

# CHAPTER 2

## OVERVIEW OF THE BILL

### Purpose and provisions of the Bill

2.1 Clause 3 of the Bill states that the object of the Bill is:

...in recognising the rights of the people of the Australian Capital Territory, the Northern Territory and Norfolk Island to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill, to repeal the *Euthanasia Laws Act 1997* which removed that right.

2.2 Schedule 1 of the Bill contains two items. The first item would repeal the *Euthanasia Laws Act 1997* (Cth) (Euthanasia Act). The second item aims to restore the Northern Territory (NT) *Rights of the Terminally Ill Act 1995* (RTI Act), stating that:

To avoid doubt, the enactment of the Legislative Assembly of the Northern Territory called the *Rights of the Terminally Ill Act 1995* has the same effect after the commencement of this Act as it had before the commencement of the *Euthanasia Laws Act 1997*.

2.3 No Explanatory Memorandum was tabled with the Bill. However, in his second reading speech, Senator Bob Brown explained that:

This is a Bill for an Act to repeal the *Euthanasia Laws Act 1997*, through which the national parliament overturned the Northern Territory *Rights of the Terminally Ill Act 1995*. It restores the legitimacy of the Northern Territory legislation...<sup>1</sup>

2.4 Senator Brown also advanced several arguments in favour of the Bill:

Every opinion poll conducted over the last two decades has shown that approximately three-quarters of Australians support the concept of voluntary euthanasia...A Newspoll in February 2007 found that eighty percent Australians believe that terminally ill people should have a right to choose a medically assisted death.<sup>2</sup>

2.5 He further pointed out that:

In the decade since the Euthanasia Laws Act was introduced here, the legal right to die with dignity has been available to the citizens of The

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1 Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

2 Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

Netherlands, Belgium, Oregon in the United States, Israel and Albania. In Switzerland, assisted suicide has been legal since 1918.<sup>3</sup>

## Background to the Bill

### *Rights of the Terminally Ill Act 1995 (NT)*

2.6 In May 1995, the NT Legislative Assembly enacted the RTI Act. The RTI Act came into force on 1 July 1996.<sup>4</sup> The Act allowed a doctor, in defined circumstances, to comply with a request from a patient that the doctor assist the patient to end his or her own life. The RTI Act set out certain criteria to be met before such assistance could be provided. These included, for example, that the patient must be at least 18 years old; two medical practitioners must be of the opinion that the patient is suffering from a terminal illness; and a qualified psychiatrist must certify that the patient is mentally competent to elect euthanasia.<sup>5</sup> Between August 1996 and March 1997, four patients made use of the RTI Act to end their lives.<sup>6</sup>

2.7 The RTI Act was challenged in the NT Supreme Court in 1996.<sup>7</sup> This challenge queried, among other matters, whether the NT Legislative Assembly had the power to enact the RTI Act. A majority of the Full Court of the NT Supreme Court held that the NT Legislative Assembly had the power and that the RTI Act was a valid law of the NT. An appeal was lodged with the High Court, but this was adjourned until parliament had completed its consideration of the Euthanasia Laws Bill 1996.<sup>8</sup> As a result of the enactment of the Euthanasia Act, no further action was taken.<sup>9</sup>

2.8 In September 1996, Mr (as he then was) Kevin Andrews, Member for Menzies in the House of Representatives, introduced the Euthanasia Laws Bill 1996 as a private member's bill. The main purpose of that bill was to overturn the NT RTI Act by amending the self-government legislation of the NT to remove the power of the NT Legislative Assembly to make legislation permitting euthanasia.<sup>10</sup>

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3 Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

4 For a more detail examination of the *Rights of the Terminally Ill Act 1995* (NT) and its enactment, see Senate Legal and Constitutional Legislation Committee, *Euthanasia Laws Bill 1996*, March 1997 (1997 Euthanasia Inquiry), Chapter 2, pp 5-11.

5 *Rights of the Terminally Act 1995* (NT), subsection 7(1).

6 1997 Euthanasia Inquiry, pp 10-11.

7 *Wake v Northern Territory* (1996) 124 FLR 298.

8 *Wake v Northern Territory*, High Court of Australia, No. D10 of 1996, transcript of proceedings, 15 November 1996, p. 4.

9 *Wake v Northern Territory* (1996) 124 FLR 298; see also 1997 Euthanasia Inquiry, pp 8-10; Northern Territory Law Reform Committee, *Submission 443*, pp 2-3.

10 At the same time, it also amended the self-government legislation of the Australian Capital Territory (ACT) and Norfolk Island: see discussion of the Euthanasia Act below.

2.9 The Euthanasia Laws Bill 1996 was considered by the then Senate Legal and Constitutional Legislation Committee (1997 Euthanasia Inquiry).<sup>11</sup> That inquiry generated considerable interest, and received over 12,000 submissions. An analysis of the submissions received by that inquiry indicated that 93% were in favour of the Bill and/or opposed to euthanasia. However, the majority of that committee made no recommendation to the Senate on the Euthanasia Laws Bill 'because it is a private member's Bill and is subject to a 'conscience vote'.<sup>12</sup> The Euthanasia Laws Bill 1996 was subsequently passed by the Federal Parliament, and the Euthanasia Act came into force on 27 March 1997.

### ***The Euthanasia Act***

2.10 The Euthanasia Act amended the *Northern Territory (Self-Government) Act 1978* (Cth); the *Australian Capital Territory (Self-Government) Act 1988* (Cth) and the *Norfolk Island Act 1979* (Cth). The Euthanasia Act removed the power under the Self-Government Acts of the three territories to enact laws:

...which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.<sup>13</sup>

2.11 The Euthanasia Act provides that each Legislative Assembly does have the power to make laws with respect to:

- (a) the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient;
- (b) medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient;
- (c) the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and
- (d) the repealing of legal sanctions against attempted suicide.<sup>14</sup>

2.12 The Euthanasia Act also contains a clause that specifically provides that the NT's RTI Act 'has no force or effect as a law of the Territory'.<sup>15</sup>

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11 1997 Euthanasia Inquiry.

12 See further 1997 Euthanasia Inquiry, especially p. 114 and Appendix 1.

13 Euthanasia Act, Schedules 1-3; and the *Northern Territory (Self-Government) Act 1978*, subsection 50A(1); the *Australian Capital Territory (Self-Government) Act 1988*, subsection 23(1A) and the *Norfolk Island Act 1979*, paragraph 19(2)(d).

14 Euthanasia Act, Schedules 1-3; and the *Northern Territory (Self-Government) Act 1978*, subsection 50A(2); the *Australian Capital Territory (Self-Government) Act 1988*, subsection 23(1B) and the *Norfolk Island Act 1979*, subsection 19(2)(2A).

15 Item 2 of Schedule 1 of the Euthanasia Act.

2.13 The Euthanasia Act does not define the terminology it uses.

### ***Terminology***

2.14 The original meaning of the Greek word 'euthanasia' is a 'good death'. The Macquarie Dictionary defines 'euthanasia' as 'the deliberate bringing about of the death of a person suffering from an incurable disease or condition, as by administering a lethal drug or by withdrawing existing life-supporting treatments'.<sup>16</sup>

2.15 However, the term 'euthanasia' was used in a variety of ways in submissions to the current inquiry. For the purposes of this inquiry, as with the 1997 Euthanasia Inquiry, the committee considers that 'euthanasia' can be divided into four categories:<sup>17</sup>

- *Active voluntary euthanasia*: where medical intervention takes place, at a patient's request, in order to end the patient's life.
- *Passive voluntary euthanasia*: where medical treatment is withdrawn or withheld from a patient, at the patient's request, in order to end the patient's life.<sup>18</sup>
- *Passive in/non-voluntary*<sup>19</sup> *euthanasia*: where medical treatment or life-support is withdrawn or withheld from a patient, without the patient's request, in order to end the patient's life.
- *Active in/non-voluntary euthanasia*: where medical intervention takes place, without the patient's request, in order to end the patient's life.

2.16 The Bill and the NT RTI Act, and therefore this inquiry and report, focus on active voluntary euthanasia.

2.17 Other important terms used during this report include:

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16 See also AMA, *Submission 375*, p. 3.

17 1997 Euthanasia Inquiry, p. xi; also Natasha Cica, *Euthanasia – the Australian Law in an International Context: Part 1: Passive Voluntary Euthanasia*, Research Paper No. 3 1996-97, Parliamentary Research Service, p. iv; and AMA, *Submission 375*, p. 3; and NSW Council for Civil Liberties, *Submission 418*, pp 9-10.

18 Some submissions to this inquiry made a distinction based on intention: that is, if there is no intention to kill, then it is not euthanasia: see, for example, Dr David van Gend, *Submission 413*, p. 8; also Australian Family Association (WA), *Submission 380*, p. 4; Christian Democratic Party, *Submission 1001*, p. 6.

19 Non-voluntary euthanasia can be defined as the killing of a patient who does not have the capacity to understand what euthanasia means and cannot therefore form a request or withhold consent (for example, where a patient is unconscious); involuntary euthanasia refers to a situation where the patient is competent to make a request, but does not do so – so effectively something is done (or not done) in spite of the person's wish to stay alive: see 1997 Euthanasia Inquiry, pp xi-xii.

- *Physician-assisted suicide*: suicide using a lethal substance prescribed and/or prepared and/or given to a patient by a doctor for self-administration for the purpose of assisting the patient to commit suicide.<sup>20</sup>
- *Double effect*: the administration of drugs (such as large doses of opioids) with the intention of relieving pain, but foreseeing that this might hasten death even though the hastening of death is not actually intended.<sup>21</sup>

### ***Legal position in other Australian jurisdictions***

2.18 No Australian state or territory has a law which allows voluntary active euthanasia. Rather, an act of voluntary active euthanasia is considered to be 'assisted suicide', which is a crime; the penalty for which varies in each state or territory jurisdiction.<sup>22</sup>

2.19 There have been several inquiries by state and territory parliaments into voluntary euthanasia legislation, as well as several unsuccessful attempts to introduce and/or enact voluntary euthanasia legislation in state and territory jurisdictions, including, for example, in the Australian Capital Territory (ACT), South Australia, New South Wales, Western Australia and Tasmania.<sup>23</sup> In Victoria, a private member's bill, the Medical Treatment (Physician Assisted Dying) Bill 2008, has recently been introduced into the Victorian Parliament. That Bill apparently proposes to allow doctors to prescribe a liquid medication to assist in a patient's death.<sup>24</sup>

2.20 Some states and territories do have legislation whereby people may be allowed to die through the withdrawal or lack of implementation of medical treatment. For example, under section 6 of the NT *Natural Death Act 1988*, the non-application of medical treatment in compliance with a direction under the Act is not considered a 'cause of death'. Most states and territories also have legislative schemes which allow patients to make 'advance directives' or 'living wills' which provide for patients to

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20 *Rights of the Terminally Ill Act 1995* (NT), s. 3 (definition of assist); see also Australian Medical Association, *Submission 375*, p. 3.

21 1997 Euthanasia Inquiry, p. xii; see also Dr Alan Rothschild, *Submission 452*, pp 16-17.

22 For a useful summary and analysis of the Australian law in this area, see Associate Professor Cameron Stewart, *Submission 729*. Note that suicide in itself is no longer a crime in Australia.

23 See, for example, Ben White and Lindy Willmott, "Private thoughts of public representatives: assisted death, voluntary euthanasia and politicians", *Journal of Law and Medicine*, Vol. 11(1), August 2003, pp 77-92; also, Parliament of Tasmania, Community Development Committee, *Report on the Need for Legalisation of Voluntary Euthanasia*, Report No. 6, 1998; Parliament of South Australia, Social Development Committee, *Inquiry into the Voluntary Euthanasia Bill 1996*, 20 October 1999, pp 33-49, available at: <http://www.parliament.sa.gov.au/NR/rdonlyres/A42EAD4B-4D4B-4050-A8DD-F4D209D4CBBB/4724/12threportvoluntaryeuthanasiabill.pdf> (accessed 19 May 2008).

24 It was introduced into the Victorian Parliament on 28 May 2008: see <http://www.legislation.vic.gov.au/> (accessed 12 June 2008); see also Nader, C., "Euthanasia Bill to Bar Death Tourists", *The Age*, 18 March 2008, p. 7; Dying with Dignity Victoria, <http://www.dwdv.org.au/ParliamentaryBill.html> (accessed 19 May 2008).

specify what medical treatments they would like in the future, if at some point they cannot make decisions for themselves. Such directives enable patients to record decisions about their preferences on a range of treatments, including refusal of life-sustaining treatments.<sup>25</sup>

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25 'Advanced directives' are discussed further in Chapter 4 of this report.