Act 2003* (SA) – Sect 28 Reporting of Deaths
- xv) *Coroners Act 1995* (Tasmania) – Part 4 Reporting of deaths; Sect 19 Obligation to report death
- xvi) *Coroners Act 2003* (Queensland) – Sect 7 Duty to report deaths
- xvii) *Coroners Act 1996* (WA) – Part 3 Reporting of deaths; Sect 17 Obligation to report death; Sect 18 Information to the coroner
- xviii) *Coroners Act 1977* (ACT) – Sect 77(1)
- xix) *Coroners Act 1993* (NT) – Sect 12(2)

5. Synopsis

- a) *The Peaceful Pill Handbook* states in the preface that it relates to assisted suicide and voluntary euthanasia and “*is* (emphasis in book)

intended for seriously ill and suffering people for whom there is little hope that their quality of life will ever recover to a level that is satisfactory to them”.

- b) The publication purports to “draw upon the latest scientific research on end of life choices to share a range of practical and useful strategies that everyone can understand. . . The over-arching paradigm of the book is to ensure the seriously ill and the elderly maintain their respect, dignity and sense of control.”
- c) It provides “information” for “seriously ill or elderly people” so that they may make “carefully considered and fully informed decisions about their own life, and death.” The publication details eight methods, some in significant detail, of bringing about death.

6. Findings on material questions of fact

Classifiable elements

The Review Board found that the publication contains aspects worthy of mention under the classifiable elements of themes, violence and drug use:

- 1) **Adult Themes** – The publication provides detailed information on “end of life” options – that is of suicide and death. This information is forensically detailed. The impact of the detailed information is high. It includes photographs, labelled diagrams, and step-by-step processes to end life. Personal stories of suicide and the death of loved ones are included and the impact of these stories and of the detailed information regarding methods of bringing about death is high.
- 2) The Review Board found that the publication contains material relevant to the theme of ending one’s life and the ways by which that may be achieved. Central to the consideration of the issues is whether or not the publication offers instruction in matters of crime for the purposes of 1(c) of the Code.
- 3) While the publication details eight ways for bringing about death, those which raise questions about “matters of crime”, (whether the participant is a principal or an assistant) are the following:
 - a) Assisting in the clean-up of the scene of a suicide in order to give the impression that the causes of death were natural, with a view to avoiding the legal obligation to report the death to the coroner, either through the offices of a medical practitioner or the police, or by the person assisting in the clean-up;
 - b) The making of cyanide compounds;
 - c) The purchase overseas and unlawful importation into Australia of Nembutal, a barbiturate;

- d) The possession of barbiturates;
- e) The manufacture of barbiturates in Australia.

These issues are addressed in some detail below.

- 4) **Violence** – The publication details methods of injurious action which when carried out are fatal.
- 5) Stories of these actions and their results are detailed. Whilst the stories do not detail blood, gore or aggressive actions, the injurious methods detailed are invariably fatal and as such would in the dictionary-meaning of the word be considered as violent.
- 6) Such actions include the combined use of oven bags and helium to end life and details of the experiences of people who used this method. Also detailed is the manufacture of cyanide and the consequences of people inhaling gases or ingesting cyanide resulting from that manufacture.
- 7) The stories of death by cyanide poisoning include statements regarding “violent (and presumably painful) death”, “tetanic convulsions” or loss of consciousness and collapse and what the authors describe as “adverse symptoms”.
- 8) Whilst these same details in – say – a crime novel would be no more than mild to moderate, in the context of a book on end of life options for seriously ill people the impact of these stories is strong.
- 9) **Drug use** – The publication details methods of the manufacture, possession and importation of barbiturates. Personal stories relate how the drugs are purchased, imported and used resulting in death of individuals. It includes details of loss of consciousness of individuals and their resultant deaths, including stories of grief following such deaths. The impact of these stories is high given the context of a suicide handbook.
- 10) The Review Board noted the submission from RTL that the publication should also be refused classification under 1(a) of the Code. However, the Review Board found it unnecessary to consider this submission because of the view that the Review Board reached in relation to 1(c) of the Code.

Options for bringing about death

- 11) The publication details a number of methods of bringing about death. Some of these include methods that involve breaches of legislation.
- 12) The publication is 211 pages long and rates eight methods of “end of life” options or ways to bring about death. Seven of the rated methods are described in detail. These are carbon monoxide poisoning; hypoxic death using “Exit bags” (oven bags placed over the head) and drugs; morphine overdose; cyanide poisoning; overdose by propoxyphene (Doloxene);

hypoxic death using the "Exit bag" and helium, and overdose using the drug pentobarbital (Nembutal). Death by hanging is not described or detailed but is rated as a common method of suicide. The publication also describes the most effective way to bring about one's death using a gun (p201) but does not rate this method.

- 13) The rating system concerns "reliability" and "peacefulness" and the test is called the Exit RP test. To obtain a rating, scores are given for the primary requirements of reliability of method and peacefulness of death, and the secondary considerations of availability of the means, the complexity of the preparation, whether the method is undetectable at autopsy, the speed of death, the safety of the means to other persons present during a suicide, and the ability to store the means of bringing about the death. These methods are detailed below.

Death by "Exit bags"

- 14) A chapter is included on hypoxic death and the "Exit bag". It details instructions on how to construct the bag including the materials necessary, the method of construction, diagrams of the stages of construction, photographs of what the bag looks like over the head of a store dummy, and case studies where people have successfully used this method to bring about death.
- 15) The "Exit bag" method is given a high rating due to the availability of the means and it being "undetectable". The publication describes the method as "reliable, simple and does not involve difficult to obtain drugs or equipment". The "Exit bag" and helium option is given 5/5 for "undetectability" – "if equipment is removed there is no way of establishing the method used – even at autopsy" (p70).
- 16) On p61 it states "If there is no evidence of an Exit bag or cylinder being used, the doctor will likely certify the death as natural, assuming that the person died from their underlying illness. The Exit bag is the only method that allows this possibility. If sleeping tablets are used these will be detected at autopsy, although they would probably be at levels unlikely to explain the death. All other approaches described in this book are detectable upon examination or autopsy".
- 17) The "Exit bag" with drugs is given a 6/10 rating for reliability, 5/10 for peacefulness and 5/5 for safety. The "Exit bag" with helium is given 8/10 for reliability, 7/10 for peacefulness and 5/5 for being undetectable – on the presumption that another person will remove the bag and the helium canister before a doctor is called. It is also given 5/5 for speed, safety and storage. The only low rating it receives is for preparation – 1/5. Death by "Exit bag" and helium is the second-highest rated method of bringing about death.

Death by carbon monoxide poisoning

- 18) A chapter is devoted to death by carbon monoxide poisoning. It describes bringing about death by using a car and attaching a hose to the exhaust pipe bringing carbon monoxide fumes inside the car. Whilst the publication states: "This is not to say that the motor car cannot be used as source of carbon monoxide to effect a reliable death, but there are many problems associated with the method." (p74).
- 19) The chapter details more reliable methods of building carbon monoxide generators showing photographs, detailed instructions, diagrams with labelled parts, graphs of rates of carbon monoxide production, the chemistry equations of carbon monoxide, where to obtain the materials and the benefits and risks of the method. The instructions are detailed, for example "Fifty mls of 85% formic acid is placed in the gravity feed chamber ('B'). The control-valve is then adjusted to allow the acid to drip into the reaction chamber at a rate of 2 to 3 drops every 5 seconds" (p78).
- 20) The development of the generators by Exit members is described as "a boost to the entire process" and the generators are described as "user friendly". A case study of a "workshop" on the Gold Coast is included where ten generators were made by participants including: "Even a lady's version made largely of Tupperware and kitchen implements was developed" (p77).
- 21) The publication states that while carbon monoxide poisoning can bring about a peaceful death there are "unresolved issues". "Most interest in this method has come from those who reject the taking of drugs orally, for fear of vomiting, and who reject the use of helium because of the need for a plastic bag to be placed over one's head. The COGen (detailed instructions for manufacture are given in the publication) addresses these concerns" (p87).
- 22) This method is rated 8/10 for reliability, 7/10 for peacefulness, 5/5 for speed and 4/5 for storage. Other ratings are between one and three out of five. It is the fourth-highest rated method of bringing about death.
- 23) The Review Board noted that suicide is not a crime and that suicide by carbon monoxide poisoning does not appear to breach any of the legislation considered by the Review Board. Nor does the discussion of death by carbon monoxide poisoning include any encouragement to "clear away" the scene to ensure the death is recorded as "natural". The above details regarding this method go towards the impact of the theme of death by suicide and the context of the theme in the publication and the publication's tone.
- 24) The Review Board noted that there is no distinction given in ratings between means that involve legal methods (such as carbon monoxide poisoning) and those that involve methods that breach legislation. The

authors, whilst warning readers of some of the legal consequences, do not encourage the reader to use means to end their life that do not breach the law.

Death by morphine and heroin overdose

- 25) Two chapters are included giving information on death by the use of opiates. Some details of what the drugs' containers and labels look like, where to obtain them, their effect and some benefits of the method are included. The publication states: "Morphine (or any of the other opiates) do not score particularly well on the RP Test" (p120). Further, "the use of the opiates as drugs of addiction and their place in the illegal narcotic trade can also make them occasionally very difficult to obtain" (p120). "There are better euthanasia options available" (p119).
- 26) The Review Board noted that whilst the information on these proscribed drugs was somewhat detailed, little encouragement was given for their use compared with the detail and encouragement given for other means, although it does state that a death by morphine is likely to be very peaceful as "Morphia is, after all, the goddess of dreams" (p118).

Death by propoxyphene (Doloxene) overdose

- 27) Doloxene is rated highly (third on the Exit RP Test scoring chart) and details are given in the form of case studies of people who have used this method effectively. Photographs show the brand names and what the drugs look like, the chapter gives details of the strength (100mg pink Doloxene Capsules) needed and a step-by-step process of how to extract the correct dosage, and take it with sleeping tablets. The publication states: "pull apart the 100 pink gelatin capsules". Information is given that if the fingers become sore, then use scissors to cut each capsule and collect the contents in a glass. Then in a separate glass put the powder from sleeping tablets: "crush an entire packet of 25 Serapax tablets with a mortar and pestle". Photographs show the capsules and an amount of white powder in a glass compared with a 20c coin.
- 28) One case study describes how a person decided to die at night. "By going to bed at our normal hour, we thought that I would be more likely to be protected legally since I could say that I had been asleep and had not known what had gone on. According to Exit, loved ones often say that they were asleep is (sic) the next room when death occurred. This is legally safe." "My lovely wife fell asleep within 15 minutes of finishing the three drinks (the third being "her favourite Sherry"). My estimation is that she died during the night, approximately 6 hours later" (p129).

Death by cyanide poisoning

- 29) Detailed information is provided on death by cyanide poisoning (see later). These include what products to buy, where to obtain them, and

information regarding the "reliability" of bringing about death. There are two pages of information on how to manufacture sodium cyanide using two different home-based methods.

- 30) This section has less detail than that on barbiturates, however, there was some level of instruction including two illustrations showing the "forge" and filtering of cyanide. The two methods described used readily-available chemicals, namely Prussian blue dye (iron III ferro cyanide) or swimming pool chlorine stabiliser (cyanuric acid). There is a recommendation for the second method to be used due to the dangers associated with the first method for the "inexperienced home chemist" (p94).
- 31) While exact amounts of the chemicals are not given, the section is written in a step-by-step process and refers to the illustrations in a similar way as a chemistry text. Additionally, the section gives details of where further information on the manufacture of cyanide may be found (p 95) similar to the references given in educational text books.
- 32) The publication states that the American Civil Liberties Union successfully took action against the California Department of Corrections arguing that the cyanide gas chamber used for executions violated the US Constitution because it was "cruel and unusual punishment" and "inflicted needless pain and suffering" (p90).
- 33) Details in the publication include information such as: "Contaminated items need to be disposed of carefully after traces of cyanide are removed. This is best achieved using chlorine bleach to oxidise any unwanted cyanide and to prevent it contaminating the equipment. The product also needs to be tested by analytic means to determine its concentration and purity. Quantitative tests are available and Exit offers such a service for supporters".
- 34) Cyanide poisoning is rated 10/10 for reliability, 5/10 for peacefulness, 5/5 for speed and storage and with low scores for all other measures including 3/5 for safety.

Death by overdose of barbiturates – imported or manufactured

- 35) Two chapters provide detailed information on barbiturates. The first chapter of 30 pages (pp132-161 inclusive) provides details of how to purchase barbiturates and how to achieve death using barbiturates. It includes:
 - a) details of the veterinarian and human forms of the drug such as Anestosal, Sedal – Vet, Pentobarbital injectable, Sedalphorte, Barbithal and Sedalparma (p148);
 - b) how members of Exit were able to purchase the drug in Mexico including how they used a variety of trade names in seeking to identify the drug they wanted until the store assistant recognised the product

- and how they showed a photograph of the product (such photographs are included in the publication) to assist with identification;
- c) details of the questions asked including checking the use by date to ensure it hadn't expired and that the seal was intact;
 - d) the appearance of the bottled forms sold in Mexico including photographs of a variety showing the proprietary labels in Spanish;
 - e) the location of where to purchase them – including the city;
 - f) the details of the best methods used to travel to the city to avoid notice by the authorities in Mexico and the US;
 - g) the area in the city where they are sold;
 - h) the appearance of the shops that sell them including photographs;
 - i) how Exit members have been able to get the drugs back into the US;
 - j) Page 154 states that people attempting to buy Nembutal should take the time to buy souvenirs so they appear to be a tourist thus avoiding suspicion and page 153 gives the approximate price of the drug;
 - k) three pages of information on "returning home", "mailing Nembutal home" and the details of offences in NSW concerning the drug; including
 - (1) how Exit members have stored them in their suitcases for return to Australia;
 - (2) the lack of interest shown in them by sniffer dogs;
 - (3) whether they were detected by metal detectors;
 - (4) the amount of barbiturate in a single dose; and
 - (5) some (incorrect) details about penalties if discovered.

The manufacture of barbiturates

- 36) The second chapter of 16 pages (pp162-177 inclusive) on barbiturates follows the actions of a group of elderly people who decided to manufacture the product themselves. This chapter details how to manufacture barbiturates. It includes
- a) detailed instructions on manufacture;
 - b) labelled diagrams;
 - c) photographs showing the equipment and how to correctly put it together (Fig 12.3, p174);
 - d) chemical formulations;
 - e) what materials to buy including equipment needed;
 - f) where to buy the ingredients and equipment;
 - g) lists of ingredients required;
 - h) techniques used;
 - i) special dangers of which to be aware;
 - j) the production of precursors to barbiturates;
 - k) the need for testing of the product; and
 - l) a photograph of a group of smiling elderly people holding a beaker captioned "Fig 12.5 The first synthesised barbiturate" (p177).
- 37) This chapter is the case study of the Peanut Project. It relates detailed descriptions of the chemicals and procedures required in the manufacture

of the barbiturate. Illustrations on pages 168, 171, 173, 174 and 175 show the chemical structure of the barbiturate and the required set-up of equipment to create barbiturates.

- 38) Exact measures of the chemicals needed to manufacture barbiturates are not given. However expert testimony by Dr Duke stated that “an undergraduate science student with practical training in synthetic organic chemistry and a good working knowledge of stoichiometry” would have the level of proficiency to follow the instructions to manufacture barbiturates, although such barbiturates may be contaminated by other substances.
- 39) The Peanut Project (chapter 12) is more than the retelling of how a group of elderly people come together to manufacture their own “Peaceful Pill”. The majority of the case study is similar to chemistry texts and includes warnings like “CAUTION: Sodium must be handled with great care... with tongs or tweezers” (p172).
- 40) The publication referred to detailed chemistry texts that were readily available from public libraries, which contained much of the missing information and on p172 the narrative refers readers to “Standard organic chemistry texts (eg. Solomons & Fryhle, 2004)” for further information”. Further, as detailed below in paragraphs 94 to 104, the publication contains numerous “endorsements” of barbiturates/Nembutal as being the best suicide method.

Removing evidence of suicide, suicide recorded as “natural causes”

- 41) Throughout the publication are ratings and discussion of the cause of death being undetectable. A death being “undetectable” is given a rating under all methods. On page 203 a chart of the methods detailed provides a score for “undetectability” (except for death by gun, which is detailed on page 201 and is not given any ratings). The chart includes death by hanging and gives ratings for this method, although it is not detailed in the publication. The highest rating of 5/5 is given for death by “Exit bag” and helium.
- 42) The Convenor asked Dr Nitschke during the review meeting if the reason the method was undetectable was because another person would remove the bag and helium canister after a person’s death. Dr Nitschke confirmed that this was the case.
- 43) Page 24 states: “any person who chooses to be involved in the death of another – however tangentially and for whatever reasons – needs to be very careful indeed. This is especially true when friends and family are involved and emotions may cloud one’s judgement.”
- 44) Page 38 states: “Methods that leave no obvious trace are strongly preferred. In reality, this might mean that an attending physician will be

more likely to assume that the death has been caused by a known underlying disease. In this situation, the question of suicide does not arise.”

- 45)Page 51 states: “Helium has no taste or smell and quickly dissipates after death. There is no test that can reveal its use.”
- 46)Page 52 includes details of where to purchase helium kits. It states a person: “purchased the kit outright, paid cash and left no paper trail.”
- 47)Page 59 relates a case study of a couple purchasing a balloon kit including a disposable helium canister. It states: “At our local shop, we took the advice of other Exit supporters, telling the sales staff that we wanted the canister on stand-by for when the grandchildren visited at weekends and school holidays.”
- 48)Page 61 states: “The helium method produces no changes in the body that can be seen or found on inspection, or discovered at autopsy. If there is no evidence of an Exit bag or cylinder being used, the doctor will likely certify the death as natural, assuming that the person died from their underlying illness.”
- 49)Page 70 in a section headed “Undetectability” states: “If equipment is removed there is no way of establishing the method used – even at autopsy.”
- 50)Page 96, after discussing the preference for oral drugs, states: “The lack of any necessary bedside equipment also means that the death will often be thought of as one from ‘natural causes’ ”.
- 51)Page 106 discusses dying in the evening so that intervention by others does not prevent the suicide. It states that when the unconscious person does not die: “this can present a significant problem to the person either tasked with, or who accidentally, finds them. On discovery, a person must do something to protect themselves. Even if they are aware of the unconscious person’s plan.”
- 52)Page 106 states: “It would not be acceptable, for example, to claim in the morning that you noticed that your friend or relation was unconscious but you chose to do nothing about it. During the night a person can argue that they had been asleep and hadn’t noticed.”
- 53)Page 130 states: “Given that a significant number of Doloxene-based suicides are likely to be reported as deaths from ‘natural causes’ (and thus missed), the use of this drug has probably been under-reported.”
- 54)Page 142, after discussing the green-dyed form of pentobarbital, states: “If drunk it can stain the lips and tongue. With such staining it is unlikely that an attending doctor will cite natural causes on the death certificate!”

- 55)Page 190 questions: "is anyone responsible for clearing away equipment from the death scene".
- 56)Page 191 states: "If the death looks natural, the doctor can certify death and sign the death certificate. The person's underlying disease is usually cited as the cause of death. There will be no red tape. The body will be released immediately, and funeral arrangements can be made."
- 57)This section then details what happens when the doctor does not consider a death to be 'natural' including calling the coroner's office and the police being involved. The book states: "The first option (the death being recorded as natural) is the usual one sought", rather than what is outlined in this section.
- 58)It states: "if the person, friends and/or family ensure that any evidence of suicide is removed from the scene, this will be the most likely result". A majority of the Review Board concluded that the "desired result" is that the death will be recorded as natural and will not be reported to the coroner and police.
- 59)The publication states: "The second option (reporting the death) presents a greater risk to the family and friends of the person who has died. Although suicide is not a crime, police will attend the death scene to ensure that no laws have been broken".
- 60)Page 192 states: "There are several steps that can be taken to increase the likelihood that the death will be seen as 'natural'." Two pages detail what these steps are including:
- i) removal of equipment including the Exit bag or empty drug packets;
 - ii) rinsing the glass after the lethal drug has been consumed;
 - iii) removal of the bag from the person's head;
 - iv) discreet disposal of the helium canister, tubing and "other tell tale signs"; and
 - v) leaving no evidence of equipment that could have been used in the suicide.
- 61)Page 193 states:
- "It is a crime to interfere with the 'circumstances of a death.' However, such actions taken after a suicide do not constitute a serious infringement of the law. If authorities do discover that cleaning up has taken place, the family or friends often explain their actions by saying that they were protecting the family's reputation. They say it would be a blemish on the family if the suicide of a family member were ever to be made public. There is little likelihood that the act of 'cleaning away', if carried out for this reason, will attract anything more than a legal slap on the wrist."

62)Page 193 states:

“there is a large legal distinction between removing a plastic bag after use and letting the doctor assume it was a natural death, and helping someone put a plastic Exit Bag on their head. The latter is clearly assisting suicide and may well attract a savage penalty if discovered.”

63)Page 194 discusses what action could be taken should suicide still be suspected.

“Exit advises people to write a note ‘just in case’. A good suicide note will state that the person’s death was entirely caused by their own actions and that no one else was involved. The note should be signed and dated by the person who takes their life.”

64)Page 194 also sets out what can be done to ensure that a doctor will sign the death certificate:

“...call your doctor for a visit prior to the planned death and complain, perhaps of some imagined developing fever and breathlessness. When this doctor is called back some days later, they are often quick to assume a natural death involving pneumonia.”

65)Page 195 discusses what is recorded on the death certificate and how many people do not wish suicide to be the reason recorded:

“Clearly a method of death that leaves no obvious signs needs to be chosen.” “A method that leaves no trace, even at autopsy, is the Exit bag with helium. But then, for the death to be recorded as natural, the bag and the helium canister would need to be removed. It can be useful if a family member or friend can ‘discover’ the body in the morning. This person will then be in a position to call the family doctor and remind the doctor of the underlying illness. One can claim that everyone in the house was asleep during the evening when the death took place.”

66)Page 196 discusses autopsies:

“At autopsy, the existence of drugs in the body will be discovered. If the drug is uncommon or difficult to obtain, questions may be asked about whether or not assistance was provided in obtaining, preparing or administering the substance.”

7. Reasons for the decision

Instruction in matters of crime

67)The Review Board is required to consider the Code and specifically in this context the Code as it applies to publications. Item 1(c) states that

publications “that (c) promote, incite or instruct in matters of crime or violence” are to be refused classification.

68) In determining whether the publication instructs in matters of crime, the Review Board reviewed very closely the *Rabelais Case* for guidance on the meaning of “instruct in matters of crime”. It is the authoritative Federal Court case on this aspect of the Code.

69) The Review Board noted Justice French’s statement in the *Rabelais Case* (154 ALR 67 at 81) that the provision of information on matters of crime will constitute instruction if “it appears from the content and context of the article, objectively assessed, as purposive, the relevant purpose being to encourage and equip people with the information to commit crimes.”

70) French J stated (in the *Rabelais Case*, Full Court) that “in considering whether a publication instructs in matters of crime in the purposive sense, the assessment is objective. The existence of words in the publication which, literally read, constitute such instruction will not necessarily bring the publication within the Code. It must be read as a whole and in context.” Accordingly, French J considered that the word “instruct” does not have to be construed in a way that excludes all elements of promotion or incitement.

71) Heerey J agreed with French J and stated that instructs “is to be read as connoting (i) the imparting or teaching of knowledge, skills and techniques as to how crime may be committed, and also (ii) some element of encouraging or exhorting the commission of crime.” His Honour also stated “for the reasons already mentioned, one is not concerned with the actual effect of the publication. Still less is the actual intent of the author or publisher relevant.” Based on the Federal Court and Full Federal Court *Rabelais* decisions, the Review Board considered it necessary to determine that the publication:

- a) provided knowledge, skills and techniques for the commission of a crime; and
- b) had, as its objective purpose, the encouragement of a particular crime. A publication can have the objective purpose of “encouraging” the commission of a crime if it has the objective purpose of increasing the disposition to commit a particular crime in someone who may already be minded to commit that crime. Put another way, to provide “encouragement” in the requisite sense, the publication does not have to have as its purpose the exhortation of an individual who is not minded to suicide, to suicide. It suffices if its objective purpose is to encourage a reader that is already minded to suicide, to undertake a particular (criminal) act.

72) The Review Board noted that the word “handbook” means a *manual, instruction manual, instruction book or guide*. The publication is structured

in similar fashion to a conventional handbook – with broad descriptions and basic skills covered initially and with increasing specificity as the chapters increasingly focus on the suitability of barbiturates as the apparently ultimate “Peaceful Pill”. The final chapters are detailed in the coverage of the issues associated with the use of a Peaceful Pill. As with conventional handbooks, tables for summary and comparison are provided at the end.

- 73)The meaning of “instruct” is of relevance – to furnish with knowledge, especially by a systematic method, to teach, train or educate. The use of case studies to provide information through the analysis of the experiences of particular individuals is a common method of instruction in health and allied areas – in the academic and professional development sphere but more particularly in community health education. Thus to provide a gradually focused argument (by methods described above) for the use of Nembutal (a barbiturate) and then provide a series of case studies exploring satisfactory solutions of the dilemma of how to obtain a prohibited substance provides a model of instruction based on sound educative principles.
- 74)As well as the content of specific chapters and paragraphs it is necessary to view the “handbook” as a whole in terms of the issue of “instruct”. Chapters 5 through 10, with the exception of Chapter 7 (Cyanide), provide information regarding methods of taking one’s life that do not breach the law, although most chapters include information on “clearing away” evidence of suicide. In relation to the overall development of the publication’s argument, it is the evaluative table at the end of each chapter, repeated in summary form at p203, which provides an indication of a progression of arguments from least to most desirable.
- 75)Thus when the reader reaches Chapter 11 it is with a ready-prepared cognitive set to see this option as more desirable than the preceding arguments. Such a developed cognitive context is of relevance in considering the next two chapters, which canvass illegal methods of possessing, importing and manufacturing barbiturates. The cautions regarding illegal activity are thus weakened because of the advance of an argument of desirability about this option contained in the pages of the chapters and also in the focused argument, which led up to them.
- 76)The publication’s overall tone is consistent with its title of “handbook”. It provides a rationale targeted to the desirability of a particular outcome, a review of less desirable strategies, accompanied by an evaluation against stated criteria and then detailed information, couched in accepted educational forms, in the obtaining – through various means – of a prohibited substance. In form and argument this goes beyond the stated intent to merely provide information.

77) In other words, the publication has a clear objective purpose of presenting particular (criminal) actions as desirable. That a reader with no suicidal tendencies may not be persuaded to undertake these acts is not relevant. Those readers who are looking for end-of-life options are instructed in, and given objective encouragement to consider, particular actions, some or all of which may involve the commission of a crime. Specifically, the publication provides a targeted program of instruction, informing in, and encouraging of the outcome described including possessing, importing and manufacturing barbiturates, and preventing suicide, a reportable death, being reported to the coroner.

Does instruction need to be complete instruction?

78) The Review Board noted from the *Rabelais Case*, the Full Court quoting Justice Merkel, that the instruction “must go beyond the mere provision of information” and that the information provided must not be so general or obvious that “no real instruction has been given”.

79) The Review Board noted that in the opinion of Associate Professor Hardy the publication provided sufficient instructions for people to be able to commit suicide if they followed the methods outlined.

80) The Review Board noted Dr Duke’s opinion that the publication provided sufficient – although flawed – instruction for an undergraduate chemistry student to be able to produce barbiturates, although in a contaminated form, if they followed the methods given.

81) Exit submitted that “the book alone does not provide sufficient information (sic) to equip a reader with information to allow them to commit a crime, namely the production of a prohibited substance.” Further, Exit submitted that “The CRB must reach its decision based on the book alone and not on the combined effect of the book and other sources of information or experience.”

82) Although it may be that the group referred to in the Peanut Project case study had more information than is provided in the publication, the Review Board unanimously found as a matter of fact that the instructions and encouragement that it does provide are sufficient to enable the likely audience of the publication to:

- a) “take part in” the manufacture of prohibited drugs;
- b) collect and store the required substances and equipment for the manufacture of prohibited drugs;
- c) manufacture the prohibited drugs, albeit that the resulting compound may be imperfect; and
- d) attempt to manufacture the prohibited drugs, albeit that the instructions are not perfect and complete.

- 83) Similarly, a majority found that the publication provides sufficiently detailed information and encouragement for individuals to “clean away” the evidence of suicide so as to prevent a reportable death being reported to the coroner, albeit that the instructions are not perfect and complete.
- 84) Further, a majority found that the publication provides sufficiently detailed information and encouragement for individuals to participate in the importation of prohibited and border-controlled drugs into Australia, albeit that the instructions are not perfect and complete.

Likely audience for publication

- 85) In considering the classification of a publication, the Review Board can consider under s.11 (d) of the Act “the persons or class of person to or amongst whom it is published or is intended or likely to be published.”
- 86) Both Exit and NSW CCL submitted that the intended audience for the publication was those set out in the publication “seriously ill and suffering people” and the elderly. Dr Nitschke and Dr Stewart stated during the review meeting that they request the date of birth of people applying online to purchase the publication to ensure the Category 1 – Restricted classification is met.
- 87) In response to questions by the Deputy Convenor Dr Nitschke and Dr Stewart acknowledged that they do not undertake any verification of a person’s date of birth and that some of the applicants objected to being asked for this information. They said that most sales of the publication were through their workshops on euthanasia and that most people who attend these are elderly or seriously and terminally ill. They said some young people, who they defined as 40 year olds, attend their workshops but no teenagers or people in their 20s or 30s do so.
- 88) Dr Nitschke and Dr Stewart stated that the publication could be purchased online through Exit, at Dymocks, a mainstream chain of book stores, and at independent outlets such as Gleebooks in Glebe, a suburb of Sydney. Dr Nitschke and Dr Stewart had no knowledge of how these outlets restricted the sale of the publications to adults.
- 89) The Review Board noted the authors’ statements in the publication that of the people who produced the barbiturates in the case study “none were (sic) professional chemists although several had studied chemistry at university many years ago”, that the average age of the participants “was 80 years” and that “several who participated were seriously ill”. They are described in the publication as “elderly folk”.
- 90) The availability of the book online, in chain bookstores and independent bookshops ensured that it had a wide distribution. The re-order form in the back of the publication does not include a question regarding age, although credit card details are required. Based on the above information

the Review Board determined that the likely audience for the book was anyone over the age of 18 who wished to purchase it. The Review Board noted the submission of RTL that some younger adults who were suicidal may purchase the book and use it to commit suicide. Indeed, the introduction of the book acknowledges this possibility. However, misuse of the publication is not relevant to the Review Board's determination of whether the publication instructs in matters of crime under Item 1(c) of the Code.

- 91)The Review Board noted Exit's submission that the book is "predominantly a medical publication aimed at providing information to its target audience in a readily understandable way".
- 92)However, the Review Board found that a close examination of the text shows that the intended audience as well as the likely audience is more than people seeking a legal means to end their life.
- 93)The publication is written to provide instruction on methods of ending life that breach a number of pieces of legislation in regard to prohibited substances, proscribed drugs and border controlled drugs. Further, the publication instructs in removing evidence of suicide to ensure that a reportable death will not be so reported.

Does the publication instruct in matters of crime (barbiturates)?

Encouragement for the possession and use of barbiturates

- 94)Page 132 states: "The barbiturate Nembutal is the drug that comes closest to the concept of the Peaceful Pill. Exit defines the 'Peaceful Pill' as a pill, tablet or mixture that can be taken orally and that is guaranteed to provide a peaceful, dignified death at a time of one's choosing."
- 95)Page 32 of the publication has a paragraph headed "The Best Peaceful Pill". It states "Fifty years on and it is pentobarbital (Nembutal) that is favoured as an ideal Peaceful Pill." Later it states: "Fifty years ago, Nembutal was a widely prescribed drug, recommended even to help babies sleep, and to calm aching teeth (See Fig 11.1, p133)." Page 133, in the chapter about barbiturates, depicts an advertisement from the 1950s of Nembutal stating that the drug is suitable for children.
- 96)Page 32 states that Nembutal "was removed from the Australian prescribing schedule in 1998". It states that "these active barbiturate salts have been used medically for many years, mainly as sedatives or sleeping tablets." "The fact that in overdose they caused death, either accidentally or deliberately, and the availability of newer, safer sleeping drugs has led to their decline" (p32).
- 97)Page 144 relates the story of Nancy Crick who suicided after "Nancy's Nembutal arrived anonymously in the mail at her Queensland home. Nancy was truly one of the lucky ones." It further states on p145, after

detailing how people travel to other countries to obtain Nembutal that "people draw great comfort from knowing that they are back in control and have the option of a peaceful death."

98) Page 145 has an authors' "note" stating that the authors are "not advocating or inciting readers to break any laws in Australia, Mexico or the US". Their purpose, they state, is to "seek to provide accurate information so that those contemplating such action are in a better position to judge whether this is an appropriate option for them. It is impossible to safely make such a decision without access to the best information."

99) Page 155 has another authors' "note", which states in part: "Exit knows of no one who has had their Nembutal confiscated by customs at US-Mexico borders, or on return to Australia."

100) Page 156 states: "A first offence is most likely to attract a fine only", "...if the person who is bringing the drug in can prove that he/she does not intend to sell the drug, then no offence is committed" and "If a person is importing a single 6 gram bottle of Nembutal for their own use, it is unclear what, if any, crime is committed".

101) Page 160 states: "The barbiturate pentobarbital (Nembutal) is the best euthanasia drug and comes closest to the concept of the Peaceful Pill. In countries where it is lawful to help someone to die and any drug or substance could be used, the choice is always Nembutal." Later on that page it states: "Nembutal can be obtained from overseas and it is in Mexico where it is most accessible as the first hand accounts that have been provided to Exit illustrate. But not everyone can afford a trip overseas. And not everyone will want to openly break the law in the process. An alternative approach is for people to make their own drug. This is the strategy behind the Peanut Project described in the next chapter."

102) Apart from the 46 pages in the two specific chapters on barbiturates, the publication includes reference to the preference for barbiturates as a method of bringing about death in the general discussion of the closest option to the Peaceful Pill on page 32 and its use by doctors in Switzerland where euthanasia is legal on pages 181, 184 and 188.

103) Page 108 states: "Nembutal is extremely stable and known to be effective well past its expiry date. However, if the particular sample of the drug is old, an assay should be carried out to give confidence and avoid risk. An assay service for the barbiturates has been developed by Exit."

104) Throughout the publication barbiturates are referred to as the best "Peaceful Pill". See pages 32, 132, 160 and page 137 where barbiturates are described as the "drug of choice" in countries where voluntary euthanasia and assisted suicide are legal. Barbiturates score the highest rating in the Exit RP Test table at 88% on page 203.

Instruction in manufacture of barbiturates

- 105) Manufacturing barbiturates is illegal under State criminal laws, listed above.
- 106) Dr Duke provided expert advice to the Review Board on the technical issues relating to the potential for the information in the chapter, if adopted by a person wishing to make a barbiturate, to result in the successful manufacture of that substance. His advice was that:
- “The chapter provides enough information for someone to manufacture the drugs mentioned.”
- 107) He does not say that everyone could use the instructions but that some practical training in synthetic organic chemistry and “a good working knowledge of stoichiometry” would suffice. Stoichiometry is the accounting or mathematics behind chemistry. The inclusion of the chemical formulae for barbiturates allows a person with this knowledge to estimate the quantities of ingredients required.
- 108) It is not necessary for the ages and abilities and experience of those who may seek to use the information to be taken into account by the Review Board when determining whether or not the material falls within the description of “instruction in matters of crime”. The Review Board is of the view that it does so fall. Further, by positioning and describing Nembutal, throughout the publication as such a favourable and painless option for suicide (as described in 94 to 104 above), the publication encourages those who may be minded to commit suicide to pursue this (criminal) option.

Importing barbiturates into Australia illegally

- 109) Bringing a barbiturate such as Nembutal into Australia is an offence under Commonwealth law. It is likely that a person bringing a small quantity of Nembutal (a border controlled drug) to Australia for use in ending their life would be committing an offence under s.233(1)(b) of the Customs Act 1901 (Cwth) and under s.233(1)(d) regarding prohibited imports. A person may commit an offence under s.233(1)(d) whether or not they actually import the goods. Importation of a barbiturate may also breach sections of the Criminal Code.
- 110) The publication, in chapter 11, gives instruction on how to identify and purchase Nembutal or equivalent in a country such as Mexico and bring it back to Australia via the US hidden in one’s luggage. There is a continuum of behaviour set out in the book, which culminates in a crime in Australia. While the preparation and the acquisition overseas of barbiturates are not crimes in Australia, the “importation” into Australia is.
- 111) The chapter, in its introduction (page 132), states that:

“The barbiturate Nembutal is the drug that comes closest to the concept of the Peaceful Pill”.

112) At page 156 encouragement is offered notwithstanding a declaration that the authors and Exit International do not encourage breaking the law:

“At Exit International we know of no one who has declared their Nembutal and of no one who has had their Nembutal confiscated in customs. We do not encourage readers of this book, however, to break the law in this regard. The provision of this information is so informed decisions can be made.”

113) The detail about purchasing and importing Nembutal described above is sufficient, in the view of the Review Board, to lead to the conclusion that the chapter falls within the description of “instruction in matters of crime”. Further, by positioning and describing Nembutal, throughout the publication as such a favourable and painless option for suicide (as described in paragraphs 94 to 104 above), the publication encourages those who may be minded to suicide to engage in criminal activity in preparation to committing suicide.

Conclusion

114) The Review Board noted Exit’s submission that “there is no purposive intent (in the publication) to impel persons towards committing any crime.” However the Review Board noted that in the *Rabelais Case* the Full Court found that the actual intent of the author was not relevant. Rather, as discussed above, the content and context of the book must be objectively assessed.

115) The Review Board found unanimously that the favourable commentary of Nembutal and barbiturates throughout the publication provided sufficient promotion of barbiturates and their manufacture to constitute “encouragement” in the sense required by *Rabelais*.

116) Further, the Review Board determined in the majority that the detail regarding the possession, importation, storage, attempt to manufacture and manufacture of barbiturates – as detailed in the paragraphs above – constituted sufficient instruction and encouragement for the publication to instruct in matters of crime.

Importation of prohibited drugs into Australia – Minority view

117) It was the minority view that the information given in the publication in regard to illegally bringing into Australia the barbiturate pentobarbital (Nembutal) did not “promote, incite or instruct in matters of crime or violence” as stated in item 1(c) of the publications table of the Code.

- 118) In Chapter 11 *Drug options-Nembutal* the authors provide "one of the typical first hand testimonials that has been provided to us". The story tells of how two women travelled to ". . . Mexico where Nembutal is readily available", purchased Nembutal from a veterinary supply shop and returned to Australia with it in their luggage, undeclared to Customs.
- 119) This anecdotal account of bringing into Australia an illegal drug is superficial, states the obvious, and does not instruct in how to avoid detection. It very simply states "As for the sniffer dog? He showed no interest in us at all". They do not say why or how they avoided the interest of the sniffer dog. This statement is prefaced by "Upon entering customs and immigration in Sydney we were worried about the penalties if we were caught bringing the drug into Australia." This is a statement of discouragement.
- 120) Similarly they state "We simply packed our Nembutal in the middle of our luggage." In the minority view this is in no way instruction, it does not instruct in how to avoid detection. This is prefaced by: "We were very nervous going through immigration," a further statement of discouragement, "... but drew comfort knowing that we did not look like drug couriers." There is no detail to tell readers why they did not look like drug couriers or what the profile of drug couriers is, so one can avoid it. These statements are of such innocence they do not impart any knowledge to the reader.
- 121) Similarly the account of *Richard's Story* gives no instruction: "At each port, the customs and immigration staff were nothing but pleasant to us. After all, we were hardly your typical drug mules." Again, there is no detail or information about how not to be detected.
- 122) Further, the *Authors' Note* at the end of the chapter outlines the crime committed and the related penalty. The authors state, "We do not encourage readers of this book, however, to break the law in this regard."
- 123) Given "the word 'instruct' in the Code should be read as connoting (a) the imparting or teaching of knowledge, skills and techniques as to how crime may be committed; and (b) some element of encouraging or exhorting the commission of crime" as in the *Rabelais Case* it is the view of the minority that there was no such encouragement, and therefore the information in this chapter does not "promote, incite or instruct in matters of crime or violence".

Coroners legislation and reportable deaths

Does the publication instruct in non-reporting of suicide?

- 124) Page 61 provides an early indication of the desirability of non-discovery of the cause of death – a theme which becomes stronger as the publication develops its arguments. This idea is developed early in the publication and the reader is gradually shaped to the notion that this is a

desirable outcome. As may be seen later, involvement of others in the deception of a medical practitioner with the aim of subverting a report to the coroner relates to matters of crime in all states.

- 125) In each State and Territory it is an offence not to report certain deaths to the Coroner. Suicide is a reportable death. The Review Board noted that in the ACT and NSW a person must have reasonable grounds to believe that the death or suspected death is a reportable death to commit such an offence. The attending doctor who certifies the death usually reports the death or if the police are called they may do so. However, if there is no evidence of suicide (that is, if the scene has been "cleaned up"), the doctor may be unlikely to report the death as a suicide but record it as a death from natural causes. If the police are not called then it is unlikely that the death will be reported to the coroner. If that occurs, then the person who is aware that the death was a suicide is obliged by law to report the death to the coroner. Failure to do so is a criminal offence.
- 126) The publication gives detailed and cogent reasons as to why a death should be recorded as being from natural causes and, as a result, not be reported to the coroner.
- 127) The publication devotes Chapter 14 to *After it's All Over* on the subject "clearing away". This has particular relevance to Chapter 5 'Hypoxic Death and the Exit Bag' where a particular event is related. On page 55 the following appears:
- "To hide the true cause of her death, I removed all of the equipment used and concealed any evidence of her suicide. I hoped that the doctor would assume it was a consequence of her cardiac disease."
- 128) There is considerable detail in Chapter 14 about what is required to clean up a scene of a suicide and the consequences of not doing so. At page 193, the authors write:
- "It is a crime to interfere with the 'circumstances of a death'. However, such actions taken after a suicide do not constitute a serious infringement of the law."
- 129) The latter observation is a matter of opinion and is not necessarily correct, but the Review Board did not consider it necessary to examine whether, apart from the Coroners legislation, it was a crime to interfere with the circumstances of death.
- 130) While the authors seek to ensure that there is advice not to break the law and they include disclaimers to that end, there is an all-pervading impression throughout the publication that the authors are relating the incidents and events with support and/or approval. For example, at page 195, the following appears:

“Nevertheless, the fact remains, if a person about to die from a terminal disease, puts an end to their suffering, the death will be recorded as ‘suicide’. If that person does not want ‘suicide’ recorded on the death certificate, they need to take steps to disguise the truth.”

- 131) Although disclaimers appear, they are not conclusive in seeking to avoid the consequences of what has been written, as they are contradicted by the tenor of the publication. The detail in relation to cleaning up after a suicide and the tenor of the chapter and the publication are sufficient for the Review Board to conclude that there is instruction in matters of crime in relation to Coroners legislation.
- 132) The publication outlines the benefits of clearing away evidence of suicide so as to prevent the death being recorded by the doctor as suicide and so that the police are not called. This action is directed at preventing the death being reported to the coroner. The publication lists the benefits of taking such action: The family gain immediate possession of the body, there is no red tape, there is no embarrassment over suicide being recorded on the death certificate, and there is no police involvement and therefore less risk to family members being accused of assisting in the suicide.
- 133) The first 13 chapters of the book target the audience described in Chapter 1 (the seriously ill and dying who want “end of life” options). However, in the issues it addresses, Chapter 14 widens the target audience to those who might assist in the aftermath of a suicide. It then systematically canvasses relevant issues designed to achieve a particular outcome – the recording of a “natural death” cause and the avoidance of referral to a coroner.
- 134) In overview, this chapter has a specific theme, provides a rationale and then detailed instruction in specific activities designed to a particular end. Evaluation of the techniques employed is then provided as well as cautions regarding strategic actions, which may assist the desired outcome. Again, this is a model of instruction commonly utilised in community health education and from that perspective, clearly falls into the category of “instruct”.

Does the publication encourage non-reporting of suicide?

- 135) The Review Board found, in the majority, that the favourable commentary in regard to removing evidence of suicide, the steps necessary to deceive the attending doctor and the comprehensive and repeated listing of the benefits of avoiding autopsy and having a death recorded as “natural” constituted encouragement with the aim of preventing a death being reported to the coroner.
- 136) Further, the Review Board notes that s.12A of the Coroners Act (NSW) refers to a “person (who) having reasonable grounds to believe that a

death" "has not been reported" to the coroner (that person) "must report the death to a police office or a coroner".

- 137) The Review Board determined that any reader of this publication would have reasonable grounds to believe that a suicide would be a death that should be reported to the coroner.
- 138) Further, such a reader would also have reasonable grounds to believe that – having removed evidence of suicide so that the death is recorded as being by "natural causes" by the doctor – the usual process of the doctor or police reporting the death to the coroner would not occur.
- 139) The Review Board notes that the publication does not overtly tell the reader to not report a death to the coroner. However, it was the Review Board's determination that there was sufficient detailed information, reasoning and encouragement NOT to do so that the purpose of this instruction – when objectively assessed – was to encourage deception of the authorities to prevent reportable deaths (suicides) being reported to the coroner.

Conclusion

- 140) The Review Board determined in the majority that there was sufficient instruction, encouragement and promotion of removing evidence of suicide so as to prevent the reporting of a reportable death (suicide) to the coroner and accordingly would warrant an 'RC' (Refused Classification).

Coroners legislation and reportable deaths – Minority view

- 141) It was the minority view that the information in Chapter 14, *After it's All Over* does not "promote, incite or instruct in matters of crime or violence" as stated in item 1 (c) of the publications table of the Code.
- 142) The authors do outline "...several steps that can be taken to increase the likelihood that the death will be seen as 'natural' ". (p192) The information given in this chapter outlines the various courses taken if a person appears to have died from natural causes, or if it is evident that the person has suicided. It outlines what may happen in each scenario. It does tell the reader what may be the likely consequences of certain actions they take in regard to a person's death and how it may appear.
- 143) It does not instruct the reader that s.12A of the *Coroners Act 1980* (NSW) and similar legislation in other States and Territories in Australia, provides that:
- (1) Any person who:
 - (a) has reasonable grounds to believe that a death or suspected death would be examinable by a coroner under section 13, 13A or 13B; and

(b) has reasonable grounds to believe that the death or suspected death has not been reported in accordance with this subsection

must report the death or suspected death to a police office, or to a coroner or assistant coroner, as soon as possible after becoming aware of these grounds.

144) While a suicide is a death that is examinable by a coroner under s.13 of the *Coroners Act 1980*, and other similar legislation, it is the minority opinion that the average reasonable person in the community may not be aware that this is the case, given that suicide itself does not breach legislation.

145) It is the minority view that the publication does not instruct the reader not to report a suicide. Rather, the reader is informed "if...the doctor suspects that the death is *not* natural, they will certify the death, but may not sign the death certificate. In this case the doctor will call the coroner's office and the police will be involved. Those close to the deceased may be required to be interviewed by the police about their relationship with the deceased and about their possible role in the person's death."

146) From reading this chapter it may appear to the reader that it is up to the doctor or police to decide if the death is reportable or not. While ignorance of the law may be no excuse, it may be that a key element of the offence under Coroners legislation in some jurisdictions is knowledge that a particular death is reportable. The reader is not explicitly furnished with this knowledge by the publication and therefore his or her actions in not reporting the death may not constitute the commission of a crime. Taking a conservative approach to the application of the classification regime, in the minority view, the chapter does not instruct the reader to contravene s.12A of the Coroners Act 1980 (NSW) and other similar legislation in other States and Territories.

Instructions that do not constitute matters of crime

Manufacture of cyanide – Majority view

147) The Review Board considered that given the warning regarding the hazards of the manufacture of cyanide being "too dangerous for the inexperienced home chemist – some of whom may be readers of this book" (p94) that the manufacture of cyanide was not being encouraged.

148) The Review Board noted Dr Duke's comments that the instructions provided would result in such dangerous fumes that the process of making the cyanide could lead to serious injury or could be fatal.

149) While there is a substantial amount of detail in this section, it is not as comprehensive as the section on the manufacture of barbiturates. Additionally, whilst there was a reasonable element of instruction, there

was insufficient promotion and encouragement to use cyanide as a method of suicide.

- 150) The publication clearly stated that cyanide may result in a bad death and that it was very dangerous to manufacture. If anything, this section reinforced the idea that Nembutal (a barbiturate) was the best "Peaceful Pill".
- 151) Due to this lack of encouragement and promotion, the instruction alone could not warrant an RC classification. Therefore, the information on cyanide could be accommodated in a Category 1 – Restricted classification due to the information being unsuitable for minors.
- 152) The Review Board determined that while there was instruction in the manufacture of cyanide, which is a restricted poison in most States and Territories, there was insufficient encouragement given to constitute instruction in matters of crime.

Manufacture of cyanide – Minority view

- 153) It is an offence in all States and Territories except NSW to manufacture cyanide. Under Commonwealth law it is an offence to manufacture sodium cyanide and cyanide hydroxide without first registering to do so. In the light of these offences it is the minority view that it is a 'matter of crime' under State and Territory law, except in NSW, to manufacture cyanide and in certain circumstances under Commonwealth law.
- 154) The question is whether the book provides instruction in matters of crime. Chapter 7 contains detailed instructions on making cyanide, and although a certain level of understanding of inorganic chemistry is necessary, the process is dangerous and there may be errors in the instructions, these things do not alter the fact that there is detailed instruction in pages 94 and 95 of the book.
- 155) Some imprimatur is given to the use of cyanide as a "Peaceful Pill". For example, at page 91, the authors write:
- "For a substance or drug to be successful as a Peaceful Pill two main criteria must be met. It must be, Reliable, and it must be Peaceful. Applying the Exit RP test to a salt like sodium cyanide gives some encouragement.
- Reliability is high; few people will ever survive the ingestion of a sufficiently high dose of sodium cyanide."
- 156) The minority view is that these things, taken together, constitute instruction in matters of crime.

Assisting suicide

- 157) There were no sections in the book that explicitly advocate assisting in a suicide. There were numerous disclaimers and warnings of severe penalties throughout the publication in relation to this point.
- 158) While some argument could be made that sections like the Exit RP Test table on page 203 and the "Cleaning Away" section on pages 192 and 193 may give people information on how to avoid being caught if they have assisted in a person's suicide, the Review Board determined that the elements of instruction, encouragement and promotion were insufficient to warrant an RC classification. Therefore, the material covered by this could be accommodated in a Category 1 – Restricted classification due to the information being unsuitable for minors.
- 159) The Review Board noted that pages 24 and 25 are mainly concerned with assisting a suicide. No submissions were put to the Review Board that the publication instructs in the matter of the crime relating to assisting a person to suicide. The Review Board determined, after a thorough consideration of the publication, the related laws and the submissions from the parties, that the publication does not instruct in the matter of the crime of assisted suicide.

Other legislation

- 160) It should be noted that other legislation may also have relevance to this publication particularly in relation to the chapters detailing information on the drugs morphine, heroin and propoxyphene.
- 161) Separately, the information in the book may be used to bring about the death of others on an involuntary basis, and such information may breach other legislation and this was one submission of RTL.
- 162) However, the Review Board determined to not exhaustively search all legislation that the publication may breach but to restrict itself to the more significantly detailed issues that may instruct in matters of crime.

Other publications on a similar subject

- 163) The Review Board noted Exit's submission that *Final Exit* by Derek Humphry, a publication on a similar topic received a Category 1 – Restricted Classification in 1993. However, this is not a relevant consideration for the Review Board because as an administrative review body it is required to consider each application on its own merits.
- 164) Previous decisions of the Classification Board or Review Board do not establish precedent of themselves. If there is any precedent in the application of the law, then the Review Board notes that *Final Exit* was

classified in 1993 and the National Classification Scheme has undergone substantial change since that time.

Constitutional freedom of political communication, the Code & s.11 of the Act

- 165) The NSW CCL submitted that the publication was “a call to political action to change the law in Australia, and is protected by the implied constitutional freedom of political communication”.
- 166) Heerey J in the *Rabelais Case* states that “the Constitutional freedom of political communication assumes – indeed exists to support, foster and protect – representative democracy and the rule of law. The advocacy of law breaking falls outside this protection and is antithetical to it.”
- 167) The Review Board considered in detail the principle in the Code that “adults should be able to read, hear and see what they want”. However, such a principle cannot provide protection for publications that instruct in matters of crime.
- 168) Further, the Review Board noted Exit’s submission that the publication had educational merit and this coupled with freedom of speech should ensure the publication’s classification as Category 1 – Restricted.
- 169) However, as the Review Board found that the publication instructs in matters of crime the existence of any merit – be it artistic, educational or otherwise – cannot override the requirement in the Code for the publication to be refused classification.
- 170) In reaching such a conclusion, the Review Board had regard to the purpose of the publication and the context of the information provided.
- 171) The Review Board noted that the submission of Exit included the title page and a chapter on the manufacture of barbiturates from *Vogel’s Textbook of Practical Organic Chemistry 5th Ed.* The Convenor asked Mr Beckett during the review meeting whether he thought that the objective purpose of *Vogel’s* was to instruct in organic chemistry. Mr Beckett agreed with this proposition.
- 172) The Review Board noted in *the Rabelais Case* that “the existence of words in the publication which, literally read, constitute such instruction (in matters of crime such as the manufacture of barbiturates), will not necessarily bring the publication within the Code. It must be read as a whole and in context.”
- 173) It is not a relevant consideration for the Review Board to consider whether *Vogel’s* would instruct in matters of crime. However, in considering the publication under review it is clear that “the whole and the

context” of the instruction in matters of crime in this publication would be materially different from that of a standard organic chemistry text.

174) The Review Board determined that if the publication instructed in matters of crime, then freedom of political communication, the principles in the Code and the matters to be taken into consideration under s.11 of the Act cannot provide any protection and enable the publication to be classified.

8. Summary

175) The Review Board in a unanimous decision classified the publication **'RC' (Refused Classification)** as it instructs in matters of crime relating to the manufacture of a prohibited drug (barbiturates), including the attempt to manufacture a prohibited drug (barbiturates); the storage of substances being used for the manufacture of a prohibited drug (barbiturates); and gives instructions enabling individuals to “take part in” the manufacture of a prohibited drug (barbiturates).

176) Further, the Review Board determined, in a 6-1 majority, that the publication instructs in matters of crime relating to the possession of a prohibited drug (barbiturates) and importation of a prohibited substance and the importation of a border controlled drug (barbiturates).

177) Additionally, the Review Board determined, in a 5-2 majority, that the publication instructs in matters of crimes under Coroners legislation in relation to reportable deaths.

178) In the two other main areas of concern in relation to the manufacture of cyanide and assisting suicide the Review Board determined (a) in a 5-2 majority that there was insufficient encouragement coupled with the detailed but flawed information regarding the manufacture of cyanide to “instruct in matters of crime”; and (b) unanimously determined that there was insufficient detailed information or encouragement to instruct in matters of the crime of assisting a suicide.