Voluntary Assisted Dying: A legal perspective

Professors Ben White and Lindy Willmott
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)
Trends in assisted dying law reform: Australia

- 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- Four Bills – 1995, 2003, 2013 (withdrawn) and 2017 (Members’ Bill ballot)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

End of Life Law in Australia website

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