



Voluntary Assisted Dying: A legal perspective

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Overview

- Trends in assisted dying law reform (international, Australia, New Zealand)
- Snapshot of Victoria's voluntary assisted dying laws
- Possible issues in practice from legal perspective



Trends in assisted dying law reform: international

- Europe: Netherlands (2000), Belgium (2002), Luxembourg (2009), Switzerland (longer history of decriminalisation)
- North America:
 - United States: Oregon (1994); Washington (2008); Vermont (2013); California (2015); Colorado (2016); District of Columbia (2017); Hawaii (2018); plus Montana by court decision (2009)
 - Quebec (2014), Canada (Carter – 2015, legislation – 2016)



Trends in assisted dying law reform: Australia

- 50+ Bills across State, Territory and Commonwealth Parliaments dealing with assisted dying over last two decades (Willmott, White et al (2016) 39(1) *University of NSW Law Journal* 1)
- Two became law:
 - *Rights of the Terminally Ill Act 1995* (NT) (overturned by Cth)
 - *Voluntary Assisted Dying Act 2017* (Vic)
- Ongoing efforts to change the law, e.g. WA, ACT, NSW
- Now one State has changed the law, others likely to follow
 - Choices about models? Natural laboratory of a federation or follow suit?



Trends in assisted dying law reform: New Zealand

- Four Bills – 1995, 2003, 2013 (withdrawn) and 2017 (Members' Bill ballot)
- Current Bill with parliamentary committee after first reading
- *Seales v Attorney-General* [2015] 3 NZLR 556
- Significance of a Member's Bill – history of other reforms



Trends in assisted dying law reform

- Focus of discussion is currently on Victoria's assisted dying laws
- But other Australian States and New Zealand may follow
- Discussions about assisted dying are of wider relevance



Victoria's voluntary assisted dying law: overview

- *Voluntary Assisted Dying Act 2017* (Vic) was passed on 29 November 2017
- Act will commence on 19 June 2019
- Planned 18 month implementation period
- Implementation Taskforce appointed and work underway on eight priority projects including clinical guidelines development, models of care and organisational protocols development, etc



Victoria's voluntary assisted dying law: eligibility

- Adult
- Residency requirements (e.g. Victorian resident and more than 12 months before request)
- Decision-making capacity in relation to assisted dying



Victoria's voluntary assisted dying law: eligibility (continued)

- Disease, illness or medical condition that is
 - incurable; and
 - advanced, progressive and will cause death; and
 - expected to cause death within weeks or months, not exceeding 6 months (12 months for neurodegenerative); and
 - causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.
- Not eligible if only mental illness or disability



Victoria's voluntary assisted dying law: process for assessment (briefly!)

- First request for assistance to die (by person to first doctor)
- First assessment (first doctor)
 - Eligible, understands mandated information, voluntary decision without coercion, enduring request
- Consulting assessment (second doctor) – similar
- Written declaration by person (witnessed etc)
- Final request by person
- Appoint contact person (by person)
- Final review form (by first doctor)
- Voluntary assisted dying permit (self or practitioner administration)
- Where self administration: information when prescribing and again dispensing
- Where practitioner administration: other requirements (witness, form)



Victoria's voluntary assisted dying law: oversight, safeguards and conscience

- Voluntary Assisted Dying Board
 - Overall oversight and reporting
 - Reporting to Board
- Safeguards ('most conservative legislation in the world')
 - Embedded throughout process but also other safeguards such as offences, VCAT jurisdiction, etc
- Conscience
 - Specific protection for health professionals not wanting to participate



Victoria's voluntary assisted dying law: in practice

- Evaluating regulation: Does it achieve stated policy goals effectively?
Does it follow the principles of good governance?
- Design of law and its implementation
- Implementation is critical
 - Compare Canadian experience
 - Anticipate some presently unanswered questions will be addressed by Implementation Taskforce



Victoria's voluntary assisted dying law: in practice

- Do the safeguards and assisted dying process strike the right balance between access and protection?
- How will the boundaries of the 'expected time to death' eligibility criteria be navigated?
 - Can a 6 and 12 month timeframe be justified?
 - Clear cases and not so clear cases
 - Can prognosis be reliably determined?
 - How be interaction between criteria affect eligibility? (e.g. dementia and need to capacity)



Victoria's voluntary assisted dying law: in practice

- How will creating jurisdiction for VCAT be used by interested parties?
- Design of law and its implementation
- Some raise design issues
 - Including those that were part of the political compromise to see the law passed (e.g. 6 and 12 months)
- Implementation work will be critical to address these and other issues
 - Need for education, clear guidance about interpretation of law and support for robust useable processes



Concluding comments

- Voluntary assisted dying law will come into force in Victoria next year but other Australian States and perhaps New Zealand likely to follow (timing?).
- Snapshot of Victorian assisted dying laws
- Some questions from a regulatory perspective about how it might operate in practice: design and implementation
- Good implementation is critical and will need to be done well



Thank you

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