



RESEARCH NOTE

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Euthanasia

Introduction

Debate in Australia about euthanasia has been rekindled following a proposal to introduce a Private Members Bill in the Northern Territory providing for active voluntary euthanasia. This Research Note examines euthanasia and the law in Australia.

Some Definitions

'Euthanasia' merely means a quiet and easy death. The term is often divided into categories such as the following:

- **passive voluntary euthanasia** - where medical treatment is withdrawn or withheld from a patient at that patient's request and death results.
- **active voluntary euthanasia** - where medical intervention is sought by a patient in order to end their own life.
- **passive involuntary euthanasia** - where medical treatment is withheld in order to cause death, but the withholding of treatment is not at the patient's request.
- **active involuntary euthanasia** - where medical intervention brings about a patient's death, and the intervention is not at the patient's request.

While such categorisations have the attraction of neatness and simplicity, distinctions are often blurred on closer examination. Thus, the disconnection of a life support system may be viewed as

passive euthanasia involving the withdrawal of medical treatment. It is arguable, however, that it is also a positive action.

The question of euthanasia has become particularly important because advances in medical treatment and technology mean that patients may now be kept alive much longer than in the past, although their quality of life may be extremely poor or they may be permanently comatose.

The Law

Common law

At common law, a competent adult can refuse medical treatment and treatment of a patient without that patient's consent constitutes the tort of trespass. There are exceptions to this rule – for example, treatment may be administered in the absence of consent in an emergency where the patient is unconscious and there is no indication of contrary wishes. While, in general, a person cannot be given any medical treatment – including life-sustaining treatment – without their consent, a person has no legal right to insist on treatment that would result in death.

Criminal law as well as civil law is relevant to euthanasia. Suicide and attempted suicide are no longer crimes in Australia (with the exception of the Northern Territory, where it appears that attempted suicide remains a crime under section 169 of the *Criminal Code Act*). However, it is a crime

to incite, counsel or assist another person to suicide or attempt suicide. A person assisting a suicide may be charged with murder or manslaughter or with the statutory offence of assisting a suicide.

A person who participates in a 'mercy killing' may be guilty of murder or manslaughter by acts of omission as well as by acts of commission. If a person has a duty to provide medical treatment or sustenance, fails to do so and death results – then that person may be exposed to criminal liability. At common law, a person cannot consent to his or her own death and any such consent will not relieve another person of criminal responsibility.

Concerns for those with terminal or incurable illness and for health professionals who may risk criminal and civil liability have resulted in several Australian jurisdictions legislating to enable competent adults, in particular cases, to direct that medical treatment be withdrawn or withheld - reflecting the common law situation where a person can refuse medical treatment.

Legislation

In South Australia, under the *Natural Death Act 1983*, a competent adult may, in strictly defined circumstances, make a direction refusing extraordinary measures for the preservation of life. The legislation applies in the case of terminal illness. In 1988,

a *Natural Death Act*, modelled on the South Australian Act was passed in the Northern Territory.

In Victoria, the *Medical Treatment Act 1988* applies. Under the Act, a person may sign a refusal of treatment certificate relating to medical treatment in general or to treatment of a particular kind. While the certificate must relate to a current medical condition, there is no requirement that the medical condition be a terminal or incurable one. In addition, in Victoria, a competent adult may confer a power on another person to make a decision about medical treatment on his or her behalf in the event that he or she becomes incompetent. A statutory offence of medical trespass is created under the Act.

In Tasmania, a Medical Treatment and Natural Death Bill passed the Lower House of the Parliament in 1992 but failed to pass the Upper House. The Bill provided for a refusal of treatment certificate relating to a current medical condition.

In 1993, a Private Members Bill - the Voluntary and Natural Death Bill - was introduced into the ACT Legislative Assembly. The Bill contained provisions enabling a competent adult suffering from a terminal illness to make a direction that a death-inducing drug be administered or provided to him or her.

The Assembly's Select Committee on Euthanasia concluded that it was 'politically inopportune' to proceed with the provisions of the Bill which would have made active voluntary euthanasia lawful in specified circumstances. Instead, the ACT Legislative As-

sembly passed the *Medical Treatment Act 1994*. Under the Act, a competent adult may make a direction refusing medical treatment or for its withdrawal. The direction may relate to general medical treatment or medical treatment of a particular kind. It must relate to a current condition. A competent adult may also grant a power of attorney which confers on another person the power to consent to the withdrawal or withholding of medical treatment if he or she becomes incapacitated.

All the legislation described above provides protection from civil and criminal liability for doctors.

On 1 February 1995, the Chief Minister of the Northern Territory announced his intention to introduce a Private Members Bill into the NT Legislative Assembly which would empower a terminally ill, competent adult to make a written request for assistance to hasten death. The Rights of the Terminally Ill Bill provides that termination of life would be either self-administered or brought about with medical assistance. Medical practitioners assisting in the carrying out of such a request would be provided with legal protections.

Australian Discussion Papers and Reports on Euthanasia

Papers and reports published in Australia on euthanasia include: the *Report of the Select Committee on the Natural Death Bill* (South Australia, 1980), the NSW Department of Health's *Proposed Legislation to Give*

Legal Effect to Directions against Artificial Prolongation of Life (c.1990), the National Health and Medical Research Council's *Discussion Paper on the Ethics of Limiting Life Sustaining Treatment* (1988), the Victorian Parliament's *Inquiry into Options for Dying with Dignity* (1986 & 1987), the Law Reform Commission of Western Australia's *Report on Medical Treatment for the Dying* (1991), the South Australian *Second Interim Report of the Select Committee on the Law and Practice Relating to Death and Dying* (1992) and the ACT Legislative Assembly's Select Committee on Euthanasia's report on the *Voluntary and Natural Death Bill 1993* (1994).

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