

The future of euthanasia politics in the Australian state parliaments

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INTRODUCTION

Despite high levels of support for law reform recorded amongst the Australian public and a reasonable section of the medical profession, since the federal parliament overturned the Northern Territory's *Rights of the Terminally Ill Act* in 1997, voluntary euthanasia has remained illegal in Australia. Nevertheless, a significant amount of activity on the issue has continued, with bills seeking to reform the law on the practice introduced in all of the Australian state parliaments except Queensland. To shed light onto the politics of voluntary euthanasia in Australia, the article considers the attempts to legalise the practice in the South Australian and the Tasmanian state parliaments. The two parliaments are selected for detailed investigation here, as they have been the foci of the majority of activity on the issue. Whilst some argue that the parliaments have shown most promise of reform, there has been strong opposition on the issue from key members of the medical and legal professions. It is argued here that, so long as there is vocal opposition to bills in the states from medical and legal professionals, the law on voluntary euthanasia is unlikely to change in the near future.

To reach these conclusions, the article continues in five sections. Section One reviews the literature on the euthanasia politics to identify the contribution this article will make. Section Two outlines the data sources used. Section Three presents the South Australian case. The case presents new material on the politics of voluntary euthanasia in the Australian parliaments, mapping the status of bills currently being considered by the parliament and examines the activities of the interest groups and members of the key professional organisations on the issue and examines the likelihood of reform in the near future. Section Four presents the Tasmanian case. The article concludes by emphasising the implications of the findings for those who study the power of the medical profession in Australian politics and suggests avenues for future research.

RESEARCH ON VOLUNTARY EUTHANASIA

The majority of scholarly work on euthanasia has come from the field of bioethics, which bridges the fields of medicine, philosophy, medicine and law. Borry *et al.* surveyed research in bioethics journals and found that ‘the prolongation of life and euthanasia’ were the main topics of research in the field for a thirteen-year period from 1990–2003.¹ The primary focus of these studies are the controversial ethical questions relating to the practice and authors here primarily seek to evaluate existing, as well as advance new, arguments for and against legalisation of the practice.² In this literature, the Northern Territory legislation, alongside the other euthanasia laws in Washington, Oregon, Belgium and the Netherlands, are frequently used as case studies, but the politics involved with the passage of these laws is only dealt with at a generic level.³ Studies have also focussed on the operation and implementation of legislation, for example Kissanne, Street and Nitschke report clinical details of the seven patients who died under the *Rights of the Terminally Ill Act*.⁴ So, whilst there have been several studies of attitudes amongst Australian medical professionals about the practice, the political implications of their findings which are of interest here, were not discussed.⁵ In contrast, the issue of voluntary euthanasia has received much less attention in political science than in the fields mentioned above. In the political science literature, a number of studies have focussed on the issue in jurisdictions such as the Netherlands, Oregon, Denmark and Belgium.⁶ In Australia, studies have focussed on the passage of the *Euthanasia Laws Act* in the federal parliament, but have neglected decision-making on the issue in the states and territories. The focus on the *Euthanasia Laws Act* is valid, as the passage of the Act generated considerable controversy, not only because it dealt with the euthanasia issue, which at the time had not been discussed

1 Pascal Borry *et al.*, “Empirical Research in Bioethical Journals. A quantitative analysis,” *Journal of Medical Ethics* 32, no. 4 (2006).

2 For example Henk Jochemsen and John Keown, “Voluntary Euthanasia Under Control? Further empirical evidence from The Netherlands,” *Journal of Medical Ethics* 25, no. 1 (1999); John Keown, ed., *Euthanasia Examined: Ethical, Clinical and Legal Perspectives* (Cambridge: Cambridge University Press, 1995); John Keown, *Euthanasia, Ethics and Public Policy: An argument against legalisation* (Cambridge University Press, 2002).

3 For example Keown, *Euthanasia Examined*, Chs 14 & 15.

4 David W. Kissane *et al.*, “Seven Deaths in Darwin: Case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia,” *The Lancet* 352, no. 9134 (1998).

5 Kuhse and Singer, “Doctors’ Practices and Attitudes Regarding Voluntary Euthanasia,”; Helga Kuhse, *et al.*, “End-of-Life Decisions in Australian Medical Practice,” *Medical Journal of Australia* 166, no. 4 (1997); Neil *et al.*, “End-of-Life Decisions in Medical Practice: A survey of doctors in Victoria (Australia)”;; Steinberg *et al.*, “End-of-Life Decision-Making”;; Christina A. Stevens and Riaz Hassan, “Management of Death, Dying and Euthanasia: Attitudes and practices of medical practitioners in South Australia,” *Journal of Medical Ethics* 20, no. 1 (1994).

6 Christoffer Green-Pedersen, “The Conflict of Conflicts in Comparative Perspective: Euthanasia as a political issue in Denmark, Belgium, and the Netherlands,” *Comparative Politics* (2007); Taylor E. Purvis, “Debating Death: Religion, Politics, and the Oregon Death With Dignity Act,” *The Yale Journal of Biology and Medicine* 85, no. 2 (2012); Bernard Steunenberg, “Courts, Cabinet and Coalition Parties: The politics of euthanasia in a parliamentary setting,” *British Journal of Political Science* 27, no. 04 (1997).

before in the Australian Federal Parliament, but also because it had implications on the territories' right to self-government.⁷

The present study seeks to remedy this situation, although first, there are a small number of exceptions which do pay closer attention to the politics of voluntary euthanasia in the state and territorial parliaments, that need to be considered to further define the scope of this study. Quirk examines the constitutional context of the debate in the Northern Territory, particularly considering the problem of Commonwealth law overriding territory law and Bartles and Otlowski, discuss the defeat of the *Dying with Dignity Bill 2009* in Tasmania.⁸ Both articles provide a useful introduction to the history and present status of the law on euthanasia in each of the state and territorial parliaments and whilst Bartles and Otlowski also present a history of the 2009 Tasmanian Bill, as well as a critical evaluation of the arguments used for and against euthanasia legislation, but neither articles examine the politics involved with the passage of bills through parliament. The most substantial study of voluntary euthanasia at the state and territorial level, however, is by Nitschke and Stewart, who provide the fullest study of the campaign to legalise in the states and territories to date.⁹ Nitschke and Stewart analyse the fate of the Northern Territory *Rights of the Terminally Ill Bill* and focus on both the passage of the Act and its subsequent overturning in the federal parliament. In relation to the fate of a euthanasia bills, the authors write: '... certain ingredients are required for the successful passage of a law on VE' and '...in the mid 1990s in the Northern Territory we had, all that was needed'.¹⁰ As such, Nitschke and Stewart cite four reasons for the success of the Northern Territory Bill: first, the presence of a key actor who was willing to sponsor a bill on the issue; second, the institutional make-up of the Northern Territory House of Assembly, being a unicameral parliament, with no house of review; third, the composition of Territory society; and, finally, the mind-set of Territory people. The present study intends to update the work of Nitschke and Stewart by charting the events that have taken place since the authors wrote their study, which was first published in 2005 and second, it will focus on euthanasia politics in the states, where the key battles to legalise are presently taking place.

7 Marion Maddox, "For God and States Rights: Euthanasia in the Senate" *Legislative Studies*, 14 no. 1 (1999); Sharon Broughton, and Sonia Palmieri, "Gendered Contributions to Parliamentary Debates: The case of euthanasia," *Australian Journal of Political Science* 34, no. 1 (1999); John Warhurst, "Conscience Voting in the Australian Federal Parliament," *Australian Journal of Politics & History* 54, no. 4 (2008).

8 Lorana Bartels and Margaret Otlowski, "A Right to Die? Euthanasia and the law in Australia," *Journal of Law and Medicine* 17, no. 4 (2010) Patrick Quirk, "Euthanasia in the Commonwealth of Australia," *Issues L. & Med.* 13 (1997).

9 Philip Nitschke and Fiona Stewart. *Killing me Softly: Voluntary Euthanasia and the Road to the Peaceful Pill* (Melbourne: Penguin, 2011). Phillip Nitschke released his auto biography in 2013, see Philip Nitschke and Peter Corris. *Damned if I do* (Melbourne: Melbourne University Press, 2013).

10 Nitschke and Stewart, *Killing me Softly*, 32.

INVESTIGATING EUTHANASIA POLITICS

The present analysis focuses on the campaigns to legalise voluntary euthanasia in the South Australian and the Tasmanian state parliaments. The two parliaments were selected as research sites as they have been the site of fervent, if not the majority of recent activity on the issue.¹¹ The analysis of this activity is conducted through a case study approach.

The main aim of the case studies is to shed light onto the recent activities of groups campaigning for, and against voluntary euthanasia to assess the likelihood of reform in the near future. Three main sources of data were used to construct the case studies. The first source of data is the parliamentary websites of each state parliament. Information

There has been a striking similarity in the patterns of the free voting on euthanasia bills in the South Australian and Tasmanian parliaments, which led to the failure of bills.

about the status of bills was obtained from the legislative tracking facilities on the parliamentary websites of each parliament. This information was used to map the current status of legislative attempts to change the law on the issue in each parliament. To supplement this information about the conscience votes on recent bills was taken from the division lists in *Hansard*, which was also available on the website of

each parliament, to demonstrate in numerical terms, at least, how close recent attempts to reform the law have come to changing the law. The second source of data sources are the websites of the interest groups and organisations involved, as well as media reports of recent events. These sources offer information, such as mission statements and official positions on the issue. In addition, media reports are analysed to gain insight into the presence of representatives and bill sponsors in the media at the time and evaluate the resonance of discourses about voluntary euthanasia and the attempts at the time. This information is vital to add important detail and contextual information to the legislative histories, which were mapped using the parliamentary websites. The third source of data is material from interviews with 'key players' in the attempts to reform the law in each state. Interviews were conducted with the following sets of participants: bill sponsors; parliamentary officials; presidents of the interest groups involved; and representatives of professional organisations. The majority of the interviews were conducted in Hobart and Adelaide during May 2012 and follow up telephone interviews were conducted in February 2013. The interviews were semi-structured and questions asked aimed to draw out information about each individual's involvement in the legislative process and benefit from their expertise to better understand each case. For example, parliamentary officials were questioned about the nature of the parliamentary processes involved in the passage of a law on voluntary euthanasia, particularly the Private Member's Bills process, to gain an insight into whether procedural mechanisms might present a barrier to law reform. Whilst representatives of interest groups and professional organisations were asked about

11 To demonstrate this point Appendix A provides a list of bills and their sponsors in the Australian state and territorial parliaments.

their current activities and arguably, most importantly, bill sponsors were asked about the present status of their legislation. This information was used to add rich detail to the information obtained from parliamentary websites and is crucial to better understand the cases under investigation.

EUTHANASIA POLITICS IN THE SOUTH AUSTRALIAN PARLIAMENT

Of all the Australian states the largest amount of activity, in relation to the amount of legislation introduced and parliamentary lobbying, has taken place in the South Australia.¹² Despite the efforts of the opponents of bills to keep the issue off the agenda, voluntary euthanasia is far from resolved in South Australia. Almost every year since the mid-1990s, the parliament has considered at least one bill seeking to change the law. In 2012, with the failure of a bill at Second Reading by only two votes, interest group activity on the issue in the state has intensified, but this activity countered by strong opposition from members of professional organisations. To shed light on these developments, the following case study outlines the present status of bills seeking to legalise voluntary euthanasia and surveys the activities of groups that have a stake in the issue.

i) The present status of voluntary bills in the parliament

The most recent bill to receive a vote in the House of Assembly was the *Voluntary Euthanasia Bill 2012*. The bill sought to legalise active voluntary euthanasia for patients that were in the terminal stage of an terminal illness. Consideration of the bill provides an insight into the voting behaviour of MPs on the issue, as well as the level of support and opposition in the parliament. The vote on the bill was significant, not only because it failed by only two votes, but because it was the first time the issue had been voted on in the Assembly for seventeen years. So, whilst the 1995 *Voluntary Euthanasia Bill* was defeated by 30 votes to 12, the 2012 bill failed by only two votes: 22 votes to 20. Table 1 below reports the Second Reading voting on the bill on 14 June 2012 by party, as well as the level of cohesion in the parties.

Table 1: Party voting on the *Voluntary Euthanasia Bill 2012* in the House of Assembly

	For	Against	DNV	Cohesion
LIB	5	11	2	.38
ALP	14	9	3	.22
IND	1	2	-	-
Total	20	22	5	

¹² *ibid.*

During the voting, both parties were significantly split and only half as cohesive on the issue as they were in 1995. The bill was supported by the Premier Jay Weatherill and two senior ministers, Pat Conlon and Paul Caica although the leader of the Liberal Party, Isobel Redmond, did not vote. There was also a gender dimension to the voting. The new influx of female 'centre-left' MPs were, in large part, responsible for the increase in parliamentary support. Indeed, half of the 14 ALP members whom supported the bill were women and twice as many women MPs supported the bill as opposed it. However, arguably, the most important factor that predicted the voting patterns was the ideological and religious factions present in the Assembly. At the time, the media reported the main reason for defeat of the bill was opposition from 'conservative' Liberals and key members of Labor's right-faction.¹³ Members of Labor's right-faction who voted against the bill, included mineral resources and energy minister Tom Koutsantonis, the Treasurer, Jack Snelling, and back-bencher Michael Atkinson. Prior to the vote, the bill's sponsor, predicted that there would be significant opposition from the right-wing of the Labor Party:

Ironically, the Labor Government, the one in power in the Lower House, is dominated by Catholics. That is the right-wing faction of the Labor Party, they are nearly all Catholics. They control the Parliament because they have the majority ...and they don't want a VE bill.¹⁴

So, whilst the recent vote signals that opinion in the House of Assembly is tending towards liberalisation, the outcome of future votes is difficult to predict as five MPs did not vote. Meaning the outcome of a vote on the bills presently before parliament is likely to be close.

In 2013, the first proposal considered was Bob Such's *Ending Life With Dignity Bill 2013*, which he introduced in February. Again, the bill is deliberately narrow in scope, restricting voluntary euthanasia to the terminal stage of a terminal illness, which means that it could win the support of the five MPs who were 'undecided' in the close June 2012 vote. However, due to its narrow scope, the bill does not go far enough for the euthanasia groups. The euthanasia groups have been working with Steph Key to develop a broader bill, which might also be introduced in the near future. The second proposal will come from Steph Key, who has confirmed she will be introducing a bill.¹⁵ In February 2013, Key intended to meet again with the euthanasia lobby, including Philip Nitschke, to discuss the kind of model for voluntary euthanasia the bill will propose and also with Mark Parnell, to discuss whether he would like to work together on the bill.

13 Daniel Wills, "SA Parliament Kills Off Euthanasia Laws for the Moment," *Adelaide Now* (online edition), June 14, 2012, accessed March 3, 2013, <http://www.adelaidenow.com.au/news/south-australia/parliament-kills-off-euthanasia-laws/story-e6frea83-1226395772400>.

14 Telephone interview with Bob Such, January 31, 2012.

15 During a telephone conversation with the author on January 31, 2013.

ii) The interest groups involved

While the precise influence of interest groups is difficult to ascertain quantitatively – and membership of a particular political party was by far the best predictor of voting patterns – it is important to consider the activities of the interest groups involved in the issue.¹⁶ In contrast with the Northern Territory, campaigns in the other states have taken place over many years up until the present. During that time, the anti-euthanasia lobby has become more organised. One of the key strengths of this lobby is that it is located within the broader right to life movement, which offers access to a large support base. Organisations such as the Australian Christian Lobby have branches in each of the states and territories. However, single-issue, anti-euthanasia groups have formed, one of the most prominent being HOPE, which is directed by Paul Russell in South Australia.

However, since the overturning of the *ROTTI Bill* in the Northern Territory, the pro-euthanasia campaign has also become more organised. South Australia has one of the most highly organised voluntary euthanasia societies in Australia.¹⁷ The state's voluntary euthanasia society has been the most active in lobbying the parliament. The South Australian Voluntary Euthanasia Society (SAVES) – which was founded in 1983 and has a large membership base – has been persistently campaigning for a change in the law on end of life choices. The recent vote in the Assembly demonstrates that the group is closer to achieving success in terms of a change in the law. A key strategy that could facilitate this involves increasing its visibility amongst politicians and the public. Frances Coombe, the President of SAVES, outlined recent activity:

Over the past couple of years we have had monthly information days on the Parliament steps. It's hard to keep this issue out in the public, it's not a happy issue, death is a topic that they don't really want to think about. So if we can keep the word voluntary euthanasia out in the public face, as we do when we are on the Parliament, steps that's ideal. Parliament House is ideally situated on North Terrace, being close to the mall and also it doesn't cost us anything, which is really important, as we don't have much money being a voluntary body. So we go on there and take our placards, tables and information pamphlets and we are there for about three hours on a Friday. The Members of Parliament know we are there and it's good for them to see we are there, so they know it is an issue that has to be addressed and is not going to go away.¹⁸

16 The pattern of the free voting is in line with the findings of the free vote literature; see for example, Philip Cowley and Mark Stuart. "Party Rules, OK: Voting in the House of Commons on the Human Fertilisation and Embryology Bill." *Parliamentary Affairs* 63, no. 1 (2010): 173–181.

17 In addition, there are four national lobby organisations originating from South Australia, who work independently of the VE Societies. The four groups are: Doctors for Voluntary Euthanasia Choice; South Australian Nurses Supporting Choices in Dying; Syndicated Australian Voluntary Euthanasia Youth Advocates; and Christians Supporting Choice for Voluntary Euthanasia.

18 Interview with Frances Coombe, Adelaide South Australia, 23.04.2012.

In addition to its influence amongst MPs, SAVES also maintains its visibility in the community by holding stalls in Rundle Mall in Adelaide city centre twice a year and asking members of the public to write to their MP. Frances Coombe commented on the reception the Society has received from the public during this activity:

Twice a year we hire a space there and hand out information and there are signs and placards and we have just started asking again if people would write a letter to their MP and they were so enthusiastic it was incredible. We weren't allowed to approach people, but people were coming in droves, it's an issue that has been saturated among the public I think that they are really wanting change, saying 'why haven't they done anything?', 'you are still here'. Some people write a page, like a stream of their experiences, so that is the power of the issue at the moment.¹⁹

One of the main challenges for SAVES is to sustain their highly active campaign over time. Frances Coombe argued that the success of the society resulted from 'keeping at it':

I think it would probably have to be our lobbying over time as a society, because we are very active. The personal letters themselves make a big difference, but those who are opposed to the choice are also writing letters and communication. So I think that it is the fact that we are a strong lobbying force and we keep at it and we do it in a respectful but dogged manner, always presenting the facts. I think that is the strongest thing that it culminates after a time.²⁰

The Northern Territory and South Australian campaigns illustrate how different contexts have required different campaigning methods. The short campaign in the Northern Territory required spontaneous activity, and the limited amount of time available for opponents to organise was a key feature of the passage of the *ROTTI Bill*. However, over time, as the opposition has become more organised, a professionalised approach has been important in South Australia, not only to network with MPs and possible bill sponsors, but also to keep the issue highly visible in the community over a long period of time. In addition, the group has had to respond to continued opposition from leadership of the main professional organisations, which have played an increasingly influential role since the overturning of the Northern Territory legislation. In addition, Christian groups had launched a heavy lobbying campaign to secure the opposition of these MPs.²¹

19 *ibid.*

20 *ibid.*

21 Wills, "SA Parliament Kills Off Euthanasia Laws for the Moment."

iii) The professional organisations involved

The *Criminal Law Consolidation (Medical Defences – End of Life Arrangements) Amendment Bill 2011* in particular prompted strong reactions from the lawyers and medical professionals' professional organisations. Since then, representatives from these organisations have upheld their opposition to the practice. For example, Dr Peter Sharley, the President of the South Australian branch of the Australian Medical Association, gave weight to the arguments of the opponents, by speaking about the bill's flaws on Radio Adelaide.²² In addition, Dr Sharley and Ralph Bönig, President of the Law Society of South Australia, issued a joint media release stating that their organisations were both opposed to the bill.²³ Nevertheless, as a national organisation, the AMA does not have a position on whether or not the law should be changed. Rather, the organisation recognises that individual doctors may have their own view on law reform. Indeed, AMA policy 10.5 states that: 'The AMA recognises that there are divergent views regarding euthanasia and physician-assisted suicide'.²⁴ Commenting on doctors views of voluntary euthanasia, Dr Simon Towler, former Branch President of the Western Australian AMA, stated that: 'There are 26,500 doctors in the AMA, (and) there are 26,500 different opinions on this issue'.²⁵ Whilst John Flannery, AMA Spokesman, explained that:

There are two things the AMA does not have a formal position on, abortion and euthanasia... The reason the AMA doesn't have a position on euthanasia is because it's one of those issues that has lots of grey around it ... doctors have their own views about the definition of euthanasia, voluntary euthanasia and assisted death. It's a very tough area to get a definitive response from the AMA on because doctors have such differing views.²⁶

However, over the past two decades, several Presidents and Branch Presidents, including Dr Peter Sharley, South Australian AMA Branch President, have spoken out against legalisation of the practice.²⁷ One of the most prominent and well-known opponents of voluntary euthanasia in the medical profession is Dr Chris Wake, former Northern Territory AMA Branch President, who was heavily involved in the campaign to overturn the Territory's *Rights of the Terminally Ill Act*. Action taken by Dr Wake included a Supreme Court and a

22 Archer, "Euthanasia Bill sparks Concern from AMA."

23 "Doctors and Lawyers Oppose Keys 'End of Life' Bill," *AMA(SA) Website*, September 12, 2011, accessed March 3, 2013, <http://www.amasa.org.au/download/Media%20releases/2011/0970%20End%20of%20Life%20Bill%2009-12%20cb.pdf>.

24 "The Role of the Medical Practitioner in End of Life Care – 2007."

25 "WA Case puts Focus on Voluntary Euthanasia Legislation," *ABC 7.30 Report*, December 1, 2000, accessed February 14, 2013, <http://www.abc.net.au/7.30/stories/s219321.htm>

26 Quoted in David Sygali, "Doctors form Lobby for Right to Die with Dignity," *Western Advocate* (online edition), November 12, 2011, accessed February 14, 2013, <http://www.westernadvocate.com.au/story/939863/doctors-form-lobby-for-right-to-die-with-dignity/>.

27 See, for example Jordan Archer, "Euthanasia Bill Sparks Concern from the AMA," *Radio Adelaide*, September 14, 2011, accessed February 14, 2013, <http://radioadelaidebreakfast.wordpress.com/2011/09/14/euthanasia-bill-sparks-concern-from-the-ama/>

High Court challenge, which were both rejected.²⁸ As a result, since the mid 1990s, the AMA has frequently been cited as opposed to law reform, despite not officially commenting on whether, or not, there should be a change in the law. At the same time, however, there are a significant number of doctors and nurses, many of whom are AMA members, who do support a change in the law. Professional groups who support a change in the law include ‘South Australian Nurses Supporting Choices in Dying’ and ‘Doctors for Voluntary Euthanasia Choice’.²⁹ Since the late 1980s, several surveys have found that a majority of doctors and nurses favour legalised voluntary euthanasia and would support a change in the law:

- In 1988, Kuhse and Singer surveyed 869 Victorian doctors and asked: ‘Do you think it is sometimes right for a doctor to take active steps to bring about the death of a patient who has requested the doctor to do this?’ Sixty-four per cent of AMA members were in favour, while 62 per cent of all participants were in favour, 93 per cent thought such a request could be rational and 52 per cent of AMA members thought that the AMA should change its stance of the issue.³⁰
- In 1993, Baume and O’Malley surveyed 1268 NSW and ACT doctors: Fifty-nine per cent thought actively hastening death on request was sometimes right, whilst 96 per cent thought such a request could be rational. Fifty-eight per cent thought that the law should be changed to permit ‘active’ voluntary euthanasia.³¹
- In 1997, Steinberg et al. surveyed approval rates of the *ROTTI* Act amongst doctors, nurses and the community in the Northern Territory and found: Thirty-four per cent of nurses and 14 per cent of doctors strongly approved of the Act, whilst 31.7 per cent and 20.9 per cent approved.³²
- In 2007, Neil et al. surveyed 854 Victorian doctors about the legalisation of voluntary euthanasia and found: Fifty-three per cent of doctors support the legalisation of voluntary euthanasia, whilst out of doctors who have experienced requests from patients to hasten death, 35 per cent have administered drugs with the intention of hastening death.³³

28 Stephen Cordner and Kathy Ettershank, “Northern Territory Euthanasia Act has an Uncertain Start,” *The Lancet* 348, no.9020 (1996): 120.

29 The position of Doctors for Voluntary Euthanasia Choice is outlined in, John O. Willoughby, Robert G. Marr, and Colin P. Wendell-Smith, “Doctors in support of law reform for voluntary euthanasia,” *The Medical Journal of Australia* 198, no. 4 (2013).

30 Helga Kuhse and Peter Singer, “Doctors’ Practices and Attitudes Regarding Voluntary Euthanasia,” *The Medical Journal of Australia* 148, no. 12 (1988).

31 Peter Baume and Emma O’Malley, “Euthanasia: Attitudes and practices of medical practitioners,” *The Medical Journal of Australia* 161, no. 2 (1994).

32 Margaret Steinberg et al., “End-of-Life Decision-Making: Community and medical practitioners’ perspectives,” *Medical Journal of Australia* 166, no. 3 (1997).

33 David A. Neil et al., “End-of-Life Decisions in Medical Practice: A survey of doctors in Victoria (Australia),” *Journal of Medical Ethics* 33, no. 12 (2007).

Nevertheless, since the Northern Territory law was overturned, despite widespread community and a reasonable amount of professional support for the practice, there has been no change in the law on voluntary euthanasia and assisted suicide in Australia. The attribution of anti-euthanasia comments to representatives of the AMA is a key reason for the failure of bills in South Australia and Tasmania, which must be considered in any explanation of the passage of bills on the practice.

iv) The likelihood of reform in the near future

Despite the efforts of the opponents of the bills to keep it off the agenda, the issue of voluntary euthanasia is far from resolved in South Australia. Over the past two years, several proposals have sought to develop a new model, which would provide a legal defence for doctors who administer pain-relieving drugs resulting in a patient's death. Supporters of this model include Steph Key MP (ALP) whose *Criminal Law Consolidation (Medical Defences – End of Life Arrangements) Amendment Bill 2011* sought to implement this model. Key explained the intent of the bill in a letter to *The Advertiser* on April 5th 2011 and stressed that it would not legalise voluntary euthanasia:

This Bill does not legalise euthanasia. Ending life will not be decriminalised. Faced with a charge of murder, a doctor must argue in court that their conduct was a 'reasonable' response to suffering. What is reasonable needs to be determined by the facts of the particular case. Would the ordinary person think it was reasonable conduct? Doctors are among our most respected leaders and would not lightly take such a decision. But there is no compulsion, no matter how terrible the suffering, for a doctor to comply with a patient's request. This is a matter of conscience for the doctor.³⁴

The bill was introduced into the Assembly on 10 March 2011 and had the support of the health minister John Hill and the opposition health spokesman Duncan McFetridge.³⁵ The bill passed its Second Reading 'on the voices' on the 24th March 2011, however, this was rescinded on 5 May 2011, when the Deputy Leader of the Opposition, Mitch Williams protested that the bill had been allowed to pass without sufficient debate. The bill caused controversy amongst opponents of voluntary euthanasia who argued it was too similar to the *Criminal Law Consolidation (Voluntary Euthanasia) Amendment Bill 2010*, which was previously introduced by the health minister John Hill and was a covert attempt to legalise voluntary euthanasia.³⁶ As such, there is evidence that opponents of euthanasia are taking this move seriously. In 2010, Hill said that he would not support the *Consent to Medical Treatment Bill* as it was 'too clunky' and in a surprise move, proposed his own bill, the *Criminal Law Consolidation (Voluntary Euthanasia) Amendment Bill 2010*. The bill did not progress but was taken up by Steph Key who introduced a redrafted version to allow a defence to doctors who administer pain-relieving drugs. In 2011, Hill stated his position on

³⁴ Quoted from SAVES, "the Bulletin," 1.

³⁵ Michael Owen, "Minister Recalls Sister as Euthanasia Law Nears," *the Australian* (online edition), March 25, 2011, accessed March 3, 2013, <http://www.theaustralian.com.au/national-affairs/state-politics/minister-recalls-sister-as-euthanasia-law-nears/story-e6frgczx-1226027710498>.

³⁶ See, HOPE, "End of life Arrangements' or Just Plain Killing?."

the issue, saying he had been a strong supporter of euthanasia until the death of his sister from cancer a decade before. Because of her good experience with palliative care, he said he no longer supported an absolute right-to-die platform and outlined his support for the doctors defence model:

...(in certain) circumstances, if the best interests of the patient was to prescribe some drugs which would finish life, I think most of us would say, 'That's quite reasonable and the doctor shouldn't be prosecuted for doing that' -- and that's what this legislation allows.³⁷

In 2012, Hill introduced legislation on a related matter – advance directives – which has caused concern amongst anti-euthanasia groups. The *Advanced Care Directives Bill* was introduced on 17 October 2012 into the House of Assembly and intends to simplify the area of advance care directives by replacing the three existing forms of directives (the enduring power of guardianship; medical power of attorney; and anticipatory direction) with one single directive. However, groups opposed to voluntary euthanasia claim that the bill: '...sets out opportunity for the withdrawal or withholding of nutrition and hydration in circumstances where a patient is not in the last days of life' and, consequently, it is effectively allowing euthanasia because: 'actions or omissions with the intent to kill or the intent that the patient dies are either acts of euthanasia or assisted suicide'.³⁸ The bill passed through the Assembly on 15th November 2012 and is awaiting its introduction in the Legislative Council.

During an interview that took place before Hill's resignation, Steph Key emphasised the importance of the continued support on the issue:

I really think with the *Medical Defence Bill* that we have a very good chance. I think because it was the idea of the Health Minister, people seemed quite comfortable with it, because it wasn't outright voluntary euthanasia. All it said was that if under certain circumstances a doctor was charged then this would be the defence they would have and it's really unfortunate that the Health Minister was a 'purist' about it really. I understand why he was and I respect that, I introduced a bill that reflected his position as well as my own, but the reality of it in our House have got electorates that they need to think about and whether they are reflecting what their electorates think. And the feedback that people have had is that it needed more safeguards, it's a bit unfortunate really. But I'm hoping that Minister Hill will consider introducing the Bill himself.³⁹

37 Michael Owen, "Minister Recalls Sister as Euthanasia Law Nears."

38 "New Threat Please Act Now!" *Hope Website*, accessed January 12, 2012, <http://noeuthanasia.org.au/content/campaigns/south-australia.html>.

39 Interview with Steph Key, 24th April 2012, Adelaide.

During 2013 Hill announced his resignation as health minister, as he intends to retire at the next election.⁴⁰ While it is possible that Mr Hill could introduce a bill as a private member, he has yet to do so. The new health minister, Jack Snelling, is opposed to voluntary euthanasia on religious grounds, which will limit the likelihood of government involvement in the future.⁴¹ The future liberalisation of the law on end of life choices rests upon two important factors. First, continued activity on the issue, including cross-party cooperation. The joint bill introduced by Steph Key from the ALP and Mark Parnell from the Greens, indicates that there is potential for cooperation, not only across party lines, but also across both houses. The second is the five 'undecided' Assembly members whose votes could determine the fate of future proposals given the very narrow margin by which Bob Such's 2012 Bill failed.

EUTHANASIA POLITICS IN THE TASMANIAN PARLIAMENT

The Tasmanian parliament also holds promise for those seeking change. One positive sign is that, although acting in their capacity as private members, two key members of the government have emerged as the drivers of change. In June 2010, whilst in the position of Attorney General, Lara Giddings announced she would hold a public consultation and make funds available to draft a private member's bill.⁴² Since this time, Lara Giddings and Nick McKim, Leader of the Greens in Tasmania, have been working in collaboration on draft proposals for reform.⁴³ In February 2013, a discussion paper containing the model of voluntary euthanasia for Tasmania was released and legislation was introduced at the end of 2013. The following section will describe and explain the fate of the 2013 attempt to change the law on euthanasia in Tasmania, the *Voluntary Assisted Dying Bill* and consider the likelihood of reform in the near future.

40 Sarah Martin, "Ministers Depart in SA Shuffle," *the Australian* (online edition) 0, January 15, 2013, accessed January 16, 2013, <http://www.theaustralian.com.au/national-affairs/state-politics/ministers-depart-in-sa-shuffle/story-e6frgczx-1226554136276>.

41 Daniel Wills, "Jack Snelling Tables Petition Against Euthanasia," *the Advertiser* (online edition), May 5, 2011, accessed March 3, 2013, <http://www.news.com.au/top-stories/jack-snelling-tables-petition-against-euthanasia/story-e6frfkp9-1226050108168>.

42 "Attorney General Outlines Law Reform Agenda," Tasmanian Government Media Release June 22, 2010, accessed 1 November 2011, <http://www.media.tas.gov.au/print.php?id=29810>
Meredith Griffiths, "Tasmania relaunches euthanasia debate," *ACB News the World Today*, June 23, 2010, accessed March 7, 2013, <http://www.abc.net.au/worldtoday/content/2010/s2934736.htm>

43 Matthew Denholm, "State to Push For Mercy Killing," *The Australian* (online) March 8, 2011, accessed March 7, 2013, <http://www.theaustralian.com.au/news/nation/state-to-push-for-mercy-killing/story-e6frg6nf-1226017319925>

i) The present status of bills

The *Voluntary Assisted Dying Bill* is the second main attempt to reform the law on voluntary euthanasia in Tasmania. Prior to this, leader of the Tasmanian Greens, Nick McKim, introduced the *Dying with Dignity Bill* into the House of Assembly on 26 May 2009.⁴⁴ The bill sought to create an exemption from the *Criminal Code Act 1925* for medical practitioners who assist terminally ill people to die under certain circumstances. One of the main reasons for its failure was the level of opposition it attracted, particularly from ALP MPs, in the House of Assembly. The *Dying with Dignity Bill 2009* failed at the Second Reading stage by 15 votes to 7, with two MPs absent, and one abstention. Table 5.1 indicates the pattern of the voting.

Table 2: Voting on the *Dying With Dignity Bill 2009* in the Tasmanian House of Assembly by party

	Yes	No	DNV	Total	Cohesion
ALP	3	9	2	14	.50
Liberal	0	6	1	7	1
Green	4	0	-	4	1
Total	7	15	3	25	

The bill attracted the support of all of the four Greens MPs, but only three (25 per cent) of the ALP MPs. By contrast, all Liberal members opposed the bill. Although the Greens and the Liberals remained cohesive, the ALP was split, with three MPs voting in support and nine opposing it. Despite the failure of the 2009 bill, in June 2010, then Premier Lara Giddings stated she remained committed to working with the Greens to prepare a private member's bill on the issue, reworking the legislation.⁴⁵ During March 2011, Giddings told the *Australian* newspaper: 'the leader of the Tasmanian Greens (Nick) McKim and I will continue to progress this initiative as private members and plan to issue a consultation paper towards the end of the year'.⁴⁶ The second reading vote on *Voluntary Assisted Dying Bill* took place on 17 October 2013. The bill would have permitted voluntary euthanasia for terminally ill patients at the late stages of illness and incorporated greater safeguards than the 2009 bill, including the requirement for three requests from a patient and the consent of two GPs to allow the practice to go ahead. Ultimately, it failed but more narrowly than the 2009 bill. Table 3 indicates the pattern of the voting.

44 For an analysis of the provisions of the Bill see Bartles and Otlowski "A Right to Die? Euthanasia and the law in Australia."

45 Griffiths, "Tasmania relaunches euthanasia debate."

46 Denholm, "State to Push For Mercy Killing."

Table 3: Voting on the *Voluntary Assisted Dying Bill 2013* in the Tasmanian House of Assembly by party

	Yes	No	DNV	Total	Cohesion
ALP	7	3	-	10	.40
Liberal		10	-	10	1
Green	4	-	1		1
Total	11	13	1	24	-

Debate in the Assembly had indicated a 12–12 result after all parties had granted a conscience vote on the bill, however, Greens deputy speaker, Tim Morris – who supported the Bill – was unable to cast a vote which led to its failure by two votes. Liberal Party MPs voted as a bloc, so with the support of three ALP MPs, this was enough to secure its defeat.

ii) The interest groups involved

Groups from each side of the euthanasia debate have emerged in Tasmania to support and challenge proposed legislation. One of the key groups campaigning for law reform is Dying with Dignity Tasmania which has used a variety of strategies to support law reform, but a key part of their campaign has been to ‘challenge information’. Margaret Sing, president of the organisation stated that the group has: ‘...made the commitment to use the best quality information that we can.’⁴⁷ She explained that politicians deserve to be given good quality information to make good public policy and that a key element of the anti-choice campaign is to confuse and scare politicians. So a key part of Dying with Dignity Tasmania’s strategy has been to advise politicians that they have the responsibility to check information and check what they are told. The group also invites politicians to check information given to them by Dying with Dignity Tasmania. The main focus of the campaign is on MPs, particularly continuing to support Nick McKim and Lara Giddings in their work. Margaret Sing has worked with both in the consultation process. Another focus of the campaign is on public outreach and representatives from the group have attended several U3A group meetings. Other current activities include a market stall on Salamanca Market in Hobart (corresponding with SAVES’s activities on the South Australian parliament steps), writing to directly to politicians, meetings held with experts such as urologist Dr Rodney Syme and palliative care expert Jan Bernheim. The group is frequently cited in the Tasmanian media in articles relating to the issue and has also held several workshops on advanced care planning.

iii) The professional organisations involved

An important factor in the fate of voluntary euthanasia legislation is the continued opposition from the present and past presidents of the Tasmanian Branch of the AMA, who have been widely quoted in the media and are still perceived to represent the views of the

47 Interview with Margaret Sing, Hobart Tasmania, 3.04.2013

profession as a whole. Indeed, the anti-euthanasia position of the former president, Dr Christopher Middleton, has been cited in the national media several times.⁴⁸ In November 2012, whilst taking part in a debate on the issue on ABC's *The World Today* programme, Dr Middleton maintained his position that, it is impossible to develop adequate safeguards for legalised euthanasia.⁴⁹ The present Tasmanian AMA Branch President, Dr John Davis, made claims about the level of opposition from Tasmanian doctors: 'I'm not sure that the majority of doctors, if in fact any doctors, would want to euthanase people, and that's not being taken into account' and that 'Being really blunt, this is legislation for state-sanctioned murder and the last one of those in Australia was in 1964'. However, in the same article, Nick McKim challenged Dr Davis's claims stating that: 'We have doctors who are motivated by compassion and respect for human dignity who currently euthanase patients and the AMA has just come out and sold those doctors down the river'.⁵⁰

iv) The likelihood of reform in the near future

As with the previous attempt to reform the law in 2009, party politics played a role in the voting on the bill and, ultimately, the lack of support from ALP MPs led to its defeat. The fate of future attempts to reform the law will rest on the sponsor's ability to generate support from ALP MPs, as the Liberal Party is likely to remain strongly opposed. There is also evidence that future proposals could be slowed by opposition in the Legislative Council. Even if a proposal passes the Assembly, the Legislative Council is likely to present a barrier. Although the issue has not been voted on in the upper house and voting would be unpredictable as there are 13 crossbench Independent members (with one Liberal MLC and one ALP MLC), a consideration of the vote on the *Same-Sex Marriage Bill*, which took place during September 2012, indicates that the outcome of the vote could be close. Of course, euthanasia involves different issues, but broadly speaking, same-sex marriage can be used as a barometer of the ideological commitments of MLCs. The *Same-Sex Marriage Bill* was defeated 8 votes to 6, with the ALP MLC Craig Farrell voting for the bill and the Liberal Vanessa Goodwin voting against. The five independent MLCs who voted in favour were: Rob Valentine, Kerry Finch, Ruth Forrest, Craig Farrell, Mike Gaffney and Tony Mulder. The seven independents who voted against were: Vanessa Goodwin, Tania Rattray, Greg Hall, Adriana Taylor, Rosemary Armitage, Ivan Dean, Jim Wilkinson, and Paul Harriss.⁵¹

48 For example, ABC News, "Doctors Label Euthanasia Bill as 'Poison'", *ABC News* (online), August 25, 2009, accessed March 8, 2013, <http://www.abc.net.au/news/2009-08-25/doctors-label-euthanasia-bill-poison/1403184>

Ashley Hall, "Why is Euthanasia still Illegal in Australia?" *ABC News* (online) November 16, 2012, accessed 8 March 2013, <http://www.abc.net.au/worldtoday/content/2012/s3634322.htm>.

49 Hall, "Why is Euthanasia still Illegal in Australia?"

50 ABC News, "Euthanasia 'state sanctioned murder'," *ABC News* (online), March 18, 2013, accessed March 20, 2013, <http://www.abc.net.au/news/2013-03-17/ama-rejects-euthanasia-bill/4577922?section=tas>

51 ABC News, "Tasmania's Upper House Votes Down Gay Marriage," *ABC News* (online), September 28, 2012, accessed March 8, 2013, <http://www.abc.net.au/news/2012-09-27/tasmania-upper-house-votes-down-gay-marriage/4284538>.

CONCLUSION

The comparison of the voting patterns on euthanasia in the two state parliaments revealed one of the main findings of this article. There has been a striking similarity in the patterns of the free voting on euthanasia bills in the South Australian and Tasmanian parliaments, which led to the failure of bills. Previously, in the Northern Territory, a larger proportion of MLAs in the parliament's conservative party, the CLP, were willing to support the law reform than their equivalents – that is Liberal MPs – in the other parliaments. Indeed, CLP support was vital to the successful passage of the Northern Territory bill. However, in the other two parliaments, Liberal MPs have almost unanimously opposed proposals to reform the law and have combined with 'right-wing' ALP legislators to defeat proposals. Another key difference in the Northern Territory was the absence of party pressure and factional voting blocs, so legislators had more freedom to act as 'independents'. In light of this, the comparison sought further to explain the opposition to euthanasia proposals, through analysis of the tactics of interest groups and professional organisations. One key reason for Liberal MPs opposition to the practice is that, since the overturning of the Northern Territory legislation, the AMA has become more strongly associated with the anti-euthanasia position. Of course, the President of the Northern Territory Branch of the AMA, Dr Chris Wake's opposition to the practice was well known during the passage of the *ROTTI Bill*, however, this was balanced by the 'Doctors for Change' movement. However, since then, due to the involvement of Dr Wake in the campaign to overturn the Northern Territory's legislation – and the continued appointment of anti-euthanasia doctors on the executive committees of several state AMA branches who have criticised euthanasia proposals in the media – the organisation has become strongly associated with the anti-euthanasia position. Nevertheless, the organisation does not have a position on the issue of law reform. Although it is difficult to calculate the extent, it is likely that this has influenced the voting on bills, in particular in the Liberal Party, by persuading any 'wavering' legislators not to vote for law reform. This has implications for the study of politics more broadly than the study of voluntary euthanasia and suggests that a study of the power of the medical profession on health policy more broadly may be fruitful. In addition, further research on the history of voluntary euthanasia in the state and territorial parliaments would be fruitful to shed more light on the future of the issue.

APPENDIX A: VOLUNTARY EUTHANASIA BILLS IN THE AUSTRALIAN COMMONWEALTH, STATE AND TERRITORIAL PARLIAMENTS (1995-PRESENT)

Parliament	Year	Bill	(2nd Reading) Vote		Origin
			Upper	Lower	
Commonwealth	1997	Euthanasia Laws Bill	38 v.33	88 v. 35	H
	2004	Euthanasia Laws (Repeal) Bill			S
	2007	Australian Territories Rights of the Terminally Ill Bill			S
	2008	Restoring Territory Rights (Euthanasia Laws Repeal) Bill			S
	2008	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill			S
	2010	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill			S
	2010	Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill			S
	2012	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill			S
Northern Territory	1995	Rights of the Terminally Ill Bill	n/a	13 v. 12	LA
	1996	Respect for Human Life Bill	n/a	11 v. 14	LA
ACT	1997	Euthanasia Referendum Bill	n/a		LA
	1997	Medical Treatment (Amendment) Bill	n/a	9 v.8 ⁵²	LA

⁵² Based on Members' voting intentions declared in the Assembly debate.

Parliament	Year	Bill	(2nd Reading) Vote		Origin
			Upper	Lower	
South	1995	Voluntary Euthanasia Bill		12 v. 30	HA
Australia	1996	Voluntary Euthanasia Bill			LC
	2000	Dignity in Dying Bill			LC
	2002	Dignity in Dying Bill	9 v. 12		LC
	2006	Voluntary Euthanasia Bill	8 v.13		HA
	2007	Voluntary Euthanasia Bill			HA
	2008	Voluntary Euthanasia Bill			LC
	2008	Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill	9 v. 11		LC
	2010				HA
	2010	Voluntary Euthanasia Bill			HA +LC
	2012	Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill		20 v.22	HA
	2013	Voluntary Euthanasia Bill			HA
	2013	Ending Life with Dignity Bill Ending Life with Dignity (No 2) Bill			HA
	New South Wales	2002	Rights of the Terminally Ill Bill		
2003		Voluntary Euthanasia Trail (Referendum) Bill		4 v. 28	LC
2013		The Rights of the Terminally Ill Bill		13 v. 23	HA
Tasmania	2009	Dying with Dignity Bill		7 v. 15	HA
	2013	Voluntary Assisted Dying Bill 2013		11 v. 13	HA

Parliament	Year	Bill	(2nd Reading) Vote		Origin
			Upper	Lower	
Victoria	2008	Medical Treatment (Physician Assisted Dying) Bill	9 v. 11		LC
Western Australia	1997	Voluntary Euthanasia Bill			
	1998	Voluntary Euthanasia Bill			
	2000	Voluntary Euthanasia Bill			
	2002	Voluntary Euthanasia Bill			
	2010	Voluntary Euthanasia Bill		11 v. 24	LC
Queensland		No voluntary euthanasia legislation introduced	n/a	-	-

Abbreviations: PMB: S: Senate; H: House of Representatives; LA: Legislative Assembly; LC: Legislative Council; HA: House of Assembly