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Volume 1

Issue 3 *Spring 1997: Symposium - Physician-Assisted  
Suicide*

Article 8

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## Recommended Citation

Andrew L. Plattner, *Australia's Northern Territory: The First Jurisdiction to Legislate Voluntary Euthanasia, and the First to Repeal It*, 1  
DePaul J. Health Care L. 645 (1997)  
Available at: <https://via.library.depaul.edu/jhcl/vol1/iss3/8>

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# AUSTRALIA'S NORTHERN TERRITORY: THE FIRST JURISDICTION TO LEGISLATE VOLUNTARY EUTHANASIA, AND THE FIRST TO REPEAL IT

*Andrew L. Plattner\**

## INTRODUCTION

On May 25, 1995, the legislature for the Northern Territory of Australia enacted the *Rights of the Terminally Ill Act*,<sup>1</sup> [hereinafter referred to as the Act] which became effective on July 1, 1996.<sup>2</sup> However, in less than a year, on March 25, 1997, the Act was repealed by the Australian National Assembly.<sup>3</sup> Australia's Northern Territory for a brief time was the only place in the world where specific legislation gave terminally ill patients the right to seek assistance from a physician in order to hasten a patient's death.<sup>4</sup> This Article provides a historical account of Australia's *Rights of the Terminally Ill Act*, evaluates the factors leading to the Act's repeal, and explores the effect of the once-recognized right to assisted suicide in Australia.

## HISTORY OF THE ACT

Physician-assisted suicide has long been the topic of widespread discussion among the provincial legislatures in Australia. Concern over the uncertainty of the law as it related to physician aid in dying prompted the

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<sup>1</sup>*Rights of the Terminally Ill Act 1995 (NT)* §§ 3-20; see Gay Alcorn, *Australia, Waiting To Go*, SYDNEY MORNING HERALD, July 6, 1996, at 30.

<sup>2</sup>*Senate Votes to Overturn Pioneering Bill on Euthanasia*, IRISH TIMES, Mar. 25, 1997, at 10.

<sup>3</sup>See *Australia Repeals World's Only Assisted Suicide Law*, ORLANDO SENTINEL, Mar. 25, 1997, at A8.

<sup>4</sup>*Euthanasia Doctor in New Mercy Killing*, EVENING STANDARD, Jan. 22, 1997, at 6.

Law Reform Commission of Western Australia to recommend legislation which would protect physicians from liability for administering drugs that alleviated pain and hastened death.<sup>5</sup> That attempt ultimately failed. On the other hand, another province, South Australia, did attempt to clarify the law by adopting the *Consent to Medical Treatment and Palliative Care Act*<sup>6</sup> which allowed a health care professional, who administered medical treatment with the intention of relieving pain, to withdraw a patient's artificial life-support even if the physician knew an incidental effect would be to hasten the patient's death.<sup>7</sup> Recognizing that no affirmative right to aid in dying existed, the provincial legislature in Queensland repealed part of its Criminal Code in order to allow a physician to effectuate the "dual effect" intent without facing criminal charges.<sup>8</sup>

### RIGHTS OF TERMINALLY-ILL ACT

While the national law of Australia permits physicians to prescribe medication that would indirectly hasten a patient's death, there was more willingness on the part of the legislature of the Northern Territory to allow physicians to act with the direct intention of hastening a patient's death.<sup>9</sup> The *Rights of the Terminally Ill Bill* was introduced by the Chief Minister of the Northern Territory as a *Private Member's Bill* on February 22,

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<sup>5</sup>See *Euthanasia-The Australian Law in an International Context*, Department of the Parliamentary Library, Research Paper No.4 1996-97 (Sept. 20, 1996) <<http://www.aph.gov.au/prs/pubs/rp/97rp4.htm>> [hereinafter Research Paper No. 4].

<sup>6</sup>*The Consent to Medical Treatment and Palliative Care Act* (1995) (SA).

<sup>7</sup>*Id.* at § 4(1) (providing that the patient must be at least eighteen years old); Section 3 defined "extraordinary measures" as medical or surgical measures that prolong life, and "terminal illness" as any condition to which no reasonable expectation of survival can be given); See Research Paper No.4, *supra* note 5.

<sup>8</sup>The *Criminal Code Act* (1995) (Qld) repealed the *Criminal Code Act* (1899) (Qld), replacing section 282 of the old Criminal Code with section 82; See Research Paper No.4 1996-97, *supra* note 5.

<sup>9</sup>*Australia and the Way to Peaceful Death*, BUFFALO NEWS, Oct. 8, 1996, at 2B; See *Cruzan v. Director, MO Dep't of Health*, 497 U.S. 281, 296 (1996) (addressing the intent element of active versus passive euthanasia, Justice Scalia stated, "[I]t would not make much sense to say that one may not kill oneself by walking into the sea, but may sit on the beach until submerged by the incoming tide; or that one may lock oneself into a cold storage locker, but may refrain from coming indoors when the temperature drops below freezing").

1995.<sup>10</sup> The *Rights of the Terminally Ill Act* was the first statute worldwide to legalize active physician-assisted suicide and voluntary euthanasia, which occurs when a physician directly acts at the patient's request to die.<sup>11</sup> After fifty amendments, and after passing by a five vote margin, the Northern Territory adopted the statutory language for voluntary euthanasia.<sup>12</sup>

The Act permitted a physician to respond to a patient's request for assistance by terminating the patient's life.<sup>13</sup> The Act allowed a terminally ill,<sup>14</sup> Australian adult,<sup>15</sup> experiencing "unacceptable" pain,<sup>16</sup> to be examined by a qualified physician to determine whether the patient could be cured.<sup>17</sup> The Act required confirming examinations by two other physicians, one specializing in treating terminal illness,<sup>18</sup> and the other, a qualified psychiatrist, to confirm the patient is terminally ill and not clinically

<sup>10</sup>*Rights of the Terminally Ill Act* (1995) (NT) §§ 3-20; see also *Euthanasia Laws Bill* (1996), Department of the Parliamentary Library, Bills Digest No. 45 1996-97 (Oct. 17, 1996) <<http://www.aph.gov.au/prs/pubs/bd/bd45-97.htm>> [hereinafter Bills Digest] (The Northern Territory also composed the Select Committee on Euthanasia in order to study the proposal and report back to the NT Legislature in May, 1995); See also Alcorn, *supra* note 1 (reporting this was the only private member's bill put into a conscience vote that was not defeated).

<sup>11</sup>Annette E. Clark, *Autonomy and Death*, 71 TUL. L. REV. 45, 46 n.2 (1996) (stating that "voluntary euthanasia occurs when a physician administers a drug or other agent at the patient's request, thereby performing the final act that results in the patient's death."); See also Research Paper No.4, *supra* note 5 (defining passive voluntary euthanasia as when medical treatment is withdrawn or withheld from a patient, at the patient's request, in order to end the patient's life; passive involuntary euthanasia is when medical treatment is withdrawn or withheld from a patient, not at the request of the patient, in order to end the patient's life; active involuntary euthanasia is when medical intervention takes place, not at the patient's request, in order to end the patient's life).

<sup>12</sup>*Rights of the Terminally Ill Act* (1995) (NT), §§ 3-20; See also Alcorn, *supra* note 1 (reporting that the Chief Minister Marshall Perron and opposition leader Brian Ede traded fifty amendments across the chamber, with Perron compromising in order to get the Act passed. However, upon its acceptance, the Bill received staunch criticisms from politicians, health care professionals, religious and pro-life groups, and the media).

<sup>13</sup>*Id.*

<sup>14</sup>*Id.* at § 3 (defining "terminal illness" as an illness which, "in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient").

<sup>15</sup>*Id.* at § 7(1)(a) ("the patient has attained the age of eighteen years").

<sup>16</sup>*Id.* at § 7(1)(d).

<sup>17</sup>*Id.* at § 7(1)(b)(ii).

<sup>18</sup>*Id.* at § 7(1)(c).

depressed.<sup>19</sup> Then, after a nine day "cooling off" period, a physician was allowed to hasten the patient's death.<sup>20</sup> The statute provided that the patient could rescind at any time and in any manner, and the physician was under no obligation to assist a patient in hastening death.<sup>21</sup> If the physician chose to comply with the patient's request, death could be hastened by prescribing or preparing a lethal substance, giving the substance to the patient for self-administration, or administering the lethal substance to the patient.<sup>22</sup> Thus, the Act authorized voluntary euthanasia in which the physician takes an active role in administering medication to a patient who has requested a lethal medication.<sup>23</sup> The Act also suggested the physician remain with the deceased's family and friends to answer any questions.<sup>24</sup> The Act, therefore, was neither an unqualified license to kill, nor an affirmation of a competent person's right to assistance in dying under any circumstance.<sup>25</sup>

Between July 1996 and March 1997, four people invoked the right to die under the Act.<sup>26</sup> Robert Dent, a sixty-six-year old, terminally ill cancer patient, was the first to die under the law.<sup>27</sup> After signing the necessary

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<sup>19</sup>*Id.* at §§ 7(1)(c)(ii), (iv).

<sup>20</sup>*Id.* at § 7(1)(i) (providing for an initial seven day period between his visit to the first physician and signing the certificate of request and Sec. 7(1)(n) provides for an additional two days between signing the certificate of request and dying); see Alcorn, *supra* note 1; see Research Paper No.4, *supra* note 5 (noting the Act also calls for the physician to provide information to the patient concerning the illness and any possible palliative measure, the patient must sign a certificate of request to be witnessed by the first and second physicians, who do not stand to gain any financial or other advantage as a result of the patient's death).

<sup>21</sup>Research Paper No.4, *supra* note 5.

<sup>22</sup>*Id.*

<sup>23</sup>See Clark, *supra* note 11, at 47 n.4.

<sup>24</sup>Research Paper No.4, *supra* note 5.

<sup>25</sup>*Id.*

<sup>26</sup>*Australia Strikes Down a State Suicide Law*, N.Y. TIMES, Mar. 25, 1997, at A7.

<sup>27</sup>*Australian Man First in the World to die With Legal Euthanasia*, N.Y. TIMES, Sept. 26, 1996, at A5; see also *Aided Suicide is First Under New Law*, CHGO. TRIB., Sept. 26, 1996, at N10 (reporting how Doctor Philip Nitschke found it to be a very poignant moment that this was the first time in history a person has legally been able to end their life with the help of their physician).

papers, and indicating to his physician that he was prepared to die, the patient was administered a lethal injection and died.<sup>23</sup>

The Act, however, was not as easily utilized as it might seem from the account of Dent's death. For example, the second person euthanized was fifty-two-year old Janet Mills, a patient diagnosed with a rare form of cancer.<sup>29</sup> Because Mills had difficulty communicating her wish orally, Mills entered lethal drug releasing commands on a laptop computer, with her husband and her two treating physicians at her side. For three years, Mills struggled to find two physicians willing to provide assistance while facing systematic opposition from individuals opposed to physician-assisted dying.<sup>30</sup>

Because the first two deaths occurred through the use of computerized lethal injection, Australian opponents of the Act dubbed the computer system the "death machine."<sup>31</sup> Unlike the first two patients, the third patient had no trouble securing three physicians' signatures.

Just before the Act was repealed, a seventy-seven-year old terminally ill patient used the computerized lethal injection system to hasten her death.<sup>32</sup> Although commentators suggested the law only placed in the open what physicians and health care workers were doing in private, opposition to the Act continued to increase.<sup>33</sup> Opponents argued this Act operated as a legal form of murder.<sup>34</sup>

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<sup>23</sup>Seth Mydans, *Law Allowing Doctor-Assisted Suicide Stirs Passions in Australia; Country's Struggles Have Become Testing Ground for U.S., Other Nations*, DALLAS MORNING NEWS, Feb. 9, 1997, at 22A (reporting how Dent punched in a series of commands into a computer, which began the flow of a lethal dose of barbiturates).

<sup>29</sup>Philippe Naughton, "Peace at last" for Australian Euthanasia Woman, REUTERS NORTH AMERICAN WIRE, Jan. 6, 1997, available in LEXIS, World Library, Allnews File.

<sup>30</sup>*Id.* ("I believe that euthanasia is the greatest thing for people who are sick with no chance of getting better.")

<sup>31</sup>*Third Euthanasia Death in Australia*, AGENCE FRANCE PRESSE, Jan. 22, 1997, available in LEXIS, World Library, Allnews File.

<sup>32</sup>*Fourth Person Dies Under Australian Euthanasia Laws*, AGENCE FRANCE PRESSE, Mar. 4, 1997, available in LEXIS, World Library, Allnews File.

<sup>33</sup>*Id.*

<sup>34</sup>*Id.* (reporting proponents believed that the legislation proved that the people who have been suffering have been able to end their lives in a compassionate and dignified way, while the opponents maintained that legalized euthanasia was "deplorable," and wished that the parliament would repeal the Act).

## OPPOSITION TO LEGALIZED EUTHANASIA

Although a majority of Australian citizens supported the policy of physician assisted suicide for the terminally-ill, the majority of physicians were opposed to the Act.<sup>35</sup> Even Dr. Nitschke, the inventor of the "death machine," who was present for all four of the Northern Territory assisted suicides, reported being bewildered by the process of helping patients die.<sup>36</sup> The deaths also stirred emotional reaction from religious leaders worldwide.<sup>37</sup> After the second death, the Vatican condemned Australia's Act as a revolt against God.<sup>38</sup> Also, the Coalition Against Euthanasia in Australia attempted to challenge the Act declaring that the assistance given by the physicians was entirely unethical.<sup>39</sup> Furthermore, one Australian commentator remarked that legalized euthanasia could never remain truly voluntary, in that the elderly would allow their deaths to be hastened out of feelings of guilt, and the disabled and the poor were at a distinct discriminatory disadvantage of having the practice forced upon them.<sup>40</sup>

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<sup>35</sup>*Australian Survey Shows Majority Support for Right-to-Die Laws*, AGENCE FREE PRESSE, Feb. 1, 1997, available in LEXIS, World Library, Allnews File (noting a Brisbane University study found that while seven in ten of 486 non-medical people supported the idea of laws permitting voluntary euthanasia, only one-third of 387 doctors supported it).

<sup>36</sup>See Mydans, *supra* note 28, at 22A (reporting Dr. Nitschke explained that he felt like an executioner when he realized that he would walk into a room with a living being, and leave the room with one less person in the world. He said, "[Y]ou get to know people, and then you just end up one day killing them. You may have good intentions, but it is very bizarre.").

<sup>37</sup>*Vatican Condemns Second Australian Suicide*, REUTERS NORTH AMERICAN WIRE, Jan. 7, 1997, available in LEXIS, World Library, Allnews File; Rachel Bridge, *Australia: Anti-euthanasia Lobby Plans Court Challenge*, SOUTH CHINA MORNING POST, Jan. 7, 1996.

<sup>38</sup>*Id.* (moral theologian Gino Concetti stated, "[T]o decide one's own death and obtain it, even with recourse to the law and medical assistance is ... a crime against life.").

<sup>39</sup>Bridge, *supra* note 37 (reporting the Coalition is made up of the Australian Medical Association, the Right to Life Association, and Catholic, Anglican and Uniting churches).

<sup>40</sup>*Australia: Editorial, The Culture of Death*, SUNDAY TELEGRAPH, Jan. 12, 1997 (subscribing to the notion that a slippery slope will ensue: "[T]he framers of the Abortion Act did not intend -- or so they said -- that there should be abortion virtually on demand; but that is what happened. The removal of all restraint upon public expression was not supposed to result in the proliferation of pornography; but that is what happened. The sexual revolution was not supposed to result in the virtual abolition of the age of consent and wholesale illegitimacy; but that is what happened").

## THE REPEAL

These powerful concerns eventually persuaded the Australian Parliament to repeal the *Rights of the Terminally Ill Act*.<sup>41</sup> Under Section 122 of the Australian Constitution, the Commonwealth Parliament has the authority to repeal any provincial law.<sup>42</sup> The Commonwealth Parliament exercised this power on March 24, 1997 and by a narrow margin of four votes the Australian Federal Senate repealed the Northern Territory's Act.<sup>43</sup> The repeal met approval from both Australia's Prime Minister and numerous religious leaders around the country.<sup>44</sup> As a result of this repeal, a physician who now prescribes medical treatment with the intention of aiding the patient's death may be subject to life imprisonment.<sup>45</sup> Those favoring the repeal reasoned that although the deepest compassion should be shown to the suffering and terminally ill, that compassion should be manifested in revering life for all in the community, and the laws should reflect the support for life and aim to reduce pain.<sup>46</sup> As a result, the Northern Territory, and all of Australia, is now uncertain regarding what actions a physician may legally take to hasten a patient's death.<sup>47</sup>

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<sup>41</sup>See *Australia Repeals World's Only Assisted-Suicide Law*, THE ORLANDO SENTINEL, Mar. 25, 1997, available in LEXIS, World Library, Allnews File.

<sup>42</sup>Research Paper No. 4, *supra* note 5.

<sup>43</sup>Stephen Cordner & Kathy Ettershank, *Australian Senate Overturns World's First Euthanasia Law*, 349 LANCET 932 (Mar. 29, 1997) (reporting that Dr. Nitschke burned the Parliament's Bill at the door of the Parliament in protest because two of his patients were denied the right to die after they had already completed the administrative steps).

<sup>44</sup>*Debate Rages Over Reversal of Australian Euthanasia Law*, AGENCE FRANCE PRESSE, Mar. 25, 1997, available in LEXIS, World Library, Allnews File.

<sup>45</sup>*Close Vote Forecast in Australian Senate of Anti-Euthanasia Bill*, AGENCE FRANCE PRESSE, Mar. 24, 1997, available in LEXIS, World Library, Allnews File.

<sup>46</sup>*Id.*

<sup>47</sup>*Senate Votes to Overturn Pioneering Bill on Euthanasia*, IRISH TIMES, Mar. 25, 1997, at 10.



## REACTIONS TO THE REPEAL AND THE FUTURE OF EUTHANASIA IN AUSTRALIA

Despite repeal of the provincial legislation, physician-assisted suicide or voluntary euthanasia is likely to continue in the Northern Territory.<sup>48</sup> Because 75 percent of Australian citizens support euthanasia and because physicians are likely to continue to practice euthanasia despite the legislative ban, the repeal seems little more than a symbolic formality.<sup>49</sup> By enacting legislation, the Northern Territory legislator expressed the widespread feeling that individual patients should be able to make a choice regarding health care regardless of the feelings of legislators and religious leaders opposed to euthanasia.<sup>50</sup>

The social, political and ethical debates continue as Australians demand control of their dying process.<sup>51</sup> It would be difficult to imagine that Australia, and particularly the Northern Territory, is unaware that the United States Supreme Court recently found no constitutional right to assistance in dying.<sup>52</sup> The discussion in Australia's legislature directly confronts the issues debated in front of the United States Supreme Court,

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<sup>48</sup>*Id.* (reporting how one physician admitted that euthanasia occurs every day in the Northern Territory Hospitals for compassionate reasons).

<sup>49</sup>*Australia Euthanasia Vote*, REUTERS FINANCIAL SERVICE, Mar. 24, 1997.

<sup>50</sup>*Australian Euthanasia Widow Appeals for Law To Stay*, REUTERS WORLD SERVICE, Mar. 19, 1997, available in LEXIS, World Library, Allnews File (reporting that Judy Dent, wife of the first to die under the Act said, "[I]f [the senators] have personal opinions to make it difficult for them, let them abstain or let them say, 'I personally am against voluntary euthanasia, however, my constituents have overwhelmingly told me that I must vote down Kevin Andrews' Bill'").

<sup>51</sup>*See Australian Woman Begg Parliament for Right to Die*, REUTERS WORLD SERVICE, Mar. 17, 1997; see also *Terminally Ill Australians May Bring Deaths Forward to Beat Law Change*, AGENCE FRANCE PRESSE, Mar. 25, 1997, available in LEXIS, World Library, Allnews File; *New Bid to Legalize Euthanasia in Australia*, AGENCE FRANCE PRESSE, Apr. 8, 1997.

<sup>52</sup>*See* *Vacco v. Quill*, 117 S.Ct. 2293 (1997) (holding that New York's statutory provision prohibiting physician-assisted suicide does not violate the Constitution); see also, *Australian Woman Begg Parliament for Right to Die*, *supra* note 51 (detailing how one terminally ill patient pleaded with Parliament not to sign the Bill overriding the Act until she had her necessary paper work completed. The parliament and physicians recognized that her choice was clear, and that her death would be hastened anyway). *Washington v. Glucksberg*, 117 S.Ct. 2258 (1997) (holding that the state of Washington's ban on physician-assisted suicide was rationally related to government's interest).

but it remains unclear whether the Court's decision will have any impact on the Northern Territory, where citizens groups in Australia are likely to continue their efforts to convince Parliament to re-enact voluntary euthanasia legislation.<sup>53</sup> The leadership of the Centrist Australian Democrats has begun to lobby for new private member's bills which would legalize voluntary euthanasia.<sup>54</sup> Proponents of this legislation urge the individual's autonomous decision to end life with the aid of a medical professional must be permitted.<sup>55</sup>

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<sup>53</sup>*New Bid to Legalize Euthanasia in Australia*, AGENCE FRANCE PRESSE, Apr. 8, 1997, available in LEXIS, World Library, Allnews File.

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

