



issues backgrounder

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NSW Parliamentary Library

Euthanasia

Developments in New South Wales

Euthanasia is currently the subject of debate and foreshadowed legislative reform at both State and Federal level. Federally, Greens leader Senator Bob Brown has foreshadowed the introduction of a Private Member's Bill to restore to the Northern Territory and the ACT the power to legislate for voluntary euthanasia. In NSW, on 22 September 2010 Greens MLC, Cate Faerhmann, moved a notice of motion to introduce a Private Member's Bill titled, Rights of the Terminally Ill Bill. Leave was sought in the Legislative Council to:

bring in a bill for an Act to establish and confirm the right of a person who is terminally ill to request assistance from a medically qualified person to voluntarily terminate his or her life in a humane manner; to allow for such assistance to be given in certain circumstances without legal impediment to the person rendering the assistance; to provide procedural protection against the possibility of abuse of the rights recognised by this Act; and for related purposes.

This long title for the Bill is the same as that for the [Rights of the Terminally Ill Bill 2001](#), which was introduced into the Legislative Council by the Greens MLC Ian Cohen. The Bill did not proceed beyond its [Second Reading](#) stage and lapsed on prorogation. Notice of motion for the subsequent [Rights of the Terminally Ill Bill 2003](#) was withdrawn on 24 February 2004. In the interim, in 2002 and 2003 Ian Cohen also sponsored a Private Member's Bill titled, [Voluntary Euthanasia Trial \(Referendum\) Bill](#). According to the [Second Reading](#) speech of 17 September 2003, its purpose was to: 'require the holding of a referendum to determine whether the people of New South Wales approve in principle of a legally and medically supervised trial of voluntary euthanasia for a period of 18 months'. The Bill was defeated at the [Second Reading stage](#) on 13 November 2003.

The ongoing debate

In 2001 the NSW Parliamentary Library Research Service published [Euthanasia: An Update](#). This paper reviewed recent developments in Australia, including those associated with the Northern Territory's [Rights of the Terminally Ill Act 1995](#), the Commonwealth's [Euthanasia Laws Act 1997](#) and the NSW case of [Northbridge v Central Sydney Area Health Service](#) [2000] NSWSC 1241, which concerned the withdrawal of treatment and life support from a patient. Developments in relevant

overseas jurisdictions, notably in the US State of Oregon and the Netherlands, were also considered.

Later developments, in Australia and in the relevant overseas jurisdictions, were updated in 2008 by the Victorian Parliamentary Library Research Service publication [Medical Treatment \(Physician Assisted Dying\) Bill 2008](#). Statistical findings were presented in relation to Oregon's [Death with Dignity Act 1998](#) and the Dutch [Termination of Life on Request and Assisted Suicide \(Review Procedures\) Act 2002](#).

Note that, internationally, the Netherlands and Belgium ([Act on Euthanasia 2002](#)) have legislated for voluntary euthanasia under certain conditions. In the United States, Oregon and the State of [Washington](#) have laws permitting assisted suicide, and laws in Switzerland are permissive of assisted suicide, provided that the person assisting is acting altruistically and not out of self-interest (*Swiss Penal Code 1937*, SR 311.0).

There are many accounts of the pros and cons of voluntary euthanasia and physician assisted suicide. See for example – G Dworkin, '[Should physician – assisted suicide be legalized?](#)' and N Levy, '[Slippery slopes and physician assisted suicide](#)' in *Giving Death a Helping Hand*, edited by D Birnbacher and E Dahl, Springer-Verlag, 2008; and Stanford Encyclopaedia of Philosophy, [Voluntary Euthanasia](#).

Definitional issues

Difficult definitional and philosophical distinctions are involved. **Euthanasia** is defined by the [Australian Medical Association](#) (AMA) as: 'The act of deliberately ending the life of a patient for the purpose of ending intolerable pain and/or suffering'. Various sub-categories of euthanasia are referred to, notably: voluntary, non-voluntary, or involuntary euthanasia and/or active or passive euthanasia. **Voluntary euthanasia** is generally defined as 'ending the life of a competent, informed patient at their request'. **Passive euthanasia** is generally defined as 'not initiating or no longer continuing life-sustaining treatment that results in death as a direct consequence of the underlying disease'. A related term is **physician assisted suicide**, applied by the AMA to 'where the assistance of the medical practitioner is intentionally directed at enabling an individual to end his or her own life'.

End-of-life treatment – guidelines and legislation

In its 2007 guidelines, [The Role of the Medical Practitioner in End of Life Care](#), the AMA wrote that, in its view, if a medical practitioner acts in accordance with good medical practice, the following forms of management at the end of life do not constitute euthanasia or physician assisted suicide:

- not initiating life-prolonging measures;
- not continuing life-prolonging measures;
- the administration of treatment or other action intended to relieve symptoms which may have a secondary consequence of hastening death.

In 2005 the NSW Department of Health published [Guidelines for End-of Life care and Decision Making](#). Relevant legislation in the other States includes South

Australia's [Consent to Medical Treatment and Palliative Care Act 1995](#) and Victoria's [Medical Treatment Act 1988](#).

Criminal Law in NSW

In NSW both euthanasia and physician-assisted suicide carry heavy penalties under the criminal law. A person found guilty of engaging in active voluntary euthanasia could be convicted of murder and liable to life imprisonment; s 19A of the *Crimes Act 1900*. A person found guilty of aiding or abetting the suicide of another person would be liable to a penalty of 10 years imprisonment; s 31C of the *Crimes Act 1900*.

By s 31B of the *Crimes Act 1900* a survivor of a 'suicide pact' is not to be found guilty of murder or manslaughter but may be guilty of an offence under s 31C (Aiding etc suicide). Section 31C of the *Crimes Act 1900* provides in full:

- (1) A person who aids or abets the suicide or attempted suicide of another person shall be liable to imprisonment for 10 years.
- (2) Where: (a) a person incites or counsels another person to commit suicide, and (b) that other person commits, or attempts to commit, suicide as a consequence of that incitement or counsel, the firstmentioned person shall be liable to imprisonment for 5 years.

[R v Justins](#) [2008] NSWSC 1194 is a sentencing decision. Shirley Justins had been found guilty by a jury of the manslaughter of her partner Graeme Wylie who suffered from Alzheimer's disease. The deceased died on 22 March 2006 from a lethal dose of a substance known as Nembutal (which had been obtained from overseas by a co-offender - Caren Jennings - who had since committed suicide). It was accepted by the Crown that the deceased voluntarily drank this substance and that the chief motivation of Justins in providing the drug to the deceased was so that he could take his own life in accordance with what she believed to be his wishes. Justins was sentenced to a non-parole period of 22 months with a balance of term of 8 months, the sentence to be served by way of periodic detention.

The latest development in the above case is the decision by the NSW Court of Criminal Appeal in [Justins v R](#) [2010] NSWCCA 242 overturning the manslaughter conviction and ordering a new trial. In a complex judgment, Spigelman CJ, Simpson and Johnson JJ all agreed that the trial judge had given incorrect instructions to the jury about what they had to consider when deciding if Mr Wylie had the capacity to commit suicide. For a commentary see – G Jacobsen, 'Conviction overturned but retrial is pending', [Sydney Morning Herald](#), 29 October 2010.

For a review of Australian legislation and case law see - L Bartels and L Otlowski, 'A right to die? Euthanasia and the law in Australia' (2010) 17(4) [Journal of Law and Medicine](#) 532.

Recent parliamentary material in other Australian jurisdictions

Western Australia

Greens MLC Robin Chapple, May 2010, [Voluntary Euthanasia Bill 2010](#). The Bill was defeated at the [Second Reading](#) stage by 24 votes to 11 on 23 September 2010.

Tasmania

On 29 June 2010 the [ABC](#) reported that 'Tasmania could become the first Australian state to legalise euthanasia as members of the Labor-Greens government are pledging to work together to push through its 'Dying with Dignity' legislation. Greens leader Nick McKim's original private members euthanasia bill was defeated in the last Tasmanian parliament in 2009. Now Tasmania's Deputy Premier and Attorney General Lara Giddings says she'll work with McKim on the new laws'.

Greens MP Nick McKim [Dying with Dignity Bill 2009](#). The Bill was [defeated](#) by 15 votes to 7 in the Lower House on 4 November 2009.

Parliament of Tasmania, Joint Standing Committee on Community Development, [Report on the Dying With Dignity Bill 2009](#).

South Australia

Greens MLC Mark Parnell and ALP House of Assembly Member Stephen Key, September 2010, [Consent to Medical Treatment and Palliative Care \(End of Life Arrangements\) Amendment Bill 2010](#). The Second Reading debate was adjourned in the Lower House on 16 September 2010; the Bill was read a first time in the Upper House on 29 September 2010.

Dr Bob Such MP (Independent), June 2010, [Voluntary Euthanasia Bill 2010](#). The Second Reading debate was adjourned on 1 July 2010.

Dr Bob Such MP (Independent), October 2008, [Voluntary Euthanasia Bill 2008](#).

Greens MLC Mark Parnell, November 2008, [Consent to Medical Treatment and Palliative Care \(Voluntary Euthanasia\) Amendment Bill 2008](#). The Bill was defeated by 11 votes to 9 in the Upper House on 19 November 2009. For a commentary on the Bill see - B Pollard, 'Fatal licence: commentary on the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008' (2010) 22(2) [Bioethics Research Notes](#) 19.

Victoria

Greens MLC Coleen Hartland [Medical Treatment \(Physician Assisted Dying\) Bill 2008](#).

Victorian Parliamentary Library Research Service, [Medical Treatment \(Physician Assisted Dying\) Bill 2008](#), Current Issues Brief 1/2008.

Commonwealth

Greens Senator Bob Brown, October 2010, [Restoring Territory Rights \(Voluntary Euthanasia Legislation\) Bill 2010](#). For a brief comment see M Metherell, 'NT rights bill splits parties', [Sydney Morning Herald](#), 29 October 2010.

Greens Senator Bob Brown, February 2008 [Rights of the Terminally Ill \(Euthanasia Laws Repeal\) Bill 2008](#).

The Senate, Standing Committee on Legal and Constitutional Affairs, [Rights of the Terminally Ill \(Euthanasia Laws Repeal\) Bill 2008](#), June 2008.

Greens Senator Bob Brown, September 2008 [Restoring Territory Rights \(Voluntary Euthanasia Legislation\) Bill](#)

Recent media coverage in Australia

(a) Sample of articles canvassing the current debate:

L Dayton, 'Alliance aims to assist those who want to die', [The Australian](#), 9 October 2010.

T Ahmed, "'How to die" becoming as important a question as "how to live"', [Sydney Morning Herald](#), 7 October 2010.

R Browne and S Whyte, 'Give us the right to choose: euthanasia support grows', [Sun Herald](#), 3 October 2010

N Perpetch, 'Doctors for dying "focused on care"', [The Australian](#), 24 September 2010.

S Nicholls and B Robins, 'Greens to introduce state euthanasia bill', [The Sydney Morning Herald](#), 22 September 2010.

'Keneally urges caution on euthanasia debate', [Wagga Daily Advertiser](#), 22 September 2010.

'WA Health Minister Kim Hames helped patient to die', [News.com.au](#), 22 September 2010.

M Metherell, J Mahar and L Murdoch, 'PM open to debate on legalising euthanasia', [Sydney Morning Herald](#), 20 September 2010.

S Dunlevy, 'Euthanasia debate on Greens agenda', [Daily Telegraph](#), 20 September 2010.

M Kennedy, 'Australia bans pro-euthanasia TV advert', [The Guardian](#), 13 September 2010.

C Alexander, 'Pro-euthanasia TV ad ban 'a violation of free speech'', [The Age](#), 13 September 2010

J Medew, 'Young people gain access to euthanasia drug', [Sydney Morning Herald](#), 15 February 2010.

J Medew, 'Half of cancer patients in unnecessary pain, says specialist', [Sydney Morning Herald](#), 12 February 2010.

(b) Sample of articles canvassing opposition to voluntary euthanasia:

A Cameron, 'Euthanasia question needs wider discussion', [Sydney Morning Herald](#), 8 October 2010.

Cardinal George Pell, 'Greens' dark path fraught with hidden dangers', [Sunday Telegraph](#) 3 October 2010.

P Kelly, 'Brown's euthanasia bill a perilous test for Gillard', [The Australian](#), 29 September 2010.

(c) Sample of articles canvassing support for voluntary euthanasia:

L Dayton, 'Laws can safeguard the dying', [The Australian](#), 16 October 2010.

K Legge, 'GPs back euthanasia for old people "tired of life"', [The Australian](#), 29 September 2010.

Dr Philip Nitschke, 'Time to end church hold on lawmakers', [Newcastle Herald](#), 28 September 2010.

(d) Sample of articles commentating on opinion polls:

A Shanahan, 'Right to die polls no basis for radical change', [The Australian](#) 2 October 2010.

B Hills, 'Death wishes should be met', [Sunday Telegraph](#), 26 September 2010.

Selected journal articles – Australia

L Bartels and L Otlowski, 'A right to die? Euthanasia and the law in Australia' (2010) 17(4) [Journal of Law and Medicine](#) 532.

B Pollard, 'Fatal licence: commentary on the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008' (2010) 22(2) [Bioethics Research Notes](#) 19.

Bob Brown, 'The right to die: legislation for euthanasia', [Precedent](#), Issue 89, November/December 2008, p 29.

A Rothschild, '[Physician-assisted death: an Australia perspective](#)' in *Giving Death a Helping Hand*, edited by D Birnbacher and E Dahl, Springer-Verlag, 2008.

DA Neil and others, 'End-of-life decisions in medical practice: a survey of doctors in Victoria (Australia)' (2007) 33 [Journal of Medical Ethics](#) 721.

R Patterson and K George, 'Euthanasia and assisted suicide: a liberal approach versus the traditional moral view' (2005) 12(4) [Journal of Law and Medicine](#) 49.

MA Somerville, 'Death talk: debating euthanasia and physician assisted suicide in Australia' (2003) 178(4) [The Medical Journal of Australia](#) 17.

DW Kissane, A Street and P Nitschke, 'Seven deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia' (1998) 352 [The Lancet](#) 1097.

Selected overseas jurisdictions

The Netherlands

In 2002, the Netherlands legalised euthanasia. Euthanasia is still a criminal offence but the law codified a twenty-year old convention of not prosecuting doctors who have committed euthanasia in specific circumstances. The Dutch [Termination of Life on Request and Assisted Suicide \(Review Procedures\) Act 2002](#) states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with criteria of due care. These criteria concern the patient's request, the patient's suffering (unbearable and hopeless), the information provided to the patient, the presence of reasonable alternatives, consultation of another physician and the applied method of ending life. To demonstrate their compliance, the Act requires physicians to report euthanasia to a review committee.

Right to Die Netherlands, [Completed Life: What are we talking about?](#) 2010

J Rietjens and others, 'Two decades of research on euthanasia from the Netherlands: what have we learnt and what questions remain?' (2009) 6(3) [Journal of Bioethical Inquiry](#) 27.

H Buiting and others, 'Reporting of euthanasia and physician-assisted suicide in the Netherlands: descriptive study' (2009) 10(1) [BMC Med Ethics](#) 18.

J Griffiths, '[Physician-assisted suicide in the Netherlands and Belgium](#)' in *Giving Death a Helping Hand*, edited by D Birnbacher and E Dahl, Springer-Verlag, 2008.

A van der Heide and others, 'End-of-Life Practices in the Netherlands under the Euthanasia Act' (2007) [New England Journal of Medicine](#), 356 (19) pp.1957-1965

J Legemaate, 'The Dutch Euthanasia Act and related issues' (2004) 11(3) [Journal of Law and Medicine](#) 312.

F Parkes, 'Tolerance and pragmatism in the Netherlands: euthanasia, coffeshops and prostitution in the purple years, 1994-2002' (2003) 5(4) [International Journal of Police Science and Management](#).

Belgium

The Belgian [Act on Euthanasia 2002](#) is similar to the Dutch Euthanasia Act, including similar criteria of due care.

J Robothan, 'Legal euthanasia does not increase rate, says Belgium expert', [Sydney Morning Herald](#), 29 October 2010.

T Smets, 'Legal euthanasia in Belgium: characteristics of all reported euthanasia cases' (2010) 48(2) [Medical Care](#) 187.

K Chambaere and others. 'Physician-assisted deaths under the euthanasia law in Belgium: a population-based survey' (2010) 182 (9) [Canadian Medical Association Journal](#) 895.

T Smets and others, 'The medical practice of euthanasia in Belgium and The Netherlands: legal notification, control and evaluation procedures' (2009) 90(2) [Health Policy](#) 181.

J Bilsen and others, 'Medical End-of-Life Practices under the Euthanasia Law in Belgium' (2009) 361 [New England Journal of Medicine](#) 1119.

J Bilsen and others, 'Changes in medical end-of-life practices during the legalization process of euthanasia in Belgium' (2007) 16(4) [Social Science & Medicine](#) 803.

Oregon and Washington

The [2009 summary](#) of the report on Oregon's Death with Dignity Act states:

Oregon's Death with Dignity Act, which was enacted in late 1997, allows terminally-ill adult Oregonians to obtain and use prescriptions from their physicians for self-administered, lethal doses of medications. The Oregon Public Health Division is required by the Act to collect information on compliance and to issue an annual report.

These annual reports, which contain a range of statistical and other material, are available at - [Oregon Death with Dying Act records and reports](#). Oregon State Government also provides [FAQs about Oregon's Death with Dignity Act](#). Washington's [Death with Dignity Act](#) is based on the Oregon model.

KA Chamberlain, 'Looking for a "good death": the elderly terminally ill's right to die by physician assisted suicide' (2009) 17(1) [Elder Law Journal](#) 61.

L Ganzini and E Dahl, '[Physician-assisted suicide in Oregon](#)' in *Giving Death a Helping Hand*, edited by D Birnbacher and E Dahl, Springer-Verlag, 2008.

TE Quill, 'Legal regulation of physician-assisted death – the latest report card' (2007) 356(19) [The New England Journal of Medicine](#) 1911.

A Rothschild, 'Oregon: does physician assisted suicide work?' (2004) 12(2) [Journal of Law and Medicine](#) 21.

R Steinbrook, 'Physician assisted suicide in Oregon – an uncertain future' (2002) 346(6) [New England Journal of Medicine](#) 460.

United Kingdom

Debbie Purdy has multiple sclerosis and may, at some stage, want her husband to help her to travel to a jurisdiction where assisted suicide is permitted. She asked the DPP to identify the factors he takes into account in deciding whether to give his consent to prosecution for the offence of assisting suicide contrary to the *Suicide Act 1961* (UK), s 2. The DPP declined. Purdy sought judicial review. In [R \(on the application of Purdy\) v DPP](#) [2009] UKHL 45 the Law Lords granted her application and ordered the DPP to set out a policy identifying the facts and circumstances he will take into account in a case such as hers.

R Daw and A Solomon, 'Assisted suicide and identifying the public interest in the decision to prosecute' [2010] Issue No 10 [Criminal Law Review](#) 737.

B Murphy, 'Human rights, human dignity and the right to die: lessons from Europe on assisted suicide' (2009) 33(6) [Criminal Law Journal](#) 341.

J Keown, 'Purdy: assisted suicide by judicial legislation' (2009) Vol 159, No 7387 [New Law Journal](#) 1340.

M Hirst, 'Assisted suicide after Purdy: the unresolved issue' [2009] Issue 12 [Criminal Law Review](#) 870.

S McLean, '[Assisted dying: the view from the United Kingdom](#)' in *Giving Death a Helping Hand*, edited by D Birnbacher and E Dahl, Springer-Verlag, 2008.

D Bell, 'The legal framework for end of life care: a United Kingdom perspective' (2007) 33 [Intensive Care Med](#) 158.

House of Lords, [Assisted Dying for the Terminally Ill Bill: First Report](#), Session 2004-05.

guardian.co.uk has an '[Assisted Suicide](#)' page which houses opinions and a database of international news articles on the topic.

Advocacy groups for and against euthanasia

[Dying with Dignity NSW](#)
[Exit International Australia](#)
[NSW Right to Life](#)
[Euthanasia.com](#)

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