



# Legal Status of Assisted Dying: An Antipodean Perspective

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# Why Australia and New Zealand?

- Different from most other jurisdictions in plenary session
- Australia had first operative assisted dying regime
- Long history of (recent) attempts to reform the law
- Arguably on cusp of legal change

# Overview

- Australia
  - Current law
  - Past law
  - Proposed law
- New Zealand
  - Current law
  - Proposed law
- What does the future hold?





# Australian law: current

- Voluntary euthanasia is unlawful in all States and Territories
- Assisting a suicide is unlawful in all States and Territories
- Covered by offences including: assisting suicide; murder; attempted murder; manslaughter

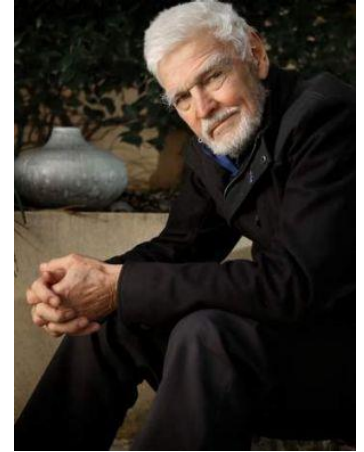
# Prosecutions are regular but infrequent

- *R v Hood* [2002] VSC 123 – male partner > male partner
- *R v Maxwell* [2003] VSC 278 – husband > wife
- *DPP v Karaca* [2007] VSC 190 – friends > friend
- *DPP v Nestorowycz* [2008] VSC 385 – wife > husband
- *DPP v Rolfe* [2008] VSC 528 – husband > wife
- *R v Justins* [2011] NSWSC 568 – friends > friend
- *R v Mathers* [2011] NSWSC 339 – friend > friend
- *R v Nielsen* [2012] QSC 29 – acquaintances
- *R v Klinkermann* [2013] VSC 65 – husband > wife
- *Walmsley v R* [2014] ACTCA 24 – fellow heroin users

Downie (2016) 16(1) *QUT Law Review* 84

# Although prosecutions don't always occur

- Victorian doctor, Dr Rodney Syme
- Made public details that would enable prosecution
- Authorities declined to prosecute
- Changing environment? (at least perhaps in Victoria)



# Australian law: past (Northern Territory)

- *Rights of the Terminally Ill Act 1995* (NT)
- First operative assisted dying legislation in the world
- Operated for 9 months
- Overturned by the Commonwealth by *Euthanasia Act 1997* (Cth)



# Australian law: proposed

- 56 Bills across State, Territory and Commonwealth Governments dealing with assisted dying over last two decades
- Features of those ‘close to passing’
  - Nothing ‘different’ about proposed model
  - Political factors? Nature of proponent/s
  - Particular States

Willmott, White et al (2016) 39(1) *University of NSW Law Journal* 1



# Australian law: Victorian Assisted Dying Bill

- Reform process
  - Parliamentary Standing Committee Report
  - Ministerial Advisory Panel on implementation
  - Government sponsored process
- The Bill (from report; Bill not yet tabled)
  - Physician-assisted dying except where physically incapable
  - ‘Most conservative model in the world’; 68 safeguards
  - Government-sponsored Bill (but conscience vote)
  - Premier, Health Minister and other Ministers support





# New Zealand law: current

- Voluntary euthanasia is unlawful
- Assisting a suicide is unlawful
- Covered by offences including: aiding and abetting a suicide; murder; attempted murder; manslaughter

# Prosecutions occur

- *R v Law* (2002) 19 CRNZ 500 – husband > wife
- *R v Martin* [2005] NZCA 3 – daughter > mother
- *R v Crutchley* [2008] NZHC 1078 – son > mother
- *R v Davison* [2011] NZHC 1677 – son > mother
- *R v Mott* [2012] NZHC 2366 – husband > wife

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# New Zealand law: current

- *Seales v Attorney-General* [2015] 3 NZLR 556
- Criminal law declarations
  - Existing criminal law not permit assisted dying
- Bill of Rights declarations
  - Section 8 – Right not to be deprived of life
    - Engaged but not breached – on grounds established by law and consistent with fundamental principles of justice
  - Section 9 – Right not to be subject to torture or cruel treatment
    - Not engaged
- Matter for Parliament to resolve



# New Zealand law: proposed

- Four Bills – 1995, 2003, 2013 (withdrawn) and 2017 (Members' Bill ballot)
- Parliamentary Committee Report in August 2017 (Petition by Street and others)
  - Did not make recommendations about whether legislation should be introduced
  - Just recorded arguments in debate and consultation views



# Future developments: Australia

- Assisted dying will become lawful but when?
- Legislative change not case law
- Victoria most likely option (although uncertain) but other States remain active
- If one State changes the law, others will follow
  - But choices about models?
  - Natural laboratory of a federation or follow suit?



# Future developments: New Zealand

- Judicial route tried
- Parliamentary Committee Report did not advance case
- Significance of a Member's Bill
  - Other progressive reform



# Thank you

End of Life Law in Australia website

<https://end-of-life.qut.edu.au/>

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