Euthanasia Politics in the Australian State and Territorial Parliaments

A thesis submitted for the degree of Doctor of Philosophy of The Australian National University

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I certify that the thesis I have presented for examination for the PhD degree of the Australian National University is solely my own work.

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Abstract

The issue of voluntary euthanasia has a turbulent history in the state and territorial parliaments. Since the passage of the *Euthanasia Laws Act 1997* in the Federal Parliament, which overturned the Northern Territory's *Rights of the Terminally Ill Act*, successive attempts to reform the law in the states have been unsuccessful. Those who support the practice argue that this is remarkable and moreover unacceptable, pointing to opinion poll data that report a consistently high level support amongst the Australian public for legalisation. Consequently, the puzzle posed that this thesis seeks to answer is, why has subsequent law reform on voluntary euthanasia not taken place in Australia, despite widespread support from the public and considerable support from the medical profession?

As such, the thesis will compare, describe and explain the fate of bills that sought to legalise voluntary euthanasia in four Australian state and territorial legislatures: the Northern Territory Legislative Assembly; the ACT Legislative Assembly; the South Australian Parliament; and the Tasmanian Parliament. A legislative history of the issue is presented for each legislature, including an analysis of the conscience votes and debates on the bills in parliament, plus an analysis of interview material. The thesis takes a comparative case study approach, which reveals that, although a number of factors that allowed the successful passage of the Northern Territory Bill have been present in the states, two key differences exist. First, there has been very little support for reform amongst state Liberal MPs, who have almost unanimously opposed legalisation during the free votes. In combination with the votes of Liberal MPs, opposition from the right-faction of the ALP, consisting of several MPs with strong religious values, has sealed the fate of bills. Second, since the *ROTTI Act* was overturned, legislators have increasingly referred to opposition within the medical profession as a reason for opposing bills.

In addition to the investigation of the fate of bills, the research allows an examination of four political processes of broader interest in Australian politics: the Private Members' Bills process; parliamentary 'free' or 'conscience' voting; lobbying parliament; and spontaneous political group formation. The literatures on these processes are reviewed and several insights are developed. Interview material with sponsors of euthanasia bills reveals the varying degrees of difficulty which MPs in each parliament encountered

with the Private Members' Bills process. For example, as a cross-bench member, one Independent MLA had a special category of business created for him to pursue his legislative programme, whilst another MP had to fight simply to get access to bill drafting services. In relation to parliamentary lobbying, interview material with the organiser of 'Operation TIAP', a group who campaigned in favour of the Northern Territory *Rights of the Terminally Ill Bill*, provides additional explanation of the successful passage of the Bill. Specifically, that the spontaneous element of their campaign combined with the strategy of reminding MLAs of their commitment to represent the views of their electorate, was key to generating support for the Northern Territory Bill.

Chapter 1: Introduction

The Aims of the Thesis

Outside the Australian Parliament the campaign to change the law on voluntary euthanasia in Australia has received little attention in the political science literature. Here, a small number of studies of voluntary euthanasia have contributed to understandings of the politics of the issue, but the neglect of the study of the issue at the state and territorial level is challenging. The noticeable absence of studies of the politics of voluntary euthanasia at the state level in particular is problematic, not only because the responsibility for decision-making in the area of end of life issues lies with legislators at this level of government, but also because, with the exception of Queensland, bills seeking to change the law on voluntary euthanasia have been introduced in all the state and territorial parliaments.[1] Consequently, these parliaments have become the sites of fierce battles between groups promoting their view on the practice and those driving attempts to push through or oppose a change in the law. This observation provides the point of departure for this thesis, which will contribute original research on the politics of voluntary euthanasia in the Australian state and territorial parliaments. The specific aim of this thesis is to compare, describe and explain the fate of bills that sought to legalise the practice in four Australian state and territorial legislatures: the legislative assemblies of the Northern Territory and the ACT; and the parliaments of South Australia and Tasmania.

Against this backdrop, the issue of voluntary euthanasia has a turbulent history in the state and territorial parliaments. Although euthanasia was legal for a short time in the Northern Territory, since the passage of the *Euthanasia Laws Act 1997* (ELA) in the Australian Parliament, which overturned the Territory's legislation, successive attempts to reform the law in the states have been unsuccessful. Primarily the ELA was designed to repeal the Northern Territory *Rights of the Terminally Ill Act* by amending the Northern Territory (Self Government) Act 1978, by removing euthanasia from the Territory's legislative competence and declaring the ROTI Act of "no force or effect as law of the Northern Territory". In addition, the Act removed

[1] It is acknowledged that the responsibility for legislating on end of life issues was removed from legislators in the Northern Territory, the ACT and Norfolk Island in 1997, after the passage of the Euthanasia Laws Act. However, prior to this there had been significant activity on the issue in the territorial Parliaments, which this thesis seeks to examine.

legislative competence from the Assemblies of the ACT and Norfolk Island.[2] So, due to asymmetrical intergovernmental power in the federal structures that differentiate between state and territory rights, only the states can now change the law on voluntary euthanasia.

Those who support the practice argue that this is remarkable, and unacceptable, pointing to opinion poll data that shows consistently high levels of support for a change in the law amongst the Australian public.[3] In addition, although the opinion of the medical profession is more divided, several surveys have reported that a majority of medical professionals also support law reform. Consequently, the puzzle posed that this thesis seeks to answer is why has subsequent law reform on voluntary euthanasia not taken place in Australia, despite widespread support from the public and considerable support from the medical profession? As such, three main research questions are posed:

- After the successful passage of the *Rights of the Terminally Ill Act* in the Northern Territory, why have subsequent attempts to reform the law failed?
- Are the proposals currently being discussed in the Australian state parliaments likely to succeed?
- What are the future prospects for voluntary euthanasia law reform in Australia?

Why Study Voluntary Euthanasia?

A study of voluntary euthanasia in the Australian state and territorial parliaments is justified by the significant questions that the issue raises about matters relating to the end of life. A decision taken in parliament on the issue has the potential to have a significant impact on the lives of many citizens. Should people have the right to choose the timing and nature of their death? Or, is euthanasia never justified? When does life end? Do people have a right to die or to commit suicide? Is the 'sanctity of

[2] A copy of the Act can be found online at: http://www.comlaw.gov.au/comlaw/Legislation/Act1.nsf/0/7F1F3684B155EA20CA257432000EB91F/$file/01797.pdf

[3] It is noted that there are several other examples of the evident paradox of policies emerging from political/legislative processes not reflecting widespread support from the public, including: free trade/tariffs; capital punishment; and immigration levels.

life' a sufficient reason to stop them? Do doctors have a right to assist in euthanasia? Or does this give them too much power? Do the families of a terminally ill loved one have an interest in euthanasia? Will families abuse euthanasia, possibly pressuring their loved ones to pursue the option out of a selfish desire to avoid the burden of caring for him or her until death? Will doctors aggressively implement involuntary euthanasia?

Clearly then, the practice of voluntary euthanasia invites us to think about many significant questions relating to the end of life. At the most general level, those advocating law reform on the practice agree that individuals have a right to a dignified death and should be allowed to choose when and where to die, with access to appropriate medical assistance. Advocates of voluntary euthanasia have campaigned for a change in the law to allow doctors to provide such medical assistance, within a regulated system, without the risk of being charged with a crime. However, those opponents of the practice continue to stress the risks involved in the legalisation of voluntary euthanasia and argue that it is impossible to formulate adequate safeguards to minimise risks involved. As such, this thesis will provide some insight into how politicians, when faced with such dilemmas, make decisions about whether or not to legalise a practice that could potentially have such a significant impact on the lives of citizens.

The level of political activity the issue has generated across Australia also justifies the present study. Of course, other issues have raised important ethical questions in politics. For example, the cases of abortion, stem cell research and embryology raise ethical questions specifically relating to the beginning of life and Table 1.1 provides a list of recent bills on morality issues that have been considered in the Australian parliaments. [4] However, in terms of the parliamentary activity it has generated, voluntary euthanasia is rivalled only by abortion. For example, as illustrated in Table 1.2, in South Australia alone thirteen bills on voluntary euthanasia and palliative care have been introduced into the Parliament since 1995. During 2010-11, bills on euthanasia and related matters were being debated in five parliaments around

[4] Appendix A provides a list of ethical issues that have been dealt with in the Australian and some overseas parliaments and have received a 'free vote'.

Australia, at both the state and federal level and to date, only MPs in the Parliament of Queensland have yet to debate, or vote on, euthanasia legislation.

Table 1.1. Recent Bills on Conscience Issues the Australian Federal, State & Territorial Parliaments

Issue	Where	Date Passed/ Failed	Pass/ Fail	Bill	Free Vote	Vote		Main Purpose
						Upper	Lower	
Voluntary Euthanasia				(See Table 1.2)				
Abortion and Reproductive Health	Com.	03.03.2006	Pass	Therapeutic Goods Amendment (Repeal of Ministerial Responsibility of **RU486**)	Yes	45 v. 26	95 v. 50	Access to RU486
	Vic.	22.10.2008	Pass	Abortion Law Reform	Yes	23 v.17	48 v. 28	Abortion >24wks
	Tas.	20.12.2001	Pass	Criminal Code Amendment (No. 2)	Yes			Set criteria for abortion
	WA	26.05.1998	Pass	Acts Amendment (Abortion) Act (WA)	Yes	24 v. 9	32 v. 22	Abortion >20 wks
	Qld	09.09.2009	Pass	Criminal Code (Medical Treatment) Amendment	NLP	n/a	88 v.1	Protect Drs/medical Abortion
	ACT	21.08.2002	Pass	Crimes (Abolition of Offence of Abortion)	No	n/a	9 v. 8	Abortion >14 wks & remove from criminal code
Marriage Equality	Com.	2010	Fail	Marriage Equality	No	5 v. 45		Legalise same-sex marriage
	Com.	2012	Fail	Marriage Equality Amendment Bill 2012	ALP		98 v. 42	Legalise same-sex marriage
	NSW	19.05.2010	Pass	Relationships Register Act	Yes	62 v. 9	32 v. 5	Provision relationship reg.
	ACT	1994	Pass	Domestic Relationship Act				Domestic partnerships
	ACT	2006	Pass	Civil Unions Act *(Overridden)*				Civil partnerships
	ACT	2008	Pass	Civil Partnerships Act				Civil partnerships
	ACT	2009	Pass	Civil Partnerships Amendment				Civil partnershipship with ceremony
	ACT	2013	Pass	Marriage Equality Bill			9 v. 8	Legalise same-sex marriage
	SA	2007	Pass	Statutes Amendment (Domestic Partners)		6 v. 8	13 v. 11	Domestic partnerships
	Tas.	2012	Fail	Same-sex Marriage Bill				Legalise same-sex marriage
	Vic.							
Embryo Research & Cloning	Com.	2002	Pass	Research Involving Embryos and Prohibition of Human Cloning Bill Prohibition of Human		103 v 36	43 v. 26	License embryo research and prohibit cloning
	Com.	2006	Pass	Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill		82 v. 62*	34 v. 31*	To amend legislation regulating embryo research

Source: Australian Parliamentary Handbook; McKeown and Lundie, 2002; 2009.

Table 1.2. Voluntary Euthanasia Bills in the Australian State and Territorial Parliaments (1995-Present)

Parliament	Year	Bill	(2nd Reading) Vote		Origin
			Upper	Lower	
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[5]	LA
South Australia	1995	Voluntary Euthanasia Bill		12 v. 30	HA
	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	Voluntary Euthanasia Bill			HA
	2010	Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill			HA +LC
	2012	Voluntary Euthanasia Bill		20 v.22	HA
	2013	Ending Life with Dignity Bill			HA
	2013	Ending Life with Dignity (No 2) Bill			HA
New South Wales	2002	Rights of the Terminally Ill Bill			HA
	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
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; HA: House of Assembly; LC: Legislative Council
Source: Australian state and territorial parliamentary website

[5] Based on Members' voting intentions declared in the Assembly debate (http://www.actrtla.org.au/newslett/aut97.htm)

Another interesting feature of the euthanasia issue in Australia is that, in contrast to the campaigns to legalise abortion, battles to legalise voluntary euthanasia have taken place in the parliamentary rather than the judicial arena. There has been little judicial activism of any consequence in any of the states or territories studied here, which adds to the importance of a study of the activity presently taking place in the state and territorial parliaments. In 1995 the *Rights of the Terminally Ill Act* in the Northern Territory was the world's first euthanasia law passed by members of any parliament.[6] This made the Territory only the second jurisdiction in the world, after the Netherlands, to permit voluntary euthanasia. Although voluntary euthanasia has been legal in the Netherlands since 1984, the practice was legalised through case law, rather than legislation. Consequently, the present study of voluntary euthanasia will offer an insight into a range of alternative parliamentary processes and procedures only evoked when dealing with moral issues, such as parliamentary 'free' or 'conscience' voting and the Private Members' Bills process.

In Australia more broadly there has been some judicial activism of note. In 1995 seven Melbourne doctors, in an open letter, challenged the Victoria State Premier to take them to court for admittedly helping patients to die, or else change the law. The open letter was largely ignored.[7] More recently during 2009, the Supreme Court of Western Australia ruled that it was up to quadriplegic Christian Rossiter to decide if he was to continue to receive medical care (tube feeding) and that his carers had to abide by his wishes. Chief Justice Wayne Martin also instructed that his carers would not be held criminally responsible for following his instructions. This was reported as a 'victory' for right-to-die campaigners, however it does not mean the end to the campaign for legal, safe, active voluntary euthanasia through law reform. At the time of the ruling, euthanasia activist Philip Nitschke decried the fact that Rossiter would have to undergo a slow and painful death through starvation, rather than having a quicker and painless way to end his life.[8] If there remains no change in the law through the legislative process in future, there may be an increase in this kind of judicial activism.

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[6] The act was also the first voluntary euthanasia legislation of its kind to be implemented was in the Northern Territory, given the delay in the implementation of euthanasia legislation in Oregon, USA until 1997.

[7] See "Handbook of the South Australian Voluntary Euthanasia Society (SAVES)," accessed on 11 February 2014, http://www.saves.asn.au/archives/resources/handbook/rtc7.php.

[8] Arthur Brice, "Australian quadriplegic granted right to starve to death," *CNN.com*, August 14, 2009, accessed February 10, 2014, http://edition.cnn.com/2009/WORLD/asiapcf/08/14/australia.right.to.die/index.html.

The primary justification of the present study of euthanasia politics however, is the absence of any change in the law, despite strong support for law reform amongst the Australian public and some medical professionals.[9] Survey results consistently show that a majority of the public takes a liberal view on morality issues including euthanasia. For example, one of the most recent polls undertaken by the Australia Institute during November 2010 recorded that 73 per cent of people support legal voluntary euthanasia. The poll asked: "If someone with a terminal illness who is experiencing unrelievable suffering asks to die, should a doctor be allowed to assist them to die?" In this case, 73 per cent said that voluntary euthanasia should be legal, whilst 15 per cent said it should be illegal and 12 per cent were undecided.[10] The highest recorded support for voluntary euthanasia was in October 2009. Here, a Newspoll survey asked: "Should a doctor be allowed to give a lethal dose to a patient?" 85 per cent of Australians agreed, whilst 10 per cent disagreed and five per cent were undecided.[11]

Since the early 1990s a variety of polls have recorded strong support for voluntary euthanasia, with on average seventy per cent support for voluntary euthanasia within the survey samples. In May 1993, a Roy Morgan poll reported that 78 per cent of the representative sample was in favour.[12] In June 1995, shortly after the passage of the Northern Territory *ROTTI Act*, Roy Morgan repeated the survey asking the same question. Again 78 per cent of the sample was in favour.[13] Shortly after the Northern Territory law became active, support for voluntary euthanasia fell slightly. During this time Newspoll asked: 'Thinking now about euthanasia where a doctor complies with the wishes of a dying patient to have his or her life ended. Are you personally in favour or against changing the law to allow doctors to comply with the wishes of a dying patient to end his or her life?' In this case, 53 per cent were strongly in favour, 22 per cent partly in favour (making a sub-total of 75 per cent in favour), 6 per cent were partly against, 12 per cent strongly against (making a total of 18 per cent against), while seven

[9] For an analysis of different groups' attitudes to voluntary euthanasia see Joanna Sikora, "Religion and Attitudes Concerning Euthanasia: Australia in the 1990s," *Journal of Sociology* 45, no. 1 (2009): 31-54.
[10] N=1,294. "Survey Results – Attitudes to Voluntary Euthanasia," accessed February 14, 2013, https://www.tai.org.au/index.php?q=node%2F19&pubid=822&act=display.
[11] N=1,201. "Voluntary Euthanasia Study," accessed February 14, 2013, http://www.dwdv.org.au/Docs/NewspollSurvey2009.pdf.
[12] The poll asked: 'If a hopelessly ill patient, in great pain, with absolutely no chance of recovering, asks for a lethal dose, so as not to wake again, should a doctor be allowed to give a lethal dose, or not?' "Support for Euthanasia Strong and Steady – June 95," accessed February 14, 2013, http://www.roymorgan.com/news/polls/rmmelw1/documents/2768-Supportforeuthanasia.pdf.
[13] N=1,158. "Support for Euthanasia Strong and Steady – June 95."

per cent were undecided.[14] In the same survey, Newspoll also asked a question about active voluntary euthanasia: 'And are you personally in favour or against changing the law to allow doctors to perform active euthanasia, for example, by giving a patient a lethal injection?' Thirty-nine per cent were strongly in favour, 24 per cent partly in favour (making a sub-total of 63 per cent in favour), 11 per cent were partly against, whilst 17 per cent were strongly against (making a total of 28 per cent against) and nine per cent undecided.[15]

Subsequently to this, in June 2002, shortly after the suicide of Nancy Crick, a woman who suffered from cancer, Newspoll conducted a survey in, NSW and Victoria and asked: 'Thinking now about voluntary euthanasia. If a hopelessly ill patient, experiencing unrelievable suffering, with absolutely no chance of recovering asks for a lethal dose, should a doctor be allowed to give a lethal dose or not?' Here, 73 per cent answered yes, while 22 per cent answered no and five per cent were undecided.[16]

There is also evidence that a significant number of medical professionals support a change in the law. At present, the Australian Medical Association's official position on voluntary euthanasia reflects Australian law that doctors should not be involved with the practice of voluntary euthanasia. Policy 10.5, under the heading *The Role of the Medical Practitioner in End of Life Care – 2007*, states that: 'The AMA believes that medical practitioners should not be involved in interventions that have as their primary intention the ending of a person's life'.[17] As such, Dr Andrew Pesce, former President of the AMA, explained that legal issues also affect the association's anti-euthanasia policy: 'The AMA would never have an official position to ask doctors to act in disregard of the law'.[18] Indeed, a 2003 survey of 1478 Australian doctors found that 83 per cent of doctors had been involved in legal, unintentional, 'passive' euthanasia by intensifying the alleviation of pain and/or symptoms by using drugs, taking into account the probability of death. However, 66 per cent of doctors had never, and said that they

[14] Senate Legal and Constitutional Legislation Committee, *Report on Euthanasia Laws Bill 1996* (Canberra: Australian Senate, 1997), 83.
[15] Ibid.
[16] N=1,232. "Roy Morgan Research Survey into Voluntary Euthanasia," accessed February 14, 2013, http://www.dwdv.org.au/Docs/VE%20Poll%20Results%202002.pdf.
[17] "The Role of the Medical Practitioner in End of Life Care – 2007," last modified August 20, 2007 https://ama.com.au/position-statement/role-medical-practitioner-end-life-care-2007.
[18] Wendy Zuckerman, "States Debate Euthanasia," *The Australian* (online edition), November 7, 2009, accessed February 16, 2013, http://www.theaustralian.com.au/news/health-science/states-debate-euthanasia/story-e6frg8y6-1225795713197

would never, participate in intentional, 'active', voluntary euthanasia hastening death on the explicit request of a patient.[19]

Nevertheless, as an 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'.[20] 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'.[21] Similarly, 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.[22]

However, over the past two decades, several Presidents and Branch Presidents, including Dr Peter Sharley, South Australian AMA Branch President, have spoken out against the legalisation of the practice.[23] One of the most prominent 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 High Court challenge, which were both rejected.[24] As a result, since the mid-1990s, the AMA has frequently been cited as opposed to law

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[19] Rurik Löfmark et al., "Physicians' experiences with end-of-life decision-making: Survey in 6 European countries and Australia," *BMC Medicine 6*, no. 1 (2008): 4.
[20] "The Role of the Medical Practitioner in End of Life Care – 2007."
[21] "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
[22] 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/.
[23] 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/
[24] Stephen Cordner and Kathy Ettershank, "Northern Territory Euthanasia Act has an Uncertain Start," *The Lancet* 348, no.9020 (1996): 120.

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'.[25] 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. For example, 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, 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 on the issue.[26]

Following the 1988 survey, in 1993 Baume and O'Malley surveyed 1268 NSW and ACT doctors: 59 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.[27] 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.[28] More recently, in 2007, Neil et al. surveyed 854 Victorian doctors about the legalisation of voluntary euthanasia and found: 53 per cent of doctors support the legalisation of voluntary euthanasia. In addition, out of doctors who have received requests from patients to hasten death, 35 per cent have administered drugs with the intention of hastening death.[29]

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[25] 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).

[26] Helga Kuhse and Peter Singer, "Doctors' Practices and Attitudes Regarding Voluntary Euthanasia," *The Medical Journal of Australia* 148, no. 12 (1988).

[27] Peter Baume and Emma O'Malley, "Euthanasia: Attitudes and practices of medical practitioners," *The Medical Journal of Australia* 161, no. 2 (1994).

[28] Margaret Steinberg et al,, "End-of-Life Decision-Making: Community and medical practitioners' perspectives," *Medical Journal of Australia* 166, no. 3 (1997).

[29] 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. Consequently, the study aims to examine the disjuncture between support for law reform and legislative outcomes, by explaining the fate of voluntary euthanasia bills and specifically, examining the reasons why legislators are opposed to law reform.

End of Life Choices and the Law in Australia

To understand the intent of voluntary euthanasia legislation that will be studied in this thesis it is necessary to outline the end of life choices legislation in Australia that existed prior to, and after, the passage of the Northern Territory's *Rights of the Terminally Ill Act*.[30] Cica provides a detailed account of euthanasia and the law in Australia and highlights that, prior to 1995, assisting suicide was a crime in all the Australian jurisdictions, including the Northern Territory. Any doctor who complied with a patient's request to die would risk exposing herself to criminal liability; in the Northern Territory this would attract a mandatory sentence of life imprisonment for the crime of murder. In addition, in the Northern Territory, as well as in Queensland and Western Australia, it is also an offence to 'procure' or 'counsel' another person to kill himself or 'aid' another person to commit suicide.[31] This means that a doctor who gives advice to a patient on medical means to end their life would face criminal liability. This is now the case again following the overturning of the *Rights of the Terminally Ill Act* by the Australian Parliament in 1997.

However, prosecutions for assisting suicide are rare in Australia. As Cica emphasises, the few cases that have come before the courts relate to 'mercy-assisted suicide' involving the provision of assistance by family members or friends of the victim, where the accused has been motivated by compassion.[32] Although the law states that a person who has assisted another's suicide cannot escape liability by virtue of compassionate motive or other extenuating circumstances, the Australian criminal justice system treats an accused person who was motivated by compassion with relative leniency. In

[30] For a detailed account of euthanasia and the law see, Natasha Cica, *Euthanasia: the Australian Law in an international context.* Department of the Parliamentary Library, 1996.
[31] Cica, *Euthanasia*.
[32] Ibid.

particular, Australian judges have imposed very lenient sentences on people convicted of assisting suicide in this context.[33]

There have been no successful prosecutions of doctors in Australia for assisting the suicide of their patients. In 2001, a surgeon in Western Australia was charged with murder and assisted suicide; however a jury found him not guilty.[34] Nevertheless, at present, a doctor who complies with a patient's request for active voluntary euthanasia is still exposed to criminal liability, with the relevant offence being murder. In all Australian jurisdictions, murder is committed if a person dies as the result of an act deliberately undertaken to bring about death. In the area of palliative care, the law becomes more difficult to prescribe; there have been no criminal prosecutions of doctors in Australia in relation to their administration of pain relieving drugs that have hastened death. However, some would maintain that the law in this area is unclear and seek to clarify the law by introducing legislation and reforming the law on voluntary euthanasia and end of life choices more broadly.[35]

Definition of Key Terms

The thesis involves some key terms on which there is an extensive debate that must now be considered and problematised. For example, what does classifying something as a 'moral' issue mean? What does religious mean in terms of the thesis? And how do the categories liberal and conservative relate to the politicians and political parties to be studied?

i) Morality issues

Although in the literature the issue to be studied here is often termed a 'conscience issue', those that have studied these issues acknowledge that a definition of the term is problematic and defining a common link between the issues is not easy. As Jones writes, "the conventional distinction between issues of conscience and other issues is far from precise"[36] and, as Cowley notes, "it is easier to list them [conscience issues] than to define what links them".[37] One of the first to study conscience issues in the policy

[33] Ibid.
[34] "Current Legal Situation," Dying with Dignity Victoria website, accessed February 21, 2013, http://www.dwdv.org.au/CurrentLaw.html.
[35] Cica, *Euthanasia*.
[36] Peter Jones. Party, *Parliament and Personality: Essays Presented to Hugh Berrington* (Oxford, Routledge: 1995), 142.
[37] Philip Cowley, "Introduction," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass, 1998), 3.

process during the 1970s, Richards selected six issues for detailed case studies in his edited volume *Parliament and Conscience*, they were: capital punishment, homosexuality, abortion, censorship of the theatre, divorce and Sunday entertainment.[38] For Richards, what these issues held in common was that they were all *"social questions which have strong moral overtones"*.[39] Indeed, Richards' definition still accurately describes many conscience issues today, but the list of those considered as conscience issues has expanded to include other issues including: "…embryo research, hunting, contraception, the punishment of war criminals …prostitution, euthanasia, censorship, divorce, and less definitely, disability rights and the wearing of seatbelts".[40]

In Australia, conscience issues have been defined in terms of the issues on which political parties (for political reasons) have allowed a conscience vote. In part, the matter is less complicated by the fact that Private Members' Bills are not automatically subject to a free vote, as in the UK. However, this produces a list of issues similar to Britain and other Westminster systems, as well as in the United States.[41] McKeown and Lundie write that, in Australia, conscience votes have been allowed on:

> 'Life and death' issues, such as abortion, euthanasia and capital punishment; human reproductive and scientific research issues, such as intro vitro fertilization, stem cell research and therapeutic cloning; social or moral issues, such as family law, homosexuality, drug reform, war crimes and gambling and; parliamentary procedure and privilege issues and standing orders.[42]

In Australia, "conscience votes are not usually allowed on economic issues or issues that have an impact on the budget" or "when a party has a definite policy on an issue" although, in the case of abortion, the ALP has a policy but allows a conscience vote on the issue.[43] Generally, although party leaders base their decisions on calling a free vote on a range of issues, a similar guiding idea exists in both Australia and the UK that, "there are some issues that are essentially moral in character and which as such, should

[38] Peter G. Richards, *Parliament and Conscience* (London: Allen & Unwin, 1970).
[39] Ibid, 7.
[40] Philip Cowley, "Introduction," 2.
[41] See table in Donley T. Studlar. "What Constitutes Morality Policy? A cross-national analysis," in *The Public Clash of Private Values*, ed. Charles Z Mooney (New York: Chatham House, 2001) , 46.
[42] Diedrie McKeown and Robert Lundie, "Conscience Votes in the Howard Government 1996-2007," Research Paper no. 20, 2008-09 (Canberra, Parliament of Australia Parliamentary Library, 2009), 2.
[43] Ibid.

be decided by MPs according to their consciences".[44] These issues are deemed outside the realm of party politics and so there is a strong view that these 'non-party' issues *should not* be subject to party discipline. Clearly then, what defines a conscience issue is not fixed and thus, there is no definitive list of conscience issues. In large part, particularly in the Australian case, defining a matter of conscience relates to their treatment in Parliament, which in turn relies upon the decisions of party leaders and their perceptions of the issues at stake.

ii) Religious

As Smith et al. write: 'Religion is a notoriously difficult concept'. They continue: 'In political debate and analysis, religion is usually defined in a sociological way as shared beliefs, experiences and practices relating to the sacred that unite people into a more or less organised group'.[45] Most religions disapprove of euthanasia and it is absolutely forbidden by some. In particular, the Roman Catholic Church is one of the most active organisations in opposing euthanasia. This is because virtually all religions state that those who become vulnerable through illness or disability deserve special care and protection, and that proper end of life care is a much better thing than euthanasia. This is not universally the case however and the thesis recognises the possibility of a variety of stances that can be held by those that hold religious beliefs, such as the Australian group Christians Supporting Choice for Voluntary Euthanasia.

iii) Liberal/conservative

The thesis refers to members of the Liberal Party as either liberal or conservative on the ideological spectrum depending upon their location in the party and their position on voluntary euthanasia and other morality politics issues. In Australia, names applied to factions in conservative parties have included Dries, West, New Right and small-l liberals.[46] Jaensch completed a substantial classification of Liberal Party MPs in relation to their position on whether they want government intervention on economic, social and moral questions.[47] This produced eight types of grouping in the Party. Liberal MPs who did want government intervention on moral issues included groups one and two (Conservative and Cold Conservative MPs) and those in groups seven and

[44] Peter Jones. Party, *Parliament and Personality*, 142.
[45] Rodney Smith, Ariadne Vromen and Ian Cook, *Keywords in Australian Politics* (Melbourne, Cambridge University Press: 2006), 152.
[46] Robert Corcoran and Jackie Dickenson, *A Dictionary of Australian Politics* (New South Wales, Allen & Unwin: 2010), 74,
[47] Dean Jaensch, *The Liberals* (Sydney, Allen & Unwin: 1994), 162-163.

eight (Dry Cold Conservative and Dry Warm Conservative). In contrast, groups three to six (Social Liberal, no label fits, Libertarian Dry and Dry Warm Libertarian) thought that government should not intervene on moral issues.

In the thesis, broader categories are applied. So, liberal members of the Liberal Party who support voluntary euthanasia are referred to as 'small-l liberals'. This would encompass groups three to six in Jeansch's classification. The important thing to note here is that this group of MPs do not want government intervention on moral issues such as voluntary euthanasia. Moreover, this group follow the philosophy of liberalism, broadly defined as 'a political ideology emphasising social reform, tolerance and freedom of the individual'.[48] In contrast, in this thesis, those who oppose reform on the issue are termed 'conservative', which would incorporate the remaining groups in Jaensch's classification. This group of MPs would favour government intervention on moral issues, in line with the political ideology of conservatism, which favours the 'retention of long established attitudes, institutions and power structures'. [49] Importantly, this group would see the role of government in relation to voluntary euthanasia as one of 'protecting' individuals and punishing those who engaged in the activity, which they regard as morally incorrect.

Key Findings and the Structure of the Thesis

To investigate the fate of voluntary euthanasia bills and the prospects for reform in the future, the thesis is divided into eight chapters. Chapter two reviews the political science literature on voluntary euthanasia and more broadly moral issues in politics, and their resolution in parliament. To relate the research to the broader framework of the discipline, the chapter reviews the literature on 'morality politics' and political science and identifies how the thesis contributes to this literature. In particular it is highlighted that political scientists have rarely studied morality politics issues and this is because party dynamics in advanced democracies (especially if it is a two party system) militate against morality issues being considered. In seeking to contribute to this literature, the chapter then explains how the research questions formulated relate to this literature. The chapter then discusses methodological issues, including issues relating to case selection and the advantages and limitations of the proposed case study approach.

[48] Corcoran and Dickenson, *A Dictionary of Australian Politics*, 115.
[49] Ibid, 42.

The subsequent four chapters present the case studies explaining the fate of voluntary euthanasia legislation in the four Australian state and territorial parliaments. Chapter three presents the case of the *Rights of the Terminally Ill Bill* in the Northern Territory and examines the Bill's successful passage into law through an analysis of the voting on the issue, the parliamentary debates, media reports and interview material. In addition to the four factors noted by Nitschke and Stewart, the chapter attributes the Bill's success to the way the debate played out in the Northern Territory. Here, it is argued that the fact that the issue had not been debated before meant that MLAs sought to gain a detailed understanding of the issue and exactly what the Bill entailed. At all stages of the process, MLAs acted as 'independents' seeking advice from medical and legal professionals, but this was balanced by their strong willingness to listen to opinions in their electorate and others inside the Legislative Assembly. The view that the medical profession was universally opposed to voluntary euthanasia had not yet become entrenched amongst politicians. As such, several MPs saw their role as 'delegates' of the electorate on the matter translating high levels of public support on the issue into legislative action. In addition, the absence of factions in the political parties in the Legislative Assembly meant that there was no 'bloc' voting and unlike in later cases, Members of the Territory's right leaning political party, the CLP, were just as likely to support the bill as they were to oppose it.

Chapters four to six demonstrate key differences in the way in which the debate on bills has played out in the ACT, South Australia and Tasmania, so preventing the success of the Northern Territory Bill being repeated. Chapter four considers the legislative attempts to change the law on voluntary euthanasia in the ACT prior to 1997 and the subsequent overturning of the Northern Territory *Rights of the Terminally Ill Act*. The chapter demonstrates that, whilst early proposals failed due to a failure of the ACT ALP to follow through on their policy commitments on the issue, as a unicameral legislative assembly the Territory had the ingredients necessary to pass a law: the presence of a key individual willing to sponsor bills, Michael Moore, who held significant leverage as a cross-bencher and managed to secure time for the issue to be debated, despite an unfavourable political environment; politicians who did not yet perceive universal opposition to the practice amongst legal and medical professionals and, as such, the majority of MLAs were willing to support a bill as demonstrated in their speeches on the *Medical Treatment (Amendment) Bill 1997*. However, initial optimism faded with the introduction of the Andrew's Bill, which prevented the Territory from introducing

and passing its own legislation. Final attempts to legislate on the matter were unanimously opposed by MLAs as they were seen as futile and in conflict with the Federal Parliament law.

Following the Passage of the *Euthanasia Laws Act 1997*, only the Australian states would be permitted to change their laws on euthanasia and assisted suicide. Chapter five considers the legislative attempts to change the law on voluntary euthanasia in the South Australian Parliament and examines the likelihood of reform in the near future. Chapter five argues that although a significant number of legislators have been willing to propose legislation on the issue, unlike in the Northern Territory, the presence of 'bloc' voting led to the defeat of bills, including strong opposition from MPs in the ALP's right faction, and has prevented the progress of successive bills. Although there is evidence of cross-party support, which would be vital in the passage of a euthanasia law, and key individuals who have been willing to sponsor bills, the voting figures in the House of Assembly demonstrate that 'socially liberal' Liberals were not willing to support change on the issue in large enough numbers to counteract the opposition from the right of the ALP. As such, the chapter argues that the future liberalisation of the law on end of life choices rests upon two important factors. First there would need to be continued activity on the issue, including cross-party cooperation. Another important factor is the five 'undecided' members in the House of Assembly, whose votes could determine the fate of future proposals, given the very narrow margin by which Bob Such's 2012 Bill failed.

Chapter six considers the legislative attempts to change the law on voluntary euthanasia in the Tasmanian Parliament and examines the likelihood of reform in the future. The chapter demonstrates that opposition from the ALP MPs was, in large part, politically motivated and that support for the 2009 *Dignity in Dying Bill* could have been higher, if it had been introduced earlier in the electoral cycle. In contrast, political factors played less of a role amongst Liberal MPs, who maintained a very strong stance against any liberalisation on the issue. The chapter argues that the main challenge for those campaigning on the issue will be to win the support of the new intake and convince the incumbent ALP MPs, who expressed their support voluntary euthanasia 'in principle' during the 2009 debate, that the new proposed model will produce sound legislation. However, vocal opposition from AMA representatives in the media and other lobbying channels could potentially deter any 'swinging' voters from supporting reform. There is

a similar situation in the Liberal Party, with six new MPs elected in 2010. However, the Liberals are likely to remain opposed, as the majority of members oppose the practice more substantively.

To provide an overarching explanation of the fate of the bills discussed in chapters three to six, chapter seven compares and contrasts the findings of the case studies presented in the case study chapters. It is argued here that key differences exist that account for the successful passage of the Northern Territory Bill, in particular the party political nature of the voting on more recent bills and the widespread perception amongst politicians that the Australian Medical Association is opposed to law reform. Due to events since the overturning of the Northern Territory legislation, such a perception has developed over time, but was not present at the time of the passage of the Northern Territory legislation.

Finally, chapter eight, the last substantive chapter, will identify the insights that the case studies provide into the broader political processes involved with legislating on moral issues, including: the Private Members' Bills process; conscience voting; and the strategies and tactics used by interest groups, in particular the use of the notion of political representation in the Northern Territory campaign on the *Rights of the Terminally Ill Bill*. Finally, the conclusion will discuss the significance of the main findings of the thesis in relation to the research questions posed and also in relation to questions relating to the broader discipline of political science. Finally, some suggestions for directions for future research are raised.

Chapter 2: Investigating Euthanasia Politics

Chapter one outlined the aims of the thesis, with specific reference to the puzzle it seeks to address, and established the importance of a study of euthanasia politics in the Australian state and territorial parliaments. To further define the scope of the present study, chapter two will provide a review of the 'morality politics' literature in political science, beginning with a consideration of the broad literature on moral issues in politics and before reviewing the existing literature on voluntary euthanasia. The chapter also considers four strands of related literature, analysing: the Private Members' Bills process; 'conscience' or 'free' voting; the role of interest groups and professional organisations; and the limited research on spontaneous political group formation. Subsequently, the chapter provides an outline of the contribution that the thesis intends to make to the discipline. Finally, the chapter will provide a discussion and justification of the methodology used in the study, in particular the comparative case study approach.

Research on 'Morality Politics'

Within political science there is an emerging strand of literature on 'morality politics' and the politics of 'morality policy' in which the present study can be located. In one of the key works in this literature, Mooney acknowledges: 'The politics surrounding morality policy in Western democracies appears to pose a number of contradictions'. He continues:

> Relative to other public policies, morality policy can be once symbolically important and economically insignificant. It can raise some of the most profound questions of right and wrong and the role of the state in society, yet it has been, until very recently, rarely studied as a class by political scientists.[50]

The conclusion might be linked to the type of politics that 'morality politics' issues generate. Particularly in Westminster democracies, party dynamics within the two party system mean that both parties can effectively opt not to address an issue at hand, if they so choose to.[51] Moreover, in reference to the UK, Cowley highlights that 'morality politics' issues do not enjoy the same high salience that they do in the US and observes

[50] Charles Z Mooney, "Preface," in *The Public Clash of Private Values*, ed. Charles Z Mooney (New York: Chatham House, 2001), p.vii.
[51] See Ian Mylchreest, "Avoiding the Issue Down Under: The Politics of Legalizing Abortion Australia," in *The Public Clash of Private Values*, ed. Charles Z Mooney. (New York: Chatham House, 2001): 227-243

how the political environment neutralises such issues to the point where 'the politics has been taken out of morality policy'.[52]

This is not to say that these issues should not be studied. The importance of a study of voluntary euthanasia itself has already been noted in chapter one. However, in political science more broadly, a study of euthanasia politics can contribute to the political science literature, in several important ways. As Mooney writes, the key contribution that studies of 'morality policy' in political science can make concerns how: *'the unique characteristics of morality policy affects its politics?'*[53] In this light, the thesis aims to uncover new knowledge in relation to the following important debates in political science and link them to the unique aspects of voluntary euthanasia as a morality politics issue.

The first debate that the thesis will touch upon involves the role of parliament in contemporary parliamentary democracy. There is agreement in the governance literature and elsewhere that the role of parliament is diminishing because of a combination of the increased roles of the executive and broader interests. However, morality politics issues are traditionally a particular category of business that executives have generally shied away from because they are vote losers.[54] As such, the present study will provide a key insight into the working of legislatures on an issue where they play a key role, in an era generally seen as one of decline.

The second debate that the thesis will shed light upon concerns governance of modern political parties and the nature of intra-party politics. As noted above, morality politics issues, such as voluntary euthanasia, are usually avoided by the executive and so remain absent from both the literature on both intra-party politics and party discipline. This makes them particularly interesting to study, because, as Kam writes (although in relation to party discipline and backbench dissent) much intra-party politics happens behind closed doors, in the party room. This is certainly not the case with morality politics issues in Westminster democracies, where the politics of the issues play out on the floor of parliament. So, as Kam writes:

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[52] Philip Cowley, "Morality Policy without Politics? The Case of Britian," in *The Public Clash of Private Values*, ed. Charles Z Mooney. (New York: Chatham House, 2001): 213-226.
[53] Mooney, "*The Public Clash of Private Values*," 9.
[54] See Mylchreest, "Avoiding the Issue Down Under".

> This (cohesion) is a central puzzle of intra-party politics, but is a difficult one to investigate because parliamentary parties usually go to great lengths to maintain facades of unity, airing internal grievances and hammering out compromises behind the closed doors of party rooms.[55]

However, as the executive usually avoids morality politics issues, they are usually left to be resolved through the more public processes involving backbenchers' Private Members' Bills and free votes. As such, the justification provided by Kam becomes relevant to the study of morality politics issues, which we can think of as:

> …an instrument for studying intra-party politics, that are generally seen to be a vital aspect of parliamentary government, but for the most part go unobserved.[56]

The third broader debate that the thesis addresses concerns the distinction between interest groups and social movements. For the reasons mentioned above, much of the lobbing of politicians on morality politics issues focuses on the legislature, rather than the executive. Consequently, the field is ripe for studying the unique characteristics of interest groups and social movements. In particular, the literature is not useful on the distinction between the two. As such, the case studies here can provide an insight into whether the euthanasia lobby is an interest group, a social movement or both.

The Debate Over Voluntary Euthanasia

Despite the contributions that can be made on the basis of a study of the issue in political science noted above, the majority of scholarly work on euthanasia has been in the field 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.[57] The primary focus of these studies is on the controversial ethical questions relating to the practice and authors seek to evaluate existing, as well as advancing new, arguments for and against legalisation of the practice.[58] In this

[55] Christopher J. Kam, *Party Discipline and Parliamentary Politics* (Cambridge: Cambridge University Press, 2009), 10-11.
[56] Ibid, 11.
[57] Pascal Borry et al., "Empirical Research in Bioethical Journals. A quantitative analysis," *Journal of Medical Ethics* 32, no. 4 (2006).
[58] 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

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.[59] 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*.[60] In addition, there have been several studies of attitudes amongst Australian medical professionals about the practice, although the political implications of their findings were not discussed.[61]

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.[62] In Australia, studies have focussed on the passage of the *Euthanasia Laws Act* (ELA) in the Australian Parliament, but have neglected legislative initiatives in other states and territories. The focus on the *Euthanasia Laws Act* is unsurprising, as the passage of the Act generated considerable controversy, not only because it dealt with the euthanasia issue, which had not previously been discussed in the Australian parliament, but also because it had implications in relation to the territories' right to self-government. As a result, Maddox examined the debate on the *Euthanasia Laws Bill* in the Senate and argued that there was an inconsistency between how the debate was perceived and what was recorded in *Hansard*.[63] Interestingly, she found that MPs who supported the ELA (who were primarily opponents of euthanasia) were less likely to broach the subject of religion in the debate than opponents of the Bill. Maddox argues that the supporters of the Bill were reluctant to use religious

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Press, 1995); John Keown, *Euthanasia, Ethics and Public Policy: An argument against legalisation* (Cambriadeg: Cambridge University Press, 2002).

[59] For example Keown, *Euthanasia Examined*, Chs 14 & 15.

[60] David W. Kissane et al., "Seven Deaths in Darwin: Case studies under the Rights of the Terminally III Act, Northern Territory, Australia," *The Lancet* 352, no. 9134 (1998).

[61] 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).

[62] 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).

[63] Marion Maddox, "For God and States Rights: Euthanasia in the Senate" *Legislative Studies*, 14 no. 1 (1999).

arguments, preferring to oppose euthanasia on 'scientific' grounds and that this was done tactically to strengthen their arguments in favour of the passage of the ELA.

Following Maddox, the debate on the ELA was the focus of two further studies. Broughton and Palmieri analysed the contributions of women MPs to the debate, whilst Warhurst analysed the conscience votes on the Bill and compared voting patterns on euthanasia with voting on two other morality issues: abortion and embryology.[64] Warhurst found that, despite being given a conscience vote, party remained the best predictor of voting behaviour across the three issues, although ideological position within the party and gender did have an impact during voting, particularly on abortion.

Indeed, the studies analysing the passage of ELA in the Federal Parliament raise some interesting sub-questions for the present study. For example, are state and territorial legislators more willing to use religious arguments during the debates or, as Maddox found, do they tend to prefer the use of scientific justifications like their colleagues in the Federal Parliament? In addition, are state and territorial MPs more, or less, likely to vote with their party colleagues than Warhurst observed in the Federal Parliament? To date, we cannot answer these questions because, outside the Federal Parliament, the politics of voluntary euthanasia in Australia has received little attention in the literature.

The present study seeks to remedy this situation, although first, there are a small number of exceptions to this prior conclusion that need to be considered, which will in turn further define the scope of this study. A piece by Quirk examines the constitutional context of the debate in the Northern Territory, particularly considering the problem of Commonwealth law overriding territory. While Bartles and Otlowski discuss the defeat of the *Dying with Dignity Bill 2009* in Tasmania.[65] 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. Bartles and Otlowski also present a critical evaluation of the arguments used for and against euthanasia legislation. However, neither Bartles and Otlowski, nor Quirk, examine the politics involved with the passage of bills through parliament, nor do they consider of the level and nature of support for, or opposition to,

[64] 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).
[65] 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).

reform. As a result, the reasons for the failure of bills seeking to legalise voluntary euthanasia remain unknown.

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.[66] Nitschke and Stewart study 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. Their book presents both Nitschke's valuable first-hand insights into events and the stories of people who used the *ROTTI Act*. This is an important work as Nitscke was himself a prominent euthanasia activist and actually carried out the first legal act of voluntary euthanasia in the Northern Territory.

Nitschke and Stewart identify four reasons for the success of the Northern Territory Bill, which will be considered in more detail in chapter three: first, the presence of a key actor who was willing to sponsor a bill on the matter; second, the institutional make-up of the Northern Territory House of Assembly, being a unicameral legislative assembly, with no house of review; third, the composition of Northern Territory society; and, finally, the mind-set of Northern Territory people. As such, Nitschke and Stewart in particular, highlight the local factors that were important in the successful passage of a voluntary euthanasia bill. However, the present study argues that a deeper understanding of the level of support and opposition amongst MLAs themselves is important. In particular, additional analysis of the votes of MLAs and their speeches in the debates on bills will deepen the understanding of the fate of legislation in both the Northern Territory and elsewhere. In addition, placing the Northern Territory case in a broader, comparative context, will allow us to assess the *relative* importance of local factors such as the role of the local leadership, the influence of organised religion and the structure of parliament had on the fate of bills.

In addition, the present study also intends to update the work of Nitschke and Stewart by charting the events that have taken place since their study was first published in 2005. There have been a number of important developments that have subsequently taken place, including a pledge by the Premier of Tasmania to introduce Private

[66] Philip Nitschke and Fiona Stewart. *Killing me Softly: Voluntary Euthanasia and the Road to the Peaceful Pill* (Melbourne: Penguin, 2011).

Members' legislation on the issue and also the intensification of the campaign in South Australia. The incorporation of case studies of the issue in South Australia, the ACT and Tasmania, will allow a deeper understanding of euthanasia politics across Australia and a comparison of the findings of these case studies with the earlier, Northern Territory will allow a fuller understanding of why subsequent attempts to legalise have been unsuccessful. In addition, as euthanasia is an unresolved issue and there are several bills seeking to legalise presently before the state parliaments, the thesis will also evaluate the likelihood of reform in the future.

The Political Processes Involved

In addition to the broader debates in political science noted at the outset of this chapter, a consideration of the literature demonstrates the potential for insights to be made into several other questions of relevance relating specifically to three political processes involved in legislating on 'morality' issues: the Private Members' Bills process; conscience voting; the strategies and tactics used by interest groups; and the phenomenon of spontaneous political group formation.[67] Within the 'morality politics' literature there is a distinct literature on each of these processes, which it is important to consider here.

i) Private Members' Bills

Given that all the euthanasia bills to be studied were Private Members' Bills, a consideration of the broad literature that deals with the Private Members' Bills process in Westminster-style legislatures is important. A consideration of this literature reveals that the process itself can have an adverse effect on the fate of bills. As such, previous studies have sought to explain the low success rate of Private Members' Bills and also suggested how the procedure could be reformed.[68] Most research on Private Members' Bills to date has focused on the British and Canadian parliaments, but there have been

[67] For a discussion of what constitutes a 'morality policy' issue see Donley T. Studlar. "What Constitutes Morality Policy? A cross-national analysis," in *The Public Clash of Private Values*, ed. Charles Z Mooney (New York: Chatham House, 2001).

[68] Alex Brazier and Ruth Fox, "Enhancing the Backbench MP's Role as a Legislator: The case for urgent reform of private members bills," *Parliamentary Affairs* 63, no. 1 (2010); Peter Bromhead, *Private Members' Bills in the British Parliament* (Greenwood Press, 1975); Ivor Flower Burton and Gavin Drewry, *Legislation and Public Policy: Public bills in the 1970-74 Parliament* (Macmillan, 1981); S.G. Deshpande, "Removing Barriers to Private Members Business," *Canadian Parliamentary Review, Spring* (1995); David Marsh and Melvyn Read, *Private Members' Bills* (Cambridge: Cambridge University Press, 1988).

studies of the procedure in other parliaments, such as the New Zealand House of Representatives and Israel's Knesset.[69]

In Australia two research papers on Private Members' Bills have been published. Dixon examined their role and value in the legislative process, whilst Davis outlined the subject matter on which MPs are allowed to introduce bills in the South Australian Parliament.[70] This research provides useful background information on various aspects of Private Members' Bills in several of the Australian parliaments, such as the number of bills introduced and passed.[71] However, the question of the extent to which the process itself presents a barrier to reform has not been addressed.

Outside Australia, previous studies have identified two main factors which affect the fate of Private Members' Bills: the level of opposition to the bill in parliament and whether or not it received extra time from the government to be considered on the floor of parliament. Marsh and Read analysed the progress of all Private Members' Bills introduced into the UK parliament in the post-war period. They found that the procedure was dominated by the executive and that bills were only successful if they had been granted extra time by the government. In addition, successful bills were minor, technical and uncontentious, with most described as 'government bills in all but name'.[72] Consequently, Marsh and Read argue that, in the UK:

> …the nature and limitations of the Private Members' Bills procedure is merely a reflection of executive dominance in the British system which is itself a reflection of the view of democracy which underpins the institutions and processes of British Government.[73]

[69] Raukura Spindler, "Members' Bills in the New Zealand Parliament," *Political Science* 61, no. 1 (2009); Shevah Weiss and Avraham Brichta, "Private Members' Bills in Israel's Parliament – The Knesset," *Parliamentary Affairs* 23 (1969).
[70] Nicolee Dixon, "The Role of Private Members Bills'," Proceedings of the Australasian Study of Parliament Group Annual Conference, Darwin, Northern Territory, July 18-19, 2003; Jan Davis. "Private Members' Bills'." Proceedings of the 35th Conference of Presiding Officers and Clerks, Melbourne, 2004.
[71] Dixon, "The Role of Private Members' Bills," 12-13.
[72] Marsh and Read, *Private Members' Bills*, 184.
[73] Ibid.

Another important factor in the fate of Private Members' Bills is opposition to the bill. Marsh and Marsh study the fate of bills in the 1997-2001 British Parliament.[74] In addition to the procedural constraints, their explanation of the fate of bills highlights the importance of the use of the 'object' procedure to prevent the passage of bills. They found that the 'object' procedure was used by the government to block legislation, but, most interestingly, the procedure was also heavily used by two Conservative MPs, who defeated a large number of bills. During this period the two MPs went on a campaign opposing a large number of bills, particularly those they believed were: 'ill-considered and poorly drafted'.[75] Marsh and Marsh found that that the 'object' procedure was used more frequently than filibustering and, consequently, is a crucial factor preventing the passage of Private Members' Bills.[76] [77]

In the Canadian House of Commons, the success rate of Private Members' Bills is also low. However, since 1985, a number of reforms have been made to address this issue. Prior to the reforms, the barriers preventing successful legislation generated discontent amongst backbench MPs.[78] During this time, only MPs who were drawn in a ballot could introduce bills and even then, the legislation was rarely voted upon. After several rounds of reforms, at present all MPs can introduce at least one bill, the bills to be debated are chosen by lottery and all legislation is voted on.[79]

Since the introduction of the reforms, a number of studies have examined their impact. Keyes noted that, after the earlier reforms in 1985, few bills were enacted and they focused on minor issues. However, more recently, Parliament has enacted four bills which have made significant changes to the law, such as Bill C-250 - *An Act to amend the Criminal Code (hate propaganda)*, which made publicly inciting hatred against

[74] Holly Marsh and David Marsh, "Tories in the Killing Fields? The Fate of Private Members' Bills in the 1997 Parliament." *Journal of Legislative Studies* 8, no. 1 (2002).
[75] Ibid., p.105.
[76] The basic rule of the 'object' procedure is that if any Member shouts *object* when the title of a bill is read then it will not make any further progress. If the bill is objected to, the Member in charge of the bill, or another member on their behalf, may nominate another Friday and seek to persuade those who objected not to repeat their action. Often a Government Whip will shout object. In this case, unless the sponsoring Member can reach an accommodation with the Government, it is unlikely the bill will make further progress.
[77] See also House of Commons, "Factsheet L2: Private Members' Bills Procedure," London, House of Commons Information Office (2010).
[78] See Deshpande, "Removing Barriers to Private Members Business".
[79] J.R. Robertson, "The Evolution of Private Members' Business in the Canadian House of Commons," accessed July 13, 2010, http://www2.parl.gc.ca/content/lop/researchpublications/prb0203-e.htm.

people on the basis of their sexual orientation illegal.[80] Similarly, Blidook examined the impact of individual MPs in the legislative process through the use of Private Members' Bills.[81] She found that individual MPs do play an important role in initiating legislation and influencing public policy, both directly and indirectly, through the legislative process, particularly when a minority government is in power, but this largely takes place within, and is limited by, procedural constraints.

In addition to the fate of bills, other UK studies have examined the appropriateness and democratic effectiveness of this process for dealing with moral issues.[82] In light of the declining success rate of bills, others have considered whether or not the process should be reformed.[83]

The questions these studies address are relevant to Australia, as apart from in the ACT, the success rate of Private Members' Bills is also low in all parliaments; nevertheless, the process continues to be the main channel used for the resolution of morality policy issues, such as abortion, same-sex marriage and voluntary euthanasia. Consequently, the thesis will evaluate the effectiveness of the Private Members' Bills process for dealing with controversial moral legislation, by examining bill sponsors experiences of using the process. So, to gain a better understanding of the Private Members' Bills process, the thesis asks: To what extent does the Private Members' Bills process itself represent a barrier to reform? In addition, how did bill sponsors negotiate the process?

ii) Parliamentary Free Voting

All of the voluntary euthanasia bills studied in this thesis received a 'free' or 'conscience' vote in parliament, which makes the outcome of the legislative process less predictable than usual.[84] As such, the voting patterns of legislators will be an important consideration when explaining the fate of bills. A consideration of the

[80] John M. Keyes, "Democratic Reform and Private Members' Business: Shifting sands of paradigms?" accessed February 20, 2013, http://www.opc.gov.au/calc/papers.htm.

[81] Kelly Blidook, "Do the Legislative Actions of MPs Matter?," Paper Presented at the Canadian Political Science Association Annual Meeting, Saskatoon, SK, May 30, 2007.

[82] Philip Cowley, "Conclusion," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass, 1998), 177-180; Philip Cowley, "Unbridled passions? Free votes, issues of conscience and the accountability of British members of parliament." *The Journal of Legislative Studies* 4, no. 2 (1998); David Marsh and Joanna Chambers. *Abortion Politics* (Junction Books, 1981), 2-3.

[83] Brazier and Fox, "Enhancing the Backbench MP's Role as a Legislator"; Alex Brazier and Ruth Fox, *Enhancing the Role of Backbench MP: Proposals for Reform of Private Members' Bills*, Briefing Paper (London, The Hansard Society, 2011).

[84] In the thesis, the terms are used interchangeably, however the term 'conscience vote' tends to be used more widely in Australia.

literature on parliamentary free voting reveals the factors that have affected MPs voting patterns on other issues and in other parliaments. Since the 1970s, parliamentary free voting in Westminster-style parliaments has been the focus of several studies and the body of literature on the topic has grown steadily, as more scholars have sought to explain MPs' behaviour in the absence of party discipline.

The value of these studies can only really be appreciated if we consider the nature of Westminster-style parliaments in general, where party discipline is strictly enforced and dissent is infrequent.[85] For example, Richards, one of the first to study free votes, writes about their potential:

> On a free vote there is a dramatic change. Members are under no party pressure to support a particular policy: they are under no party pressure even to attend Parliament. The division lists offer a vivid insight into their attitudes.[86]

There have been two key studies of free vote patterns in the Australian Federal Parliament.[87] Warhurst studied three free vote issues that came onto the agenda during the Howard years: euthanasia; stem cell research; and the medical abortion drug RU486. The study found that party remained a good predictor of voting behaviour and that: '…the two coalition parliamentary parties are notably more socially conservative than the Labor Party, and even more so than the Democrats and the Greens'.[88] In addition, Warhurst finds that gender and religion also played a role in voting behaviour, whilst Plumb analysed the same votes to examine the extent to which there was an ideological

[85] Kam, "*Party Discipline and Parliamentary Politics*", Dierdre McKeown and Robert Lundie (2005). "Crossing the Floor in the Australian Federal Parliament 1950 to August 2004" Research Note no. 11 2005-06 (Canberra, Parliament of Australia Parliamentary Library, 2005).
[86] Richards, *Parliament and Conscience*.
[87] Diedrie McKeown & Robert Lundie, "Conscience Votes in the Howard Government 1996-2007"; Warhurst, "Conscience Voting in the Australian Federal Parliament.". Studies which discuss broader issues relating to the resolution of conscience issues in the Australian Federal Parliament include, Helen Pringle. "The Greatest Heights of Parliament? Conscience Votes and the Quality of Parliamentary Debates," *Australasian Parliamentary Review*, vol. 23, no. 1 (1998); Kerry Ross, Susan M. Dodds, and Rachel A. Ankeny. "A matter of conscience? The democratic significance of' conscience votes' in legislating bioethics in Australia," *Australian Journal of Social Issues*, 44, no. 2 (2009): 121; Marian Sawer, "What makes the substantive representation of women possible in a Westminster parliament? The story of RU486 in Australia," *International Political Science Review* 33, no. 3 (2012).
[88] Warhurst, "Conscience Voting in the Australian Federal Parliament," 595. For a media commentary see, Peter Van Onselen and Wayne Errington, "With Consciences to the Fore, Politics Gets Uglier," *Canberra Times* (online) February 20, 2006, accessed June 4, 2010, http://www.canberratimes.com.au/news/local/news/opinion/with-consciences-to-the-fore-politics-gets-uglier/715188.aspx?storypage=3.

aspect to the voting.[89] In particular, Plumb found that there was a significant split in the Liberal Party, between MPs who consistently took a 'social liberal' position and those who took a 'social conservative' position.

There has been one study of legislators' attitudes to voluntary euthanasia at the state level, but it didn't involve an analysis of conscience voting. Willmott and White surveyed Queensland politicians' personal views on voluntary euthanasia and found that 55 per cent of their respondents favoured reform.[90] Moreover, the study suggested that these personal views might not be followed in a conscience vote where concerns about party lines and re-election intrude. This thesis will overcome the limitations of their study by conducting an analysis of the actual conscience votes that have taken place on voluntary euthanasia bills, to give a more accurate view of the opinions of legislators on the issue.

Studies of abortion law reform in Australia also reveal more about the ideological splits that exist in the main political parties on moral issues at the state and territorial level, although these studies were conducted some time ago. Coleman studied abortion law reform in the 1970s and explained why reformist legislation was so successful in states and territories which had a Country-Liberal Party government. Coleman highlights that the CLP, in fact, maintained a liberal commitment on social issues:

> Where reformist legislation was successful (in South Australia and the Northern Territory) it was carried out under Liberal-Country Party government. The Liberals, though to the right on economic and class issues, did in the past maintain a (somewhat muted) small 'l' liberal commitment to certain issues, such as civil liberties and 'social' issues. For example, it was a Liberal government which eventually reformed Australia's draconian censorship laws in 1971, agreed then to be the most stringent in the western world (except for Ireland). For those Liberals who defined abortion as a matter of civil liberties rather than in terms of murder of the unborn, laws against abortion were an illegitimate intrusion by the State into the private affair of individuals. In South Australia and the Northern Territory the number of Catholics in the population was small

[89] Alison Plumb, "Social Ideology and Free Voting in the Australian Federal Parliament," (Unpublished paper, 2013).
[90] Willmott, Lindy and Benjamin P. White, "Private Thoughts of Public Representatives: Assisted death, voluntary euthanasia and politicians," *Journal of Law and Medicine* 11, no. 1 (2003).

> and the DLP either did not exist or had no electoral influence. Consequently, reform legislation was possible as the governments were not blackmailed by the DLP and could count on the left-wing vote within the Labor Party.[91]

The study will provide an insight into whether or not similar patterns exist in legislators views of voluntary euthanasia.

To date however, the majority of the studies of parliamentary conscience voting have focused on the UK House of Commons.[92] The main pattern observed in these studies is similar to that observed in Australia: that political party remains the best predictor of voting behaviour. So, Cowley concluded that conscience issues: '…are more likely to cut down party lines than across them …it is rare to find one vote where both of the major parties are significantly split'.[93]

Others have argued that additional factors must be taken into account to fully explain free vote patterns. For example, Plumb and Marsh agree that party is an important consideration, but argue that social ideology plays a significant role, particularly in the UK Conservative Party, so must be accounted for to give a more nuanced explanation of voting patterns.[94] After analysing votes on abortion, homosexuality and the death penalty in the UK, Marsh and Read and Read et al. also emphasise the role of social ideology during free voting.[95] Read, Marsh and Richards demonstrate that, while the Conservative Party is generally split on ideological grounds on moral issues, the Labour Party is not. Second, as far as the Labour Party's split on abortion is concerned, they

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[91] Karen Coleman, "The Politics of Abortion in Australia: Freedom, church and state." *Feminist Review* (1988), 84.
[92] John R. Hibbing and David Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," *Legislative Studies Quarterly* (1987); Marsh and Read, *Private Members' Bills*; Charles Pattie et al., "Voting Without Party?" in Conscience and Parliament, ed. Philip Cowley (London: Frank Cass Publishers, 1998); Charles Pattie et al., "The Price of Conscience: The electoral correlates and consequences of free votes and rebellions in the British House of Commons, 1987–92," *British Journal of Political Science* 24, no. 03 (1994); Alison Plumb and David Marsh, "Beyond Party Discipline: UK parliamentary voting on fox hunting." *British Politics*, AOP 25 February 2013, doi:10.1057/bp.2013.2; Anthony Mughan and Roger M. Scully. "Accounting for Change in Free Vote Outcomes in the House of Commons." *British Journal of Political Science* 27, no. 4 (1997); Melvyn Read at al.. "Why did they do it? Voting on homosexuality and capital punishment in the House of Commons." *Parliamentary Affairs* 47, no. 3 (1994); Richards, *Parliament and Conscience*. On voting in the House of Lords, see Philip Norton, "Cohesion without discipline: Party voting in the House of Lords." Journal of Legislative Studies 9, no. 3 (2003).
[93] Cowley, "Conclusion", 188.
[94] Alison Plumb and David Marsh, "Divisions in the Conservative Party on Conscience Issues: Comment on Philip Cowley and Mark Stuart, 'Party Rules, OK: Voting in the House of Commons on the Human Fertilisation and Embryology Bill'," *Parliamentary Affairs* 64, no. 4 (2011): 769-776.
[95] Marsh and Read, *Private Members Bills*; Melvyn Read et al., "Why did they do it?".

show that it is almost exclusively the Labour Roman Catholics who oppose abortion. This finding was confirmed by Pattie et al. who argue:

> Once we controlled for party, very few other factors had a significant bearing on how Labour MPs voted. The only votes where some factor other than party seems to have had a consistent effect on Labour MPs were …abortion and embryo research votes (where) Roman Catholic Labour MPs were much more likely to (support a conservative position).[96]

In Canada, Overby, Tatalovich and Studlar studied MPs' free vote behaviour on the 1990 Bill C-43, which sought to establish a Federal law on abortion.[97] In line with British studies, they found that party played an important role in the voting, perhaps an even greater role than in the British Parliament. However, more recently, Overby, Raymond and Taydas found that this cohesion was being eroded at the federal level.[98] In their study of MPs' voting behavior on *Bill C-38* in 2005, which legalised same-sex marriage in Canada, they found that constituency pressures were an important determinant of the voting. They argue:

> …electorally secure MPs were more likely to vote (with) their constituencies than MPs from less secure ridings, as were MPs from districts in which constituents' preferences may have deviated from the unofficial party line.[99]

This pattern was strongest in the Liberal Party.

Finally, studies of free voting in New Zealand have focussed on the history of the practice and a qualitative analysis of the voting patterns.[100] An individual level analysis of MPs' behaviour during free voting has yet to be undertaken in New Zealand. However, Plumb analyses party unity during free votes on moral issues in four

[96] Charles Pattie et al., "Voting Without Party?", 168-169.
[97] Marvin Overby et al., "Party and Free Votes in Canada Abortion in the House of Commons." Party Politics 4, no. 3 (1998).
[98] Marvin Overby et al.,"Free Votes, MPs, and Constituents: The Case of Same-Sex Marriage in Canada," *American Review of Canadian Studies* 41, no. 4 (2011).
[99] Ibid., 474.
[100] David Lindsay, "A Brief History of Conscience Voting in New Zealand," *Australian Parliamentary Review* 23, no. 1 (2008); David Lindsay, "Conscience Voting in New Zealand," (PhD diss., University of Auckland, 2011).

Westminster-style parliaments, including the New Zealand House of Representatives, and found that levels of cohesion are strikingly similar across the parliaments.[101]

Of course, an examination of voting patterns of legislators during conscience votes is crucial for explaining the fate of bills on voluntary euthanasia. The review of the literature on parliamentary free voting has revealed the patterns observed in the studies of conscience voting and also highlighted the originality of a study of voting patterns at the state and territorial level in Australia. One aim of this thesis is to identify whether the patterns observed elsewhere hold true for the state and territorial parliaments and as such, the following question is posed: What factors affect legislators' voting on voluntary euthanasia in the Australian state and territorial parliaments?

iii) The Role of Interest Groups

Studies of other moral issues have sought to understand the role played by, and influence of, interest groups and professional organisations in the process of law reform. The literature reveals that, because moral issues tend to be resolved through the Private Members' Bills process and MPs receive a free vote, groups must place a greater emphasis on influencing parliament as a whole, in addition to lobbying the government. As such, identifying the effectiveness with which groups have undertaken this task, including the strategies and tactics used when campaigning, will be an important part of the explanation of the fate of voluntary euthanasia bills in the case studies. The literature specifically examining the euthanasia lobby in Australia is limited, thus to gain some understanding of the role of interest groups during lobbying on a contentious moral issue, it is useful to turn to the studies of the abortion lobby.

In Australia, there have been studies of both the pro-abortion and the anti-abortion lobby: in the latter case, primarily on the role of the Catholic Church.[102] Coleman studied the politics of abortion in Australia and emphasised the power of the Catholic Church in relation to the outcome of law reform: '…the key influence was, in most

[101] Alison Plumb, "Research Note: A Comparison of Free Vote Patterns in Westminster-style Parliaments," *Commonwealth and Comparative Politics*, AOP 25 March, 2013, DOI: 10.1080/14662043.2013.773695.

[102] Coleman, "The Politics of Abortion in Australia"; Mylchreest "Avoiding the Issue Down Under"; John Warhurst and Vance Merrill, "The Abortion issue in Australia: Pressure politics and policy." *The Australian Quarterly* 54, no. 2 (1982); John Warhurst, "The Catholic Lobby: Structures, Policy Styles and Religious Networks," *Australian Journal of Public Administration* 67, no. 2 (2008); John Warhurst, "Single Issue Politics: The impact of conservation and anti-abortion groups," *Current Affairs Bulletin* 60, no. 2 (1983).

cases, the Catholic Church. The way in which the abortion issue was handled in each state depended largely on the strength of that influence or lack of it'.[103]

Warhurst also studied the Catholic lobby and outlines their effectiveness as a group, but challenged assumptions about the lobby, including its perceived power and financial resources:

> How powerful is the Catholic lobby? There is a notable disjunction here between the lobby's own view of itself and the views of its critics. Some critics exaggerate its power. David Marr, for instance, sees government support for refurbishing cathedrals as "a measure of the raw power of the Catholic Church in Australia." Insiders, whether they are bishops or professional lobbyists, are more sanguine and often frustrated by failures or insignificance. The lobby itself is trying to do better. It has renewed emphasis on its solidarity, especially between bishops and their agents. In terms of power, however, it would look around Canberra, Sydney or Melbourne with envy at other lobbies, including business, unions and the media.[104]

The UK literature on the abortion lobby is also useful here, as it gives an insight into the kinds of strategies and tactics used by interest groups under similar circumstances. Marsh and Chambers studied the growth of the abortion lobby in the UK and their activities after the passage of the *Abortion Act 1967* and during the subsequent attempts to amend it.[105] Marsh and Chambers conclude that three main strategies and tactics have been most effective for the abortion lobby trying to influence Parliament. The first point relates to the nature of the Private Members' Bills process: it is much easier to defend existing legislation than promote new legislation. The second point relates to the focus of the lobbying; that is, whether groups focused their activity inside or outside parliament:

> …the anti-abortion lobby has overemphasised extra-parliamentary activity. Of course any interest group attempting to influence MPs must have support from the country, and in the case of the White Bill and the Benyon Bill, SPUC and LIFE's orchestrated write-in campaigns to MPs were effective. However such

[103] Coleman, "The Politics of Abortion in Australia", 75.
[104] Warhurst, "The Catholic Lobby", 17.
[105] Marsh and Chambers, *Abortion Politics*.

> efforts were less effective on the Corrie Bill. This was partly because MPs, inundated with constituents' letters, quickly became punch-drunk and alienated by the efforts of both sides.[106]

In contrast, Marsh and Chambers emphasise that: 'the pro-abortionists emphasized the necessity for a strong organization within parliament, which was well co-ordinated with the extra-parliamentary forces'.[107] Consequently, the authors argue that:

> The Corrie Bill also shows how important knowledge of parliamentary procedure is for parliamentary interest groups. The pro-abortion side was better versed in procedure, and on most occasions better at using it.[108]

Finally, Marsh and Chambers found that the support of professional organisations such as the British Medical Association, was vital whilst defending the *Abortion Act 1967* and this influenced the votes of many MPs:

> In the case of a social or medical issue like abortion there is considerable advantage to having the support of the appropriate professional associations. When David Steel piloted the original Bill through Parliament he made important concessions to the BMA and the RCOG in order to minimize their opposition. …On the Corrie Bill for the first time MPs seemed to appreciate the strength of medical opposition to any radical amendment of the Abortion Act, and a large number of MPs told us that they believe this was a crucial factor in influencing the votes of uncommitted MPs at Report Stage.[109]

The literature on moral issues highlights the importance of an analysis of the role played by groups campaigning on these issues and the strategies and tactics that groups have used to influence the outcome of legislative process. Regrettably, a detailed examination of each of the individual groups campaigning on voluntary euthanasia in Australia was not possible due to the constraints of this thesis. Consequently, whilst there will be some discussion in the case studies of the role played by interest groups in each state and territory, a preliminary review of literature and material relating

[106] Ibid., 82.
[107] Ibid., 190-191.
[108] Ibid., 191.
[109] Ibid., 191-192.

specifically to the Northern Territory Bill suggests that focusing on the campaign here will be insightful.

Specifically, the thesis will focus on the methods used by a group called 'Operation TIAP', who led the pro-euthanasia campaign in the Northern Territory. Nitschke and Stewart, who provide the most detailed study of the euthanasia movement in Australia to date, do not examine the role played by Operation TIAP, which is surprising, given the group has been attributed for playing a key role in the passage of the *Rights of the Terminally Ill Act*.[110] In his address to the 11th International Conference of the World Right to Die Societies, held in Melbourne during October 1996, Marshall Perron, the sponsor of the Rights of the Terminally Ill Bill, emphasised the important role the group played in the campaign:

> During the period the Bill was before Parliament and the debate raged, a small band of supporters under the leadership of Lynda Cracknell, formed a group which conducted what they called 'Operation T.I.A.P.' (Terminally Ill Act Petition). As I mentioned earlier, we had no voluntary euthanasia society and I played no role in getting Operation T.I.A.P.' underway. It was spontaneous action by concerned citizens and we are all indebted to them for the time, effort and expense they put in during the main campaign. Under Lynda's guidance, the players in Operation TIAP went on to form the Northern Territory Voluntary Euthanasia Society, which has played a key role in keeping the world informed of events and providing input to government regulations since the Act was passed.[111]

The extract from Perron's speech and the frequency with which the group was referred to in the local media at the time, especially in the *Northern Territory News*, suggest that the activities of 'Operation TIAP' warrant further attention. As such, the third set of research questions related to the political processes involved with the passage of euthanasia legislation, seek to better understand the role of Operation TIAP in the passage of the Northern Territory Bill. What was the impact of the group Operation TIAP and what was the most effective method they utilised in their campaign?

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[110] Nitschke and Stewart, *Killing me Softly*.
[111] "An address by Marshall Perron, former Chief Minister of the Northern Territory at the 11th International Conference of the World Right to Die Societies, Melbourne, 17 October 1996," Dying with Dignity Victoria, accessed February 14, 2013, <http://www.dwdv.org.au/Docs/perron96.htm>.

iv) Spontaneous Political Group Formation

A more detailed consideration of the extract from Perron's speech reveals another interesting feature about the campaign on the Northern Territory Bill: that prior to the passage of the *Rights of the Terminally Ill Act*, the Territory had no voluntary euthanasia society and as such, the campaign on the Bill, led by Operation TIAP, was a result of spontaneous action by citizens who had little prior involvement in politics. The survey of the literature on the abortion lobby presented above, suggests that the case of Operation TIAP is highly unusual, as it is primarily formal groups and societies, who employ professional lobbyists, which gain the most influence in the legislative process.

Indeed, the literature contains many case studies of *formal* groups and societies who campaign professionally on moral issues, but fewer examples of this kind of spontaneous action, although there are a small number of exceptions. Melyantsou studied the spontaneous formation of political groups following the 2006 Belarusian Presidential elections and sought to define the phenomenon, examine the reasons for their formation and discuss their future prospects.[112] This kind of activity was also studied by Dowse and Hughes, who called those who took part 'sporadic interventionists'.[113] In addition, Bang and Sorensen study a set of individuals, who they call 'Everyday Makers', who get involved with politics at a local level on an ad-hoc basis, focussing upon the implications of this kind of political participation.[114] By examining the work of 'Operation TIAP', this thesis seeks to contribute to this literature by documenting another empirical example of spontaneous group formation. The main research questions that will be asked here are: What were the reasons and driving forces behind the formation of the group? What were their aims? How did the element of 'spontaneity' affect the outcomes of the campaign?

Research Questions

A survey of the literature on voluntary euthanasia has revealed the potential contributions that can be made by examining the fate of proposals to reform the law on voluntary euthanasia in the Australian state and territorial parliaments and identified several possible research questions. These questions are outlined below.

[112] Dzianis Melyantsou. "Spontaneous Political Groups after the 2006 Elections," *Political Sphere* 11 (2008).
[113] Robert E. Dowse and John A. Hughes, "Sporadic Interventionist," *Political Studies* 25, no. 1 (2006).
[114] Henrik P. Bang and Eva Sørensen. "The Everyday Maker: A new challenge to democratic governance," *Administrative Theory & Praxis* (1999).

In light of the high level of support for law reform amongst the public and a reasonable section of the medical profession, but the successive failure of legislation seeking to change the law, three key research questions are addressed:

- After the successful passage of the *Rights of the Terminally Ill Act* in the Northern Territory, why have subsequent attempts to reform the law failed?

As euthanasia is an unresolved issue, and at present there are several bills seeking to legalise it:

- Are the proposals currently being discussed in the state parliaments likely to succeed?
- What are the future prospects for law reform?

In addition, the literature suggests that a study of the passage of euthanasia legislation can also provide insights into four areas of broader interest, relating to the treatment of moral issues and to Australian politics more broadly. In relation to legislators' voting behaviour on 'conscience' issues, each of the individual cases and chapter seven will deal with the following question:

- Which factors affect legislators' voting behaviour on voluntary euthanasia in the Australian state and territorial parliaments?

Subsequently, to gain a greater understanding of three additional political processes, chapter eight will deal with the following three sets of questions:

- First, relating to the Private Members' Bills process: To what extent does the Private Members' Bills process itself represent a barrier to reform? How did bill sponsors negotiate the process?
- Second, relating to the strategies and tactics of the pro-euthanasia group, 'Operation TIAP' and its impact: what was the impact of the group and what was the most effective method they utilised in the Northern Territory campaign?
- Third, relating to the phenomenon of spontaneous group formation: What were the reasons and driving forces behind the formation of the group? What were

their aims? How did the element of 'spontaneity' affect the outcomes of the campaign?

The Contribution of the Thesis

The main contribution of this research lies with its focus on the politics of the issue of voluntary euthanasia at the state and territorial level of Australian politics. The thesis will build on the work of Nitschke and Stewart, by updating their study and broadening the focus of enquiry to other Australian parliaments, where original empirical work has been undertaken. The empirical data gathered will enable future work to be undertaken, comparing the present case with the resolution of other moral issues in the Australian or overseas parliaments. However, the present study will involve a comparison of the factors affecting the fate of bills in four Australian parliaments. This approach is taken to reveal the relative importance of factors involved in the passage of euthanasia legislation, thus adding to the explanation presented in the individual case studies. This comparative method has not previously been utilised in research analysing the fate of bills on euthanasia in Australia.

The thesis also aims to make three further contributions. First, part of the empirical research involves a study of MPs' behaviour during the free votes in the state and territorial parliaments. MPs' voting patterns at this level of government have been neglected in the literature, which has previously focussed only on the practice in the Australian Federal Parliament. Subsequently, chapter seven presents the first comparative study of free voting across the Australian state and territorial parliaments. Second, as the euthanasia bills to be studied are all Private Members' Bills, chapter seven will investigate the nature of the process in the four Australian parliaments to identify the impact this may have on the passage of legislation. The process has rarely been the focus of study, even in the Australian Parliament. However, it is important that the process is better understood, not only because it is the main channel through which moral issues are resolved in Australian politics, but also because the process is being increasingly used by the growing number of independent and minor party legislators seeking to pursue their legislative agenda. An examination of MPs' personal experiences of using the process will contribute to a better understanding of the process.

Third, chapter eight also examines the work of the euthanasia lobby in greater depth, specifically focussing on the impact of Operation TIAP, which campaigned in favour of

the Rights of the Terminally Ill Bill in the Northern Territory. The literature has focussed on the role of professional and formalised groups in the campaign on other moral issues, such as abortion. In contrast, the work of Operation TIAP represents a rare empirical example of spontaneous political group formation and the methods the group used, which are not yet documented in the literature.

Methodology

Seeking answers to the research questions posed, the research adopted a comparative case study approach. Within the case studies several methods were used to gather data. The advantages of a case study approach and then each of the methods of data collection and analysis within the case studies will now be discussed in turn.

i) The Comparative Case Study Approach: Advantages and Limitations

As Van Evera writes, social scientists have considered case studies the weaker option, compared with experimentation and observation using large-*n* analysis, for testing theories.[115] However, as George and Bennett argue, it is possible to identify four strong advantages of case study methods that make them useful for testing hypotheses and particularly useful for theory development: first, they have the potential for achieving high conceptual validity; second, they have strong procedures for fostering new hypotheses; third, they provide a useful way to closely examine the hypothesised role of causal mechanisms in the context of individual cases; and finally, they allow us to address causal complexity. Each of these advantages will now be discussed in relation to the benefits and advantages over a purely statistical or large-*n* approach, in relation to the present study.[116]

In the present study several variables of interest, such as the political culture of the states and territories, are difficult to measure. For example, the Northern Territory has a very different political culture and history to the South Australian Parliaments. Thus, it will be necessary to carry out what George and Bennett term: '"contextualised comparison," which self-consciously seeks to address the issue of equivalence by searching for *analytically equivalent* – even if expressed in substantively different terms

[115] Stephen Van Evera, *Guide to Methods for Students of Political Science*, (London: Cornell University Press, 1997), 50-51.
[116] Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, (MIT Press: London, 2005), 19.

– across different contexts'.[117] So, a detailed consideration of contextual factors (through the use of legislative histories, analysis of media reports and the parliamentary debates) will be required in the thesis, which is difficult to do in statistical analysis. Moreover, as the cases involved are complex, it is expected that explanations of the fate of voluntary euthanasia bills will involve 'equifinality'. That is they will involve several explanatory paths, combinations or sequences leading to the same outcome (the success or failure of legislation), and these paths may or may not have one or more variables in common.[118] It is expected that a case study approach will offer a useful way to overcome any related difficulties.

The second advantage of case studies, as George and Bennett write, is that they:

> …have powerful advantages in the heuristic identification of new variables and hypotheses through the study of deviant or outlier cases and in the course of field work – such as archival research and interviews with participants, area experts, and historians.[119]

This is beneficial in the context of the present study, as little previous work has been done on the politics of voluntary euthanasia in the Australian states, thus it will be important to develop and test new hypotheses during interviews with participants, such as bill sponsors and experts, particularly of their knowledge of parliamentary process.

The third advantage of case studies is that they: 'examine the operation of causal mechanisms in individual cases in detail'.[120] So, within each case study it will be possible to look at a large number of intervening variables, such as the present status of the law on assisted dying or the type of interest group activity, then: 'inductively observe any unexpected aspects of the operation of a particular causal mechanism or help identify what conditions in a case activate the causal mechanism'.[121] The benefit of this approach over statistical studies is that they often omit all contextual factors, except those codified in the variables selected for measurement. This would be inappropriate for studying the complexity of the parliamentary processes and individual

[117] Ibid.
[118] Ibid, 20.
[119] Ibid.
[120] Ibid, 21.
[121] Ibid.

behaviour of legislators involved in the legislative process during euthanasia law reform.

The fourth advantage of case studies identified by George and Bennett is 'their ability to accommodate complex causal relations such as 'equifinality', complex interactions effects, and path dependency'.[122] Consequently, it will be possible through this approach to document complex interactions between the different parts and stages in the legislative process and process-trace the political processes involved in legislating on voluntary euthanasia. The advantage over statistical methods here is that those methods can model several kinds of interactions, but only at the cost of requiring a large sample size, which is not possible with the small number of states and territories involved in Australian politics. As George and Bennett write, these models of non-linear interactions can quickly become complex and difficult to interpret. Thus, a clear advantage of the case study approach for the present study, is that it will capture the rich detail and enable historical description of cases that would not be observable with other methods.

Although case studies have been chosen as the preferred method in this study, it is important to recognise the method's limitations. The following limitations of the approach must be considered when evaluating the findings of the thesis, although it is maintained that the case study approach is the most appropriate for the research questions addressed in the thesis. George and Bennett identify the limits of case studies and cite two limitations of the approach, which must now be discussed here: selection bias and a lack of representativeness of any cases. These limitations will now be discussed in relation to the aims of the thesis.

The first problem with case studies that concerns statistical researchers George and Bennett, is that case study methods are particularly prone to versions of 'selection bias'.[123] Gerorge and Bennett write: 'Selection bias, in statistical terminology, "is commonly understood as occurring when some form of the selection process in either the design of the study or the real-world phenomena under investigation results in inferences that result from systematic error"'.[124] The safeguards that have been employed in the present study against selection bias include selecting cases with a range

[122] Ibid, 22.
[123] Ibid.
[124] Ibid, 23.

of outcomes. This means that successful and unsuccessful voluntary euthanasia bills have been selected and situated in comparison with one another. Then competing congruence testing and process-tracing have been carried out.

A second critique of the case study method that might be presented against the thesis is a 'lack of representativeness' of the cases.[125] However, as mentioned above, the aim here is not to select cases that are directly 'representative' of diverse populations and so claims will not be made that the findings of the thesis are applicable to other populations, except in contingent ways. The present study is mindful of exploring the explanatory richness involved in explanations of why bills on voluntary euthanasia succeeded or failed, within the cases, rather than across many cases.

ii) Case Selection

The previous section discussed the advantages and limitations of using case studies. The next section discusses issues related to the design of the case studies, specifically the selection of cases.

The design chosen for the present study is the multiple case study approach.[126] The advantages of the method are that: 'evidence from multiple cases is often considered more compelling, and the overall study is therefore regarded as being more robust'.[127] The design will follow a replication logic, whereby each case is selected so that it 'predicts similar results' (a *literal replication*).[128] For this reason four of the smallest Australian parliaments were selected as cases and research sites: the Northern Territory and the ACT legislative assemblies, and the South Australian and Tasmanian parliaments. In addition, each individual case is embedded.[129] So the context of each case is the state or territory in which it occurs. The cases are the state and territorial parliaments and the units of analysis, 'embedded' within in the cases, are voluntary euthanasia bills in each parliament. Whilst the Northern Territory case provides an example of a successful bill and the ACT case offers an example of a bill that had strong potential for success, the latter two cases provide examples of unsuccessful bills in contexts where there is currently significant activity on the issue. As mentioned above, the comparative element of the study was justified, given that placing the

[125] Ibid, 30.
[126] Robert K. Yin, *Case Study Research: Design and Methods Vol. 6* (London: Sage, 2013), Ch. 2.
[127] Ibid, 53.
[128] Ibid, 54.
[129] Ibid, 59.

Northern Territory case in a comparative context revealed the relative importance of the factors that led to the successful passage of the *Rights of the Terminally Ill Bill*. As such, this approach allowed an investigation of general patterns, but also an in-depth contextual understanding of each case.

The replication logic of the research design fits the research questions posed in the study (why did the Northern Territory voluntary euthanasia legislation pass successfully into law, whilst all other bills since have failed?) and will allow investigation into the fate of the voluntary euthanasia bills. To illuminate why the Northern Territory Bill was successful, cases that predict similar results have been carefully selected as research sites, however these are subject to some caveats that must be acknowledged here. All three parliaments were selected on the basis that they shared characteristics with the original Northern Territory case, including: that they were small parliaments; had a reasonable amount of interest group activity on the issue on both sides of the issue; had willing bill sponsors and strong leadership on the issue; the state or territory had a similar religious composition. In terms of structure, the ACT Legislative Assembly shares the most with the Northern Territory Legislative Assembly, being a small unicameral parliament. The South Australian and Tasmanian parliaments are also small parliaments, but both have second chambers of review. In addition, the campaigns in each of these parliaments have become protracted, but this may reveal important features about the fate of bills in the states, in contrast to the territories. So, here, a temporal dimension will become important when making generalisations from the cases. It is now eighteen years since the Northern Territory Bill passed into law and this must be recognised in the analysis of the cases.

Research Methods

To construct the case studies, a mixed method approach was adopted, utilising primary and secondary data sources, including: the construction of legislative histories; an analysis of the patterns of free voting on the bills in each of the parliaments; an analysis of the parliamentary debates on the bills; and interviews with 'key players' in the voluntary euthanasia debate. Each of the methods was selected to allow a range of different inferences to be made about the fate of voluntary euthanasia bills. As such, it was important that each of the methods used to construct the case studies interacted with one another, but also overcame the limitations of the other. Each of the methods

used to construct the case studies and their advantages and limitations will now be discussed below.

i) Constructing the Legislative Histories: Analysis of Parliamentary Material and Media Reports

The first stage in the data collection involved the construction of legislative histories of voluntary euthanasia bills in each of the parliaments. First, secondary data was utilised to construct skeleton legislative histories of the issue in each parliament. One important data source was the website of each parliament, especially those offering 'legislation tracking' services such as the South Australia Legislative Tracker. These websites contain vital information on both the bill sponsors and the movement of bills through the legislative process. To add detail to the skeleton legislative histories, media reports containing information about the passage of the bills were analysed. An important data source here was the media search engine *Factiva*, which allowed access to media reports on voluntary euthanasia published in local and national newspapers over the past two decades. To supplement the *Factiva* search, an additional important source of information was a collection of newspaper articles from the *Northern Territory News* at the time of the passage of the Northern Territory Bill, compiled by euthanasia campaigner Lynda Cracknell and a collection of articles compiled by Judy Dent, which covered the death of her husband Bob. These articles were kindly made available to me whilst I was conducting interviews with these two participants during May 2012.

Other important sources that were analysed in constructing the legislative histories were newspaper editorials and opinion columns (sourced through the *Factiva* search), interest group materials and material from professional organisations such as speeches and press releases. The amount of information gathered at this stage of the data collection was vast, so an initial sift was conducted to include material that was directly related to bills being analysed. It was important to include this information in the legislative histories as they could potentially influence both public opinion and legislators. This information was subsequently triangulated with the results of the analysis of the parliamentary debates to give an insight into the type of material that held most salience amongst politicians when making their speeches.

Constructing the legislative histories was important to identify the status of the law on the issue and the previous attempts at legislating on the issue, as well as other end of life

issues, in each of the parliaments. The aim of the legislative histories was to place the present attempts to legalise in the context of the rich history the issue has in several of the parliaments. Although not explaining the fate of bills on their own, the legislative histories provided the important legislative background to the 'politics' of the issue that would come from the analysis of the debates and the conscience votes on the issue.

ii) Analysis of the Conscience Votes on the Bills

To supplement the information in the legislative histories, an analysis of the conscience votes was conducted for each of the bills on which there was a vote in each of the parliaments. The analysis of the conscience votes was conducted to indicate the level of support for the bills in each of the parliaments amongst MPs for voluntary euthanasia. The analysis of the conscience votes was especially fruitful and important in this study because voluntary euthanasia is a 'free', or 'conscience', vote issue and in all but two cases MPs were not compelled to follow a party line on the issue by the whips, so they could choose to vote on the issue how they wished. As we saw, several studies have expressed the importance of the study of free votes more generally for political scientists, as they offer an insight into the behaviour of MPs, but here the aim was to indicate the level of opposition and support for voluntary euthanasia bills to gain an insight into why bills succeeded (in the case of the Northern Territory) or failed (in the cases of the states).[130] Indeed, identifying a significant difference between voting patterns amongst MLAs in the Northern Territory and MPs in the states could reveal important factors, such as the level of intra-party cohesion or the institutional environment, that were important in the explanation of the fate of the bills.

For each bill, a data-set was created including the outcome of the votes and the MPs' background characteristics. Division lists for the votes were easy to access online, as they are recorded in *Hansard*, the written report of the parliamentary debates. To measure the level of cohesiveness of political parties on each of these issues, a party unity (IPU) score was calculated for each political party using the Rice Index.[131] The IPU scores are calculated by subtracting the minority percentage of votes from the majority percentage of votes and then dividing this figure by 100. A score of 1.0 indicates a totally united party, while a score of 0 indicates that the party is split down the middle.

[130] Richards, *Parliament and Conscience*.
[131] Stuart Arthur Rice. *Quantitative Methods in Politics*. (Knopf: London,1928).

Where the IPU score indicated a split in the political parties, further analysis of the voting was required. This was less important in some cases, for example the Tasmanian vote in the Liberal Party largely followed party lines. Information about MPs' background characteristics was taken from their personal websites, including on gender, constituency location and religion. Information on gender, party and constituency location was straightforward to obtain, however information on the religion of the MPs was more difficult to access from any one source. This was overcome by analysing the speeches of the MPs in the debate and media reports looking for references to religion, a useful tool given that MPs often referred to their religion in the debates.

Previous studies of the faith of Australian politicians have noted the difficulties of finding accurate information on the faith of politicians, as this information is not often available in the public domain.[132] Overcoming these difficulties, Warhurst's study of the faith of prime ministers enables a simple five-part categorization of them according to their faith. The five categories Warhurst utilises are: observant Christians (regular church-goers); conventional Christians (occasional church-goers); nominal Christians (attendance only on formal occasions); articulate agnostics, who speak publicly about their disbelief; and nominal agnostics, who may be judged by their actions.

These points were relevant to the Northern Territory case study, where voting on the Rights of the Terminally Ill Bill were categorised by religion. Noting the issues raised by Warhurst, the classification of MLAs was kept deliberately broad. Three categories were utilised based on whether MLAs spoke about their faith in the debate on the bill: Christians (equivalent to Warhurst's regular-church goers); none and not practicing; and unknown (who did not speak about their faith in the parliamentary debate on the issue). During the quantitative analysis of the votes in the other states and territories, categorisation of politicians by their faith was not necessary, as party membership generally predicted the pattern of the voting.

Second, MPs' ideological positions were developed on the basis of whether they voted for or against a bill. So for example, a vote for the *Rights of the Terminally Ill Bill* was a liberal vote and a vote against the Bill represented the conservative position.

[132] John Warhurst. "The Faith of Australian Prime Ministers, 1901-2010," paper presented to the Australian Political Studies Association Conference, Melbourne, 27-29 September 2010.

iii) Analysis of the Parliamentary Debates on the Bills

Although the analysis of the conscience votes indicated the level of support for the bills, it does not indicate the reasons *why* MPs supported, or opposed, the practice. Consequently, analyses of the parliamentary debates on the bills were conducted to reveal the broad arguments legislators used to support, or oppose, the bills. Indeed, White and Willmott stressed the importance of such this kind of analysis, in order to reveal why there is a disconnection between public opinion and MPs' opinions on the issue:

> Given the critical role that politicians play in this debate and the apparent disconnect between public opinion and politicians' opinions, it may be instructive to analyse the public record (for example, *Hansard* and the reports of review committees) to distil the arguments that politicians identify as important when supporting or opposing reform. Such an analysis may be helpful in better understanding the VE and AS debate, particularly if politicians are granted a conscience vote as is often the case for topics such as these.[133]

The transcripts of the debates to be analysed were available online in *Hansard*. The speeches of contributors were categorised as either for or against euthanasia and then again thematically, to reveal the specific arguments used for and against the bills. In addition, the arguments were categorised by the political party of the member making the argument. The analysis sought to identify patterns, for example, if MPs from the different political parties were making similar arguments. An overview of the arguments used by MPs is presented in a series of tables in each chapter, before each of the arguments is discussed in detail. The tables are significant because they provide the reader with an overview of the types of arguments used by MPs, prior to the in depth analytical summaries which follow in the text.

The thematic categorisation also facilitated the comparison between the types of arguments used across the different parliaments in chapter seven. This allowed me to establish whether certain broader factors had a varying influence on the opinions of legislators over time. This analysis was then triangulated with other components of

[133] Benjamine J. White and Lindy Willmott, "How should Australia Regulate Voluntary Euthanasia and Assisted Suicide?," *Journal of Law and Medicine* 20 (2012): 416.

political discourse analysed while constructing the legislative histories, including newspaper editorialising, opinion columns, interest groups' campaign materials and in particular the positions of professional organisations, to give crucial insights into why bills passed or failed from those who actually voted for the bills.

iv) Interviews with 'Key Players'

To deepen the explanation of the fate of the bills provided by the analysis of the votes and debates, interviews were conducted with four groups of participants: the bill sponsors; academics and experts; representatives of interest groups; and representatives of professional groups. The interviews were conducted during the final stages of the data collection process and made it possible to ask the key individuals involved about the potential arguments that would be made in the thesis and about any issues that were unresolved in the analysis of the conscience votes, legislative and parliamentary material and debates. Ethical clearance for the interviews was granted from the ANU Human Ethics Committee during November 2010. Participants were first contacted during January 2012 and the interviews were conducted during April and May 2012 at six sites: Darwin; Adelaide; Canberra; Hobart; and two sites in Queensland. In total 20 interviews were conducted. Although the majority of the interviews were face-to-face, some were conducted over the telephone if a meeting was not possible.

The interviews were semi-structured and a different set of questions was asked of each category of participants. For example, bill sponsors were asked about their experience of the Private Members' Bills process, their involvement with interest groups and what they thought were the main factors affecting the fate of their bill. The representatives of interest groups were asked different questions, relating to strategies and tactics their group used when campaigning on the issue. The experts and academics interviewed were asked more specific questions about technical aspects of the study, for example a representative from the South Australian Parliamentary Counsel provided information on the Private Members' Bills process and the availability of drafting services to backbench MPs. Finally, representatives of professional groups, such as the Australian Medical Association, were asked for information about their organisations official position on the issue and on law reform. The interview material has been referred to throughout the study and deepens the explanation offered by the analysis of the votes and the debates.

During the final writing-up stage in January 2013, copies of chapters where direct quotations from interviewees had been used were sent out. Interviewees were given the opportunity to comment on the arguments being made in the thesis and the accuracy of the statements being used. In addition, follow-up interviews were conducted with several of the participants at this stage to gain an up-to-date insight into the present status of bills and the future of the issue.

Conclusion

The practice of voluntary euthanasia invites us to think about the most significant questions relating to the end of life. Proposals to reform the law on the practice have been put before parliaments around the world, but how do politicians, when faced with such dilemmas, make a decision whether or not to legalise a practice that could potentially have such a significant impact on our lives? To date there have been few studies of voluntary euthanasia in Australian political science at the state and territorial level and this thesis remedies this omission. One specific way in which the present approach will advance the study of euthanasia politics is by taking a comparative case study approach, to reveal the relative importance of factors that have affected the passage of voluntary euthanasia legislation in the states and territories. The next four chapters of the thesis will present the case studies of voluntary euthanasia legislation in the Australian parliaments and examine the prospects for reform in the future in those jurisdictions. Chapter three will consider the key factors that enabled the successful passage of the world's first voluntary euthanasia legislation, the *Rights of the Terminally Ill Act* in the Northern Territory Legislative Assembly.

Chapter 3: Euthanasia Law Reform in the Northern Territory

During the early 1990s, the Northern Territory of Australia came to the forefront of national and international debates on assisted dying; this status was confirmed with the passage of the landmark *Rights of the Terminally Ill Act* (ROTTI). In an address to the *International Conference of the World Right to Die Societies* in Melbourne during October 1996, Marshall Perron, the sponsor of the *ROTTI Bill* reflected on the successful outcome of the conscience vote:

> I said after the successful vote, "it's good to know democracy is alive and the conscience vote still means something". How those words came to me at that hour I'll never know, but in hindsight they fitted the occasion perfectly. Every single member voted as they believed they should. No vote was cast to support or oppose another member in the Parliament. It was true democracy at work, as it should be on this issue.[134]

The passage of the *ROTTI Act* was a surprise to all involved, not only because it was a Private Members' Bill and such bills have a limited chance of success, especially if the aim to address controversial subject matter, but also because the Bill posed a significant challenge to the values of some significant groups within society. Although these factors represented strong barriers to success, the *ROTTI Bill* passed into law on the 25th May 1995, with the support of fifteen of the twenty five Members of the Territory's Legislative Assembly. Through an analysis of the conscience votes and the debate on the *ROTTI Bill* in the Northern Territory Legislative Assembly, the aim of chapter three is to describe and explain the passage of the controversial Bill.

The chapter is divided into five main sections. The first section revisits the work of Nitschke and Stewart, outlining the four factors which they argue allowed the success of the *ROTTI Bill* and will outline how the chapter will develop their work. Next, to understand the intent of the *ROTTI Bill*, section two outlines the status of the law on end of life choices prior to the passage of the *ROTTI Bill* and subsequently, section three

[134] "An address by Marshall Perron, former Chief Minister of the Northern Territory at the 11th International Conference of the World Right to Die Societies, Melbourne, 17 October 1996," Dying with Dignity Victoria, accessed February 14, 2013, http://www.dwdv.org.au/Docs/perron96.htm.

presents a legislative history of the issue in the Northern Territory Legislative Assembly, to highlight the context in which the Bill passed. The fourth and main section will deepen Nitschke and Stewart's explanation of the passage of the *ROTTI Bill*, presenting the findings of an analysis of two crucial stages in the life of the *ROTTI Bill*: the Second Reading vote; and the debate which preceded it in the Legislative Assembly.

The Factors Contributing to Success: Nitschke and Stewart's Analysis

In his co-authored book entitled *Killing me Softly*, euthanasia activist Philip Nitschke reflects on the passage of the *ROTTI Act*, noting that: '…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'.[135] As such, Nitschke and Stewart cite four reasons why the Northern Territory Bill was successful.

The first factor Nitschke and Stewart cite as being responsible for the passage of the ROTTI Act is the presence of a key actor, Chief Minister Marshall Perron, who was willing to take on the issue. The authors describe Perron as: '…a charismatic politician who was prepared to stand by his beliefs ...something of a legend in the Territory'. In addition, they contend that: '…his long involvement with Darwin gave him a unique insight into the local psyche, something that he was able to put to good use as he carved out his successful political career'. They also argue:

> He doesn't mince words and can be a powerful force in any debate. He has that admirable talent of taking the people with him. A politician from the conservative side of politics, his leadership on VE reinforces the fact that the issue of one's right to die with dignity transcends political divisions and ideological differences.[136]

The second factor they suggest allowed the success of the *ROTTI Bill* was the institutional make-up of Northern Territory Parliament, which is a unicameral legislative assembly. Nitschke and Stewart argue that:

[135] Nitschke and Stewart, *Killing me Softly*, 32.
[136] Ibid., 32-33.

> This makes the passage of legislation more efficient. The government of the day is all the more powerful when the checks and balances of the house of review of the traditional Westminster system are absent.[137]

The third factor relates to the social make-up of the Northern Territory, given it is the least religious state in Australia. Nitschke and Stewart emphasise that:

> According to Social Trends 1994, 18 per cent of the Territory's population consider themselves to have no religion. This compares to 10 per cent in New South Wales and a national average of 12 per cent. Territorians are also the most likely to leave the religion question on the census unanswered.[138]

The final factor that Nitschke and Stewart cite is the mind-set of people in the Northern Territory. They write:

> In this part of the world, car registration plates contain words like 'Frontier', 'Barra Country', and 'Outback' - words that conjure up Territory fact and myth. And this is the point. Territorians can be rough rugged and cynical as hell about the gentrified south. In some ways, the Territory welcomed a VE law precisely because no one else had one. No other state or territory was tough enough to find a legislative way to deal with this political hot potato.[139]

These four key points are certainly crucial for understanding the passage of the *ROTTI Act*. However, to deepen this understanding, the analysis here will focus specifically on the first, and particularly the second, factors that Nitschke and Stewart state as being vital to the passage of the Bill: the role of Marshall Perron; and the institutional makeup of the Northern Territory Legislative Assembly. In addition, however, it is argued that another key factor, the willingness of MLAs to act as 'independents' during conscience votes and consider public opinion whilst making their decision, rather than being party representatives, was key to the passage of the Bill. After outlining the status of the law on end of life choices in the Northern Territory and providing a brief history of the Bill, which are necessary to understand the context in which the Bill passed, the remaining part of the chapter will provide an analysis of two key events in the life of the Bill, the

[137] Ibid., 33.
[138] Ibid.
[139] Ibid., 33-34.

Second Reading vote, the preceding debate and one additional important data source: material from an interview with Marshall Perron.

End of Life Choices and the Law in the Northern Territory

Prior to the passage of the *ROTTI Act*, individuals did have some rights in the area of end of life choices; these were prescribed by the *Natural Death Act 1988 (NT)* and the *Natural Death Regulations Act 1989*. The Natural Death Act allows individuals to make advance directives, to give instructions regarding their treatment, specifying the actions that they would like to be taken if they were no longer able to do so due to incapacity. This allows them to specify that 'extraordinary measures' should not be taken to maintain their life due to terminal illness.

Significant debate has taken place over whether or not this law went far enough to protect doctors who administer pain-relieving drugs to a dying patient. Cica argues that that the *Natural Death Act 1988 (NT)* is unhelpful as:

> It provides that its operation 'does not affect the legal consequences (if any) of taking ... therapeutic measures (not being extraordinary measures) in the case of a patient who is suffering from a terminal illness, whether or not the patient has made a direction under this Act'. Therapeutic measures are not defined in this context, but presumably would include the administration of pain relieving measures. The legislation does not specify what the unaffected legal rules governing the administration of such measures might be. Nor does it refer to any possible rationale for those rules. [140]

As a result, the *ROTTI Bill* sought to clarify the law in the area of end of life choices and to end the ambiguity that patients and doctors faced in making decisions on the treatment of terminal illness.

A Legislative History of the Issue

On 1 February 1995, Chief Minister Marshall Perron announced to the media his intention to introduce a bill on euthanasia and assisted suicide. Perron introduced the *Rights of the Terminally Ill Bill* into the Northern Territory Legislative Assembly later

[140] Cica, *Euthanasia*.

that month, on 22 February 1995. In his introductory speech, Perron outlined his rationale for introducing the Bill:

> This is not a political issue; it is a human rights issue. I began preparing this bill after searching thought about the rights of those who face a distressing, undignified and possibly painful death and the dilemma confronting them and their medical advisers on the question of whether or not to actively terminate life. Through the laws in place today, society has made an assessment for all of us that our quality of life, no matter how wretched, miserable or painful, is never so bad that any of us will be allowed to put an end to it. I am not prepared to allow society to make that decision for me or for those I love.[141]

The *Rights of the Terminally Ill Bill* aimed to allow physician-assisted suicide and clarify the law in relation to end of life choices and palliative care in the Northern Territory. The legislation sought to set out a statutory regime under which physician-assisted suicide and active voluntary euthanasia could be performed without violating the criminal (or any other) law. It also sought to allow a doctor to comply with a request by a terminally ill, competent, adult patient for assistance in ending the patient's life, if specified conditions were satisfied.[142] The *Rights of the Terminally Ill Act* would be the first piece of legislation of its kind in the world.

In light of the introduction of the Bill, the Legislative Assembly called for a committee to be formed, allowing three months for an investigation of the issue. The Select Committee on Euthanasia was established on 22 February 1995, with five members: three Country Liberal Party MLAs, Eric Poole, Lorraine Braham and Richard Lim; and two Australian Labor Party MLAs, Syd Stirling and Maurice Rioli. The aim of the Committee was to gather and analyse the views of the community on euthanasia, so that a more informed debate could take place on the *ROTTI Bill*. The running theme of the Committee's report, based upon evidence given at the hearings, concerned arguments about 'the right of the individual versus the common good', which formed the title of the Committee report. The Committee was not asked to take a position on the issue, rather to survey the range of views that existed in the Northern Territory community.

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[141] "Extract from the Northern Territory Parliamentary Record, 22 February 1995," Northern Territory Legislative Assembly, accessed February 14, 2013, http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/serial67 speech.pdf.
[142] Cica, *Euthanasia*.

How did the broader community receive the *Rights of the Terminally Ill Bill*? Reflecting on the Committee inquiry Marshall Perron stated that:

> I concluded, after the committee reported, that there are not a lot of "swingers" in this debate. I do not believe any member of the committee changed their mind on the issue, despite reading hundreds of submissions and questioning dozens of witnesses for and against voluntary euthanasia. I also believe that almost all those who oppose the decriminalisation of voluntary euthanasia are religiously motivated. While people will give you all the hypothetical slippery slope reasons for their opposition, the facts are they will never agree to voluntary euthanasia even if you suggest an absurd level of safeguards.[143]

In total, 104 people appeared before the Committee, with 15 groups represented. Groups who made submissions opposing the Bill included the Northern Territory Branch of the Australian Medical Association, Palliative Care Nursing Darwin, Doctors Concerned about Euthanasia, the Australian Federation of Right to Life Associations and Right to Life Australia. Groups who made submissions supporting the Bill included the AIDS Council of Central Australia. In total, 1126 written submissions were received, of these only 255 (23 per cent) of submissions were received from residents of the Northern Territory.[144] Of the Territory submissions, opinion was completely divided on the issue, with 122 in favour of voluntary euthanasia law reform and 123 against; ten submissions didn't state a position on the issue. Overall, 814 (72 per cent) of submissions were in favour of the Bill and 300 submissions (27 per cent) were against. Outside of the Northern Territory, most submissions were received from NSW (96 per cent in favour), Victoria (92 per cent opposed) and Western Australia (94 per cent supporting the Bill).[145]

[143] "An address by Marshall Perron, former Chief Minister of the Northern Territory at the 11th International Conference of the World Right to Die Societies, Melbourne, 17 October 1996," Dying with Dignity Victoria, accessed February 14, 2013, http://www.dwdv.org.au/Docs/perron96.htm.
[144] Thus many MLAs conducted their own research into public opinion on the bill in their electorates.
[145] Northern Territory Legislative Assembly, *'The Right of the Individual or the Common Good?' The Report of the Inquiry by the Select Committee on Euthanasia* (Darwin, 1995): 34-37.

The Committee took a little less than three months to conduct the inquiry and tabled its report on the 16 May 1996.[146] During the Second Reading debate on the Bill, several MLAs stated that they were unhappy with the way the Committee conducted the inquiry. However, in that debate, the sponsor of the Bill responded to these arguments, emphasising that:

> Every one of these amendments has stemmed from the community consultation process and most of them from the select committee's own report after 3 months of moving around the Territory and spending about $120 000 on gathering community opinion. Each of these 50 or so amendments will strengthen the safeguards in the legislation. The only purpose to be served by putting them to the community in a new composite bill will be to increase community support for the legislation (Marshal Perron, CLP, Fannie Bay).

A week after the report was tabled, the Bill was debated and voted upon in the Legislative Assembly. The Bill passed its Third Reading 15 votes to 10 in the early hours of the 25th May 1995, received assent on the 16th June 1995 and came into operation one year later on 1st June 1996.

Explaining the Fate of the Rights of the Terminally Ill Bill 1995

Two key events in the passage of the *Rights of the Terminally Ill Bill* were the Second Reading debate and the votes in the Legislative Assembly. To successfully pass into law, it was crucial that the Bill passed votes in the Parliament; opposition here would certainly have meant the failure of the Bill and the opportunity to legalise would have been lost. The remaining sections of the chapter will deal with two questions which are important in the explanation of the fate of the *ROTTI Bill*, but not discussed by Nitschke and Stewart: how did the legislators vote on the *ROTTI Bill*; what were the key arguments they used in favour or against the passage of the Bill into law?

The Conscience Votes and Second Reading Debate

In deciding the outcome of the *ROTTI Bill*, the small number of legislators in the Northern Territory Legislative Assembly (twenty-five) meant that every vote for or against the legislation was crucial. As is customary when considering moral issues,

[146] NT Legislative Assembly, *The Right of the Individual or the Common Good?'.*

each party allowed a conscience vote on the Bill. Table 3.1 shows party voting on the conscience votes during the Second and Third Reading votes.

Table 3.1. Voting on the Northern Territory *Rights of the Terminally Ill Bill* by Party

	Second Reading Vote			Third Reading Vote		
	For	Against	Total	For	Against	Total
CLP	8	9	17	10*	7	17
ALP	4	3	7	4	3	7
IND	1		1	1		1
Totals	13	12	25	15	10	25

Notes:

* Two Country Liberal MLAs changed their vote between the Second and Third Reading, to support the Bill.

The Table shows that the Bill passed its Second Reading stage narrowly, by only one vote, and its Third Reading more comfortably, by fifteen votes to ten, when two Country Liberal MLAs changed their votes to support the Bill. All MLAs voted on the legislation at both the Second and Third Reading stage. However, the most unusual feature of the voting was the lack of cohesiveness of the parties. Previous studies of conscience voting in other countries have shown that party remains the best predictor of voting.[147] To better demonstrate this, Table 3.2 shows index of cohesion figures for the parties and reports that with index of cohesion scores close to zero, both parties were divided.[148]

Table 3.2. Party Voting on the *Rights of the Terminally Ill Bill* by Ideological Position and Index of Cohesion

	Second Reading Vote			Third Reading Vote		
Party	Liberal	Conservative	Index	Liberal	Conservative	Index
Country Liberal	47%	53%	.06	59%	41%	.18
Australian Labor	57%	43%	.14	57%	43%	.14
Independent	100%	-	1	100%	-	1
Overall	52%	48%		60%	40%	

[147] 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); Marsh and Read, *Private Members' Bills*; Overby et al., "Party and Free Votes in Canada Abortion in the House of Commons".

[148] To measure the level of cohesiveness of political parties on each of these issues, Index of Party Unity (IPU) scores were calculated for each political party using the Rice Index. This is calculated by subtracting the minority percentage from the majority percentage then dividing this figure by 100. A score of 1.0 indicates a untied party, while a score of 0 indicates that the given party is split down the middle.

This means that legislators from the same party were almost as likely to vote with legislators from the opposite party, as they were to vote with those from their own party. Australian Labor MLAs were slightly more liberal during the votes, while CLP Members were slightly more conservative during the Second Reading vote, but liberal during the Third Reading, due to the two changers.[149]

What other factors, then, predicted the voting? The following sets of tables show constituency location, Indigenous population and religion as predictors of voting patterns. Table 3.3 shows that that constituency location predicted only a small amount of the voting.

Table 3.3. Party Voting on the *Rights of the Terminally Ill Bill* by Constituency Location

	Second Reading			Third Reading		
	For	Against	Total	For	Against	Total
CLP	**8**	**9**	**17**	10	7	17
Urban	8	7	15	10	5	15
Rural		2*	2	-	2	2
ALP	**4**	**3**	**7**	4	3	7
Urban	1		1	1	-	1
Rural	3	3	6	3	3	6
Independent	**1**	**-**	**1**	**1**	**-**	**1**
Rural	1	-	1	1	-	1

Notes:

* Goyder (CLP) classified as mixed by the NT Electoral Commission but included in rural here as it encompasses large a large land mass of rural areas.

The MLAs representing urban constituencies were marginally more likely to support the Bill than those representing rural constituencies. More specifically, CLP MLAs representing urban seats were more likely to support the Bill. Both CLP MLAs representing rural constituencies opposed the Bill. All ALP MLAs representing an urban seat supported the Bill. The three ALP MLAs who represented rural constituencies opposed the Bill, on the basis of concerns that the Indigenous communities living in their electorate had with the Bill. However, three rural ALP MLAs, who had sizable Indigenous communities in their electorate, still maintained their right to a conscience vote, supporting the Bill. There were only three women

[149] However, it is unlikely that two CLP MLAs changed their view on the practice in this short time. Lynda Cracknell, who led the pro-euthanasia campaign, was informed that the two members remained bitterly opposed to voluntary euthanasia, but choose to 'join the winning team' when the outcome became clearer.

MLAs in the Assembly, but all supported the Bill, meaning that the gender of an MP was a slightly above average predictor of voting patterns. Table 3.4 shows that Christian MLAs were more likely to oppose the Bill; six out of nine Christian MLAs opposed the Bill.[150] However, this became more marginal in the Third Reading vote (five out of nine).

Table 3.4. Voting on *the Rights of the Terminally Ill Bill* by Religion

	For	Against	Total
Christian	3	6*	9
None/Not practicing	2		2
Unknown	8	6*	14

Notes:

* One vote change in favour of the Bill in 3R vote – i.e. 3R vote: 4 Christians in favour and 5 against.

Table 3.5 shows that MPs representing an Indiginous community were more likely to vote against the Bill.

Table 3.5. Voting on *the Rights of the Terminally Ill Bill*: MPs representing Constituencies with Above Average % Indigenous/Islander Population

Member	**Party**	**Constituency**	**Indigenous/ Islander Pop. %**	**Voting**
Maurice Rioli	ALP	Arafrua (Rural)	90.2	Against
Wes Lanhupuy	ALP	Arnhem (Rural)	73.2	For
Brian Ede	ALP	Stuart (Rural)	56.9	For
Tim Baldwin	CLP	Victoria River (Rural)	47.2	Against
Maggie Hickey	ALP	Barkley (Rural)	39.8	For
Neil Bell	ALP	MacDonnell (Rural)	39.2	Against
Syd Stirling	ALP	Nhulunbuy (Rural)	36.6	Against

MLAs representing rural constituencies, which had an above average Indigenous population, were more likely to oppose the Bill. However, for others, this did not influence their position; they continued to vote in favour of the Bill, despite strong opposition from Indigenous community leaders.

The above analysis of voting on the *ROTTI Bill* clearly demonstrates the ways in which the issue cut *across* traditional differentiating variables. In particular, this initial analysis shows that party membership played a very marginal role in the voting.

[150] These categories were derived from MLAs self identifying as Christian and none/not practicing in the parliamentary debates on the Bill.

As such, to explain the voting more fully, it is useful to turn to an alternative source of data: an interview with the bill sponsor, Marshall Perron. When asked about the unusual patterns in the voting, Perron explained that, in this case, MLAs in the Northern Territory acted as 'independents' during the voting:

> …it was an example of true democracy in action. We had 25 independents, each one of them passionately using their time to convince their colleagues across the floor of the parliament of their point of view. I mean it really was a marvellous experience to witness, the members of the Labor Party and Ministers in my own Government, arguing both sides and really passionately. Because no one knew how the vote was going to come out. There was no counting the numbers behind the scenes, a couple of journalists tried it. A couple of us knew how we were going to vote, others held their power dry until pretty late, which is wise for politicians to do. So no one knew how the vote was going to come out in the end.[151]

Given Marshall Perron's claim that the MLAs acted more like 'independents', each with their own view on the matter, a deeper insight into legislators' positions on euthanasia than can be gained from the analysis of the conscience votes alone is required. Indeed, while the analysis of the votes gives some indication of the level of support and opposition to the Bill, it doesn't tell us *why* MLAs supported or opposed the Bill.

As such, the following section presents the findings of an analysis of the Second Reading debate on the Bill in the Northern Territory Legislative Assembly that took place on the 24th and 25th May 1995.[152] The excerpts below are all taken from the Parliamentary Record of the Seventh Assembly for those dates. First, it will present a review of the arguments used by the opponents of the Bill, before subsequently outlining the arguments used by the legislators who supported the Bill and then examining the extent to which MLAs' views on the issue coincided with one another.

Arguments Used by the Opponents of the Bill

[151] Interview with Marshal Perron, Buderim, Queensland 16.05.2012.
[152] Northern Territory Legislative Assembly, *Extracts from the Parliamentary Record of the Debates of the Legislative Assembly on the Rights of the Terminally Ill Bill on 24 and 25 May 1995 A.M.* (Northern Territory Parliament: Darwin, 1995).

Opponents of the Bill used ten main arguments and the frequency with which the arguments were used is illustrated in Table 3.6 below.

Table 3.6. Arguments Used by the Opponents of the *Rights of the Terminally Ill Bill*

Argument	**Frequency/Party**		
	CLP	**ALP**	**Total**
Practical concerns i.e. the way the Bill has been drafted	5	3	8
Resources should be focused on improving palliative care services	5	2	7
The sanctity of life	3	3	6
It is impossible to draft a bill with adequate safeguards	4	1	5
Indigenous concerns	3	2	5
A euthanasia law would put vulnerable people at risk	3	1	4
The 'slippery slope' argument	3	-	3
Public opinion is against legalising euthanasia	3	-	3
Medical ethics i.e. doctors would contravene the Hippocratic oath	3	-	3
International opposition	3	-	3

The weight of these arguments will now be considered in turn. The most common argument used by MLAs opposing the Bill fell under the broad category of 'practical concerns', relating to concerns about the legislative process and not voluntary euthanasia in principle. In total, eight of the twelve MLAs (five CLP and three ALP) who opposed the Bill raised concerns that fell into this category. Several CLP MLAs argued that the Bill had been badly drafted and rushed through parliament. Opponents of the Bill also raised concerns about the number of amendments that had been tabled, arguing that this would change the overall nature of the Bill, making it different to the original Bill as introduced. Opponents of the Bill were also concerned about the speed with which it was progressing through the legislative process, arguing that the Bill was being rushed through.

The second most widely used argument related to the palliative care provisions in the Northern Territory. Seven MLAs who opposed the Bill at Second Reading used this argument, insisting that euthanasia is not necessary if good palliative care is available, and consequently, that resources should be put into improving palliative care services in the Northern Territory first, before voluntary euthanasia was considered as an option. MLAs believed that it was their responsibility to ensure that the best palliative care is available to citizens, before 'rushing' to pass legislation on voluntary euthanasia. Compounding this argument was a belief that the Northern Territory should implement

a regime of 'best practice' palliative care to preserve the dignity of patients and improve pain relief available to patients.

The following statement from the debate illustrates this position:

> The pervasive inadequacy of pain relief and palliative care in current clinical practices, including a lack of professional knowledge and training, unjustified fears about physical and psychological dependence, poor pain assessment, pharmacological practices and the reluctance of patients and their families to seek pain relief, all contribute to a belief that euthanasia is the only way out. It is not. You do not solve the problem by killing the patient (Shane Stone, CLP, Port Darwin).

The third most widely used argument rejecting the Bill related to the sanctity of human life. Half of the twelve MLAs who opposed the Bill used this argument. Most argued that euthanasia involved an unnatural intervention in the process of death and argued that human life is valuable and should be protected. This argument was invoked in both a religious and non-religious context. Neil Bell (ALP, MacDonnell) addressed the question of how his religious beliefs had informed his argument and stated that the Christian position he adopted entailed acting out of a love for the terminally ill person. He did not believe that voluntary euthanasia was acting out of love and kindness for a patient, as some proponents claim. In line with sanctity of life arguments, he stated that the premature death of any person diminish him, because he is involved in humankind.

Several MLAs with known Christian, or other religious affiliations, stressed that they were not solely making their choice on the basis of their personal religious beliefs. For example, Peter Adamson (CLP, Casuarina) acknowledged his own religious beliefs, but argued that the Bill could also be opposed on practical grounds. For example, he asked fellow MLAs about their confidence in their ability to pass a safe law.

Other MLAs also asserted that that they were not acting on the basis of their religious beliefs, but rather considering the Bill in a rational way, putting aside emotion. In his speech Denis Burke (CLP, Brennan), who was known to be a practising Roman Catholic, did not mention his religious beliefs, but stated that in discussing the matter he was attempting: 'earnestly to address in a rational and dispassionate way the issues in

this bill'. Another MLA Mike Reed (CLP, Catherine) was displeased with the way he had been labelled a 'Catholic' in a derogatory way, because he had not declared his position in relation to the matter. He highlighted the way that, in his experience, anyone who said anything publicly has been misconstrued in one way or another, so he sought to keep his 'own counsel' until the day of the debate.

Continuing his speech, Reed refers to the other arguments against the Bill, including the 'slippery slope' argument, stating that euthanasia is intentional (private and self-determined) killing and 'rational killing' is illogical. In a shorter speech, Terry McCarthy (CLP, Goyder) declared his religious interest, opposing the Bill on moral grounds and defending his right to do so on a conscience issue. Once again, he argued that the proposal was based on the flawed principle that we have no right to voluntary euthanasia, because it lacks the principle of equal justice for all.

Shane Stone (CLP, Port Darwin) said that a number of factors, including personal circumstances involving the death of family members, in addition to his religious beliefs, had been influential in shaping his view on the issue. He stated that: 'Real life experience, such as the death of family members, has greatly influenced my thinking. When you hold your father in your arms as he dies, as I did, you have ample opportunity to reflect on death and dying'.

Taken together, the next group of concerns, about the safeguards of the Bill and the protection of vulnerable people, had significant weight in the Second Reading debate. Four of the opponents maintained that vulnerable people were at risk from the Bill. This group argued that vulnerable people, such as Indigenous Australians, the elderly and those of low socio-economic status are at risk of euthanasia when they are ill, as they would be easily persuaded, either by others or by their own depression, to seek to end their lives because they are a burden on their families. Proponents of this argument highlighted that, when a person is ill, they are vulnerable physically and emotionally, particularly when terminally ill. Several MLAs pointed out the potential for error and abuse and the profound effect the practice may have on society's values as the most compelling reasons against allowing assisted suicide and euthanasia.

Less frequently discussed than practical concerns, palliative care and the sanctity of life were arguments relating to the number of safeguards contained in the bill, which were

used by five of the Bill's opponents. This group argued that safeguards could be easily evaded, that people might act in bad faith; some took this argument further concluding that adequate safeguards on euthanasia are impossible. One MLA, Syd Stirling (ALP, Nhulunbuy) expressed his doubts about whether the practice could be safely and adequately legislated. He stated that, although not opposed to the principle of the bill at the outset, throughout the life of the Committee, as a result of his reading, viewing of videos and speaking to people from both sides of the debate, his doubts about the difficulties of legislating on the practice had: 'hardened to outright opposition to the bill'.

Shane Stone (CLP, Port Darwin) raised issues relating to the theory and practice of safeguards. He argued that no matter how carefully guidelines are framed, assisted suicide and euthanasia will be practised: 'through a prism of social inequality and bias that characterises the delivery of services in all segments of our community, including health care'. In particular, he felt that some groups would be more at risk of malpractice than others; this same point led others to ask their colleagues about their ability to pass a safe law.

An equal number of legislators to those who opposed the bill on the grounds of inadequate safeguards raised concerns about the vulnerability of Indigenous people. This group of MLAs emphasised how euthanasia conflicts with traditional values in Indigenous communities, and that there was considerable fear about the practice in those communities. MLAs who represented Indigenous communities said there was overwhelming opposition to the practice in those communities and that this should be taken seriously, given this group account for 26 per cent of the Northern Territory population. Syd Stirling (ALP, Nhulunbuy) said that he had visited and spoke about the Bill with Indigenous people at Elcho Island, Yirrkala and Gunyangara in his electorate and, as a member of the Committee on voluntary euthanasia, he had also visited Hermannsburg, Yirrkala, Milingimbi and Nguiu and was faced by unanimous opposition to the bill. Maurice Rioli (ALP, Arafura) also stated that he received 'nothing but indications of overwhelming opposition' to this bill from constituents in his electorate of Arafura, which contains eight major Indigenous communities and several outstations.

A smaller number (three) of MLAs cited the 'slippery slope' argument, raising concerns about the possibility that legislation would be broadened over time. Fear was also raised that any initial liberalising of the law might lead to a shift from voluntary to involuntary euthanasia and that the Dutch example provided evidence of broadening of law over time. The following statement demonstrates that position:

> That brings me to the 'slippery slope' argument. The member for Fannie Bay failed to demonstrate that there are adequate safeguards in the bill - hence the amendments. He stated only that we `should consider the narrow focus of the bill'. Since the onset of this debate in the public arena, there has been a multitude of recommendations from the report and everywhere else that changes need to be made to provide better safeguards (Richard Lim, CLP Greatorex).

Three MLAs also used the argument that public opinion was becoming more opposed to the practice, particularly in the Netherlands, where euthanasia has been legal for some time. Generally, supporters of the Bill used evidence from public opinion polls to support their arguments, however two CLP MLAs cited polls as evidence that support for euthanasia was declining. Stephen Hatton (CLP, Nightcliff) argued that, following the Remmelink study between 1993 and 1994, support for voluntary euthanasia declined in the Netherlands from 78 per cent to 71 per cent. In addition, Peter Adamson (CLP, Casuarina) argued that, although majority of people in the developed world favour the concept of voluntary euthanasia, when the specifics of legislation are debated support has eroded.

Three of the MLAs addressed the issue of medical ethics. Stephen Hatton (CLP, Nightcliff) emphasised that there had not been enough consideration of the issues surrounding medical ethics during the drafting of the Bill. He argued that it would have been advantageous to have advice from the Department of Law on the legal implications and from our medical and health professionals on the questions the bill raised in relation to medical ethics. He argued that, because the Bill was introduced by the Private Members' Bills process, information has not been available. So the 'normal' processes of developing legislation, of discussion within government and government departments, had not occurred.

Finally, three MLAs argued that there had been significant international opposition to euthanasia, including a report from the UK House of Lords, which advised against euthanasia legislation. Thus, this group of MLAs contended the Northern Territory should not introduce a law on the practice. The following statement demonstrates the position:

> We are called on to make a decision tonight that will change forever the social fabric of humanity. Greater bodies and legislatures have considered this matter, including the House of Lords Select Committee on Medical Ethics. For these reasons, I beseech members to defeat the bill (Richard Lim, CLP Greatorex).

Stephen Hatton (CLP, Nightcliff) also argued that every inquiry that has been conducted in the world in relation to the issue had reported against a statutory provision for voluntary euthanasia. Peter Adamson (CLP, Casuarina) stated that the Australian Medical Association was opposed to the practice, despite the organisation not having a position on the issue, and argued that it was unethical:

> As members are aware, the Australian Medical Association states that euthanasia is unethical. Would we pass a measure in any other field which, in the opinion of the industry peak body, was unethical? I think not. The House of Lords committee was in no doubt as to how big a role the British Medical Association should play in any debate on legalising assisted suicide.

This argument clearly demonstrates that some MLAs took the position of Dr Chris Wake, the president of the NT branch of the AMA at the time, to be the position of the organisation as a whole, which did not actually have a position on the matter.

The Arguments Used by the Supporters of the Bill

The range of arguments used by the supporters of the *ROTTI Bill* was not as broad as those of opponents, but focused on the 'individual rights' argument. The extent of the support for each of these arguments is demonstrated in Table 3.7 below and will now be considered in turn.

Table 3.7. Arguments used by the Supporters of the *Rights of the Terminally Ill Bill*

Argument	**Frequency/Party**			
	CLP	**ALP**	**IND**	**Total**
Individuals have a right to choose how to die	8	3	1	11
Tactics of pro-life lobbyists	4	2	1	7
Will support the Bill with amendments	2	4	-	6
Euthanasia is taking place, existing practice should be regulated	4	-	1	5
Compassion	3	-	1	4
The Northern Territory should take leadership on the issue	1	2	-	3
A minority will use the law and should have the right to do so	-	3	-	3

Speakers mainly utilised their time to respond to the broad range of arguments made by opponents of the Bill. The strongest argument made overall was the 'individual rights' argument. MLAs from each party were just as likely to raise this argument. Overall, the supporters of the Bill used six main arguments in support, which are loosely categorised as follows: first, the individual rights argument; second, the view that a voluntary euthanasia law would affect a minority of people and they should have the right to choose how to end their life; third, it was argued that euthanasia is already being practiced and there needs to be a law to clarify the area; fourth, some MLAs felt that the Bill should be passed on compassionate grounds, as people in pain with a terminal illness should be allowed to end their suffering; fifth, it was argued that that the Northern Territory should seize the opportunity to show leadership in the area; and, finally, some MLAs emphasised that they were not persuaded by the tactics of those opposed to the Bill. In addition to these arguments, six MLAs also commented that they would only support the Bill later at the Third Reading, if relevant amendments were made.

The most widely used argument by supporters of the Bill emphasised that the right of the individual to choose the nature of their death should be enshrined in law. All but two of the thirteen supporters of the Bill referred to this argument, and speakers generally framed their own version of this argument in response to various themes raised by opponents of the Bill, such as concerns about Indigenous Australians. This argument is well summed up in the following statement made by the sponsor of the Bill, Marshall Perron (CLP, Fannie Bay):

> The terminally ill are mothers, fathers, brothers, sisters, sons, daughters, wives and husbands - they are the flesh and blood of their kinfolk. In suffering, like us all, they embrace with tears, fears and sadness. They are not just `patients'; they are people. Mr Speaker, they are people like you. They are people like me. They are people like all those people in the public gallery. They are people like all those in the corridors and offices of this building. They are people like all of those in the streets. That is what we are talking about - real people. Let us allow each of them a personal choice. The freedoms that Territorians enjoy all their life should not come to an end just because life does.

As indicated, MLAs from both parties were just as likely to use this argument and all MLAs who voted for the Bill touched on the 'individual rights' argument at some point in their speeches. In particular, a number of MLAs responded to opponents and framed the issue in terms of the individual's right to decide their own fate, rather than it being left to members of the medical profession. For example, Maggie Hickey (ALP, Barkly) stated: 'I have a great deal of sympathy with the medical objections, and I would like to acknowledge here the efforts of the president of the Northern Territory Branch of the AMA, Dr Chris Wake, who has been very conscientious in speaking individually to each member, and sometimes more than once, to put forward the AMA's very cogent arguments'. However, she also recognised that medical practitioners who choose not to be involved in the practice of euthanasia should have their wishes respected and upheld, and there would be no coercion upon them to become involved. MLAs who took this position, such as Hickey, recognised the power of the medical profession on the issue and emphasised that they should not be the ones to decide the fate of individuals who are dying. The following statement demonstrates the medical professionals versus individual rights position clearly:

> On the other hand, they (medical professionals) should not believe that, because they have been the gatekeepers to medical assistance, the arbiters of care, they should also be the deciders of the fate of the sick and dying. Ultimately, it should be the decision of the dying. …Let me be unequivocal. My personal position is that a person's life is their own to do with as they will and as their circumstances allow, provided that they harm no one else by their actions (Maggie Hickey, ALP, Barkly).

The group of MLAs who supported the 'individual choice' argument, acknowledged the views of the medical profession, however they saw the final decision as resting with the patient. It was not only MLAs from the ALP who commented on the power of the medical profession versus individual rights, but also CLP MLAs. Fred Finch (CLP, Leanyer) argued that members of the medical profession have a role to play, if they wish to play it, but emphasised that doctors who are opposed to the practice do not have to be involved. He argued that medical professionals should have a role, but only in terms of the detail, the practicalities and the final regulations. So, in contrast to opponents who placed medical opinion at the forefront of the debate, MLAs in this group emphasised the final decision about their death lies with the individual:

> In the end, it is the individual patient who is empowered, not the doctor. He is an adviser. He is a practitioner. He is a deliverer, but he is not empowered with the decision. The decision belongs with the patient.

He continued:

> Some members have told us to 'think about the doctor'. If the doctor is not in it, he is out of it. If he does not want to be part of it, he will not be part of it. If the nurse does not want to be part of it, she will not be part of it. If the family do not want to be part of it, they do not have to be part of it. This is all about the individual. To suggest that individual rights equal selfishness is the height of hypocrisy. Nothing can be more fundamental in this life than a person's individual rights (Fred Finch, CLP, Leanyer).

MLAs in the CLP, such as Loraine Braham (CLP, Braitling), made similar points about individual rights:

> This bill is about people having the right to decide for themselves as individuals because each person is an individual and is unique. The rights of the individual recognised in the society of 1995 encourage all people to make choices about their lives and there is an expectation that we can have this final choice.

Wes Lanhupuy (ALP, Arnhem) used the individual rights argument, whilst responding to the argument from opponents of the Bill about the concerns in the Indigenous community. He emphasised that he had expressed his personal views to many Indigenous Australians in his electorate, but emphasised that, in the end, it was a decision that legislators had to make by themselves. As an Indigenous Australian, Lanhupuy stated after much debate and controversy, that he hoped the public would be able to give him the right to exercise his right as an individual to support the voluntary euthanasia legislation.

In addition to supporting the right of individuals, five MLAs stated that they had not been persuaded by the arguments of the opposing side, condemning tactics used by groups that opposed euthanasia. In particular, they had been appalled by 'scare campaigns' conducted by interstate groups. Fred Finch (CLP, Leanyer) commented that he was lobbied from far and wide, but had read the first 50 letters from interstate and decided that was enough. However, he took note of every letter, every telephone call and every representation from people within the Territory, particularly those from his constituents. He emphasised that he was: '…turned off by some of the arguments of some of the zealots who oppose this bill. We have been told that, if we vote for the bill, we will be classified as Nazis. The choice of words of some of the opponents was extraordinary' (Fred Finch, CLP, Leanyer).

The next most common argument used by supporters of the Bill was that voluntary euthanasia is, in fact, already taking place and therefore legislation should be passed to regulate existing practice via the law. The argument was used by five of the CLP MLAs, but no ALP MLAs used the argument. Darryl Manzie (CLP, Sanderson) pointed out that the AMA stated in the Committee that, at present, 19 to 40 per cent of doctors carry out euthanasia without checks. He emphasised that the legislation would allow for checks and a law to be brought into place. He asked, 'Why should doctors be above the law? Why should we have a set of circumstances whereby we turn a blind eye to what is being practised? ...Should we prosecute the doctors or should we change the law?'

The argument about compassion, that dying people should not have to suffer unnecessary pain, was the next most commonly used argument. Only four of the

thirteen MLAs who supported the Bill used this argument, favouring the 'individual rights' argument, as Daryl Manzie (CLP, Sanderson) stated:

> We have heard very little of what is involved in dying in agony. We are not talking about large numbers of people dying in agony. We are not talking about the bulk of people who go through the process that we will all eventually go through. We are talking about a very small group of people. Some say that up to 5% of people can suffer terribly. Others say that it is between 1% and 2%. We have a number of people who, under our present system of palliative care, still suffer a terrible set of circumstances when they die. They do not die in comfort. They do not die with any dignity. They die in agony.

The majority of Daryl Manzie's speech reiterated this argument and he illustrated his point by using quotes from personal accounts of pain and people looking after loved ones. Excerpts are provided below from the speeches of the other three MLAs who used the compassion argument:

> One of the other arguments is that somehow suffering at the end of your life is an ennobling experience. I do not have a great problem with pain. I believe I have a very high tolerance level of pain. However, I do not find that it is an ennobling experience. I would hate to think how I would be if I went beyond simply the pain question to the other demeaning components of ultimate death. Whom does it ennoble? Is it the person suffering? Is it the witness? `He died such a noble death. That is good for him. I am still here'. I do not think that is such an ennobling experience (Fred Finch, CLP, Leanyer).

Closely related to the individual rights argument, but used by fewer MLAs, is the 'minority rights' argument. Three ALP MLAs argued that, in fact, very few people would use the Bill or discuss euthanasia with their doctor, thus it was irrelevant for the large majority of people. The MLAs who used this argument stressed that opponents should not be allowed to enforce their will on this minority and, ultimately, the rights of the minority should be protected.

> If we oppose euthanasia, we have to be careful that we are not imposing our will on the minority of people to whom euthanasia would apply. It is my belief that

> very few people would discuss euthanasia even with their doctor or with their family and fewer still would pursue the outcome of euthanasia (John Bailey, ALP, Wanguri).

The final argument to be considered here is the argument that the Northern Territory should show leadership on the issue, and implement change that others would follow. This view, held by three of the MLAs who supported the Bill, is outlined in the following quote:

> If this bill fails, the democratically-elected members of this Legislative Assembly will have tragically passed up the opportunity to enact legislation that genuinely would meet the criteria of need, that genuinely would bring about a substantial social change for the better, and that would accord us, the humble representatives of the Northern Territory, worldwide attention and respect. If we fail to pass the bill, we will have passed up the opportunity to show leadership to the rest of Australia. Nationally, we are in the vanguard of this debate. If we succeed, it is close to certain that the rest of the country will follow (Barry Coulter, CLP, Palmerston).

Conclusions: Why Did the Bill Pass Successfully into Law?

In addition to the four factors cited by Nitschke and Stewart, this case study of the passage of the *ROTTI Bill* has argued that there are other factors that influenced the successful passage of the Bill. An interview with the Bill's sponsor revealed that the way in which the debate played out in the Northern Territory was important. The fact that the issue had not been debated before meant that MLAs sought to gain a detailed understanding of the issue, and exactly what the Bill entailed. At all stages of the process, MLAs acted as 'independents', demonstrating a strong willingness to listen to opinions in their electorate and inside the Legislative Assembly. In addition, the absence of factions in the political parties meant that there was no 'bloc' voting, which would have almost certainly resulted in the defeat of the Bill. Although the Bill was extremely close to being defeated, passing its Second Reading stage by only one vote, ultimately enough MLAs were willing to support the Bill to allow it to pass and support for the Bill actually increased after the Second Reading. An analysis of the conscience votes revealed that the issue was very divisive. The voting patterns observed did not match the general trends recorded in the literature, with no single factor providing a

good predictor of voting behaviour, not even party membership. Importantly, the findings of the analysis were clarified during an interview with the Bill's sponsor, who said that the MLAs acted as 'independents'.

Subsequently, a deeper understanding of the reasons *why* the MLAs supported or opposed the Bill was sought through an analysis of the Second Reading debate. The analysis of the debate indicated that MLAs, who supported the Bill from both political parties, made a strong case for the 'individual rights' argument, which had the most proponents. As chapter eight will demonstrate later in the thesis, supporters of the Bill were also more likely to see their role as an MLA as a 'delegate' of their electorate on the matter, translating high levels of support in public opinion polls into legislative action. However, opponents of the Bill were much more likely to be sceptical of public opinion, preferring to trust the position of medical professionals.

The strength of the individual rights argument held amongst MLAs supporting the Bill, combined with their willingness to represent the popular view held in the Northern Territory at the time, which was in favour of a euthanasia law, represent additional key aspects of any understanding of the passage of the *ROTTI Bill*. However, less than a year after its implementation, the *ROTTI Bill* was overturned in the Federal Parliament with the passage of the *Euthanasia Laws Act* (ELA).[153] The ELA also prevented the ACT Legislative Assembly from legislating on the issue. The next chapter will examine both the ACT bills on voluntary euthanasia, prior to the passage of the ELA, and the future prospects for reform on the issue in the territories, in light of the passage of the Act.

[153] There was no sense in the Northern Territory prior to the passage of the ROTTI Act that it would be overturned. This is in marked contrast to the later attempts to legalise in the ACT during 1997, where in light of the introduction of the Euthanasia Laws Bill, ACT legislators opposed two final bills introduced in the Legislative Assembly as they believed that any attempt to change the law at that late stage was futile.

Chapter 4: Euthanasia Law Reform in the ACT Legislative Assembly

Prior to 1997, the Australian Capital Territory Legislative Assembly also considered proposals to legalise euthanasia and assisted dying. Indeed, legislators in the Assembly were among the first to consider the issue, when Michael Moore (Independent, Molonglo) introduced the *Voluntary and Natural Death Bill* on 16 June 1993. Chapter four charts the progress made by proposals to legalise voluntary euthanasia in the ACT, describing and explaining the fate of three euthanasia bills introduced in the Legislative Assembly in 1993, 1995 and 1997. The chapter argues that the first two proposals failed due to the unwillingness of the ACT ALP to follow through on their pro-euthanasia policy commitment. In contrast, the 1997 Bill failed for a more obvious reason; the intervention by the Federal Parliament, which resulted in the passage of the *Euthanasia Laws Act* (ELA). The chapter also demonstrates that an additional factor had an impact on the progress of legislation: Moore's leverage as a cross-bench member, which allowed him to secure time for the issue to be debated, even in an unfavourable political environment.

The chapter has four main sections. The first section provides the context, outlining the state of end of life legislation in the ACT. The second section charts the passage of the three euthanasia bills in the ACT Legislative Assembly, with a specific focus on the debate on Moore's last bill in 1997. Subsequently, the third section will outline the unfolding of events in the lead-up to the passage of the controversial *Euthanasia Laws Act* in the Federal Parliament. Finally, the fourth section assesses the future prospects for end of life choices legislation in the Northern Territory and the ACT. It is argued that the present situation is unlikely to change in the near future.

End of Life Choices and the Law in the ACT

To understand the passage of the bills seeking to change the law on voluntary euthanasia in the ACT, it is necessary to understand the evolution of end of life law in the Territory more broadly. The following section outlines the status of end of life legislation in the ACT and the changes that have been made to the law on advance directives, through the development of the *Medical Treatment Act*.

In the ACT it has always been illegal for a doctor to comply with a patient's request for active voluntary euthanasia. A doctor who complies with such a request could be charged with murder. In the ACT, the sentence for murder is discretionary, but there is a maximum sentence of life imprisonment.[154]

Clarification of the law is one of the key arguments in favour of a law on voluntary euthanasia and/or physician assisted suicide. As such, more broadly speaking, one of the most significant advances in the area of end of life choices in the ACT has been the development of the *Medical Treatment Act*. For several years, alongside Victoria (1988) and the Northern Territory (1988), the ACT was one of the few states to have a specific law which allowed individuals to refuse medical treatment in advance.[155] The *Medical Treatment Act* originated out of recommendations made by a committee of members of the ACT Legislative Assembly, which was established to look into the law on end of life choices, following the introduction of the *Voluntary and Natural Death Bill*.[156]

Although it was charged with investigating the *Voluntary and Natural Death Bill*, the committee considered it important to address the subjects of palliative care and pain management. The committee rejected proposals for voluntary euthanasia, but recommended that the law be clarified in order to resolve ambiguities in the sphere of palliative care. This provided the impetus for the *Medical Treatment Act 1994*. The *Medical Treatment Act* allows individuals to make an advance directive to refuse medical treatment, so their wishes can be followed even when they are no longer able to express those wishes because of their illness. In addition, the Act enshrines the principle of 'double effect' in law. The principle of double effect allows patients to receive the maximum amount of pain relieving drugs, even if this leads to death, so long as the intent of the administering of the drugs was to relieve pain, not specifically to cause death. In these circumstances the doctor administering the drugs will not be liable for prosecution.

The Act is similar to Victorian legislation, which referred to the withdrawal or refusal of medical treatment 'generally', or of a 'particular kind', for a 'current condition'. In

[154] Cica, *Euthanasia*.
[155] See Lindy Willmott et al., "Refusing Advance Refusals: Advance Directives and Life-Sustaining Medical Treatment." *Melbourne University Law Review* 30 (2006).
[156] See ACT Legislative Assembly, *Select Committee on Euthanasia Report, Voluntary and Natural Death Bill 1993* (Canberra: ACT Legislative Assembly, 1994).

addition, the Act entitled individuals to receive the maximum amount of pain relieving drugs based on their perception of pain, even if death might result. Subsequently, in recent years, the *Medical Treatment Act* has been amended several times. In 1997, legislators removed the reference to 'current condition', so now any adult of sound mind may make an advance direction in writing, orally, or in any other way, to refuse or to request the withdrawal of, both a general or a particular kind of medical treatment.

Although the development of the *Medical Treatment Act* represents some progress in the sphere of end of life legislation, for some the legislation does not go far enough. The ACT law on palliative care includes similar provisions to the Victorian *Medical Treatment Act 1988 (Vic)*, which as Cica writes:

> …provides that its operation 'does not affect any right, power or duty which a medical practitioner or any other person has in relation to palliative care'. The definition of palliative care includes 'the provision of reasonable medical procedures for the relief of pain, suffering and discomfort'.

However, the ACT law on palliative care also has similar drawbacks to the Victorian law, in that it does not clarify the rules regarding when a doctor prescribing pain-relieving drugs may be liable for prosecution. Consequently, some argue that the Victorian, and thus, the ACT's *Medical Treatment Act*, did not go far enough, as it still leaves doctors open to prosecution.[157] As Cica writes, the provisions of the law:

> …Do not indicate when (or why) the administration of pain relieving measures that result in a patient's death will not result in criminal liability. Nor does the section of the ACT legislation that, 'notwithstanding the provisions of any other law of the Territory' confers on a patient 'a right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances'. The legislation does not indicate whether or under which circumstances pain relief that kills a patient will be considered to be 'reasonable' for these purposes. It merely states that a health professional must 'pay due regard to the patient's

[157] The *Medical Treatment Act* provides that its operation 'does not affect any right, power or duty which a medical practitioner or any other person has in relation to palliative care'. It similarly includes 'the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort' in its definition of palliative care.

account of his or her level of pain and suffering' when administering pain relief to a patient.[158]

Subsequently, the attempts to legalise voluntary euthanasia in the ACT have sought to amend the *Medical Treatment Act* to clarify these issues and further liberalise the law on end of life choices.

Today, the ACT is one of the more liberal jurisdictions on end of life choices, as a result of the passage of the *Medical Treatment (Health Directions) Act.* On 30 May 2007, the *Medical Treatment Act* was repealed and replaced by the *Medical Treatment (Health Directions) Act 2006*. *The Medical Treatment (Health Directions) Bill* was an ALP Government Bill, introduced by the Attorney General on 21 September, 2006. The main intention of the Bill was to repeal and restructure the *Medical Treatment Act 1994*, in light of the introduction of the *Powers of Attorney Bill 2006*, which made redundant provisions relating to medical directions for treatment. The Act allows patients to give legal directions about medical treatment that they do not want to receive at present and in the future.[159] Specifically, the Act prescribes procedures for making and revoking health directions and outlines the duties of health professionals, including informing people with decision-making capacity, of the nature and consequences of medical treatment and available alternatives. In addition, the Act exempts health professionals from civil and criminal liability for honest decisions and withdrawal of treatment in certain circumstances and requires the guardian of a person with impaired decision-making capacity to exercise their power in a manner consistent with a health direction. However, the law has been criticised as it still does not clarify the rules about when a doctor proscribing pain-relieving drugs may be liable for prosecution.

A Legislative History of Voluntary Euthanasia Bills in the ACT

There have been three proposals to legalise voluntary euthanasia and physician assisted suicide in the ACT Legislative Assembly. The following section will chart the progress of each of these proposals.

[158] Cica, *Euthanasia*.
[159] "Advance Care Plan: Information sheet (Australian Capital Territory)," RACGP website, viewed on March 1, 2011, http://www.racgp.org.au/Content/NavigationMenu/ClinicalResources/RACGPGuidelines/AdvanceCarePlans/ACT_advance_care_plan_introduction_2007.pdf.

i) The Voluntary and Natural Death Bill

The first Bill introduced into the Legislative Assembly was the *Voluntary and Natural Death Bill*, which was introduced by Michael Moore the Independent MLA for Molonglo, on 16 June 1993. The Bill had two aims. First, it sought to set up a statutory regime for 'advance directives' (as outlined above) and, second, it sought to decriminalise voluntary euthanasia, specifically to allow competent adults suffering from a terminal illness to direct that a death-inducing drug be administered, or provided, to him or her.

In his introductory speech, Moore announced his intention. In particular, he intended that the Bill would regulate the existing practice of mercy killing, transferring decisions about death from the doctor to the patient:

> This Bill seeks to regulate and control the current widespread practice of mercy killing. However, instead of the power to terminate life when suffering a terminal illness being in the hands of doctors, usually in consultation with family members, this Bill allows the individual to make the decision for themselves. The most important word in this Bill is "voluntary", as it places the responsibility and the choice squarely in the hands of the individual.[160]

The Bill did not go to a vote, but was referred to a Select Committee, which recommended that it not proceed and that the Chair of the Committee (Moore) be allowed to introduce a bill relating to the withdrawal or withholding of medical treatment. On 16 June 1993, the ACT Legislative Assembly established a committee to report on the *Voluntary and Natural Death Bill 1993*. Three MLAs were appointed to the Committee: Michael Moore (Independent, Molonglo), who chaired the Committee; the Leader of the Opposition, Kate Carnell (Liberal, Molonglo); and the Deputy Chief Minister, David Lamont (ALP, Molonglo). The Committee received 214 submissions and conducted three days of public hearings, which took place from 2nd to 5th February 1994. In addition to submissions from individuals, the following groups gave evidence: representatives of the AIDS Action Council and People Living with AIDS; the ACT Chapter of the NSW VE Society; the ACT Nurses Board; the Australian Nurses Federation; the ACT Branch of the AMA; the University of Canberra; and several

[160] ACT Legislative Assembly. *Debates of the Legislative Assembly for the ACT, June 16* (Canberra: ACT Legislative Assembly, 1993), 1878.

church and church affiliated groups. The three members of the Committee also visited Melbourne and Adelaide, where they consulted with government officials, state voluntary euthanasia societies and palliative care specialists. In particular, discussions with officials in Melbourne were concerned with the workings of the Victorian *Medical Treatment Act 1988*, which would form the basis of the ACT law.

The Committee tabled its report on 14 April 1994, which was also the date on which it was decided that the debate on the original *Voluntary and Natural Death Bill* was to be resumed.[161] The main recommendation of the Committee was that changes in the law be made in relation to palliative care and passive euthanasia. However, following a caucus meeting, the Labor Party decided that it was not ready to implement its policy on active euthanasia, as the issue should be debated further in the community. However, Michael Moore, the Chair of the Committee and sponsor of the Bill, disputed the decision made by the committee in relation to euthanasia. In the preface of the report, Moore argued that the Liberal and Labor Party members combined forces to defeat the idea of a referendum on active euthanasia.[162] Moore also contended that both parties used delaying tactics to prevent the resolution of the issue; he also noted that certain groups, who were opposed to a referendum on the issue, received more attention during the process of the Committee hearings.

Despite the failure of the Bill, the Committee hearing drew attention to the issue in the Legislative Assembly and it was as a result of the Committee's recommendation that the *Medical Treatment Act 1994* was passed, which allows patients to refuse medical treatment.

ii) The Medical Treatment (Amendment) Bill 1995

The issue of voluntary euthanasia returned to the Assembly in September 1995, when Moore tabled his second Private Members' Bill on the issue, which also sought to legalise active voluntary euthanasia. This attempt to legalise occurred in a different political environment to the previous attempt, with a Liberal government in office and the two Independent MLAs (including Moore himself) holding the balance of power. As such, it was possible for Moore to utilise his leverage as a cross-bench member, to secure time for the consideration of the Bill. The Second Reading vote on the Bill took

[161] ACT Legislative Assembly, *Select Committee on Euthanasia Report*.
[162] Ibid., v.

place on 22 November 1995. This was the first vote on the issue in the ACT and thus the outcome was unpredictable. MLAs debated the issue for three hours; however, ultimately, the Bill was defeated 10 votes to 7. Table 4.1 below shows MLAs party affiliation and voting patterns on the Bill.

Table 4.1. Party *Voting on the Medical Treatment (Amendment) Bill 1995*

Party	**Aye**	**No**
ALP	4	2
Liberal		7
Green	2	
Ind	1	1
Total	7	10

The Liberal Party allowed a conscience vote; however, none of the members deviated from the majority position, against the Bill. In contrast, the ACT Labor Party did not allow a conscience vote. ACT Labor adopted a pro-euthanasia position in 1991, so MLAs were compelled to support Moore's Bill. However, as the vote drew closer, it became clear that two Labor MLAs, Bill Wood and the Shadow Attorney General Terry Connolly, would oppose the Bill. Informal discussions were held between the ALP National Executive and the ACT branch of the Labor Party, who decided that members who did not follow party policy would not be disciplined.[163] During the debate, both MLAs stated that they would not support the Bill for reasons related to the sanctity of life. If the two ALP MLAs voted with the Liberals to oppose the Bill, even with the support of the two Green MLAs, it was doubtful that the Bill would have the numbers to succeed and the bill failed by three votes.

iii) The Medical Treatment (Amendment) Bill 1997

In 1997, Moore introduced a third proposal to change the law on euthanasia in the ACT by amending the *Medical Treatment Act*. The *Medical Treatment (Amendment) Bill* faced an even stronger test, given the Federal Parliament was debating the *Euthanasia Laws Bill*, which aimed to completely remove decision-making power on euthanasia from the Territories. Despite the challenge in the Federal Parliament, Moore decided to proceed and introduced the Bill on 19 February, 1997. The intent of the Bill was to 'protect the rights of patients who are terminally ill to request assistance from a medical

[163] ACT Right to Life, "Newsletter, Christmas 1995 (December '95-February '96)," Accessed November 1 2011, http://www.actrtla.org.au/newslett/chris95.htm.

practitioner to terminate the patient's life'. In his introductory speech Moore outlined his reason for introducing the Bill:

> I am returning this Bill to the Assembly because legislation of this kind remains the desire of the public and because it will be good law. Since this Bill was last debated in November 1995 the Northern Territory law has come into force. Voluntary active euthanasia has been discussed across the nation. The debate has matured, and the public are better informed than they have ever been on the means of achieving reform. I must also say, with great disappointment, that they have also been subjected to much disinformation - a subject to which I shall return.[164]

Moore continued, arguing:

> Since I first began considering voluntary euthanasia law reform in the early 1990s I have become increasingly convinced that the case for permitting voluntary active euthanasia is a compelling one. The issue at heart is one of liberty - the liberty of individuals against the domination of other social forces, be they government, the medical profession, the church, or the overbearing influence of one opinion over others.

There was no formal vote on the Bill. However, fifteen of the seventeen legislators announced their voting intentions in the debate. Table 4.2 below analyses the voting intentions of the ACT MLAs.

[164] ACT Legislative Assembly. *Debates of the Legislative Assembly for the ACT, February 19*. (Canberra: ACT Legislative Assembly, 1997).

Table 4.2. Voting Intentions Stated in the Debate on the *Medical Treatment (Amendment) Bill 1997*

Party	Aye	No	Not Stated	Undecided
ALP	5	1		
Liberal		5	1	1
Green	2			
Ind	1	1		
Total	8	7	1	1

Once again, the positions taken by the MLAs in the debate generally followed party lines. The Liberal Party allowed a conscience vote on the issue; although MLAs were unanimously opposed to the Bill, one new member, Louise Littlewood did not state a position on the issue. Michael Moore explained the position of Louise Littlewood in relation to the voting:

> That being said, it was about to go to a vote and Louise Littlewood had been in the Assembly a very short time and she said, 'I really need more time to think about this now'. I may be a bastard in many ways and was in some ways in driving things, but for somebody that new to have to make the decision and to be seen to actually hold the vote was a pretty big responsibility and so, I agreed that we would adjourn the legislation until the next sitting. Prior to the next sitting the Federal Government passed its legislation.[165]

Reflecting on the outcome of the vote, the Bill's sponsor Michael Moore stated that there was a religious component to the voting in the Liberal Party:

> The Liberals were under a lot of pressure, it was supposedly a conscience vote but there's a strong Catholic element in there and I thought they were going to go a different way.[166]

Voting in the ALP also largely followed party lines. One of the Party's two anti-euthanasia MLAs, Terry Connolly, did not stand at the 1996 election, which left only

[165] Interview with Michael Moore, 7th May 2012, Canberra.
[166] Ibid.

Bill Wood in opposition. There is evidence that the Party's position on the issue determined the voting. The Leader of the Party, Wayne Berry emphasised:

> I come from a position of being pro-choice in this matter, and so does my party. The choice in this circumstance is the choice of the individual to make decisions about their life. There are many different views about euthanasia. For me, it is about letting go; it is about letting an individual make their own decisions; and, importantly, it is about dignity.

In contrast, Kate Carnell, Chief Minister and Leader of the Liberal Party, gave several reasons for her decision to oppose the Bill. The most important point here is in relation to the *extent* of her support for progressive change on end of life choices, which demonstrates why there has been a lack of support for change in the Liberal Party.

In the debate, Carnell stated that, although she supported the existing *Medical Treatment Act*, for her the issue of intent was different for the present Bill, which would allow a doctor to administer pain-relieving drugs with the intention of killing the patient, not relieving pain. Carnell argued that she had no problem with pain relief being given (even if this leads to death), if the intent is to diminish a patient's pain. However, in her words, the 1997 Bill represented: 'a line over which personally I cannot go'.[167] Carnell said that she believed that patients have the right to die 'with as much dignity as possible', but she stated that she could not sanction a situation in which one person assists in the death of another. In addition, she gave her support to the tightening of the existing *Medical Treatment Act*, emphasising that this is the appropriate way to go, as it would give people adequate pain relief and the right to die with dignity. However, in her view, to go further would be dangerous, as the *Medical Treatment Act* had now been given 'time to grow'.[168]

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[167] ACT Legislative Assembly. Debates of *the Legislative Assembly for the ACT, 26 February 1997* (Canberra: ACT Legislative Assembly, 1997), 431.

[168] In addition, Carnell made several other objections to the Bill. First, she argued that it is impossible to make a law on euthanasia, as 'black letter law' is difficult on this issue. Second, she contended that there was a need to take on board different cultural beliefs when looking at legislation. Carnell emphasised that Canberra is a community with people from diverse backgrounds and that people need to feel safe 'if we are to be a multicultural society'. Carnell concluded by arguing that everybody in society should be given the right to die with dignity and that legislation to protect doctors who are providing pain relief was needed, but in her view taking things a step further to active voluntary euthanasia would create legislation that was too rigid.

On the other side of the debate, the Leader of the Opposition, Wayne Berry ALP, who voted in favour of the Bill, outlined his reasons. In the opening paragraph of his speech, Berry sent clear signals to ALP MLAs, as mentioned above, Berry emphasising the position of his party: "I come from a pro-choice position on this matter and so does my party". Berry made a strong individual rights argument, arguing that euthanasia was about letting the individual make their own decision and that the issue was about dignity. Berry also argued that the Bill should protect carers. In this light, he made the point that unregulated euthanasia was already taking place and, thus, there was a need to acknowledge this with safeguards. In addition, Berry emphasized that personal choice should not drive judgment, stating that: 'I am happy to support the policy which my party has developed and which I went to the last election in support of'. Reflecting on the Andrews Bill in the Federal Parliament, Berry argued that the Bill should be passed in principle, to send a signal to the Federal Parliament not to interfere with the right of the territories to pass legislation on the matter. Berry stated that he believed that if the Bill failed then the Legislative Assembly were effectively endorsing the Andrews Bill.

In addition to the voting and the position of the party leaders on the Bill, the scope and extent of the arguments used by the MLAs on the matter gives an insight into the politics of the issue in the ACT. The following section presents an analysis of the debate on the *Medical Treatment (Amendment) Bill 1997*.[169]

Arguments used by Opponents

In total the opponents of the Bill used fifteen separate arguments. Table 4.3 below summarises the arguments used by opponents of the Bill.

[169] On several occasions, legislators utilised similar arguments as those in the Northern Territory debate, thus to avoid repetition, the following analysis will explore the arguments that were unique to the debate in the ACT Legislative Assembly.

Table 4.3. Arguments in Opposition to the *Medical Treatment (Amendment) Bill 1997*

Argument	**Frequency/Party**			
	Lib.	**ALP**	**Ind.**	**Total**
It is impossible to draft a bill with adequate safeguards	3	-	1	4
Vulnerable people will be put at risk	3	-	1	4
Cultural concerns	1	-	1	2
Practical concerns about the Bill i.e. the way it has been drafted	1	-	1	2
Sanctity of life	2	-	-	2
International opposition to euthanasia	1	-	1	2
Existing legislation (the Medical Treatment Act) is adequate	2	-	-	2
Euthanasia is state sanctioned death	1	1	-	2
Legislators have the responsibility to protect citizens	2	-	-	2
Resources should be put into developing adequate palliative care services	1	-	-	1
The 'slippery slope' argument	1	-	-	1
Professional opinion is against euthanasia	1	-	-	1
Medical ethics i.e. euthanasia goes against the Hippocratic oath	1	-	-	1
Legalising euthanasia will bring the Territory unwanted attention	1	-	-	1
Humans have the right to life	1	-	-	1

The most frequently used argument by opponents of the Bill was that it is impossible to draft a bill with adequate safeguards and that it will put vulnerable groups in society at risk. These arguments about 'inadequate safeguards' and 'vulnerable people' were used by four of the seven opponents. Six broad arguments were made in the debate in the ACT Legislative Assembly that had not previously been raised in the Northern Territory debate. First, cultural concerns were emphasised. It was argued that Canberra is a multicultural society and euthanasia poses a greater challenge to groups within a multicultural society. This argument was brought up by two MLAs, including Kate Carnell, ACT Chief Minister. Kate Carnell acknowledged that voluntary euthanasia is a difficult issue and that there are people from several different cultures in the ACT with different beliefs on the subject and she did not believe that they had been taken on board. She argued that those people need to feel safe and secure in our society if we are to be a multicultural society.

The main argument raised by the only ALP opponent of euthanasia was that a euthanasia law should not pass, as it would represent state-sanctioned death. Bill Wood (ALP, Brindabella) argued that he did not have the confidence in himself, or in the Assembly, to yield the power to determine life or death. He argued that the state must not have this power, but rather must nurture life and that his position was in the best interests of society.

Trevor Kaine (Liberal, Brindabella) made the argument that humans have a right to life and that decriminalising voluntary euthanasia would breach international agreements, including the Universal Declaration of Human Rights of 1948, which states: 'Everyone has the right to life, and that all are equal before the law and are entitled without any discrimination to equal protection of the law'. Another of his arguments was that existing legislation was adequate, and therefore there was no need for a euthanasia law. Kate Carnell also made this point:

> Again, I believe that the Medical Treatment Act that we have already passed, even with some tightening up, is the appropriate way to go. It does give people the right to adequate pain relief. It does give people the right to die with dignity. It does ensure that doctors who are part of that death with dignity scenario, even if they give people doses of pain-killers that may bring forward death, are protected.

In light of the likely passage of the Andrews Bill in the Federal Parliament, one MLA argued that the Legislative Assembly should reject the legislation to show the Federal Parliament that they were a responsible legislature:

> In conclusion, Mr Speaker, Mr Berry said that the best way to rebuff the Andrews Bill is to pass this legislation today in principle. I believe that the best way to show the Federal Parliament that we can take a responsible course of action without Federal intervention is to reject this legislation all on our own. The legislation should be rejected. It changes adversely the ethics of medical treatment; it dramatically corrodes the relationship between doctor and patient; and it is bad public policy (Gary Humphries, Liberal, Molonglo).

Finally, reflecting upon the events in the Northern Territory, one MLA argued that if a euthanasia law was passed, Canberra would be the focus of unwanted media attention:

> I am all for doing nothing more to provide further material for ignorant media elsewhere in Australia to use in uninformed slanging of this Territory. I am not talking about Canberra bashing; that is a fact of life. What I am talking about is the kind of morbid attention that media would focus on us if this Assembly should pass Mr Moore's Bill and the Commonwealth does not invalidate it.

> Surely we have better things to do than fend off media beat-ups about decriminalised murder (Trevor Kaine, Liberal, Brindabella).

Arguments used by Supporters

The supporters of the Bill used six main arguments and the primary focus of the speeches was on the 'individual rights' argument. Table 4.4 summarises the arguments used by supporters of the Bill.

Table 4.4. Arguments used by Supporters of the *Medical Treatment (Amendment) Bill 1997*

Argument	**Frequency/Party**		
	ALP	**Greens**	**Total**
Individuals have the right to choose how they die	4	1	5
Compassion	2	1	3
Legislators have the responsibility to regulate the practice	3	-	3
Safeguards are possible	1	1	1
Palliative care is inadequate	1	-	1
The community would benefit from a euthanasia law	-	1	1

The arguments supporting the Bill mirrored the arguments which had been used in the Northern Territory debate on the *ROTTI*, but the range of the arguments used was narrower. As in the Northern Territory debate, the 'individual rights' argument was the most prominent argument used by supporters of the Bill. The second most common argument was compassion, linked to the view that legislators have a responsibility to regulate the practices involved with medicine and the end of life. Three MLAs used these arguments. The final three arguments relating to safeguards, palliative care and the community benefit of the legislation were mentioned once each.

Overall, legislators who opposed the Bill used a broader set of arguments. This group of MLAs (seven in total) occupied the floor of the Legislative assembly for longer than the supporters of the Bill, with legislators speaking for an hour and thirty-five minutes and speeches lasting an average of just under fourteen minutes. In contrast, supporters occupied the floor for one hour and twenty-two minutes, with speeches lasting an average of just under twelve minutes.

Events Leading to the Passage of the Euthanasia Laws Act

The fate of the *Medical Treatment (Amendment) Bill 1997* was left hanging in the balance for some time, pending the passage of the *Euthanasia Laws Bill* in the Federal

Parliament, which sought to overturn the Northern Territory law and prevent the territories from legislating on the issue. The following section examines the unfolding of events in the lead up to the passage of the *Euthanasia Laws Act*, which overturned the Northern Territory *Rights of the Terminally Ill Act* and also resulted in the withdrawal of the *Medical Treatment (Amendment) Bill* from the ACT Legislative Assembly.

Within days of the commencement of the *ROTTI Act* in the Northern Territory in July 1996, the media reported that Kevin Andrews (Liberal, Menzies) intended to introduce a Private Members' Bill, entitled *the Euthanasia Laws Bill*, to overturn the momentous law.[170] This was the last resort for opponents of the Act, as legal challenges made by Dr Chris Wake, Northern Territory Branch President of the Australian Medical Association and Reverend Dr Djiniyini Gondarra, Aboriginal leader and chairman of the Northern Land Council, had already failed in the Northern Territory Supreme Court and the Australian High Court. Repeal bills originating in the Northern Territory Legislative Assembly had also been rejected.

At first it was not clear whether the *Euthanasia Laws Bill* would extend to the ACT.[171] However, when the Bill was introduced into the House of Representatives on 9 September 1997, it covered the ACT, as well as the Northern Territory and Norfolk Island. The Chairwoman of Right to Life Australia, Margaret Tighe, said the group would support the move and stated that: 'Right to Life will continue to support any initiative aimed at overturning this insidious piece of legislation'.[172] Early on, the Prime Minister John Howard and the Leader of the Opposition Kim Beazley signalled their support for the Bill. John Howard said that he would vote in favour the Bill, but allow a conscience vote on it. In a radio interview he argued:

> It is a matter of principle. …It goes to the essence of what we see life to be and the sanctity of it and the importance of it and the quality of it. …I've stated my position on euthanasia in the past. I don't intend to force that view down the throats of any of my colleagues. …This is a very difficult, sensitive issue and there are passionately held views on both sides.

[170]Financial Review, "Commonwealth may Veto Territory's Euthanasia Laws," *Financial Review*, June 28, 1996.
[171] Lenore Taylor, "MP may expand anti-death law bill," *The Australian*, July 17, 1996, 3.
[172] Reuters News, "World's first euthanasia law faces new challenges," August 22, 1996.

Subsequently, in response to criticism about the Federal Government overriding Northern Territory legislation, Howard said:

> The law allows a territory law to be overridden by the Federal Parliament, so we're not acting unconstitutionally or improperly or indecently, we're exercising the lawful power currently given to the national parliament (*Reuters News* 1996b).[173]

Elsewhere, Howard defended his decision and stated that: 'No matter how strong a federalist one (was), issues going to the essence of life and going to the quality of life probably override even the federalist principles'.[174] The Catholic Church also issued a call for Federal MPs to support the Andrews Bill.[175] On the other side of the debate, MPs also mobilised in support of the Northern Territory, with Chris Gallus and Anthony Albanese signing a joint letter calling for support for the euthanasia law.[176]

In the meantime, the *ROTTI Act* survived after a repeal bill was introduced in the Northern Territory Parliament. Neil Bell's *Respect for Human Life Bill* was defeated by 14 votes to 11 after a 5 hour debate.[177] It was reported that Kevin Andrews said that he was disappointed at the survival of the legislation and that he would have abandoned his repeal Bill, if Bell's legislation had succeeded and he was confident that a 'proper national debate' would have followed. Andrews cited government reports identifying widespread opposition from Aboriginal communities. Mike Reed, a Northern Territory MLA, was concerned that, if Andrews' Bill were examined by a Senate inquiry, then the Territory would be 'dragged around the country like a dirty rag'. However, Neil Bell said that he would not introduce another repeal bill.[178] Marshall Perron, the sponsor of the original Bill, called on national parliamentarians to defend the legislation: 'I think the campaign from here is to take on Canberra in a serious way. It is not for them to involve themselves in Territory affairs'. In addition, the *ROTTI Act* gained support from two Northern Territory Government Ministers, who were initially

[173] Reuters News, "Australian PM backs move to end euthanasia law," September 9, 1996.
[174] Gabrielle Chan and Maria Ceresa, "Leaders in united bid to outlaw euthanasia," *The Australian*, September 10, 1996, 3.
[175] The Australian, "Catholic bishops euthanasia plea," September 5, 1996, 4.
[176] Reuters News, "World's first euthanasia law faces new challenges."
[177] Reuters News, "World's first voluntary euthanasia law survives," August 22, 1996.
[178] Maria Ceresa, "MPs defeat bid to reject euthanasia," *The Australian*, August 23, 1996, 4.

opposed to it, Mick Palmer and Steve Hatton. Mick Palmer went on to state: 'I am not going to kowtow because a two-bit politician from Canberra has decided to stick his nose into the Territory'.[179]

On 22 September 1996, Bob Dent became the first person to die under the Northern Territory legislation, via lethal injection. News of his death came as the High Court confirmed that the *ROTTI Act* would go before it on November 15.[180] Dr Philip Nitschke administered an injection at the patient's home in Darwin and he said it was a 'very poignant moment'.[181] Professor Peter Baume later argued that the death: 'occurring when and where it did, has been a defining moment for Australia'.[182] On 25 September 1996, the Coalition of Organisations for Voluntary Euthanasia (COVE) announced the death of Bob Dent and released a letter defending his right to end his life and criticising church groups and others wanting to overturn the law: 'The church and the law should be separate'. This made the news around the world.[183]

The death of Bob Dent stimulated a wide and varied response from several groups which had a stake in the euthanasia debate. Kevin Andrews said that: 'This (death) clearly makes this a national debate. …I don't think anyone can say that this is something which simply affects the Northern Territory'.[184] However, Anglican Church leaders condemned the death as a 'shameful day for Australia'. Sydney's Roman Catholic Archbishop, Cardinal Edward Clancy, said: 'At least this deplorable act may serve to bring the stark reality of euthanasia fully home to the consciousness of Australians and further instances of this ugly evil may yet be prevented'.[185] Opponents of euthanasia sought to frame the issue in regard to its significance nationally for Australia, beyond the Northern Territory, whilst the *Sydney Morning Herald* reported that anti-euthanasia politicians brushed aside a plea by Bob Dent, saying they would act in the national interest, not on the basis of individual cases.[186]

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[179] Ibid.
[180] The Australian, "GPs assist first legal euthanasia," September 26, 1996.
[181] Reuters News, "First patient dies under Australian euthanasia," September 25, 1996.
[182] Peter Baume et al., "The right to die – act of compassion or merely killing?" *The Australian*, September 27, 1996, 13.
[183] New York Times. "Australian man first in world to die with legal euthanasia," September 26, 1996.
[184] Reuters News. "Assisted suicide sparks public row in Australia." September 26, 1996.
[185] Reuters News, "Church leaders condemn "shameful" Australian death," September 26, 1996.
[186] Jody Brough, "Mercy death splits the nation," *Sydney Morning Herald*, September 27, 1996.

At this time, it seemed that the Andrews Bill was likely to pass the House, but the result in the Senate remained uncertain and some commentators believed that the bipartisan Senate committee might find that the Bill could: 'trespass unduly on personal rights and liberties'.[187] Senator Bob Brown said he would try to introduce a pro-euthanasia bill, based on the Northern Territory law, in a bid to head off Kevin Andrews' bill.[188] The Victorian Premier, Jeff Kennett, attacked the Andrews Bill as 'an insult to humanity', calling on the Prime Minister and the Opposition Leader to 'butt out' and respect the right of the dying to choose their time of death.[189] In the meantime, state and territory leaders increased pressure on Federal MPs to vote down the Andrews Bill, by unanimously rejecting the Bill at the National Leaders Forum meeting in Melbourne. Before the meeting began, other state leaders spoke out in support of the Northern Territory, including the Western Australian Premier, Richard Court, and the New South Wales Premier, Bob Carr. [190]

Despite opposition from the Premiers of the states and territories, the *Euthanasia Laws Bill* passed its Second Reading in the House of Representatives on 9 December 1996, by 91 votes to 38. The Bill passed its Third Reading in the House of Representatives on the same day, by 88 votes to 35. A Senate committee of 13 senators tabled its report on the matter on 6 March 1997. Although it didn't make any specific recommendations, it provided advice to Senators on the key issues at stake and concluded that the Northern Territory law lacked the adequate safeguards necessary for a law on euthanasia. A record number of responses were received in the Senate (12,577), with over ninety per cent in favour of the Andrews Bill. [191] The Bill then went to the Senate, where it passed its Second Reading on 24 March 1997, by a close margin of 38 votes to 33. The Bill passed its Third Reading on the same day, by 38 votes to 33.

As a result of the passage of the Bill, Michael Moore decided to withdraw his bill from the ACT Legislative Assembly. During an interview he explained why he did so:

> At the following sitting after the Federal government had passed its legislation I sought permission to withdraw the legislation as its sponsor. The reason I did

[187] Ibid.
[188] Ibid.
[189] Ibid.
[190] Jacqueline Fuller, "Anti-mercy kill bid opposed," *The Canberra Times*, September 28, 1996.
[191] Georgina Windsor et al., "Euthanasia Law Unclear and Unsafe – Senators," *The Australian*, March 7, 1997.

> that was that there was lots of people in the Voluntary Euthanasia Society and other people who said no leave it there and fight for it and that will really push the Federal Government. I didn't believe that anything was going to push the Federal government, it was clear that we no longer had the power. I thought that it was going to create a false hope and in withdrawing it I publicly stated that we no longer had the power and therefore to have this legislation on the table was entirely inappropriate.[192]

However, Moore didn't abandon all hope of bringing in change and made two further attempts to legislate on related matters. On 18 June 1997, Moore introduced the *Euthanasia Referendum Bill*. The intent of the Bill was to hold a referendum in the ACT on voluntary euthanasia. The Bill was defeated at the Second Reading stage by 15 votes to 2. Only Louise Littlewood and Moore supported the Bill. On 24 September 1997, Michael Moore made a final attempt which aimed to liberalise the law in end of life choices with the *Crimes (Assisted Suicide) Bill 1997*, which attempted to circumvent the newly introduced *Euthanasia Laws Act 1997*. Although assisting suicide would remain an offence, the Bill sought to amend the punishment for assisting suicide, so that lighter penalties would apply for assisting a person to die in specified circumstances. The Bill also failed at the Second Reading stage by 3 votes to 14, on 5 November 1997. Only Moore and Green MLAs Kerrie Tucker and Lucy Horodny supported the Bill. It is clear at this point from reading the debates and the outcome of the vote, that in contrast to Northern Territory debate, and in light of the Andrews Bill, ACT legislators now believed any attempt to pass a law on voluntary euthanasia would be futile.

The Future of Voluntary Euthanasia Law Reform in the Territories

At present, any attempt to liberalise the law on voluntary euthanasia must originate from one of the Australian states. The territories are confined to regulation of a limited range of end of life choices, such as advance directives and the withdrawal of medical treatment. Indeed, the ACT has passed legislation in a response to calls to clarify their laws in this area, although the Northern Territory has yet to do so. There have been several failed attempts, which are listed in Table 4.5 below, in the Federal Parliament to restore decision-making power on voluntary euthanasia to the territories.

[192] Interview with Michael Moore, 7th May 2012, Canberra.

Table 4.5. Attempts to Restore the Northern Territory and ACT's Legislative Power on Euthanasia in the Federal Parliament

Year	Bill	Sponsor
2004	Euthanasia Laws (Repeal) Bill	Senator Lyn Allison, Australian Democrats, Victoria
2007	Australian Territories Rights of the Terminally Ill Bill	Senator Bob Brown, Australian Greens, Tasmania
2008	Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill	Senator Bob Brown, Australian Greens, Tasmania
2008	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill	Senator Bob Brown, Australian Greens, Tasmania
2010	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill	Senator Bob Brown, Australian Greens, Tasmania
2010	Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill	Senator Bob Brown, Australian Greens, Tasmania
2012	Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill	Senator Richard Di Natale, Australian Greens, Victoria

The earliest attempt to repeal the *ELA* occurred in 2004, when Senator Lyn Allison introduced a Private Members' Bill in the Senate. Subsequently, since 2007, Senator Bob Brown has introduced bills on six occasions, with limited success. In November 2011, however, the Federal Parliament passed Senator Brown's Bill entitled the *Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill*, which removed the power of Federal Ministers to veto territory laws. Now only parliament as a whole can overturn territorial laws. Senator Brown also introduced amendments on the Bill, which would extend its provisions to the Northern Territory and Norfolk Island. The successful passage of the Bill was particularly significant, as it was the first piece of Greens' legislation to pass into law in the Federal Parliament.[193] However, the legislation does not affect the status of the Andrews Bill, which still prevents the Northern Territory and the ACT from debating voluntary euthanasia, nor does it reinstate the *Rights of the Terminally Ill Bill*.

Since Bob Brown's retirement, Greens Senator Richard Di Natale has reintroduced his Bill, however the Bill did not succeed. In the Northern Territory, both the Attorney General John Elferink and the Opposition Leader Delia Lawrie have indicated that they would support the reintroduction of voluntary euthanasia, but share the view that the

[193] ABC News, "Ministers loose power of veto over territories," November 1, 2011, accessed November 1, 2011, http://www.abc.net.au/news/2011-11-01/ministers-lose-power-of-veto-over-territories/3613422.

Federal legislation is unlikely to succeed.[194] For the foreseeable future, reform on the issue will have to originate from one of the states.

The bleak outlook for euthanasia law reform in the territories has led some euthanasia activists to abandon the quest for change through the legislative process. In recent years, this strand of the movement has preferred to focus on the research into, and the development of, technology to extend the range of end of life choices and place individuals, rather than doctors, at the centre of end of life decision-making.[195] For example, Nitschke and Stewart (2005) write that, in contrast to the South Australian Voluntary Euthanasia Society, Exit International:

> …remains strongly committed to a practical, hands-on approach that provides information and strategies for end of life choices. And we remain skeptical of the legislative process or the goals it purports to be able to deliver, particularly in the current political climate (p.319).[196]

Indeed, the breakaway of euthanasia activist Philip Nitschke and the formation of Exit International marked a significant juncture in the life of the euthanasia movement. However, the euthanasia societies in each of the states and the territories continue to pursue legislative change.

Both the ACT and the Northern Territory still have active voluntary euthanasia societies, which hold regular meetings and do some lobbying, but the amount that can be achieved in terms of law reform is obviously limited by the *Euthanasia Laws Act*. During an interview, the President of the Northern Territory Voluntary Euthanasia Society, Judy Dent, described their predicament:

> NTVES is unique in it was formed after legislation passed, everybody else was formed trying to get legislation through and of course now we are in a position where we are not legally allowed to lobby for legislation, so there is no point. We can't pass any so why bother asking them? So, it's amazing that we have

[194] Coggan, Michael. "Vote on voluntary euthanasia unlikely in NT." *ABC News*, November 19, 2012, accessed November 20, 2912, http://www.abc.net.au/news/2012-11-19/vote-on-euthanasia-unlikely-in-nt/4380416.
[195] See Brian Martin, "Techniques to Pass on: Technology and euthanasia," *Bulletin of Science, Technology & Society 30*, no. 1 (2010).
[196] Nitschke and Stewart, *Killing me Softly*, 319.

> managed to stay alive. Can we keep it going? …People won't come to a meeting if they can't do anything. [197]

Similarly, Jeanne Arthur, President of Dying with Dignity ACT, outlined the activities of the group based in the ACT and emphasised the importance of keeping the debate on voluntary euthanasia going, despite the obvious challenges presented by the ELA:

> The organisation has been going since the 1980s as a branch of DWD NSW, but it only got going again actively about six years ago. So, what we have been doing is holding these meetings, lobbying the local parties. We have had Federal politicians come talk to us at times and we have had talks on organ donation. There's also a strategy that the Canberra hospital is running at the moment where they ask you to come along to talk to them about your wishes about how you want to die. So we cover all of those things and we just keep the debate going.[198]

Prior to the 2012 election in the ACT when Dave Matthews, a pro-euthanasia ALP candidate, was defeated, Jeanne Arthur commented on the likelihood that a euthanasia law would pass in the ACT, if the *Euthanasia Laws Act* were overturned:

> I think if the ACT Legislative Assembly, and there is a whole lot of 'ifs' here, if the ACT Legislative Assembly was to be similarly formed, with the Labor/Greens combination and Dave Matthews were a member and he was willing to back my ideas and push them through, I think we could get it through.[199]

However, it remains unlikely that the Federal Parliament will overturn the ELA soon, so Jeanne Arthur suggested an alternative option, which would involve changing the Australian Constitution:

> And the other thing is I'm also suggesting that they try and overcome the ELA and fight against it in various ways. One of the proposals that I have is to try to get a change to the constitution, which we should have anyway, because section

[197] Interview with Judy Dent, 21st May 2012, Darwin.
[198] Interview with Jeanne Arthur, 2nd February 2012, Canberra.
[199] Ibid.

> 122 of the Constitution says that the Commonwealth can make laws for anyone in the Territory, which is completely unjust, so that's an issue, so we need to change that section and I've got a suggestion which would allow the Commonwealth to make laws for the Territories, but it would have the wording the 'Parliament may make laws that govern any Territory, providing that citizens of the Territories are provided with no more or less governance than the States of Australia'. …How effective it would be I don't know, you can only put things up and see what happens.[200]

Overturning the *ELA* or amending the constitution are valid options for the territories, however this will not be easy. Consequently, for the time being, law reform will have to originate from one of the state parliaments.

Conclusions: Why did the ACT Bills Fail to Pass into Law?

This case study has charted the progress of three bills which sought to legalise voluntary euthanasia that were introduced into the ACT legislative Assembly between 1993 and 1997 by Independent MLA Michael Moore. The chapter argues that the first two proposals failed due to the unwillingness of the ACT ALP to follow through on their pro-euthanasia policy commitment. The third bill failed for more obvious reasons, due to the intervention by the Federal Parliament.

In 1993, Moore's first bill was given time in parliament by the pro-choice ALP Government and a committee was established on the issue. However, David Lamont, the Deputy Premier, recommended in the committee that the proposal to legalise voluntary euthanasia should not proceed. The Committee did, however, propose the establishment of a new law, which set out a statutory regime for a patient's refusal of medical treatment and raised awareness of life choices as a political issue in the community. In 1995, things looked hopeful for those seeking reform, with the passage of the Northern Territory *ROTTI Bill*, which had stimulated nationwide debate on the issue and opinion polls showing widespread public support for the practice. However, after initially stating that it would not allow a conscience vote, the ALP decided not to discipline two of its MLAs who said that they would not support the Bill for sanctity of life reasons. Consequently, combined with unanimous opposition from the Liberals, the votes of the two ALP MLAs led to the failure of the Bill. In 1997, after the resignation

[200] Ibid.

of one of the anti-euthanasia ALP MLAs at the 1996 election, Moore's third proposal had a reasonable chance of success; however, the intervention of the Federal Parliament stopped the bill from making any further progress.

This case has also demonstrated that an additional factor had an impact on the progress of bills: Moore's leverage as a cross-bench member, which significantly increased his ability to get the issue onto the agenda. After the defeat of the pro-choice ALP at the 1995 Territory election, the Liberals moved into government in coalition with the two independent MLAs, Michael Moore and Paul Osborne. The Liberals were strongly opposed to voluntary euthanasia and it would have been unlikely that time would have been made available to discuss the issue; however, Moore utilised his leverage to secure time to debate two further euthanasia bills.

Despite protest from state and territory leaders, the passage of the *Euthanasia Laws Act* on 24 March 1997 ended the territories progressive involvement in the sphere of end of life choices. Any future law reform would now have to originate from one of the states and, consequently, the next two chapters will examine the fate of the attempts to change the law on voluntary euthanasia in the South Australian and Tasmanian Parliaments.

Chapter 5: Euthanasia Law Reform in the South Australian Parliament

Following the Passage of the *Euthanasia Laws Act 1997*, only the Australian states would be permitted to change their laws on euthanasia and assisted suicide. Out of all the Australian states, the greatest activity in terms of the amount of legislation introduced has taken place in the South Australian Parliament.[201] Almost every year since the mid-1990s, the Parliament has considered at least one bill seeking to legalise euthanasia. Chapter five will describe and explain the progress of the attempts to legalise euthanasia in the South Australian Parliament through a legislative history of the issue, an analysis of the conscience votes and the debates on bills, plus interview material with experts and bill sponsors. It is argued that the main reason for the failure of bills in the South Australian Parliament is the opposition from Catholic MPs in the right faction of the ALP, who have prevented a series of bills from being voted on in the House of Assembly. In addition, it is suggested that success of future legislation liberalising end of life choices rests, in large part, with continuing the co-operation between ALP and Green members, Steph Key and Mark Parnell and, most importantly, winning support from 'socially liberal' Liberal Party MPs, to counter opposition in the ALP right faction.

The chapter has four main sections. The first section provides the context, first discussing the progress made on the broad category of end of life choices law, before subsequently, charting the progress and outcome of voluntary euthanasia bills introduced into the Parliament. The second section presents an analysis of two debates on euthanasia bills, one in the Legislative Council and one in the House of Assembly, with particular focus on the arguments made by opponents of the bills, to chart the evolution of opposition to euthanasia and identify reasons why opponents have been so effective. The third section considers the future of the issue in South Australia, outlining the present attempts to liberalise the law on end of life choices. The chapter concludes by highlighting the main reasons for the failure of the South Australian legislation and considers the future prospects for reform.

End of Life Choices and the Law in South Australia

There have been several important changes to the law on end of life choices in South Australia over the past three decades. It is important to understand these changes to

[201] See Appendix A for a list of the bills and their sponsors.

contextualise the following explanation of the fate of voluntary euthanasia bills. In the late 1970s, the State developed living wills legislation, with the passage of the *Natural Death Act 1983*. The *Natural Death Bill* was first introduced in 1979, but failed due to a lack of general legal recognition of brain death at the time. As Stevens and Hassan write: 'without a definition of death it was opined that withdrawal of treatment from people who were brain dead and artificially sustained on respirators, could be regarded as homicide'.[202] However, the Bill was reintroduced and was passed three years later, although without a definition of death, which was outlined in a separate *Death (Definition) Act*, making it unnecessary to include a definition of death in the *Natural Death Act*.[203] The *Death (Definition) Act* paved the way for the passage of the *Natural Death Act*, which allows adults to direct doctors not to use 'extraordinary measures', such as artificial ventilation, to keep them alive if they are suffering from a terminal illness.

In the following years, legislation in other states was generally modelled on this precedent. Essentially, it was felt that the *Natural Death Act* was necessary given advances in medical knowledge, which had widened the options in medical treatments available to terminally ill people and meant that medical practitioners had the ability to utilise many more procedures to prevent death.[204] This meant that people could be artificially kept alive for longer periods of time, with no hope of recovery.

Seven years later, in 1990 a Parliamentary Select Committee was established to enquire into 'the law and practice relating to death and dying'. Although the Committee rejected calls for voluntary euthanasia legislation, it provided the impetus for the *Consent to Medical Treatment and Palliative Care Act 1995*, which replaced the *Natural Death Act 1983*.[205] The *Consent to Medical Treatment and Palliative Care Act* set out a number of important provisions: first, a provision for individuals to be allowed to make living wills, which would allow individuals to set out instructions about the type of treatment to be consented to, or refused, if an individual was in terminal stages of a terminal illness and was no longer capable of making decisions about healthcare;

[202] Christine A. Stevens and Riaz Hassan, "Management of Death Dying and Euthanasia: Attitudes and Practices of Medical Practitioners and Nurses in South Australia," *Sociology Discipline* (Flinders University, 1992):23-24.
[203] Ibid.. 24.
[204] Ibid.
[205] *The Consent to Medical Treatment and Palliative care Bill* received assent on 27 April 1995 and commenced on 30 November 1995.

second, the Act allowed the appointment of a medical agent to act on behalf of a patient in accordance with their living will; third, it included a provision that a doctor, who acts to relieve pain in a patient in the later stages of a terminal illness, will not be fined if the incidental outcome is death; and fourth, it established that a doctor is under no obligation to continue life-sustaining measures if the patient is beyond the point of death, unless the patient stressed otherwise in their living will.[206] With the passage of the Act, South Australia became the first state to clarify the law on the administration of pain relieving drugs. However, no allowances for voluntary euthanasia were made and under no circumstances can a doctor administer pain-relieving drugs with the intention to end a patient's life. Acting with the intention to end a patient's life would be considered assisting suicide and the physician would be guilty of assisting suicide or murder.[207]

A Legislative History of the Issue

Legislative attempts to reform the law on voluntary euthanasia have a long history in South Australia. The next section will present a legislative history of the issue in the South Australian Parliament, which includes an analysis of the conscience votes on the successive bills. The legislative history will focus on four sets of bills in chronological order: first, the Quirke Bill introduced into the House of Assembly in 1995; second, the Levy Bill and the Kanck bills which were introduced into the Legislative Council between 1996 and 2002; third, the Such bills introduced into the House of Assembly between 2003-2010; and, fourth, the Parnell Bill introduced into the Legislative Council in 2008. In addition, at present (February 2013) there are other bills being considered in the South Australian Parliament, which will be discussed in the final section of the chapter, which deals with the future of the issue in the State.

i) The Quirke Bill (1995)

The first legislation specifically seeking to legalise voluntary euthanasia was the *Voluntary Euthanasia Bill 1995*, a Private Members' Bill, which was introduced in the House of Assembly by John Quirke (ALP) on 9 March, 1995. In his Second Reading speech, Quirke outlined two main reasons for introducing the Bill. First, Quirke argued that society must begin to deal with issues relating to death and the process of dying

[206] "Fact Sheet 08: Medical Treatment and the Law in South Australia," *South Australia Voluntary Euthanasia Society*, accessed February 21, 2013, http://www.saves.asn.au/factsheets.php.
[207] Ibid.

more adequately. Quirke's second reason was more personal, the death of his father, which he expressed had been a traumatic event and instrumental in his deeper consideration of the issue. When outlining the purpose of the Bill, Quirke stressed that the Bill was about choice:

> This Bill is about choice, nothing more, nothing less— some would argue the ultimate choice in life: the choice when hope and all else are gone. When struggling with some of the issues involving this Bill, I made the determination that the central issue must always remain the free choice of those terminally ill to bravely, quickly and, with as much dignity as possible, pass out of this world. I do not wish to spend much time on those persons who have objected to this measure. I simply say to them that they ought to respect the right of people who choose to die with dignity. To some of the organised religions which have made clear that they do not support euthanasia in whatever formulation, I say that they should respect the right of others to choose differently.[208]

In his speech, Quirke outlined the main features of the Bill. The Bill would allow any person who was terminally ill, over the age of 18 years, of sound mind and diagnosed as likely to die within 12 months, a choice to die by the self-administration of lethal drugs or have the ability to make a request of a qualified medical practitioner. The Bill stated that the person must also be competent to make the decision and he or she must make the decision, not a third party. The diagnosis of that terminal illness and the prognosis of the case must be confirmed by two medical practitioners. The Bill did not deal with future requests by a person who is not yet terminally ill or the hastening of the death of a person who is in a coma or not mentally competent to make the decision.

The Bill was defeated at Second Reading Stage on 27 July 1995 in a conscience vote by 30 votes to 12. The voting pattern on the Second Reading of the Bill is shown in Table 5.1 below.

[208] South Australian Parliament. *Debates of the House of Assembly, March 9 1995* (Adelaide: Parliament of South Australia, 1995).

Table 5.1. Second Reading vote on the 1995 *Voluntary Euthanasia Bill* in the House of Assembly

	FOR	AGAINST	DNV	COHESION
LIB	5	27	4	.68
ALP	7	3	1	.40
TOTAL	12	30	5	-

Both the main parties were split on the issue. During the vote, the majority of ALP MPs (70 per cent) voted in favour, however the majority of Liberal MPs (84 per cent) voted against, which lead to the failure of the Bill.

ii) The Levy Bill and the Kanck bills (1996-2002)

Following the failure of the Quirke Bill, the focus of the campaign shifted to the Legislative Council. During the next six years, three bills seeking to legalise were introduced in the South Australian Upper House, all of which passed their Second Reading votes. On 6 November 1996, Anne Levy, ALP introduced the *Voluntary Euthanasia Bill*. Levy worked closely with the South Australian Voluntary Euthanasia Society (SAVES) who drafted the Bill. The Bill passed its Second Reading on 9 July 1997 by 13 votes to 8. Table 5.2 shows the patterns of voting during the Second Reading of the Bill in the South Australian Legislative Council.

Table 5.2. Second Reading Vote on the 1996 Voluntary Euthanasia Bill in the Legislative Council

	FOR	AGAINST	DNV	COHESION
LIB	5	5	1	0
ALP	6	3	-	0.34
DEM	2	-	-	1
TOTAL	13	8	1	-

The issue divided the main parties. Once again, the majority of ALP members (67 per cent) voted in favour of the Bill. This reflected the pattern of the voting in the House of Assembly. However, the Liberal Party was completely divided, with half of MLCs joining the ALP members in support of the Bill. In addition, both Democrat MLCs voted in favour of the Bill. Interestingly, although male MLCs were just as likely to support the Bill as oppose it, female MLCs voted overwhelmingly in support of the Bill. In total, as shown in Table 5.3 below, five female MLCs, including two Liberals, voted in favour of the Bill and one Liberal woman MLC opposed the Bill.

Table 5.3. Second Reading Vote on the *Voluntary Euthanasia Bill* 1996 in the Legislative Council - Voting by Gender

	FOR	AGAINST	DNV
Male	7	7	1
Female	5	1	

On the same day as Ann Levy introduced the *Voluntary Euthanasia Bill*, Sandra Kanck introduced the *Voluntary Euthanasia (Referendum) Bill 1996* in the Legislative Council. The Kanck Bill proposed that a referendum on the issue should be conducted at the next election and that the Levy Bill, if passed, be amended to require a referendum to be held before it became law. Although the Bill also passed its Second Reading vote in the Legislative Council, both bills lapsed when the state election was called in October 1997. Anne Levy, the sponsor of the first bill, retired at the election and did not stand for re-election.

This was not the end of the issue in South Australian Parliament. In the Legislative Council, Carolyn Pickles (ALP) moved that a select committee be established to consider the submissions and take oral submissions.[209] On 25 March 1998, the Levy Bill was referred to the Social Development Committee. The Committee's inquiry extended over a year. Over 4 000 written submissions were received, of which 52.7 per cent opposed and 46.8 per cent supported the Bill, and more than 100 oral submissions were heard. The South Australia Voluntary Euthanasia Society website states that the majority of witnesses did not comment directly on the Bill, but were concerned with moral, ethical or religious issues, and medical treatments, such as palliative care.[210]

The Committee tabled its report on 20 October 1999 and was opposed to any change in the law on voluntary euthanasia, but was in favour of greater provisions for palliative care. The report made eleven recommendations, nine of which referred to palliative care and were unanimous, while only two referred specifically to the Bill, stating that: 'active voluntary euthanasia and physician-assisted suicide remain criminal offences' and 'the lapsed Voluntary Euthanasia Bill 1996 not be introduced'. Although the recommendations were not supported by two of its six members, the Committee's

[209] "Parliamentary process and timeline for voluntary euthanasia bills in the South Australian parliament," *South Australian Voluntary Euthanasia Society*, accessed March 10, 2011, http://www.saves.asn.au/resources/timeline_for_VE_legislation.pdf.
[210] South Australian Voluntary Euthanasia Society, "Another missed opportunity," *The VE Bulletin,* 17 no. 1, (2000).

decisions were upheld, and it was ordered that the earliest that the recommendations could be considered by parliament was 27 March 2000. This prevented the issue being debated during the next two years.[211]

Following the requirements of the Social Development Committee, Sandra Kanck waited two years to introduce her next bill. On 14 March 2001, Kanck introduced the *Dignity in Dying Bill 2001* in the Legislative Council. The Bill was debated on the evening of 25 July 2001 and, once again, successfully passed its Second Reading vote in the Legislative Council by 10 votes to 9. Table 5.4 below shows the patterns of voting on the Bill at the Second Reading stage.

Table 5.4. Party Voting on the 2001 *Dignity in Dying Bill* in the Legislative Council

	FOR	AGAINST	DNV	COEHSION
LIB	3	5	1	.14
ALP	2	3		.20
DEM	2	1		.34
IND	3	0		1
	10	9		

Once again, the Bill split both main political parties. This time however, the majority of the Liberal (57 per cent) and ALP (60 per cent) members were opposed. The number of ALP MLCs supporting liberalisation of end of life choices was reduced after two members, Terry Cameron and Trevor Crothers, left the party and became independents. The majority of Democrat MLCs supported the proposal, but this time one Democrat member opposed it. Nevertheless, the Bill narrowly passed successfully with the support of a cross-party group of MLCs. Following the established pattern, women MLCs were more likely to support the Bill, with three of the four MLCs voting in favour. Yet, despite its success in the conscience vote, the Kanck Bill lapsed and failed to make any further progress. Subsequently, Kanck reintroduced the *Dignity in Dying Bill* into the Legislative Council on 5 May 2002.[212]

[211] "Voluntary Euthanasia Bill 1996," *South Australian Voluntary Euthanasia Society*, accessed March 10, 2011, http://www.saves.asn.au/resources/archive/sa/bill1.php.
[212] South Australian Voluntary Euthanasia Society, "Dignity in Dying Bill reintroduced," *The VE Bulletin* 19, no. 2 (2002).

iii) The Such bills (2003-2012)

The next period of activity on the issue came in the House of Assembly. Between 2003 and 2006 an Independent MP, Bob Such, introduced three bills based on the dignity in dying legislation, previously introduced by Sandra Kanck in the Legislative Council. However, all of these bills lapsed before they went to a vote. Subsequently, between 2006 and 2012, Bob Such introduced legislation another six times in the House of Assembly.

The *Voluntary Euthanasia Bill 2006* prompted a reaction from the Federal Parliament, after Sandra Kanck made a speech in the Legislative Assembly offering advice to members of the public about how to make their own 'peaceful pill' to commit suicide.[213] The speech prompted an unprecedented response from the Legislative Council. In light of the speech, Premier Mike Rann, ALP, addressed the Legislative Assembly, stating that the speech was: 'One of the worst abuses of parliamentary privilege I have ever seen in my nearly 21 years in parliament'. He continued: 'the abhorrence of her speech to the Legislative Council was both distressing and unforgivable'.[214] As a result, the Legislative Council passed a motion by 18 votes to 2 to prohibit Sandra Kanck's speech from appearing in *Hansard*. Only Kanck and Mark Parnell of the Green Party voted against the motion. Although censored in *Hansard*, the text of the speech subsequently appeared on Exit International's website.[215] This prompted a response from the Federal Parliament, with the passage of the *Criminal Code (Suicide Related Material Offences) Act 2006*. The Act prohibited the use of telephone, fax or the Internet for discussion of the practicalities of suicide. The Bill received bipartisan support in the Federal Parliament, with only the Greens and the Democrats opposing the Bill. In an article in the *Age* newspaper, Marshall Perron, the sponsor of the Northern Territory legislation, described the move as a: 'blow to free speech'.[216]

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[213] "Voluntary Euthanasia Speech to the Legislative Council," *Exit International*, accessed 4 April 2011, http://www.exitinternational.net/documents/Kanckspeech.pdf.

[214] South Australian Parliament. Debates of the House of Assembly, August 31 (Adelaide: Parliament of South Australia, 2006), 810.

[215] ABC News Online, "Kanck's speech to appear on Nitschke's website," accessed 15 November, 2011, http://www.abc.net.au/news/newsitems/200609/s1730876.htm.

[216] Marshall Perron, "Suicide Debate Law a Blow to Free Speech," *The Age* (online edition), January 5, 2006, accessed February 21, 2013, http://www.theage.com.au/news/opinion/suicide-debate-law-a-blow-to-free-speech/2006/01/04/1136050492339.html.

Subsequently, Bob Such introduced the *Voluntary Euthanasia Bill* five more times. Four of the bills did not receive a vote; however the most recent Bill, the *Voluntary Euthanasia Bill 2012*, failed to reach the Third Reading stage by only two votes. This was the first vote on the issue in the House of Assembly in 12 years.

iv) The Parnell Bill, the Key/Parnell Bill and the Key Bill (2008-2011)

Since 2008, bills seeking to change the law on voluntary euthanasia have been introduced concurrently, both in the House of Assembly and the Legislative Council. Mark Parnell introduced the *Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill* in the Legislative Council on 12 November 2008. Parnell described the Bill as: 'careful and conservative'.[217] In contrast to the Such and Kanck bills, which had tried to create a new right to voluntary euthanasia in South Australian law, the Parnell Bill sought to include voluntary euthanasia within the existing *Consent to Medical Treatment and Palliative Care Act*. The Bill also sought to provide greater oversight of the medical treatment relating to death, via the establishment of a five-person committee, appointed by the government, including medical and palliative care experts.[218]

The vote on the Parnell Bill was the first vote on issue in the Legislative Council since 2004. Since then almost half of the members (9 of the 22) of the Legislative Council had been replaced, but nevertheless, the Bill passed its Second Reading in the Legislative Council by 11 votes to 10. The Second Reading voting on the Bill is shown in Table 5.5 below.

Table 5.5. Party Voting on the *Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008* in the Legislative Council

	FOR	AGAINST	DNV	COHESION
LIB	3	5		0.14
ALP	4	3	1	0.14
FAM FIRST		2		1
IND	1			1
NO POKIES	2			1
GREEN	1			1
	11	10		

[217] "Newsletter, January 2009", *Dying with Dignity Tasmania*, accessed February 21, 2013, http://www.dwdtas.org.au/downloads/newsletter_jan09.pdf
[218] Ibid.

Previous voting patterns were repeated in the Liberal Party, with the majority of MLCs opposing the Bill. This time however, opinion in the ALP had swung in favour of the Bill, with four MLCs supporting the Bill, backed up by MLCs from the Greens, No Pokies and the Independent MLC David Winderlich. The Bill then went to the Committee Stage, where a series of amendments were tabled. The Bill received its Third Reading in the Legislative Council on 18 November 2009. However, in the vote, David Ridgway (Liberal) and Anne Bressington (Independent) who had previously supported the Bill withdrew their support. Ridgway stated that he changed his view on the issue after recently speaking to medical practitioners about the issue during the time his mother was in hospital and passed away. Consequently, the Bill was defeated by two votes, 9 votes to 11.

In 2010, Steph Key (ALP) and Mark Parnell (Green) introduced a joint bill entitled the *Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Bill*. This was the first time a joint bill on the issue of voluntary euthanasia had been introduced in any of the Australian parliaments. Key introduced the Bill into the House of Assembly on 16 September 2010 and Parnell introduced the Bill into the Legislative Council on 29 September 2010. Once again, the aim of the Bill was to amend the *Consent to Medical Treatment and Palliative Care Act 1995* by introducing a new section (Part 4 – End of Life Arrangements).[219] The Bill would allow requests for active voluntary euthanasia to be made: 'where an adult of sound mind is suffering from the final stage of a terminal illness or an illness, injury or other medical condition, except a mental illness, that irreversibly impairs the person's quality of life'. The Bill would also allow the administration of voluntary euthanasia through three methods: administering drugs; prescribing drugs for self-administration; or withdrawing or withholding medical treatment. A number of conditions were attached to such a request for voluntary euthanasia, including a requirement that the person must have consulted two doctors, at least one of who was a specialist in the relevant area of medicine. The Bill would also, if it had passed, have established a special council, called the 'Voluntary Euthanasia Board of South Australia', comprised of medical and legal practitioners, to oversee any requests for voluntary euthanasia. [220]

[219] For a full outline of the intent of the Bill see, South Australian Voluntary Euthanasia Society, *The Bulletin*, 27, no. 3, 1-2.
[220] Ibid.

The Bill was defeated in the Legislative Council 'on the voices' on 24 November 2010. Although there was no formal voting on the Bill, the majority of MLCs (19 out of 22) spoke in the debate. Eleven members spoke against the Bill: two Labor members, Carmel Zollo, and Bernard Finnigan; six Liberal members, the Speaker Bob Sneath, Terry Stephens, David Ridgway, Stephen Wade, Jing Lee, Rob Lucas and Michelle Lensink; two Family First members, Denis Hood and Robert Brokenshire; and the Independent, Ann Bressington. Eight MLCs spoke in favour of the Bill: four Labor members MLCs, Ian Hunter, John Gazzola, Bob Sneath, and Gail Gago; the Independent MLC John Darley; Liberal John Dawkins; Tammy Franks from the Greens; and Kelly Vincent, representing Dignity for Disability.[221] Although the Bill remained alive in the Legislative Assembly for some time, it fell in December 2011, when Parliament was prorogued.[222]

In 2011, seeking greater clarity in the area of end of life choices, Steph Key introduced another bill entitled *Criminal Law Consolidation (Medical Defences – End of Life Arrangements) Amendment Bill 2011* in the House of Assembly. Ms Key stressed that this was not a voluntary euthanasia bill, but it would offer a defence for doctors who act to relieve patients' pain with the incidental outcome being death. Steph Key explained the intent of the Bill in a letter to *The Advertiser* on April 5th 2011:

> 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.[223]

The Bill originated out of a bill proposed by the Health Minister entitled the *Criminal Law Consolidation (Voluntary Euthanasia) Amendment Bill 2010* and sought to amend

[221] See also Sydney Morning Herald, "Euthanasia Bill Defeated," accessed February 21, 2013, http://news.smh.com.au/breaking-news-national/euthanasia-bill-defeated-20101124-187la.html.
[222] Greg Kelton, "Parliament Ends Marathon Spell," *Adelaide Now*, accessed February 21, 2013, http://www.adelaidenow.com.au/news/south-australia/parliament-ends-marathon-spell/story-e6frea83-1226223408922.
[223] Quoted from South Australian Voluntary Euthanasia Society, *The Bulletin*, 28, no. 2 (2011), 1.

the *Criminal Law Consolidation Act 1935* by inserting a new section decriminalising voluntary euthanasia. Key introduced the Bill in the House of Assembly on 10 March 2011 and it passed the Second Reading stage 'on the voices' on 24 March 2011. However, this was rescinded on 5 May 2011, when Mitch Williams, the Deputy Leader of the Opposition, protested that the Bill had been allowed to pass without sufficient debate. Opponents of the Bill also protested that the Bill was almost exactly the same as the one introduced by the Health Minister, with the words 'voluntary euthanasia' removed from the title and that it was a covert attempt to legalise voluntary euthanasia.[224] During this time, one high profile opponent of voluntary euthanasia Karl Morris, the Executive Chairman of Ord Minnett stockbrokers, hired Santo Santoro, a former Liberal Party Queensland Senator, to lobby MPs against the Bill.[225] Although the Bill was scheduled for its Third Reading on 29 September 2011, this did not take place as parliament was prorogued, which resulted in the failure of the Bill.

v) The Such Bill (2012)

One of the most recent attempts to legalise to receive a vote is the *Voluntary Euthanasia Bill 2012*, which failed by 20 votes to 22 on 14 June 2012. This was the first of Bob Such's bills to receive a vote and the first time the issue had been voted on in the House of Assembly for seventeen years. In contrast to the 1995 vote, where the *Voluntary Euthanasia Bill* was defeated 30 votes to 12, the 2012 Bill failed very narrowly by 22 votes to 20. Table 5.6 below reports the Second Reading voting on the Bill by party.

Table 5.6. Party Voting on the *Voluntary Euthanasia Bill 2012* in the House of Assembly

	FOR	AGAINST	DNV	COEHSION
LIB	5	11	2	.38
ALP	14	9	3	.22
IND	1	2		-
	20	22	5	

During the voting, both political parties were significantly split, only half as cohesive on the issue as they were in 1995. The legislation was supported by the Premier Jay Weatherill, as well as two senior ministers, Pat Conlon and Paul Caica. The Leader of

[224] See, "End of life Arrangements' or Just Plain Killing?" *HOPE*, accessed February 21, 2013, http://noeuthanasia.org.au/index.php?option=com_content&view=article&id=87:end-of-life-arrangements-or-just-plain-killing&catid=26&Itemid=174.

[225] Russell Emerson and Sarah Martin, "Big Money Bid To Stop Euthanasia Laws," *The Advertiser*, September 12, 2011, accessed March 3, 2013, http://www.adelaidenow.com.au/big-money-bid-to-stop-euthanasia-laws/story-e6frea6u-1226134239773

the Liberal Party, Isobel Redmond, did not vote. There was also a gendered dimension to the voting. The new influx of female left-wing MPs (many of whom were sponsored by the group Emily's List at the election) were, in large part, responsible for the increase in parliamentary support for the issue. Indeed, half of the 14 ALP members whom supported the Bill were female and twice as many female MPs supported the Bill as opposed it.

However, the ideological and religious factions present in the House of Assembly significantly shaped the outcome of the vote and subsequently, the fate of the Bill. Indeed, the media reported that the main reason for the defeat of the Bill was opposition from 'conservative' Liberals and key members of Labor's right-faction.[226] Members of Labor's right-faction, who voted against the Bill, included Mineral Resources and Energy Minister Tom Koutsantonis, Treasurer Jack Snelling and back-bencher Michael Atkinson. Bob Such, the Bill's sponsor, predicted that there would be significant opposition from the right-wing of the Labor Party. During an interview that took place six months prior to the vote, Such stated:

> 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.[227]

In addition, Christian groups had launched a heavy lobbying campaign to secure the opposition of these MPs.[228] Overall, the vote signals that opinion in the House of Assembly is tending towards liberalisation, but the outcome of future votes is difficult to predict as 5 MPs remained undecided, meaning that future votes could still go either way.

[226] 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.
[227] Telephone interview with Bob Such, January 31, 2012.
[228] Wills, "SA Parliament Kills Off Euthanasia Laws for the Moment."

Explaining the Fate of Voluntary Euthanasia Bills in the South Australian Parliament

To further explain the fate of legislation, the next section presents the findings of an analysis of the debates on two euthanasia bills in the South Australian Parliament: one in the House of Assembly; and one in the Legislative Council. In addition to arguments made by supporters of the legislation, the analysis will focus specifically on the speeches made by opponents. The analysis will also incorporate data collected by the South Australian Voluntary Euthanasia Society (SAVES) on the arguments used by opponents of voluntary euthanasia legislation in the Legislative Council.[229] This will allow a comparison of the types of arguments used in each chamber, as well as an analysis of how opposition to the legalisation of euthanasia has changed over time.

i) The Debate on the Voluntary Euthanasia Bill 1995 in the House of Assembly

The first debate to be analysed is the debate on the *Voluntary Euthanasia Bill 1995*, which was introduced in the House of Assembly by John Quirke (ALP) on 9 March 1995.[230] The debate took place over seven days between 9 March and 27 July 1995 and subsequently, the Bill was defeated in a vote, 30 votes to 12. In addition to the sponsor of the Bill, 22 of the 47 members of the House of Assembly spoke in the debate, the majority of which opposed the Bill. In total 7 MPs (5 ALP and 2 Liberal) spoke in favour of the Bill, whilst more than twice as many MPs (15 in total, including 1 ALP and 14 Liberal), spoke against the Bill.

Arguments used by Opponents of the Bill

Opponents of the Bill used a broad range of arguments, 24 in total, to oppose the Bill. The most frequently used argument emphasised that good palliative care was already available in South Australia and therefore, there was no need for voluntary euthanasia and that resources should be put into developing palliative care facilities. The other most frequently used argument in opposition to the Bill related to concerns about the sanctity and value of human life. Both arguments were used by 6 of the 15 MPs who opposed the Bill. The other main arguments used to oppose the Bill are summarised in Table 5.7 below.

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[229] "Parliamentary opposition to voluntary euthanasia in SA and SAVES responses," *SAVES Website*, accessed March 3, 2013, http://www.saves.asn.au/archives/resources/archive/sa/parliament_and_saves.pdf.

[230] South Australian Parliament. *Debates of the House of Assembly, March 9, 1995*. Adelaide: Parliament of South Australia, 1995.

Table 5.7. Arguments used by Opponents of the *Voluntary Euthanasia Bill 1995*

Argument	**Party/Frequency**		
	ALP	**Lib**	**Total**
Good palliative care is already available and should be developed further	1	5	6
Sanctity/value of human life	-	6	6
Under the current *Consent to Medical Treatment and Palliative Care Act* patients have the right to refuse treatment	1	4	5
The 'slippery slope' argument		5	5
Elderly/terminally ill people will be placed under pressure to choose euthanasia	1	4	5
Human beings do not have the right to end their lives – euthanasia undermines this principle	-	4	4
Unintended consequences	-	4	4
The Bill contains inadequate safeguards	-	4	4
Opinion polls are unreliable	-	3	3
The present Bill will blur the distinction between mercy killing and other methods such as withdrawing treatment	1	2	3
Doctors and the AMA oppose the practice	-	3	3
Medical ethics: euthanasia contravenes the Hippocratic Oath	1	2	3
Other jurisdictions have rejected the practice	-	2	2
Opposition in electorate	-	2	2
The Bill lacks clarity and contains loopholes	-	1	1
The Bill sends out the wrong message to young people	-	1	1
The Bill only applies to those over 18 years old, thus implying that those under 18 can endure pain until they die	-	1	1
It is the responsibility of government to protect the vulnerable	-	1	1
The Bill does not respect religious/ethnic minority values	-	1	1
Euthanasia undermines common law which seeks to uphold life	-	1	1
A person who is terminally ill may recover	-	1	1
No solution to the issue can be found in law	-	1	1
Bill gives too much power to physicians	-	1	1
The issue still provides an ethical dilemma to the Dutch government	-	1	1

Arguments used by supporters of the Bill

In contrast to the opponents, supporters used a smaller range of arguments and their speeches were generally shorter in length, to allow more time for opponents to speak in the debate. Consequently, twice as many opponents of the Bill spoke in the debate than supporters. Nevertheless, seven of the 12 MPs who voted in favour of the Bill spoke in the debate. In total, three of the seven MPs who spoke in favour of the Bill used the individual rights argument and the same number of MPs supported the Bill in order to allow further debate on the issue. Liberal MPs in particular were more likely to state that although they didn't support the practice of voluntary euthanasia, they were willing to let the Bill pass at Second Reading, to allow further debate on the issue to take place. A range of additional arguments were also raised by individual MPs: the compassion argument; that public opinion was in favour of reform; and that there was a need to

regulate existing practice. One MP reflected on his time as a medical student, during which he watched patients in a cancer ward die in pain. The arguments used by supporters of the Bill are summarised in Table 5.8 below.

Table 5.8. Arguments used by Supporters of the *Voluntary Euthanasia Bill 1995*

Argument	**Frequency/Party**		
	ALP	**Lib**	**Total**
Individual rights	2	1	3
Bill should be passed to allow further debate	1	2	3
Need to tackle life and death issues	1	-	1
Compassion	1	-	1
Not all pain can be managed via palliative care	1	-	1
The process is voluntary	-	1	1
Public opinion is in favour	-	1	1
The provisions of the Bill are minimal – request for assisted death is only in respect to a current condition and to those with less than 12 months to live	-	1	1
The law will regulate existing practice	-	1	1
Supports the Bill but it does not go far enough	1	-	1
Not many people will use the Bill	1	-	1
Personal experience with terminally ill people	-	1	1

ii) The Debates on the Levy and Kanck Bills in the Legislative Council: 1996 – 2004

Data from the South Australian Voluntary Euthanasia Society indicates the nature of objections to the Levy and Kanck bills in the South Australian Legislative Council between 1996 and 2004.[231] The most popular argument used by MLCs was the objection to voluntary euthanasia in principle. Most objected to the practice on religious and moral grounds. The second most widely used argument, which appeared fifteen times, was the impossibility of developing a bill with adequate safeguards. The ten arguments that were used in the debates are summarised in Table 5.9 below.

[231] "Parliamentary opposition to voluntary euthanasia in SA and SAVES responses."

Table 5.9. Opposition to Voluntary Euthanasia Legislation in the Legislative Council (1996-2004)

Argument	No. of times used
Object to the principle of voluntary euthanasia	16
Adequate safeguards are impossible	15
The definition of "hopelessly ill" is too broad. Why not "terminally ill"?	13
The *Consent to Medical Treatment and Palliative Care Act* is sufficient	12
Vulnerable people may be easily persuaded to seek to end their lives	11
The slippery slope argument	8
The Netherlands experience – laws have been broadened and people have been killed without consent	7
Other authorities have rejected euthanasia (i.e. British House of Lords Select Committee)	6
Increased health costs and economic rationalisation will pressure the health service into unwarranted acceptance of euthanasia requests	4
Medical ethics: euthanasia contravenes the Hippocratic Oath	3

iii) The Debate on the Consent to Medical Treatment (End of Life Arrangements) Amendment Bill, 2010 in the South Australian Legislative Council

One of the most recent debates on the matter in the South Australian Parliament was the debate in the Legislative Council on the *Consent to Medical Treatment (End of Life Arrangements) Amendment Bill*.[232] An analysis of this debate is important here because the Bill was rejected 'on the voices' without a vote. In addition, an analysis of a more recent debate updates knowledge of MLCs' opinions on voluntary euthanasia in South Australia and will supplement the SAVES data from the period 1996-2004, to give a general overview.

The Second Reading debate took place over three days, with the majority of MLCs speaking on 24 November 2010. The majority of MLCs (19 out of 22) spoke in the debate. Eleven members spoke in opposition to the Bill: two ALP members; six Liberal members; two Family First MLCs; and one independent. Eight MLCs spoke in favour: four ALP members; one Liberal; one independent; one Green; and the MLC representing Dignity for Disability.

Arguments used by Supporters of the Bill

Overall, MLCs raised thirteen separate arguments in support of the Bill. The most popular argument, which was used by MLCs from all parties, was again the individual

[232] South Australian Parliament. *Debates of the Legislative Council, November 24, 2010*. Adelaide: Parliament of South Australia, 2010.

rights argument. The MLCs who used this argument all made the point that individuals should have the right to a dignified death at a time of their choosing. As we saw, this was also the most popular argument used by supporters in the Legislative Assembly. The second most frequently used argument was that opinion polls show support for the practice. Three MLCs argued that opinion polls are valid and provide a valuable guide to the general feeling about the issue in the electorate. In addition, one MLC argued that the Bill should pass, as most Australians supported the practice. Another three arguments were used twice each: that the Bill did contain adequate safeguards; that the practice already occurs and needs a regulatory framework; and finally, that palliative care is not always adequate for controlling pain. The other main arguments used by supporters of the Bill are summarised in Table 5.10 below.

Table 5.10. Arguments used by Supporters of the *Consent to Medical Treatment (End of Life Arrangements) Amendment Bill, 2010* in the South Australian Legislative Council

Argument	**Frequency/Party**				
	ALP	**Lib.**	**Green**	**Ind.**	**Total**
Individual rights	3	1	1	1	6
Opinion polls are informative & most Australians support the practice	2		1		3
The safeguards are adequate			1	1	2
The practice already occurs & needs a regulatory framework	1		1		2
Palliative care is not always adequate	1		1		2
Compassion				1	1
There has been a lot of consultation on the Bill			1		1
The Board will Play an active role			1		1
No evidence that vulnerable groups died more often in Oregon or the Netherlands			1		1
VE drives investment in palliative care			1		1
Few people will use the law				1	1
Personal reasons: death of relatives		1			1
The practice is voluntary		1			1

Arguments Used By Opponents of the Bill

The majority of the MLCs had spoken on the issue before, thus there were common themes throughout the debate on the *Consent to Medical Treatment Bill*, which had arisen in previous debates on the issue. This is noticeable in a comparison of the debate on this piece of legislation and the SAVES data. In both debates, opponents argued that the present *Consent to Medical Treatment Act* and existing palliative care arrangements work well, so the further liberalising of end of life choices is unnecessary. Although

there were some similarities between the types of arguments used by these MLCs and the MPs in the House of Assembly fifteen years ago, on the Quirke Bill, opposition on the basis of religious 'sanctity of life' concerns have decreased and the scope and range of arguments used by opponents has increased. Overall, MLCs who opposed the Bill raised thirty-one separate arguments in opposition to the Bill. The arguments raised by MPs are summarised in Table 5.11.

Table 5.11. Arguments used by Opponents of the *Consent to Medical Treatment (End of Life Arrangements) Amendment Bill, 2010* in the South Australian Legislative Council

Argument	**Party/Frequency**				
	Lib	**ALP**	**FF**	**Ind.**	**Total**
Rejects following public opinion polls	1	2	2	1	6
Elderly people may feel under pressure to undertake euthanasia	2	2			4
Practical problems i.e. the Bill is unfair on insurance companies	1	1	2		4
The AMA & other bodies oppose the practice	2	1	1		4
Inadequate safeguards	1	1	2		4
The Bill is too broad i.e. a person does not need to be terminally ill to use it	1		2		3
Aboriginal concerns	2		1		3
The present palliative care system works well/ more resources should be put into the system	1	1	1		3
The legislation is dangerous/put people at risk	2	1			3
The Church opposes the practice		1	1		2
There should be a referendum on the matter		1		1	2
Party does not support voluntary euthanasia			2		2
Euthanasia would lead to an erosion of trust between doctors and patients		1	1		2
Heath Minister statement on shortcomings	1	1			2
The 'slippery slope' argument		1		1	2
Unintended consequences				1	1
Legislators should work to improve Pal. C.		1			1
Existing law on advance directives is sufficient		1			1
The wording of the Bill makes the advance directives process unworkable			1		1
MPs in the Netherlands are opposed to VE			1		1
Parties who have stood on euthanasia platforms have not been successful			1		1
The Bill has conflicting elements i.e. doctors who oppose euthanasia may face imprisonment			1		1
A small number of terminally ill people can recover			1		1
Patient's wishes are sometimes unclear		1			1
The State should not pay to kill its own citizens		1			1
Similar legislation has been defeated in other parliaments		1			1
Medical Ethics: euthanasia contravenes the HO	1				1
The majority of correspondence received has been against the Bill			1		1
People should not choose euthanasia as an economic measure		1			1
Active VE not been supported in referendum		1			1
Personal experience: death of relatives		1			1

The most popular argument used against was the response to supporters' arguments that public opinion was in favour of the practice, so it should be legalised. In total, six legislators emphasised that they would not follow public opinion on the issue, as they believed it was their responsibility to protect the electorate from 'dangerous' laws. The next most frequently used argument against the Bill related to the position of the Australian Medical Association. Four MLCs argued that, because medical organisations, such as the AMA, opposed the practice, they would not support the Bill.

Three other arguments were used by four MLCs. First, despite the evolution of the Bill and the inclusion of provisions for an official voluntary euthanasia board, MLCs were still concerned that the Bill did not contain adequate safeguards. Second, it was argued that elderly people might feel under pressure to agree to euthanasia. Third, MLCs also raised practical problems with the Bill, for example suggesting that it was unfair on insurance companies because it did not contain provisions that a person planning euthanasia should be prohibited from taking out an insurance policy. A larger number of arguments were used three times or less, such as that the Bill would allow non-terminally ill people to use the law.

The breadth of arguments used by MLCs indicates that the debate has moved forward and arguments about the Bill have become more sophisticated over time. It is also noticeable that during the earlier debates, concerns about opposition from the Church and sanctity of life were more common. However, these concerns were raised by relatively few MLCs in 2010. A number of members, who had spoken on the issue before, stated that they would not repeat the main reasons for their positions on the issue, but rather, raised additional concerns about the new bill. This suggests MPs positions have become fixed and future liberalisation rests upon on a change in the composition of the Parliament, rather than a change in MPs views on the issue.

The Future of the Issue in South Australia

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 5 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.[233]

The Bill was introduced into the House of Assembly on 10 March 2011 and had the support of the Health Minister John Hill and the Opposition Health Spokesman Duncan McFetridge.[234] The Bill passed its Second Reading 'on the voices' on 24 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 has caused controversy amongst opponents of voluntary euthanasia who argued that the Bill is too similar to the *Criminal Law Consolidation (Voluntary Euthanasia) Amendment Bill 2010*, which was previously introduced by the Health Minister John Hill and is a covert attempt to legalise voluntary euthanasia.[235] As such, there is evidence that opponents of euthanasia are taking this move seriously. 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.[236] 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.[237] The Third Reading of the Bill was

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[233] Quoted from SAVES, "the Bulletin," 1.
[234] 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.
[235] See, HOPE, "End of life Arrangements' or Just Plain Killing?."
[236] Archer, "Euthanasia Bill sparks Concern from AMA."
[237] "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.

scheduled to take place on 29 September 2011, however this was postponed and eventually the Bill failed when Parliament was prorogued.

In 2010, Minister 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 of the Bill to allow a defence to doctors who administer pain-relieving drugs. In 2011, Hill stated his position on the issue and said he had been a strong supporter of euthanasia before the death of his sister from cancer a decade ago, but because of her good experience with palliative care, he no longer supported an absolute right-to-die platform. He 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.[238]

In October 2012, Minister Hill introduced Government legislation on a related matter – advance directives – which has caused a stir amongst anti-euthanasia groups. The *Advanced Care Directives Bill* was introduced on 17 October 2012 in 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 singe 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'.[239] The Bill passed the House of Assembly on 15 November 2012 and is awaiting its introduction in the Legislative Council.

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[238] Michael Owen, "Minister Recalls Sister as Euthanasia Law Nears."
[239] "New Threat Please Act Now!" *Hope Website*, accessed January 12, 2012, http://noeuthanasia.org.au/content/campaigns/south-australia.html.

During an interview that took place before Minister Hill's resignation, Steph Key emphasised the importance of his 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.[240]

However, Minister Hill announced his resignation as Health Minister, as he intends to retire at the 2014 election.[241] The new Health Minister, Jack Snelling, is Catholic and reported to be very opposed to voluntary euthanasia which will limit the likelihood of Government involvement in the future.[242]

In February 2013, Bob Such introduced the *Ending Life With Dignity Bill 2013*, which failed due to a lack of time in Parliament. The Bill was 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, who have instead been working with Steph Key to develop a broader bill. Steph Key has confirmed that she will be introducing a Bill in the future. In February 2013, Ms Key met with the euthanasia lobby again, including Philip Nitschke,

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[240] Interview with Steph Key, 24th April 2012, Adelaide.
[241] 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.
[242] 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.

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. [243]

Conclusion: Why have Bills to Legalise Voluntary Euthanasia in the South Australian Parliament Failed to Pass into Law?

Overall, out of all the Australian states and territories, the South Australian Parliament has seen the largest number of attempts to legalise voluntary euthanasia. In the early 1980s, the State was one of the first to introduce natural death legislation, allowing adults in South Australia to state that extraordinary measures should not be taken to prolong their life where there is no hope for their recovery. Ten years later, the State became the first to put into place statutory provisions clarifying the law on the administration of pain relieving drugs, with the *Consent to Medical Treatment and Palliative Care Act 1995*. Moreover, on more than one occasion, the Legislative Council has demonstrated that it is willing to pass a law on voluntary euthanasia at Second Reading stage. Both the *Dignity in Dying Bill 2001* and the *Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008* passed Second Reading stage, albeit with small margins. This indicates that there is some support in the State for liberalisation of end of life choices.

Why then, have voluntary euthanasia bills failed in the South Australian Parliament? Chapter five demonstrated that, although a significant number of legislators have been willing to propose legislation on the issue, strong opposition from MPs in the ALP's right faction of the party has prevented the progress of successive bills. Although there is evidence of cross party-support, which would be vital in the passage of a euthanasia law, the voting figures in the House of Assembly demonstrate that 'socially liberal' Liberals were not willing to support change on the issue in large enough numbers to counteract the opposition from the right of the ALP. The analysis of the debates provided a greater insight into the reasons why MPs opposed the bills, revealing the wide variety of arguments used by opponents of bills. The main argument used by opponents was that South Australia's law on advance directives goes 'far enough' and further liberalisation of the law is unnecessary.

[243] During a telephone conversation with the author on January 31, 2013.

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. Another important factor is the five 'undecided' members in the House of Assembly, whose votes could determine the fate of future proposals given the very narrow margin by which Bob Such's 2012 Bill failed. At present, South Australia is not the only parliament considering the issue, there is also significant activity taking place in the Tasmanian Parliament on the issue. As such, the fourth and final case study will focus on attempts to reform the law in the State.

Chapter 6: Euthanasia Law Reform in the Tasmanian Parliament

Chapter five investigated the proposals to reform the law on voluntary euthanasia in the South Australian Parliament. However at present, the Tasmanian Parliament also holds promise for those seeking to change the law. One of the most positive signs for reform 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 that she would hold a public consultation and make funds available to draft a Private Members' Bill.[244] Since this time, Giddings and McKim have been working in collaboration on draft proposals for reform.[245] In February 2013, a discussion paper containing the model of voluntary euthanasia for Tasmania was released and legislation is expected to be introduced by the end of 2013. Chapter six will describe and explain the fate of the 2009 attempt to change the law on euthanasia in Tasmania, the *Dying with Dignity Bill* and consider the likelihood of reform in the near future. It is argued that party politics played a role in the voting on the 2009 Bill and ultimately, the lack of support from ALP MPs led to its demise. The fate of the forthcoming 2013 Bill 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 the proposal could be slowed down by opposition in the Second Chamber.

The chapter is divided into four sections. Section one will outline the status of end of life choices in Tasmania and the aims of the *Dying with Dignity Bill 2009*. Subsequently, to contextualise the explanation of the fate of the Bill, Section two presents a legislative history of the issue in the Tasmanian Parliament. Section three will focus upon explaining the fate of the Bill, identifying the nature and extent of opposition to it through an analysis of the conscience vote and parliamentary debate on the Bill, as well as material taken from an interview with the Bill's sponsor. Finally,

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[244] "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

[245] 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

Section four will consider the future of the issue in the State and discuss the likelihood of reform on the issue in the near future.

End of Life Choices and the Law in Tasmania

To understand the significance of the *Dying with Dignity Bill 2009*, it is first important to identify the present status of the law in relation to end of life choices in Tasmania. In Tasmania it has always been illegal for a doctor to comply with a patient's request for active voluntary euthanasia. A doctor who complied with such a request could be charged with murder, and in Tasmania there is a mandatory sentence of life imprisonment for murder.[246] The criminal law in Australia no longer proscribes suicide or attempted suicide; however, alongside voluntary euthanasia, assisting suicide is a crime in all the Australian jurisdictions, including Tasmania. As such, a doctor who complies with a patient's request to die in this way is, again, exposed to criminal liability. In addition, in Tasmania, it remains an offence to: 'instigate or aid another to kill himself'.[247]

Since 1985, the Tasmania Greens have sought to bring Tasmanian law on death and dying into line with the other states, including a number of attempts to introduce legislation to allow advance directives. The legislation introduced was modelled on the *Victorian Medical Treatment Act 1988*. All the attempts to modify the law in this area failed until 2005, when the Tasmanian Parliament passed the *Directions for Medical Treatment Bill*. The Bill allows 'advance directives' to be made for a current condition, terminal illness or persistent vegetative state. In addition, the Parliament also legislated to allow individuals to appoint an enduring guardian as a substitute decision-maker, in the event of incapacitation.[248] This move brought Tasmanian law on death and dying into line with the Northern Territory, South Australia, Queensland and Victoria.

In this context, the significance of the *Dying with Dignity Bill 2009* was that it sought to decriminalise voluntary euthanasia in the State.[249] The Bill was modelled on the Northern Territory *ROTTI Bill* and sought to:

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[246] Cica, *Euthanasia*.
[247] Otlowski cited in Cica, *Euthanasia*.
[248] See "Tasmania," *Exit International Website*, accessed March 7, 2013, http://www.exitinternational.net/page/TAS.
[249] A copy of the Bill is available online at: http://www.parliament.tas.gov.au/bills/Bills2009/pdf/37_of_2009.pdf

> …confirm the right of a person enduring a terminal illness with profound suffering to request assistance from a medically qualified person to voluntarily end his or her life in a humane and dignified manner, to allow for such assistance to be given in certain circumstances without legal impediment to the person rendering the assistance [and] to provide procedural protection against the possibility of abuse of the rights recognised by this Act.[250]

Amongst other provisions, the Bill had a number of safeguards and restrictions, which limited its scope. For example, under the provisions of the Bill, voluntary euthanasia would only be available to terminally ill people facing intolerable suffering who had expressed the wish to die; and a medical practitioner had to be involved. Other provisions included a requirement that the sufferer must be examined by three doctors, including a psychiatrist and a doctor qualified in the treatment of the sufferer's terminal illness, to confirm the existence and seriousness of the illness and likelihood of death, as well as the mental competence of the sufferer.[251]

A Legislative History of the Issue

The Tasmanian Parliament has considered the issue of euthanasia three times: once in 1984; a second time in 1996; and most recently, in 2009. In 1984, Greens MP Bob Brown introduced a Private Members' Bill on the issue in the House of Assembly.[252] In 1996, an examination of the issue was conducted by the Community Development Committee, which produced a report investigating the need for legislation on voluntary euthanasia.[253] The investigation was prompted by the enactment and repeal of the Northern Territory Bill. Nevertheless, although 54 per cent of the Tasmanian public supported the legalisation of voluntary euthanasia at the time, the Committee recommended that there should be no change in the law (Report of the Community Development Committee, 1998, p.10).[254] The Committee did, however, recommend that there should be reform of the law on advance directives, in conjunction with a

[250] *Dying with Dignity Bill 2009* (Tas), Long Title.
[251] Bartels and Otlowski. "A Right to Die? Euthanasia and the law in Australia."

[252] "Newsletter, November 2007," *Dying with Dignity Tasmania website*, accessed March 7, 2013, http://www.dwdtas.org.au/downloads/newsletter_nov07.pdf
[253] Community Development Committee, "The Need for Legislation on Voluntary Euthanasia," accessed March 7, 2013, http://www.parliament.tas.gov.au/ctee/old_ctees/reports/Voluntary%20Euthanasia.pdf.
[254] An opinion poll for the *Mercury* Newspaper asked participants "would you like to see Tasmania legalise voluntary euthanasia as the Northern Territory has done?" 54% of respondents answered yes, 34% of respondents answered no and 10.8% were undecided.

programme to promote the practice amongst the general public and the legal and medical professions.

In 2009, thirteen years after the Community Development Committee inquiry, the Tasmanian Parliament considered the issue again, when the leader of the Tasmanian Greens, Nick McKim introduced the *Dying with Dignity Bill 2009* into the Tasmanian House of Assembly on 26 May.[255] 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. After McKim tabled the Bill, there was a motion debated in the Legislative Council, to send the Bill to an Upper House Committee. However, the motion was voted down on 18 June 2009 and instead the Deputy Premier, Lara Giddings referred the Bill to the Joint Standing Committee on Community Development. The Committee was composed of three independent members of the Legislative Council: Kerry Finch, Ruth Forrest and Mike Gaffney; and four Members of the House of Assembly: Heather Butler and Brenton Best, both representing the ALP; Cassy O'Connor, from the Greens; and Brett Whiteley, from the Liberal Party.

Subsequently, public hearings about the Bill were held in August 2009. The majority of submissions opposed the Bill. Submissions in favour of the Bill came from the sponsor Nick McKim, Dying with Dignity Tasmania, Christians for Choice for Voluntary Euthanasia and euthanasia activist Philip Nitschke. In addition, two medical organisations: the Nuro Muscular Alliance of Tasmania and the MS Society of Tasmania, made submissions in favour of the Bill, stating that although their organisations did not have a formal position on the legislation, they strongly supported their clients having the choice to make their own decisions on the matter. Submissions in opposition to the Bill came from a variety of sources, including Church groups, the AMA, the Royal College of Nurses and the Law Society.[256] Overall, the opponents of the Bill were more successful than supporters in organising submissions, both from within Tasmania and from inter-state groups. In total there were 375 submissions opposing the Bill, with 44 from interstate groups and 24 emails, which did not specify a

[255] For an analysis of the provisions of the Bill see Bartles and Otlowski "A Right to Die? Euthanasia and the law in Australia."
[256] "Newsletter, September 2009," *Dying with Dignity Tasmania website*, accessed March 7, 2013, http://www.dwdtas.org.au/downloads/newsletter_sept09.pdf.

location. In contrast, there were 121 submissions in favour of the Bill, with only 9 from interstate and 4 emails from unspecified locations.[257]

The Committee tabled its report on 9 October 2009. The main finding of the Committee was that the Bill did not provide an "adequate or concise legislative framework" to permit voluntary or assisted suicide and the Bill was "described as having insufficient or too many safeguards to enable a sufferer seeking assistance to end their life".[258]

Despite the failure of the 2009 Bill, one year later, in June 2010, the Premier Lara Giddings stated that she remained committed to working with the Tasmanian Greens to prepare a Private Members' Bill on the issue, reworking the legislation.[259] 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'.[260]

Explaining the Fate of the *Dying With Dignity Bill 2009*

One of the main reasons for the failure of the Bill was the high level of opposition it attracted, particularly from ALP MPs, in the House of Assembly. To gain a greater insight into the nature of opposition and ultimately, the failure of the Bill, the following section will consider how the issue played out in the main political parties. First, however, it is necessary to establish the level of opposition to the Bill and the broad reasons why MPs opposed it.

i) The Conscience Vote

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 6.1 indicates the pattern of the voting.

[257] "Newsletter, May 2010," *Dying with Dignity Tasmania website*, accessed March 7, 2013, http://www.dwdtas.org.au/downloads/newsletter_may10.pdf
[258] Community Development Committee, "The Need for Legislation on Voluntary Euthanasia," 6.
[259] Griffiths, "Tasmania relaunches euthanasia debate."
[260] Denholm, "State to Push For Mercy Killing."

Table 6.1. 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. In contrast, all of the Liberal members opposed the Bill. Although the Greens and the Liberals remained cohesive, the ALP was split, with three MPs voting in support of the Bill and nine opposing it.

ii) The Parliamentary Debate

The analysis of the conscience vote in the House of Assembly indicates that there was significant opposition to the Bill in both the main political parties. As such, an examination of the parliamentary debate on the Bill is necessary to understand the broad reasons why MPs opposed the Bill.[261]

Although there was a ten-minute time limit on speeches in the debate, supporters of the Bill occupied the floor for less time, deliberately keeping their speeches brief to allow opponents to speak and let their grievances be heard. As the sponsor of the Bill, Nick McKim spoke first in the debate. The majority of supporters indicated their support for all of the arguments made by Nick McKim in his introductory speech, but generally did not reiterate the points made. Consequently, the range of arguments made by supporters was not as broad as by those by MLAs opposed to the Bill. In his speech, McKim argued that he introduced his Bill in order to bring the law into line with current community values on the practice, and give those suffering a painful death the right to choose how to die:

> In fact, Mr Speaker, current law forces many people to suffer pain and indignity as they die. That is an archaic law that I believe is out of step with contemporary community values. This bill seeks to provide those sufferers - that is, sufferers

[261] Tasmanian Parliament, *Debates of the House of Assembly, November 4, 2009* (Hobart: Parliament of Tasmania, 2009).

> who are facing an agonising and often humiliating death - with the right to choose a peaceful and dignified death within a safe and regulated legal and medical framework. It also seeks to provide certainty and protection for doctors and other health care workers who choose, for very good, very right reasons, to aid somebody to die.

McKim continued:

> My conscience tells me that it is wrong to force people to die agonising and humiliating deaths when they do not want to die that kind of death. My conscience tells me it is wrong that the law is so out of step with community sentiment on this issue. My conscience tells me that it is wrong that voluntary and non-voluntary euthanasia is currently practised within Tasmania in a completely unregulated framework. My conscience tells me that it is wrong that courts have become de facto public policy makers due to a failure of parliaments around the world to take responsibility for this area of public policy. My conscience tells me that laws should be based on values like compassion and respect, which this bill is, and my conscience tells me that it is wrong that the law protects us while we are alive but fails us as we are dying, and that is what current law does. In short, my conscience tells me loud and clear that I should support law reform in this area.

Table 6.2 below summarises the range of arguments, of which there were eight, used by supporters of the Bill.

Table 6.2. Arguments used by supporters of the *Dying with Dignity Bill 2009*

Argument	**Frequency/Party**		
	Green	**ALP**	**Total**
Compassion	3	1	4
Euthanasia is already happening and should to be regulated to protect doctors who help those who are suffering to die	4	-	4
The Bill does provide enough safeguards	1	2	3
Individuals should have the right to choose	1	1	2
Public opinion is in favour of law reform	2	-	2
Laws in other countries have not been abused	1	1	2
Adequate palliative care is not available for all	2	-	2
The Bill established a way for the community to deal with death	-	1	1
Only a small number of people will use the law	-	1	1

The most popular argument used by supporters of the Bill, which was raised on four occasions, fell under the broad heading of 'compassion'. These MPs argued that individuals should not have to die in pain. In addition, supporters of the Bill also raised the point that euthanasia is already occurring in the State and that present practice should be regulated to offer protection to doctors who help those in pain to die. Again, Nick McKim, the sponsor of the Bill, stated that:

> My conscience tells me that it is wrong that voluntary and non-voluntary euthanasia is currently practised within Tasmania in a completely unregulated framework.

An argument to counter one of the main criticisms of the opponents of the Bill, that the Bill does contain adequate safeguards, was raised on three occasions. As Lisa Singh (ALP, Dennison) argued, the Bill did contain a number of safeguards including that: only a terminally ill person who is enduring intolerable suffering would be able to seek assistance. The person seeking to use law must be over the age of 18, mentally competent, have been assessed by two doctors and a psychiatrist and be made fully aware of available palliative care options. The Bill also contained a clause that the person seeking assistance must have been a resident in Tasmania for 12 months and a cooling-off period of seven days following a request to a medical practitioner is in place. In this light, Lisa Singh (ALP, Dennison) argued: 'this bill is founded on voluntariness. No patient, doctor or medical professional can be compelled to take part

under its provisions; they can opt out at any time'. Despite criticism from opponents of the Bill, Lara Giddings, then Deputy Premier, argued in response to opponents that it was necessary that the Bill contained so many safeguards. In addition, she argued that there should be a review of the legislation every two years: 'Probably you could put a review clause in it, reviewing it in two years or so to see whether it was achieving what it set out to achieve'.

The following four arguments were raised on two occasions: first, that individuals should have the right to choose euthanasia if they wish; second, that public opinion favoured law reform; third, that laws in other countries have not been abused; and, fourth that, for various reasons, adequate palliative care is not available for all. The final two arguments were raised once: that the Bill would establish a way for the community to deal with death, which is not available at present; and that only a small number of people would use the law.

The supporters of the Bill could not, however, get the numbers to push the Bill through, as the opposition was simply too great. In addition to the two main party leaders, 13 of the MPs who spoke in the debate were opposed to the Bill. Opponents of the Bill made a broad range of points (12 in total). There was significant cross-party support for the key argument made in the Committee Report (the position held by both the party leaders) that the Bill did not provide an adequate legislative framework for euthanasia. Opponents from both the Liberal Party and the ALP argued that legislators should be working towards better palliative care services in Tasmania. Table 6.3 below summarises the main arguments made by the opponents of the Bill.

Table 6.3. Arguments used by opponents of the *Dying with Dignity Bill 2009*

Argument	**Frequency/Party**		
	Liberal	**ALP**	**Total**
The Bill does not set out a clear legislative framework or adequate safeguards	2	3	5
Vulnerable people will be put in danger	4	1	5
There is no need for euthanasia with adequate PC	2	3	5
The Bill seeks to protect those who commit murder/ euthanasia is 'legalised killing'	3	1	4
The 'slippery slope' argument	1	1	2
Religious reasons i.e. sanctity of life	2	-	2
Patients already have the right to refuse treatment	1	-	1
Other jurisdictions have rejected proposals for a VE law	1	-	1
Legal and medical professionals are against the practice	1	-	1
A doctors role should be to cure patients: Hippocratic Oath	1	-	1
Legislation sends out the wrong message to young people	-	1	1
Views of constituents: most are against	-	1	1

In addition to the four main arguments, opponents of the Bill made eight further arguments opposing the legislation. MPs from both parties evoked the slippery slope argument. Liberal MPs made the following five arguments: first, that they were opposed to the Bill for religious reasons; second, that patients already had the right to refuse treatment, thus a law on voluntary euthanasia was not necessary; third, that other jurisdictions had rejected a law on euthanasia; fourth, that medical and legal professionals were against a law on euthanasia; and, finally, that doctors take a Hippocratic Oath, therefore their role should be to cure patients. In addition, Labor MPs referred to the arguments that the Bill sent out the wrong signal to young people, that it is OK for someone to take their life; and that the views of their constituents were against the Bill and thus, they were also against it.

The analysis of the parliamentary debate reveals that different types of arguments were used to oppose the Bill in the ALP and the Liberal Party. Liberal MPs opposed the Bill on a broader range of arguments and expressed more fundamental disagreement with the principle of voluntary euthanasia than ALP MPs. The following quote from the Bill sponsor Nick McKim accurately describes the nature of the opposition to the Bill:

> There was a range of reasons why people didn't vote for it, but basically opponents were in two camps. There were the people that would never support voluntary euthanasia no matter how it was framed or what the model was and

> those people I suspect will always vote against voluntary euthanasia. But the other reason that people gave was that they had concerns about the model or the drafting of the Bill.[262]

Indeed, the analysis of the debate reveals that not only were there two camps of opponents, but generally the two camps divided along party lines. The following sections will examine the way in which the issue played out in the two main parties, to reveal the nature of the opposition to the Bill and importantly, the reasons for its demise.

iii) The Liberal Party

The analysis of the arguments used by MPs indicates that the six Liberal MPs fell into the first camp of MPs described by McKim: that is those who would oppose the practice in all or almost all circumstances. The first indication of this is that the arguments used against the practice were more wide-ranging, and Liberal MPs spoke longer in the debate, displaying much stronger opposition to the Bill than ALP MPs.

Liberal MPs were more likely to describe euthanasia using emotive language, describing the practice in terms of 'killing' or 'murder'. Indeed, three of the six Liberal MPs used such language in their speeches. For example, Michael Hodgeman, (Liberal, Dennison) stated that:

> I cannot put it any other way than that I am opposed to legalising euthanasia because I see it as legalising killing. The law of this State is clear beyond any doubt that it is illegal to kill another human being in the State of Tasmania and I support that.

Similarly, Brett Whiteley (Liberal, Braddon) also described euthanasia as 'killing' in his speech:

> Whether we like it or not, euthanasia is premeditated or deliberate killing of a human being, albeit under the banner of compassion and with good intentions in the main. There is no dispute with me on that. Under this bill, euthanasia will

[262] Interview with Nick McKim, 04.05.2012

> involve injecting a lethal dose of chemicals into a person's body with the sole purpose of killing them.

In addition, Rene Hidding (Liberal, Lyons) stated that he was opposed to the practice as it sought to provide protection against charges of murder:

> This legislation is all about protection for that perpetrator against the charges of murder, manslaughter, wrongful death, malpractice, negligence et cetera. The proposition is in short that it is better to be dead than in pain.

Liberal MPs were also more likely to discuss their objection to the Bill in relation to religious concerns. In addition, Rene Hidding, emphasised how his faith had informed his decision to oppose the Bill:

> I choose not to set aside my faith and neither will the huge numbers of Christians in Tasmania, those who still identify with the Christian faith, many of whom would agree with me. There are some Christians who do not agree with me, there is no question about that, but many of them agree with me that there are very few options in legislation such as this. We believe that God provides life and life therefore has a special sanctity and to take it or offer to take it is forbidden.

Similarly, Brett Whitley stated that he opposed the Bill on the basis of his belief in the sanctity of life:

> As a Christian I do believe in the sanctity of life very strongly. I see it as my God-given and democratic responsibility to spell out exactly what euthanasia is and is not. It is my view that a mistaken understanding of euthanasia that gives rise to mistaken support for euthanasia is not something that I want to base the passing of legislation on. When we clear up the misunderstanding of what euthanasia is and is not, I believe we dry up the support for a bill such as this.

Will Hodgeman, the Leader of the Liberals, who was last to speak in the debate, moved the focus away from religious and moral arguments. Rather, Hodgeman agreed with the

main conclusion of the Committee Report, arguing that the Bill did not provide an adequate legislative framework for euthanasia:

> I cannot support a bill that does not provide adequate legislative frameworks where it involves the deliberate bringing to an end of a person's life, albeit one who is suffering an incurable disease or condition, but where it is done by another person.

iv) The ALP

The issue played out differently in the ALP. In contrast to the Liberal Party, a significant number of ALP MPs fell into the second category of opponents described by McKim: 'those who were opposed to the Bill, due to the way it was drafted or because of the type of model it proposed'. A number of these MPs said that they were supportive of the practice in some circumstances. For example during the debate, a number of Labor MPs argued that they supported VE, but they weren't prepared to support the Bill on the Second Reading. At least two ALP MPs stated that they supported the Bill in principle, but did not believe that it set out a clear enough legislative framework. Indeed, this was the main concern of the Premier, David Bartlett. Bartlett argued that the Bill did not set out a clear legislative framework for euthanasia and did not contain 'watertight' safeguards to protect Tasmanians:

> I think some of those points are well made but I recognise they are debating points around the quality of the bill that is before us. In voting on this bill we are considering not only the right of Tasmanians to legally end their lives; we are also considering whether this bill lays out a clear pathway to allow that to happen. I think the answer to that is no, it does not.

Another example of this kind of opposition came from Brenton Best (Labor, Braddon) who stated that he believed that a 'softer' approach would have gained more support:

> What I do believe, though, is that maybe a softer approach might have gained support. Certainly what would gain my support would be perhaps to look at the area of decriminalisation, in instances where someone has been assisted and it is a genuine circumstance. I know there are guidelines that the DPP has in relation

> to that and I think that probably would have been a softer and much better approach to take.

The fact that a number of ALP MPs supported the principle of voluntary euthanasia, but failed to support his Bill at the Second Reading stage, dismayed the Bill's sponsor, Nick McKim, who commented upon the opposition to his proposal from the ALP MPs:

> Parliamentary process is that a bill gets read three times in the House of Assembly, the Lower House. The reading for the first time is just a procedural where the bill gets tabled and read; no bill gets opposed on the first reading, it's just simply a notification to the House that the bill has been tabled. The Second Reading happens prior to the bill going into committee stages and the Third Reading is the final passage or not of the new legislation.[263]

He continued:

> If someone supported any bill, I'll use my *Dying with Dignity Bill*, if someone conceptually supported dying with dignity, but had concerns about the drafting or the model the correct approach is to vote for the Bill on the Second Reading speech and then seek to amend the bill when it is in committee stages and they if they still weren't satisfied with the drafting or the model then they vote against it on the Third Reading. That's how parliaments work.[264]

Consequently, McKim argued that Labor opposition to his Bill was politically motivated:

> That's how I am so confident that it was a political strategy by Labor not to give me any kind of a win in the lead up to the election because a number of Labor MPs got up and said they supported VE but they weren't prepared to support the Bill on the Second Reading.[265]

Indeed, Nick McKim foresaw this problem before the debate and took action. He explained how he brought up the issue with his colleagues before the debate:

[263] Interview with Nick McKim, 04.05.2012
[264] Interview with Nick McKim, 04.05.2012
[265] Ibid.

> I actually wrote to all Members of Parliament before the debate and pointed out parliamentary process, like I explained to you, and I said that if they had problems with the model or the drafting that they respected parliamentary process they should support it on Second Reading and the seek to amend it in the committee stages. I was very happy, and in fact flagged in my Second Reading speech, that I would have actually have sought to amend my own bill in areas that it had become clear to me that it wasn't drafted well enough or tightly enough.[266]

The opposition from the ALP MPs is better understood when considered in relation to the timing of the vote on the Bill. Nick McKim argued that ALP opposition to the Bill because of the way it was drafted, and the model of VE it proposed, was in fact, a political strategy not to give him 'a win' in the lead up to the election. He explained:

> I was ready to move this issue in 2008 and then I became leader of the Greens, however, I made the decision to postpone the campaign on VE while I bedded down my leadership with the Greens publicly. So it went back until 2009, and I believe very strongly that within the Labor party who were in majority government at the time, there was an instruction given to Labor MPs that they should not support my bill, as not to give me a 'political win' so close to the 2010 state election.[267]

If McKim is correct, had the Bill been introduced earlier in the electoral cycle, Labor MPs might not have been put under pressure to oppose the Bill and the level of support at the Second Reading stage at least, could have been higher.

[266] Ibid.
[267] Ibid.

The Future of the Issue in the Tasmanian Parliament

In June 2010, whilst in the position of Attorney General Lara Giddings announced that she would hold a public consultation and make funds available to draft a Private Members' Bill.[268] On 23 January 2011, David Bartlett stepped down as Premier. The following day, the State Parliamentary Labor Party unanimously elected Lara Giddings as its new Leader and consequently, the new State Premier. Three months later, during March 2011, it was reported in the *Australian* newspaper that Giddings said she would continue to work with Nick McKim to redraft the *Dignity with Dying Bill* and reintroduce a Bill within the following two years.[269] Since this time Giddings and McKim have been working in collaboration on draft proposals for reform. In February 2013, a discussion paper containing the model of voluntary euthanasia for Tasmania was released and legislation is expected to be introduced by the end of 2013.

Rather than seeking submissions on whether or not there should be law reform on voluntary euthanasia, the discussion paper sought input on what kind of model the sponsors should seek to implement in their Bill. Nick McKim emphasised that the type of model to be introduced is one of the most important factors in developing voluntary euthanasia legislation:

> I think the model is really important and you have got to find a balance in the model between providing adequate safeguards and ensuring that any future framework is workable. My Bill was criticised both for not having enough safeguards and having too many safeguards. In hindsight I would have removed a couple of the safeguards that were in there, more because I think that in a place like Tasmania it is really difficult to get access to specialists, like psychiatrists and psychologists to do a sound mind test on people, but that's one of the issues we are working through currently while we are developing our model.[270]

By seeking community opinion, the sponsors are taking a more bottom-up approach to euthanasia in Tasmania, with the aim of generating broader support and giving the public a greater say about the way of dealing with the issue. This is likely to be well received and community support for voluntary euthanasia remains strong. An EMRS

[268] Tasmania Government, "Attorney General outlines law reform agenda." Griffiths, "Tasmania relaunches euthanasia debate."
[269] Denholm, "State to Push For Mercy Killing."
[270] Interview with N. McKim, 04.05.2012

poll of 1000 Tasmanians commissioned by Nick McKim during May 4-7, 2009 found that 78 per cent of participants were 'in favour of changing the law to allow doctors to meet the patient's wish to end their life'; which was an increase of 3 per cent on a poll conducted the previous year.[271]

On 2 February 2013, the proposed model for Tasmania was released in a discussion paper.[272] The model would allow 'voluntary assisted dying' for people in the advanced stages of a terminal illness. Only Tasmanian citizens over the age of 18 would be able to use the law and their decision would be subject to a 14-day cooling-off period. After this time, life-ending medication can be prescribed and administered by the patient or by the doctor on the patient's behalf. In addition, patients would need to be mentally competent, have given written and verbal consent and have been assessed by at least two doctors. Lara Giddings acknowledged that the model will be too conservative for some campaigners, as it is restricted to people in the terminal stages of a terminal illness, however she said that it was 'the right model for Tasmania'.[273]

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 that there must be three requests from a patient and the consent of two GPs to allow the practice to go ahead. Ultimately, the Bill failed but more narrowly than the 2009 Bill. Table 3 indicates the pattern of the voting.

Table 6.4 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	-

[271] Tim Martain, "Survey backs euthanasia," *The Mercury* (online), May 25, 2011, accessed March 7, 2013,
http://www.themercury.com.au/article/2009/05/25/75471_tasmania-news.html
[272] Lara Giddings and Nick McKim, "Voluntary Assisted Dying – A Proposal for Tasmania," Consultation Paper, February 2013,
http://mps.tas.greens.org.au/wp-content/uploads/2013/02/Voluntary-Assisted-Dying-Consultation-Paper-Feb-2013.pdf
[273] Rosemary Bolger, "Euthanasia Laws to Change," *The Examiner* (online), February 3, 2013, accessed March 8, 2013,
http://www.examiner.com.au/story/1276241/euthanasia-laws-to-change/?cs=94.

Debate in the House of 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.

Predicting when, and if, law reform is likely to take place is difficult. The continuing high level of opposition to change in the Liberal Party represents a big obstacle for proposals. It is expected that Liberal members will continue to be allowed a conscience vote on the Bill, however if euthanasia is interpreted as an extension of the ALP's social reform programme, rather than a Private Members' issue, the Party could become strongly against change on the issue, with the 'social liberals' in the Party coming under pressure from their 'conservative' colleagues to oppose change.

In August 2011, a motion was moved by a delegate at the Liberal Party's State Council meeting at the Devonport City branch, which called on members to acknowledge public opinion and enact laws to: 'allow people with a terminal illness suffering extreme pain to die with dignity'. The pro-euthanasia motion was lost on the voices, with the majority of MPs continuing to oppose any move towards law reform. Rene Hidding (Liberal, Dennison) said:

> It is simply not safe for the weak and vulnerable to be under pressure that comes about under legislation such as this not to be a burden. …Palliative care and pain relief is completely brilliant compared to what it was 10 years ago. There is no such thing as unmanageable pain.[274]

Another important factor is 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 profession as a whole. Indeed, the anti-euthanasia position of the former president, Dr Chirstopher Middleton has been cited in

[274] David Killik, "Libs say no to euthanasia," *The Mercury* (online), August 29, 2011, accessed March 8, 2013,
http://www.themercury.com.au/article/2011/08/29/257031_tasmania-news.html.

the national media several times.[275] Recently 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.[276] Whilst 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 euthanise 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' claim about the position of Tasmanian doctors, stating that: "We have doctors who are motivated by compassion and respect for human dignity who currently euthanise patients and the AMA has just come out and sold those doctors down the river".[277]

Finally, even if a proposal passes the House of 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, the same-sex marriage issue 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 Member Vanessa Goodwin voting against. The five independent MLCs who voted in favour of the Bill were Rob Valentine, Kerry Finch, Ruth Forrest, Craig Farrell, Mike Gaffney and Tony Mulder. The seven independents who voted against the Bill were Vanessa Goodwin, Tania Rattray, Greg Hall, Adriana Taylor, Rosemary Armitage, Ivan Dean, Jim Wilkinson, and Paul Harriss.[278]

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[275] 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.

[276] Hall, "Why is Euthanasia still Illegal in Australia?"

[277] 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

[278] 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: Why did the Dying with Dignity 2009 Bill fail to pass into law?

The failure of the *Dying with Dignity Bill 2009* was due to opposition from both ALP and Liberal MPs, but particularly, due to opposition from ALP MPs on party political grounds. The chapter demonstrated that opposition from the ALP MPs was, in large part, politically motivated and that support for the Bill could have been higher if it had been introduced earlier in the electoral cycle. In contrast, political factors played less of a role amongst Liberal MPs, who maintained a very strong stance against any liberalisation on the issue, 'in principle'.

How likely is it that future attempts to legalise will succeed? Although the campaign to legalise euthanasia has a long history in Tasmania, the most promising developments in the history of reform occurred in 2010 when Lara Giddings became Premier and announced that she would work with the Leader of the Greens, Nick McKim, to introduce a bill on the issue. 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 that there must be three requests from a patient and the consent of two GPs to allow the practice to go ahead. Ultimately, the Bill failed, but more narrowly than the 2009 Bill.

If another bill is introduced, the most important stage for the legislation will be passing votes in both Houses. The Bill will first face a vote in the Legislative Assembly. Vocal opposition from AMA representatives in the media and other lobbying channels could still potentially deter any 'swinging' voters from supporting reform. The Liberals are likely to remain opposed, as the majority of members oppose the practice more substantively. Their present position on the issue was endorsed in August 2011, when a motion to support law reform was defeated at a State Council meeting. In addition, if the Bill passes the House of Assembly, the Legislative Council, who recently defeated same-sex marriage legislation and could present a serious barrier. This chapter has presented the last of four case studies, which sought to explain the fate of Bills to legalise voluntary euthanasia in the Australian state and territorial parliaments. The next two chapters will extend the explanation of the passage of voluntary euthanasia bills, by examining the progress of legislation in comparative context, and by examining the broader political processes involved in the passage of euthanasia legislation.

Chapter 7: Comparing the Fate of, and Prospects for, Bills in the Four Jurisdictions

The individual case studies explained the fate of euthanasia bills in four Australian Parliaments and identified several factors that affected the fate of bills. To add to the explanation offered in each of the case studies, chapter seven will compare the factors that affected the fate of bills and will evaluate their relative importance. Through this comparative overview, the chapter will address the main research question posed in this thesis: After the successful passage of the *Rights of the Terminally Ill Act* in the Northern Territory, why, despite strong support amongst the public and some medical professionals, have subsequent attempts to reform the law failed?

As such, the chapter is divided into four substantive sections. Euthanasia is considered to be a 'non-party' issue; as such getting the issue on the agenda is not as straightforward as government legislation. Section one considers the willingness of legislators to introduce Private Members' legislation on the issue and the experience those legislators had getting the issue on the agenda. Once a bill is introduced, the Second and Third Reading votes in parliament are the crucial stages of the legislative process. Section two compares the patterns of voting on euthanasia proposals in the Parliaments and reveals similarities in the patterns of voting on bills in the ACT, South Australia and Tasmania, which led to the failure of bills. Section three further examines the opposition to euthanasia proposals revealed in section two, through a comparative analysis of the contributions opponents made to debates on the issue. The analysis reveals a key difference in the more recent debates; legislators who oppose euthanasia are now more likely to refer to opposition from the AMA in their speeches. The argument is developed that, since the overturning of the Northern Territory legislation, for several reasons the AMA has become more strongly associated with the anti-euthanasia position. This, in turn, has influenced the voting, in particular in the Liberal Party, by persuading any 'wavering' legislators not to vote for law reform. Finally, section four considers four other factors, which individually had a relatively marginal impact, but when taken together represent additional important considerations when explaining the fate of the bills.

Getting the Issue on the Agenda: the Importance of Leadership on the Issue

Voluntary euthanasia is traditionally considered to be a 'non-party' issue in Australian politics. This is because the main political parties do not have a policy position on the issue and, if in government, would not introduce legislation. As a result, to get the issue of euthanasia law reform on the agenda, there must be legislators who are willing to introduce 'non-government' legislation on the issue, through the Private Members' Bills process. The following section will consider the willingness of legislators to introduce legislation and their experience of getting the issue on the agenda. It will be demonstrated that the actions and experience of legislators themselves, plus institutional arrangements in the parliaments, has an impact on the process of law reform.

Across the Parliaments, there have been willing sponsors of voluntary euthanasia legislation, who represent political parties across the ideological spectrum. In addition, two independent MPs have been very active introducing legislation. Table 7.1 below shows the origin and sponsorship of voluntary euthanasia bills in the four states and territorial parliaments.

Table 7.1. The Origin and Sponsorship of Voluntary Euthanasia Bills in the Four Jurisdictions

	The Northern Territory	**The ACT**	**South Australia**		**Tasmania**
			House of Assembly	**Legislative Council**	**House of Assembly**
Sponsor/ Party	M. Perron CLP	M. Moore (x3) Independent	J. Quirke ALP	A. Levy ALP	N. McKim Greens
Sponsor/ Party			B. Such (x9) Independent	S. Kanck (x2) Democrats	
Sponsor/ Party			S. Key (x2) ALP	M. Parnell (x2) Greens	

Bill sponsors can play a large role in the fate of bills. For example, the success of the Northern Territory Bill has been attributed to the sponsor, Marshall Perron, former Chief Minister of the Northern Territory, who was highly respected by members of his party. As Michael Moore commented:

> I also think you can not underestimate the personal influence of Marshall Perron within the CLP in the Northern Territory at the time. He was quite a charismatic leader and did have a significant influence.[279]

[279] Interview with Michael Moore, Canberra, ACT, 07.05.2012.

No Liberal Member has introduced legislation elsewhere and, as we will see in the next section, there has been strong opposition to liberalising legislation amongst Liberal members.

In the other Parliaments, there is evidence that the position of the bill's sponsor in the parliament has played a role in their ability to get the issue on the agenda. In the ACT, Michael Moore's final attempt to legalise was introduced with a Liberal Government in power in the Legislative Assembly, which was strongly opposed to law reform. However, as a cross-party member, he was able to secure time to have the Bill debated.

In the States, an interesting development has been the co-operation between ALP and Greens legislators on the issue. In South Australia, Steph Key, an ALP MP, and Mark Parnell, a Green MP, introduced a joint bill on the issue. This enabled the issue to be considered simultaneously in the Upper and Lower House. It was argued in chapter five that, if liberalising legislation is to be passed, the Greens must continue to co-operate with ALP members, especially given it is an area where there has been strong opposition from Liberals MPs. A similar trend is emerging in the Tasmanian Parliament, with the Leader of the ALP working in collaboration with the Leader of the Greens on the issue. Again, this kind of strategy is needed to counter opposition, particularly from Liberal Members on the issue.

The ability of bill sponsors to develop strategies to overcome the barriers presented by the Private Members' Bills process, and other institutional arrangements, is important. In the ACT, Michael Moore took this kind of initiative by introducing legislation without drafting assistance from the ACT Parliamentary Counsel. This made the Counsel realise that he was serious about pursuing his legislative agenda, with or without their help. In an interview, Moore recalled that, when one of his bills, drafted without their help, passed, the Parliamentary Counsel realised that they would have to provide assistance in the future. As a result, they had to take his later proposals more seriously. Subsequently, as described in the previous section, Moore was also able to use his position as a cross-party member to his advantage, to bargain for drafting assistance and time on the floor of Parliament.

Winning a Free Vote

Once legislation is introduced, passing votes in parliament is another crucial stage in the legislative process. Voluntary euthanasia is traditionally a free vote issue, which makes the outcome of the votes less predictable than in the usual circumstances of party voting. As such, the personal views of MPs are very important to the outcome of a vote. An analysis of the voting on bills in the four parliaments reveals a key difference between the Northern Territory and the latter three cases. The highly unusual voting patterns observed in the Northern Territory can be appreciated in the context of analyses of free voting, which have generally found that, on moral issues, party membership remains the main explanatory variable.[280] However, this was not the case in the Northern Territory and the parties were completely split.

In the latter three cases, the voting patterns were more comparable to existing patterns observed in the literature. Table 7.2 below shows the relationship between political party and voting on the bills.

Table 7.2. Party Voting in the ALP and Liberal Parties on Voluntary Euthanasia Bills in the Australian State and Territorial Parliaments

	The Northern Territory		**The ACT**		**SA Lower House**				**SA Upper House**[281]		**Tasmania**	
Party	**No**	**Yes**	**No**	**Yes**	**1995**		**2012**		**No**	**Yes**	**No**	**Yes**
					No	**Yes**	**No**	**Yes**				
LIB	9	8	5	-	27	5	11	5	4	5	6	0
ALP	3	4	1	5	3	7	9	14	4	3	9	3

The intra-party cohesion figures reported in Table 7.3 below give a better indication of the extent to which the main political parties divided on the issue.

[280] Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," Marsh and Read, *Private Members' Bills*, Pattie and Johnson et al., "Voting Without Party?" Pattie and Fieldhouse et al., "The Price of Conscience," Plumb and Marsh, "Beyond Party Discipline," Read at al.,"Why did they do it?" Richards, *Parliament and Conscience*.

[281] Average across voting on three bills: Voluntary Euthanasia Bill 1996; Dignity in Dying Bill 2001; Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008. All Second Reading Votes.

Table 7.3. Intra-Party Cohesion Voting on Voluntary Euthanasia Bills in the Australian State and Territorial Parliaments

	The Northern Territory[282]	**The ACT**[283]	**South Australia Lower House**[284]		**South Australia Upper House**[285]	**Tasmania**[286]
			1995	**2012**		
CLP/Liberal	0.06	1	0.68	0.38	0.14	1
ALP	0.14	0.68	0.40	0.22	0.14	0.50
Democrats					0.60	

In the Northern Territory, a larger proportion of MLAs in the Parliament's conservative right leaning party, the CLP, were willing to support a euthanasia bill than equivalent Liberal MPs in the other Parliaments. CLP support was vital to the successful passage of the Northern Territory Bill. Marshall Perron commented on the difference between the Northern Territory CLP and the Liberal Party in the other states and territories:

> I think it boils down to the same thing, Territory politicians are largely pragmatic, more so than idealistic, whilst even myself as an example, CLP member all my life I would describe myself as a conservative politician by nature, but in saying conservative I'd have to add well I am a really progressive conservative because I was all for reform if it made any sense, but it wasn't so much idealistic. … Interstate I think they take more seriously their purist philosophical dent whereas in the Territory and I think the Labor Party is the same, you could almost have swapped a couple of the Labor Party across to our side and a couple of our side over to theirs, our softies as we would call them, wanting to vote for the Labor bits and pieces and a couple of their people were more right wing than me.[287]

However, in the other three parliaments, Liberal MPs have almost unanimously opposed proposals to reform the law. For example, during the 1995 vote in the South Australian House of Assembly, although there were a small number of 'socially liberal' Liberal

[282] The Rights of The Terminally Ill Bill 1995 Second Reading Vote
[283] Voting Intentions on the Medical Treatment Amendment Bill 1997
[284] Voluntary Euthanasia Bill 1995 Second Reading Vote; Voluntary Euthanasia Bill 2012 Second Reading Vote
[285] Average across voting on three bills: Voluntary Euthanasia Bill 1996; Dignity in Dying Bill 2001; Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008
[286] Dying with Dignity Bill 2009 Second Reading Vote
[287] Interview with Marshal Perron, Buderim, Queensland 16.05.2012.

MPs who supported the *Voluntary Euthanasia Bill*, the large number of Liberal MPs present overall meant that the Bill was still heavily defeated. In contrast, in 2012 there were only half the number of Liberal MPs present and the outcome of the vote was much closer.

In contrast, whilst ALP legislators in the Northern Territory were generally in favour of law reform, there was a key group of ALP MPs in each of the other three parliaments who opposed legislation on religious grounds. In combination with the votes of the Liberal MPs, the votes of this group of ALP MPs have secured the defeat of several bills. This was particularly the case on the most recent vote on the 2012 Bill in South Australia. In contrast, in the Northern Territory, there was an absence of factions, which meant that legislators did not vote in blocs. Marshall Perron commented on this:

> …our parliament at 25 is too small to have powerful factions involved and I'm not talking about a left right faction, but there is no religious undertone even though there are people there who were religious in our parliament at the time, there was nothing like the NSW Labor Party's Catholic influence, the Liberal's Lyons Forum and so on. These groups that meet and strong-arm their members behind the scenes, that couldn't happen in the NT, we are just too small.[288]

The characterisation by Perron of the Northern Territory MLAs as 'independents' indicates that there was an absence of party pressure on legislators, which was not the case elsewhere, for example in the ACT Liberal Party or the Tasmanian Labor Party. Moreover, because the vote was at the beginning of the electoral cycle, MLAs were less likely to be placed under any pressure at the following election.[289] This was not the case in Tasmania, when the *Dying with Dignity Bill 2009* failed its Second Reading. During an interview, the Bill's sponsor, Nick McKim, said that he believed the Labor MPs were being whipped behind the scenes. McKim argued that Labor MPs were instructed to vote against the Bill so that it would not give the Greens a win before the forthcoming election. The pressure exerted meant that MPs who might have supported the Bill in principle did not do so and, consequently, a workable framework for voluntary euthanasia could not be developed.

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[288] Ibid.

[289] The 1994 Northern Territory election took place on June 4 1994 and Marshall Perron introduced his Bill on 22 February 1995.

The Parliamentary Debates

A key pattern was evident in the voting in the latter three parliaments – strong Liberal Party opposition, combined with the votes of 'right-wing' ALP members, sealed the fate of bills. The precise impact of the arguments made in the parliamentary debates have had on the outcome of the votes is difficult to quantify, but nevertheless, a consideration of the debates reveals in greater detail the reasons why MPs opposed the legislation. Table 7.4 below shows the top five arguments used by members in each of the parliaments.

Table 7.4. Arguments used by Opponents of Euthanasia in the Australian State and Territorial Parliaments

State	Argument	Total
Northern Territory	1. Practical concerns i.e. the way the Bill has been drafted	8
	2. Resources should be focused on improving PC services	7
	3. Sanctity of life	6
	4. Safeguards	5
	5. Aboriginal concerns	5
The ACT	1. Safeguards	4
	2. Vulnerable/elderly people will be put at risk	4
	3.Cultural concerns	2
	4. Practical concerns i.e. the way the Bill has been drafted	2
	5. Sanctity of life	2
South Australia Lower House	1. Good PC is already available and should be developed	6
	2. Sanctity of life	6
	3. Consent to Medical Treatment and Palliative Care Act is adequate	5
	4. Slippery Slope	5
	5. Vulnerable/terminally ill people will be put under pressure	5
South Australia Upper House	1. Against 'mindlessly' following public opinion polls	6
	2. Practical problems i.e. the Bill is unfair on insurance companies	4
	3. The AMA and other bodies are opposed	4
	4. Safeguards	4
	5. The Bill is too broad	3
Tasmania	1. Inadequate safeguards/legislative framework	5
	2. Vulnerable people	5
	3. Resources should be focused on improving PC services	5
	4. Euthanasia is 'legalised killing'	4
	5. Slippery slope	2

The comparison reveals that a similar set of arguments were used in opposition to bills in all four parliaments. However, the analysis reveals a key difference in the more recent debates; now legislators who oppose euthanasia are more likely to refer to opposition from the AMA in their speeches. Both South Australian and Tasmanian MPs who opposed voluntary euthanasia referred to opposition to law reform within the professional organisations in their speeches.

Since the overturning of the Northern Territory legislation, the AMA, for several reasons, has become more strongly associated with the anti-euthanasia position. The first reason is the active involvement of anti-euthanasia doctor Chris Wake, President of the NT branch of the AMA, in the campaign to overturn the Northern Territory legislation. In addition, anti-euthanasia doctors continue to hold executive positions in the organisation and frequently voice their concerns about legalisation. For example, the current Chairman of the Tasmanian Branch of the AMA Dr Christopher Middleton's position on the issue has been cited in the national media several times.[290] In the public hearing on the 2009 Bill, Dr Middleton argued that legalising euthanasia would 'poison' the doctor-patient relationship, creating fear and distrust. Most recently, in November 2012, Dr Middleton argued against reform whilst taking part in a debate on the issue on the ABC's *The World Today* programme entitled 'Why is euthanasia still illegal in Australia'.[291]

As such, over time, the view that the AMA is opposed to law reform, despite the fact that the organisation does not comment on the issue, has become widespread. During the debate on the *Dying with Dignity Bill 2009* in Tasmania, the sponsor of the Bill, Nick McKim argued that it was wrong of the Tasmanian branch of the AMA to oppose voluntary euthanasia, when their membership is actually divided on the issue:

> I also want to reflect on the AMA's position on this issue, which is that they took a strong stand against VE despite their membership being pretty much split down the middle on this issue. The AMA if it were to remain faithful to the views of its members should have remained neutral on the issue, not taken such a strong stance against. In doing what they did, they have abrogated their responsibilities to their members.

Nevertheless, for the reasons stated above, the AMA has become more strongly associated with the 'anti' position and there is evidence that this has influenced the views of legislators. For example, during the 2009 debate in the Tasmanian House of Assembly, in response to a comment about the safety of a regulated system of voluntary

[290] For example: ABC News, "Doctors Label Euthanasia Bill as 'Poison'."
[291] Hall, "Why is Euthanasia still Illegal in Australia?"

euthanasia, one MP argued that the 'entire' medical profession in Australia believed that a safely regulated system of voluntary euthanasia is impossible:

> But, as I said earlier, the entire medical profession and the entire legal profession and, if you like, the entire ethical profession around Australia, simply does not agree with you (Rene Hidding, Liberal, Lyons).

Although this MP was a particularly strong opponent of voluntary euthanasia, and the direct influence of the statements made by the AMA leadership on legislators voting is unclear, the analysis of the debates provides some evidence that anti-euthanasia doctors and lawyers, who hold executive positions in professional organisations, do play an important role in the fate of bills. This in turn has influenced the voting, in particular in the Liberal Party, by persuading any 'wavering' legislators not to vote for law reform. Most recently, there is evidence that this pattern will continue during the debate on the proposed 2013 Tasmanian legislation with John Davis, the President of the Tasmanian Branch of the AMA, issuing a media statement arguing that voluntary euthanasia is equivalent to 'state sanctioned murder'.[292]

An additional interesting feature of the debates, given the strength of opposition from Church groups, is that concerns about the sanctity of life have not been more prominent in the debates. This is not to say that arguments about the sanctity of life have declined in importance to opponents and it could indicate that the findings of Maddox may also apply to the State and Territorial Parliaments.[293] Maddox found that MPs in the Federal Parliament, who opposed voluntary euthanasia, were less likely to raise the subject of religion in the debate than supporters of the practice. Maddox argued that the supporters of the *Euthanasia Laws Bill* (who were opponents of euthanasia seeking to overturn the Northern Territory euthanasia legislation) strategically choose to 'hide' religious arguments in the public arena, preferring to oppose euthanasia on 'scientific' grounds. In the most recent debates in Tasmania and the South Australian Legislative Council arguments about the sanctity of life have not featured at all in the top five arguments used.

[292] ACB News, "Euthanasia 'state sanctioned murder'."
[293] Maddox, "For God and States Rights: Euthanasia in the Senate."

It is also possible that, as the Northern Territory was one of the first parliaments to debate the issue, MLAs were less likely to hold a strong view on the issue. However, over time, in the states views may have become entrenched and positions polarised. As a result, incumbent MPs will not change their views regardless of the model of euthanasia that is being proposed and, as several interview participants noted, when new proposals are introduced, few MPs actually read through bills to understand their content. Under these circumstances, the composition of the parliament is more important. Thus, those lobbying for or against change on euthanasia should focus on trying to ensure that candidates who support their position get selected at pre-selection.

Other Relevant Factors

Additional examination of the case studies indicates that four other factors had a relatively marginal impact, but when taken together, represent additional important considerations when explaining the fate of the bills. The four factors are: the success rate of Private Members' Bills; the institutional make-up of the parliament; the length and the nature of campaigning on the issue; and the religious composition of the state or territory. Each will now be considered in turn.

i) The success rate of Private Members' Bills

In the literature, the Private Members' Bills process itself has been identified as one of the major barriers to successful reform on moral issues (Marsh and Read, 1988). This is primarily due to the limited amount of time that is set-aside in parliament to consider such proposals. The following section examines the success rate of Private Members' Bills in the Australian parliaments, to identify whether the Northern Territory had any unusual tradition of passing Private Members' Bills that could have affected the outcome of law reform. The section reveals that the Northern Territory Parliament fits the existing pattern observed in the literature and has no tradition of passing Private Members' legislation, which makes the passage of the *Rights of the Terminally Ill Act* a particularly remarkable achievement.

Table 7.5 below presents figures from Dixon, who examined the success rate of Private Members' Bills over an eight-year period, from 1994 to 2002.[294]

[294] Dixon, "The Role of Private Members Bills".

Table 7.5. The Success Rate of Private Members' Bills in the four Jurisdictions (1994-2002)[295]

Year	Northern Territory		The ACT		South Australia[296]		Tasmania[297]	
	Intro.	Passed	Intro.	Passed	Intro.	Passed	Intro.	Passed
1994	1	0	18	12	4	0	5	0
1995	4	2	10	4	15	2	11	0
1996	3	0	21	6	1	0	20	0
1997	4	0	28	25	11	0	26	1
1998	7	0	31	8	11	2	21	2
1999	3	0	33	17	8	2	4	3
2000	6	0	26	16	14	0	4	3
2001	2	0	19	17	28	2	13	0
2002	7	1	28	10	27	7	7	3
Total	37	3 (8%)	214	115 (54%)	119	15 (13%)	111	12 (11%)

Despite being the only place where euthanasia legislation passed, the Northern Territory actually has the lowest success rate for Private Members' Bills out of the four case study jurisdictions. Over an eight-year period, only 8 per cent of bills in the Northern Territory were successful, compared to 11 per cent in Tasmania, 13 per cent in South Australia and 54 per cent in the ACT. Moreover, after the passage of the *ROTTI Bill* in 1995, the Northern Territory did not pass another Private Members' Bill for seven years. Given the limited success of Private Members' legislation in the Northern Territory Parliament, this makes the passage of the Northern Territory Bill even more unusual. For example, there have been no similar attempts to legislative on voluntary euthanasia in Queensland, another unicameral Legislative Assembly with a similar success rate for Private Members' legislation as the Northern Territory.[298] This suggests leadership on the issue is a more important factor than the success rate of Private Members' legislation.

ii) The institutional make-up of the parliament

Nitschke and Stewart argue that one of the key factors that allowed the success of the *ROTTI Bill* was the institutional make-up of the Northern Territory Parliament. The Northern Territory Legislative Assembly is unicameral, that is, it has no Second Chamber to review legislation. Nitschke and Stewart argue:

[295] Source, Dixon, "The Role of Private Members Bills".
[296] The number of bills introduced excludes those received from the Legislative Council.
[297] House of Assembly.
[298] See Dixon, "The Role of Private Member's Bills," 96.

> This makes the passage of legislation more efficient. The government of the day is all the more powerful when the checks and balances of the house of review of the traditional Westminster system are absent.[299]

This could certainly have helped the passage of the *ROTTI Bill*. In particular, it speeded up the legislative process, which took the anti-euthanasia lobby by surprise and left little time to mobilise in opposition. The small number of legislators present, just 25, also helped, because the lobbying effort could be focussed.

The ACT Legislative Assembly and the Tasmanian Parliament are both small in terms of the number of legislators, however bills have not passed. Indeed, the ACT Legislative Assembly only has 15 members, but unanimous opposition from Liberal MLAs and two rebellious ALP MLAs secured the defeat of a bill in 1995. The Tasmanian House of Assembly also only has 25 members, but there was a similar pattern of opposition here in 2009, with Liberal and ALP members combining to defeat *the Dying with Dignity Bill*. This comparison suggests, unsurprisingly, that the voting intentions of the legislators are most important, no matter the size of the parliament.

The South Australian Parliament differs from the other three Parliaments in terms of size, as it is much larger. The House of Assembly, which is nearly twice the size of the Northern Territory Parliament, has 47 members and the Legislative Council has 22 members. However, here euthanasia legislation has had more success in the Second Chamber. Several votes have taken place in the Legislative Council, with an even number of legislators in support and opposition, if we aggregate the three votes. In contrast, in 1995 the legislation faced stronger opposition in the House of Assembly, with a large number of MPs opposed. This suggests that the challenge in South Australia will be getting a bill through the Lower House, rather than the Upper House, although a recent vote on the issue was very close. The main problem here, as in the ACT and Tasmania, is the existence of voting blocs; as explained above, with right-wing ALP and conservative Liberal MPs having enough numbers at present to combine and defeat bills. Consequently, this suggests that the size of the parliament is a relevant factor in the passage of euthanasia legislation.

iii) The nature of the campaign on the issue

[299] Nitschke and Stewart, *Killing me Softly*, 33.

The main difference between the campaigns in the Northern Territory and the three other cases, relates to the speed with which they were conducted. The Northern Territory legislation passed through the Parliament in four months. Since then however, the campaign to legalise in the other states has played out over years, allowing each side to become increasingly organised. The following section contrasts the pro-euthanasia campaign in the Northern Territory with the campaign in South Australia, both of which made significant advances towards liberalisation of the law: the *ROTTI Bill* in 1996 and the vote in South Australia, which was one of the closest results in a vote on euthanasia in recent years. The first provides an example of a grass-roots organisation, which formed spontaneously to lobby on a single piece of legislation. The second is an example of a highly organised formal group, which has had to contend with the influence of the professional doctors and lawyers organisations, which remain opposed to law reform.

The key feature of the campaign on the *ROTTI Bill* in the Northern Territory is that it was extremely brief. The campaign lasted only four months, which is extraordinary for an issue such as euthanasia. Lynda Cracknell, who led the pro-euthanasia campaign called 'Operation TIAP', commented on the advantage of this speed:

> The short campaign I think was to the benefit of the end result, that short powerful campaign, that didn't allow the opponents really as much time they would have liked to marshal their forces.[300]

Another difference in the campaign in the Northern Territory was that there was no Voluntary Euthanasia Society leading the campaign. Instead, the pro-campaign consisted of a grass roots organisation, which *later* transformed into a Voluntary Euthanasia Society. The spontaneous formation of Operation TIAP (which stood for Terminally Ill Act Petition), in response to Marshall Perron's announcement that he would introduce a Bill, was unique in the history of lobbying on the issue in Australia. Lynda Cracknell explained how the grass roots nature of the campaign allowed them to achieve greater success:

> My assessment of the NT community was that it was extremely parochial and we had to take advantage of that. It was a community that resented experts

[300] Interview with Lynda Cracknell, Bundaberg Queensland, 18.05.2012.

> coming in from outside the territory on all sorts of issues. You know big brother coming in telling us what to do, what makes them think they are smarter than we are. It was the culture there, you had to accept it, so it seemed much better to us remain a home-grown local, equally parochial organisation.[301]

Although some of the State's VE societies did make small contributions at the time the group was trying to get funds for advertising, the organisation was not officially affiliated with them. Lynda Cracknell also commented on the advantage of campaigning in an informal way:

> …I think that organisation also has to be, whatever that community organisation is, has to be structured in a way that they can act very quickly. One of the problems with formal VE societies is that they become constrained by procedural matters and the need to hold meetings and have quorums and pass motions. It becomes too clumsy because in a campaign like this, you have to be ready to respond very, very quickly to whatever circumstances arise and you don't always have time to call a meeting about it.[302]

In contrast to the quick Northern Territory campaign, the campaigns in the other states and territories 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 the anti-euthanasia lobby is that it is located within the broader right to life movement, which offers access to a large support base. In addition, 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.

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.[303] The State's voluntary euthanasia society has been very active in lobbying the South Australian Parliament.

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[301] Ibid.
[302] Ibid.
[303] 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.

The South Australian Voluntary Euthanasia Society (SAVES), which was founded in 1983, has a large membership base and has been persistently campaigning for a change in the law on end of life choices. The recent vote in the South Australian House of Assembly demonstrates that the group is closer than ever to achieving success, in terms of a change in the law. One of the key strategies that could facilitate success involves increasing its visibility amongst politicians and the public. Frances Coombe, the President of SAVES, outlined their 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 which 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.[304]

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 personal letters 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

[304] Interview with Frances Coombe, Adelaide South Australia, 23.04.2012.

> page, like a stream of their experiences, so that is the power of the issue at the moment.[305]

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.[306]

The Northern Territory and South Australian campaigns illustrate how different contexts have required different campaigning methods. The short and sharp 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.

iv) The religious composition of the state or territory

Religious groups have been vehemently opposed to the legalisation of voluntary euthanasia on moral and ethical grounds. Nitschke and Stewart (2005) comment that one factor which allowed the successful passage of the *ROTTI Bill* was the fact that the Northern Territory was one of the least religious areas in Australia. Although it is difficult to make a direct link between the religious composition of a state or territory and the passage of legislation on euthanasia, a consideration of census data reveals that

[305] Interview with Frances Coombe, Adelaide South Australia, 23.04.2012.
[306] Interview with Frances Coombe, Adelaide South Australia, 23.04.2012.

their assumption has some force. Table 7.6 below shows census data on the level of religious affiliation in the Australian States and Territories in 1996.

Table 7.6 Religious Affiliation in the Australian States and Territories 1996 (%)[307]

	Northern Territory	The ACT	South Australia	Tasmania	Australia
No Religion	20.4	20	21.8	16.7	16.5
Christian (all)	61.2	66.6	66	72.3	70.3
- Catholic	21.8	29.6	20.7	19.4	26.8
- Anglican	15	19.6	16	34	21.8

Comparing the levels of religious affiliation in each of the states and territories reveals that the impact of this factor is subtle, but when combined with the other factors, might be a significant predictor of voting patterns. Although the Northern Territory had a similar percentage of individuals who stated that they had 'no religion' to the ACT and South Australia, a comparison of the number of Christians from all denominations is revealing. The total number of people belonging to a Church in the Christian faith in the Northern Territory in 1996 was only 61.2 per cent. This was nearly 10 per cent below the national average. The number of members of the Catholic and Anglican Churches were also significantly lower than the national average. For example, there was less than half the number of Anglicans, as a percentage of the population, as in Tasmania, one of the most religious states.

How might the current levels of religious affiliation in the States affect the present attempts to legalise in South Australia and Tasmania? Religious affiliation has been declining across Australia in general since 1996. For example, in 1996 16.5 per cent of people declared that they had no religion on the census. By 2011 this figure had risen to 22.3 per cent. This means that a smaller percentage of the population are likely to be opposed to voluntary euthanasia on religious moral grounds. Public opinion polls also confirm this evidence.

Table 7.7 below shows census data on the level of religious affiliation for the top five religions in the Australian states and territories in 2011.

[307] "1996 Census Data by Location Name (main areas)," *ABS Website*, accessed March 8, 2013. http://www.abs.gov.au/AUSSTATS/abs@.nsf/96cdbygeogtype?openview&restricttocategory=Main%20Areas&Expand=1&.

Table 7.7. Religious Affiliation in the Australian States and Territories 2011 (%)[308]

	Northern Territory	The ACT	South Australia	Tasmania	Australia
No Religion	23.9	28.9	28.1	28.6	22.3
Catholic	21.6	26.1	19.9	17.9	25.3
Anglican	11.4	14.7	12.6	26.0	17.1
Uniting Church	6.9	3.3	8.9	4.8	5.0
Lutheran	3.7		4.5		1.2
Buddhism		2.6			2.5
Presbyterian and Reformed				2.4	2.8

The most striking difference between the 1996 and 2011 figures is the decline in the Anglican population in Tasmania. In 1996, Anglicans represented the largest religious group in Tasmania, constituting 34 per cent of the population. In 2011 this figure had declined by 8 per cent to 26 per cent. It is not possible to predict where reform will come first on the basis of these figures. Indeed, both Tasmania and South Australia have groups that still have a significant presence, including the Uniting Church in South Australia and the Anglicans in Tasmania. Over the long term however, it is likely that the decline in the number of people who are affiliated to a religion will have a positive effect on the campaign to legalise. In addition, other demographic factors will play an increasingly important role, such as Australia's ageing population. However, there is evidence that this could be balanced out by the highly vocal and persistent way in which religious groups continue to campaign on the issue. As Sikora found in an analysis of religious attitudes to euthanasia in the 1990s: 'Even as levels of education increased and both church attendance and the intensity of religious beliefs declined, Australian churchgoers and worshippers maintained their fervent opposition to euthanasia'.[309]

Conclusion

To deepen the explanation offered in each of the case studies, chapter seven has examined similarities and differences in the factors that affected the fate of euthanasia bills revealed in the case studies and evaluated their relative importance. Through this comparative overview, the chapter sought to further explain the failure of subsequent attempts to reform the law. Section one considered problems associated with getting the issue on the agenda. There has not been a shortage of MPs willing to introduce bills

[308] "2011 Census Community Profiles," *ABS Website*, accessed March 8, 2013, http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/0
[309] Sikora, "Religion and Attitudes Concerning Euthanasia," 31.

on voluntary euthanasia. Legislators have introduced legislation in all the parliaments and have been successful in getting the issue on the agenda, but this presented a greater challenge in some parliaments than others, with Tasmanian legislators being particularly affected by limited access to bill drafting services.

Once a bill is introduced, the Second and Third Reading votes in parliament are crucial stages in the legislative process. Section two revealed a striking similarity in the patterns of voting on euthanasia bills in the ACT, South Australian and Tasmanian Parliaments, which led to the failure of bills. In the Northern Territory, a larger proportion of MLAs in the Parliament's conservative/right-wing party, the CLP, were willing to support the law reform than Liberal MPs in the other parliaments. CLP support was vital to the successful passage of the Northern Territory Bill. Another key difference in the Northern Territory was that legislators acted as 'independents', due to the absence of party pressure and factional voting blocs. In the other three parliaments, Liberal MPs have almost unanimously opposed proposals to reform the law and have combined with 'right-wing' ALP legislators to defeat proposals.

In light of the patterns revealed, section three sought to further explain the opposition to euthanasia proposals, through comparative analysis of the contributions that opponents made to debates on the bills. The analysis revealed a key difference in the more recent debates, in that legislators who oppose euthanasia are now more likely to refer to opposition from the AMA in their speeches. It was argued that, since the overturning of the Northern Territory legislation, the AMA has become more strongly associated with the anti-euthanasia position. Although the organisation does not have a position on the issue of law reform, due to the involvement of representatives of the organisation in the campaign to overturn the Northern Territory's legislation and the appointment of anti-euthanasia doctors on the executive committees of several state branches, the organisation has become associated with the anti-euthanasia position. This, in turn, has influenced the voting, in particular in the Liberal Party, by persuading any 'wavering' legislators not to vote for law reform.

Finally, section four considered four other factors, which individually had a relatively marginal impact, but when taken together represent additional important considerations when explaining the fate of the bills. Statistics indicated the low success rate of Private Members' Bills in the Australian parliaments, including in the Northern Territory

Legislative Assembly, which did not have a tradition of passing non-government legislation before the successful passage of the *ROTTI Bill*. This suggests that the passage of the *ROTTI Bill* was even more unusual. In addition, an analysis of campaigning on the Northern Territory Bill revealed that the speed with which the legislation passed through Parliament was crucial and had an influence on the way the campaign was conducted. Since then the campaign has changed in nature. State euthanasia societies have had to contend with influential professional organisations and professional lobbyists, and as a result, organisations such as SAVES have had to become more professionalised and the campaign has become protracted.

Chapter seven has revealed a number of interesting features of the campaign to legalise voluntary euthanasia which merit further analysis, in particular the Private Members' Bills process and the strategies employed by the Northern Territory interest group 'Operation TIAP', in particular, the spontaneity with which the campaign was initiated and conducted. Consequently, to gain a greater understanding of these aspects of the passage of legislation, chapter eight will examine the political processes that have been evoked when legislating on voluntary euthanasia.

Chapter 8: The Political Processes Involved

Although the main aim of the thesis was to chart the passage of voluntary euthanasia legislation in the Australian state and territorial parliaments, the study has provided some initial insights into several political processes involved with legislating on moral issues more broadly. Chapter eight examines three of these processes: first, the Private Members' Bills process; second, spontaneous political group formation; and third, political representation. Chapter eight has three sections, which deal with each of the political processes in turn. Section one examines the Private Members' Bills process, identifying the barriers faced by legislators seeking to introduce voluntary euthanasia legislation. Section two and three examine the features of the pro-euthanasia lobby in the Northern Territory, which had a positive impact on the success of the *Rights of the Terminally Ill Bill*. Section two documents the formation of 'Operation TIAP', which provides an interesting empirical example of the phenomenon of spontaneous political group formation. It will also consider the impact of this on the success of the legislation. Finally, section three examines one of the most effective tactics of the group 'Operation TIAP' which involved utilising the notion of political representation to encourage MLAs to support the *ROTTI Bill*, in light of high levels of public support on the issue.

i. The Private Members' Bills Process

Chapter seven demonstrated that Private Members' Bills have a low rate of success in three of the Parliaments. The following section examines the extent to which the process represents an additional barrier to those who seek to pass a law on voluntary euthanasia in greater detail. The chapter will utilise interview material with bill sponsors to explore their experiences of the process in greater depth.

Prior to introducing a bill, a legislator's access to bill drafting services from the Office of the Parliamentary Counsel in each Parliament is also an important consideration. Not all of the Parliamentary Counsel's offices prepare Private Members' legislation and some have a quota on the number of bills they will service. Historically, South Australia has been one of the most generous states in terms of providing drafting services to private members. In South Australia there are no limits on the number of bills a member can ask to be drafted and s/he may ask for assistance at any time s/he wishes.

[310] This has assisted MPs seeking to introduce bills on voluntary euthanasia and led to a high number of bills on the issue being introduced. Access to such services varies across the States and Territories, but other jurisdictions are starting to offer them, because most parliaments are seeing a higher representation of smaller political parties and independents who need drafting help.

The bill sponsors in each of the states and territories had different experiences. In the Northern Territory, access to drafting facilities was not a problem:

> In our case it wasn't [a problem]. Very few Private Members' Bills came up in Territory politics and the opposition occasionally moved a bill. They all had access to Territory Parliamentary Counsel. Now I am not saying there wouldn't be delays in that because Parliamentary Counsel are always behind, but I had access to the Parliamentary Counsel and it wasn't just because I was Chief Minister, any Member would have access to it. [311]

Michael Moore, who sponsored voluntary euthanasia legislation in the ACT Legislative Assembly, also said that access to Parliamentary Counsel was not a problem:

> This one I didn't see as a panic in time because I know Parliamentary Counsel were largely trying to help. I had quite a number of meetings with Parliamentary Counsel once they had assigned someone to do it. So I didn't have the same issue about whether government was going to block me in time or not. At that stage it was my vote holding government in, in these areas that didn't really affect their government processes, they were quite keen to look after me.[312]

However, Nick McKim emphasised that the situation was more difficult in the Tasmanian Parliament:

> It's an unfortunate situation in Tasmania that opposition members of parliament, or non-Government members of parliament which I was at the time, do not have

[310] I would like to thank Aimee Travers, who is a Senior Assistant at the South Australian Parliamentary Counsel for this information.
[311] Interview with Marshall Perron, Buderim Queensland, 16.05.2012.
[312] Interview with Michael Moore, Canberra, ACT, 07.05.2012.

> access to Parliamentary Counsel. Which is something that I have in fact tried to rectify in the past. So we drafted it internally in this office, I guess effectively I drafted it internally, I really used the NT legislation that was repealed as the basis for the Bill and just made a couple of changes to the model to fit what we wanted to achieve.[313]

Marshall Perron acknowledged that access to Parliamentary Counsel could be a barrier to the progress of liberalising legislation in the future. He suggested that one thing Voluntary Euthanasia societies could do to remedy the situation is to fund private drafters to help politicians who are willing to introduce a bill. Perron explained the situation in more detail during an interview:

> I think in the states in some cases when a backbencher wants to introduce a bill, they can be denied access for long periods of time and if the Government's agenda is so far behind, then the parliamentary draftsmen couldn't look at your drafting instructions for two years or something. In which case what I am advocating, that Voluntary Euthanasia and Dying With Dignity Societies do is to identify politicians that are willing to introduce a bill and offer to fund private drafters to draft a bill for them. It is something that the movement can do to help willing politicians to get over that hurdle.[314]

In addition to experiencing problems with access to drafting facilities, an MP can face other barriers related to the Private Members' Bills process once they have introduced their bill. Interview material reveals that all of the bill sponsors interviewed faced barriers including opponents slowing down their legislation by various means. Nick McKim remembered how opponents of his bill voted to send it to committee for inquiry. When asked if he faced 'slowing down tactics' in parliament, he responded:

> Well interestingly, well actually yes I have, and in fact my bill was slowed down by the Labor and Liberal parties who voted to send it off to a Parliamentary Committee for inquiry rather than allow the debate to be held in good time, which slowed it down by a number of months.[315]

[313] Interview with Nick McKim MP, Hobart Tasmania, 04.05.2012.
[314] Interview with Marshall Perron, Buderim Queensland, 16.05.2012.
[315] Interview with Nick McKim MP, Hobart Tasmania, 04.05.2012.

Marshall Perron faced the same tactics from opponents of the *Rights of the Terminally Ill Bill*:

> Yes, it's a classic tactic. If you feel you are losing the race, then you slow it down. Your first objective is to try to get the bill dismissed and taken off the notice paper. These were measures, by a very vocal opponent, Neil Bell (ALP, Macdonell). A man who never spoke religion but was a most articulate and very passionate speaker, he moved on at least one occasion that the question be now put. Which is the classical way to disrupt the process of legislation and have it dismissed and if you have enough support in the parliament it is very effective. It terminates debate and takes it off the notice paper.[316]

Opponents also recommended that his Bill be referred to a committee:

> So there were attempts to do that and when it was proposed, for the Bill to be referred to a committee of the parliament to take evidence. I read that instantly as an attempt by opponents to delay the Bill. The tactic is to form a committee and they say it hasn't had enough time, it will come back and say we want an extension of three months and it will go on and on and then hopefully an election will come along and then it will fall off the notice paper. Another tactic is to delay the bill until the election, when the parliament is prorogued.[317]

However, reflecting on the committee process, Mr Perron argued that it was a good thing for his bill to go through, as it gave the community a forum to debate the issue:

> It turned out to be a very good exercise because it actually gave the community a forum that passionate people and organisations that wanted to do more than just write a letter or participate in a phone poll. Many people wanted to get out and do something about it. It gave them somewhere to go and the committee travelled around the NT and Alice Springs and other towns holding public forums, where you could come along and express your view. And that is a really good exercise for people, feeling part of democracy and they are. It gave the Churches and others opportunities to put their long submissions in. The

[316] Interview with Marshall Perron, Buderim Queensland, 16.05.2012.
[317] Ibid.

> committee invited some experts, for and against, to come up and paid their fares to come to the Territory to appear before the committee to put their points of view. So think that the committee exercise was a good one and I'm glad that it took place.[318]

Mr Perron suggested that this would be a good process to go through in Tasmania:

> I am delighted to see Tasmania preparing a discussion document in advance of preparing a bill. They might release a draft bill at the same time, which is fine, it will give the community something to focus on. It was an excellent process to go through.[319]

In South Australia, the increase in the number of independents and MPs from minor parties, who have open access to bill drafting facilities, has led to an increase in the number of bills introduced. However, proportionally there has not been a significant increase in the number of bills passed overall. Table 8.1 below shows the success rate of Private Members' Bills in the South Australian Legislative Council.

Table 8.1. Private Members' Legislation Introduced in the South Australian Legislative Council (1990-2010)[320]

Parliament	Minor/Ind. MPs Present	Introduced LC	Passed LC	Passed Both LC & LA
2006 - 2010	6	188	40	7 (4%)
2002 – 2006	7	101	17	15 (13%)
1997 - 2002	4	53	11	3 (5%)
1993 - 1997	2	53	19	2 (4%)
1990 - 1993 (incomplete)	2	29	7	3 (9%)

Both bill sponsors from South Australia commented on the difficulties they faced getting legislation though. Bob Such, Independent MP for Fisher, described some of the tactics used by of opponents of his voluntary euthanasia bills in the House of Assembly:

> Well, they can clog up the notice paper with issues, so that other things have to be debated again. The Parliament has just been prorogued and there are about

[318] Interview with Marshall Perron, Buderim Queensland, 16.05.2012.
[319] Ibid.
[320] Source, Davis, "Private Members' Bills.' Data updated using the South Australian Legislative Tracking System.

> 30 Bills that got introduced and we only got to debate about a third of them in full. That was it. My bill was spoken to, both for and against by about three or four people. The people who are against the legislation can clog up the notice paper, so because we only have a limited amount of time (basically an hour each week), if opponents speak for a lot of time on another bill, it means that you don't get your bill considered for another fortnight. That's why it progresses so slowly.[321]

Steph Key (ALP, Ashford) reflected on the situation in the South Australian Parliament and argued that more time should be available for Private Members' business:

> Well I think we should have more time. I have been a Minister as well and I've also been a Shadow Minister, so I have had wide experience within Parliament. I really think Private Members' time should be a more significant period of time. We've made some changes in the House of Assembly where the Reports of Parliamentary Committees have actually been taken out of Private Members' time, so we can debate motions and bills, but we are only talking about a couple of hours per fortnight when we are sitting. Also when we have committee reports we only have about an hour consider them. Some of the really good work that backbenchers do doesn't get an opportunity to be aired. I'm pretty unhappy about it as all the rest of us are.[322]

She also commented on the effectiveness of the Private Members' Bills process for dealing with moral issues, such as voluntary euthanasia and highlighted the tendency for a certain members to dominate the time available:

> No I think it's not a very good way at all. It's a little bit different in the Legislative Council. They have a little bit longer for Private Members' time. You could actually have two or three hours to discuss a bill, which seems to be a reasonable thing. But, not in our House. There's certain member in particular that hogs private members' time. Most of the bills he introduces I support, not

[321] Interview with Bob Such, Independent MP Fisher, 31.01.2012.
[322] Interview with Steph Key MP, in Adelaide, 24.04.2012.

> all of them, but most of them, but the rest of us get cheesed off because all we hear about is from this guy. He dominates the whole session.[323]

In contrast to the other parliaments, the ACT Legislative Assembly has developed a different culture in terms of the time available, which is in large part, responsible for the high success rate of bills in the Territory. Indeed, it was not only minor pieces of legislation that were passed. In the early 1990s, Michael Moore used the procedure to successfully introduce two significant pieces of legislation, one which legalised prostitution and another regulating cannabis:

> Well I certainly got a lot of legislation out. I used the Private Members' process in '92 to get two quite dramatic pieces of legislation up. One was the *Prostitution Act*, which has just been reviewed by the Assembly Committee and apart from making some minor suggestions for improvement, which I think are actually good suggestions for improvement, it has been going 20 years we should be able to pick some things up in that time. And the other one is the cannabis expiation notice legislation. Both of those pieces of legislation I sponsored and they went through, they were quite dramatic pieces of legislation.[324]

Due to his leverage as both a cross-bench member and a Minister, the Legislative Assembly created a new category of business to deal with Michael Moore's programme of legislation, called 'Executive Members' Business'. Michael Moore emphasised the benefits of this:

> In fact we established, under the standing orders, a whole new category, which was called 'executive member's business' that was actually just for me. But there was a big difference in the ACT from beginning because other than one government there has always been minority governments and those minority governments therefore the power of the Assembly compared to the power of the government has been seen as two different things. Whereas when you have majority government the government believes it should also control the parliament and that's just never been able to be the case, apart from one after I

[323] Interview with Steph Key MP, in Adelaide, 24.04.2012.
[324] Interview with Michael Moore, Canberra, ACT, 07.05.2012.

> left, one of the Parliaments. So the processes involved in looking after the all Members of the Assembly are quite good. So the government doesn't dominate it.[325]

In addition, as Dixon writes, in the ACT the Opposition and other parties have been able to combine forces to have their bills passed into law.[326] There has also been a coalition government in Tasmania since late 1990s, where the main parties have relied on the support of the Tasmanian Greens and Independents, as is the case at present. However, although the procedure is the same as in the ACT, there has not been a dramatic increase in the number of bills that have passed successfully into law, which could be due to a lack of access to bill drafting services, a lack of time available to debate bills, as well as the moderating effect of the Second Chamber.

Interview material points to another possible explanation, which is the presence of a number of independent MLAs who held leverage in relation to the balance of power in the Assembly and thus had more influence in the legislative process. Michael Moore, former Independent MLA in the ACT Legislative Assembly, cited this as being a crucial factor in him being able to secure time for his voluntary euthanasia bill to be debated:

> This one I didn't see as a panic in time because I know Parliamentary Counsel were largely trying to help and I had quite a number of meetings with Parliamentary Counsel once they had assigned someone to do it. So I didn't have the same issue about whether government was going to block me in time or not. At that stage it was my vote holding government in, in these areas that didn't really affect their government processes they were quite keen to look after me.[327]

The main point here is that more time and assistance was available to independent members, and the Government was unable to dominate the process, especially as they had to compromise and support independent MLAs' legislation as part of coalition

[325] Interview with Michael Moore, Canberra, ACT, 07.05.2012.
[326] Dixon, "The Role of Private Members Bills."
[327] Interview with Michael Moore, Canberra, ACT, 07.05.2012.

agreements. This resulted in a higher number of non-government proposals succeeding. Although the majority of proposals were not on politically sensitive issues, Moore did pass some legislation on divisive issues, such as licensing of drugs and prostitution in the ACT. In relation to voluntary euthanasia, the situation in the ACT created an environment in which it was possible to debate legislation without as many procedural barriers as in the other parliaments. However, the *Euthanasia Laws Act* prevented Moore from taking his proposal any further.

The legislators interviewed had different experiences of the Private Members' Bills process. In all but one of the parliaments, the process represented a barrier to the passage of legislation. However, each legislator developed their own strategies for dealing with this situation. Nevertheless, passing a bill successfully remains a great achievement, where successful bills are the exception rather than the norm.

ii. Spontaneous Group Formation

One of the most unusual things about the campaign to legalise voluntary euthanasia was that prior to the passage of the *Rights of the Terminally Ill Bill* there was no existing Voluntary Euthanasia Society in the Territory. The campaign to legalise was conducted largely by a community group, which formed spontaneously after Marshall Perron announced his intention to introduce a Bill. A more detailed consideration of the formation of 'Operation TIAP' is appropriate here, to document another empirical example and to reveal more about the phenomenon of spontaneous group formation. The main questions to be answered are as follows: What were the reasons and driving forces behind the formation of the group? What was their aim? How did the element of 'spontaneity' affect the outcome of the campaign?

a) The beginnings of the group. The information about the campaign used here comes from an interview with the group's founder, Mrs Lynda Cracknell, and the personal records she kindly made available to me. The interview took place during May 2012. At the outset of the interview, Mrs Cracknell described how she became interested in the issue:

> I was surprised and delighted when I saw in the newspaper in the Territory that Marshall Perron was introducing his Bill. I had no particular personal experience of someone dying badly at that time, but it just seemed to me such a

> wonderful thing for someone to be doing so I talked it over with my husband and I decided that I would try and take it further, try and give my support to the legislation in whatever way I could and that was the beginning of it.[328]

Over the three months from February 1995, Mrs Cracknell brought together over 50 citizens to conduct the campaign. The campaign began when Lynda wrote a letter to the Northern Territory News explaining her interest in Marshal Perron's proposed legislation, with the aim of contacting others interested in the issue. Although Lynda received some calls from people who were opposed to the legislation, everybody who arrived at the first meeting, at a local tavern in Darwin, turned out to be a supporter of voluntary euthanasia. Initially, 14 people came to the meeting, although the number of volunteers rose to 27 and then later on to about 50 active helpers. However, there was a core group of about 6 members who were the key decision makers, which made it easier to consult and move quickly on issues and enabled the different skills of the team to be used to maximum effect. The majority of members had little prior experience in political campaigning, but felt strongly about the legalisation of voluntary euthanasia.

The group decided to use the name Operation Terminally Ill Act Petition or 'TIAP', as one of their main aims was to create a petition of names in favour of the *Rights of the Terminally Ill Bill*. The group was founded upon four basic ground rules: first, respect for different views; second, the conduct of a 'clean' and honest campaign; third, no affiliation with groups outside of the NT; and fourth, the provision of factual information to the public.

b) Campaigning methods. Lynda Cracknell's original intention had been to conduct a public opinion poll, however as everyone at the meeting supported the idea of such legislation, the group decided to take it forward as a petition in support of voluntary euthanasia, rather than a poll. Quickly, the group's activities expanded to include a lot more than the petition. Over three months, the team submitted a 28 page written submission to the Select Committee on Euthanasia and appeared before the Committee. The group also collected nearly 2,300 signatures on a petition in support of the Bill. In addition, the group distributed 600 copies of the Bill and the Executive Summary and mailed 350 newsletters and 40 copies of the Operation TIAP select committee submission. Lynda Cracknell wrote many letters to the editors of the *NT News* and

[328] Interview with Lynda Cracknell, Bundaberg Queensland, 18.05.2012.

organised a public debate. TIAP group and individual letters were sent to all MLAs and group members held meetings with some MLAs. The group also organised a successful supporters rally. Six press releases were made and advertisements were placed in five different newspapers. Group members also made countless phone calls to radio talkback programs and participated in a large number of radio and television interviews. In total the group raised $2 500 in public donations.

The main aim of the group was to keep the issue in the public eye and help to educate people to overcome any misunderstandings about voluntary euthanasia. When asked to describe the methods used by Operation TIAP, Lynda Cracknell summed up the process: 'It was really a growth thing, everybody kept having bright ideas and thought well let's do this'.[329] One example of innovation in the group's approach was a cartoon fundraiser. One cartoonist produced a very interesting cartoon that showed some banner waving opponents about to be overtaken by a giant wave labelled public opinion. The group got the cartoonist's permission to use the cartoon as a fundraiser and had 1000 copies printed; a limited, numbered edition with copies presented to people who had made donations of $20 or more.

Ultimately, Noel Padgam-Purich MLA presented the group's petition to the Northern Territory Legislative Assembly on 16 May 1995. The petition had approximately 2 300 signatures, which were collected in the space of 9 weeks. Volunteers took the signatures primarily in shopping centres, but other locations were used, for example some doctors displayed the petition and took signatures in their surgeries. The group later calculated the proportion of the population who had signed it; it would be the equivalent of a Sydney petition with about 60,000 signatures.

The group was not funded by, or affiliated with, Marshall Perron. This was an important part of the group's strategy, as Lynda Cracknell explained:

> I didn't meet with Marshall, I think we saw that it was important to remain a community group, not influenced by politicians, we thought it was important not be seen as Marshall's support team. Even though we tried to keep our distance, there was still times that the opponents suggested that, I found one reference last

[329] Interview with Lynda Cracknell, Bundaberg Queensland, 18.05.2012.

night, that Marshall was using tax payer funds to fund our support for his bill and of course nothing could be further from the truth.[330]

The group conducted its activities with very limited funds. Further into the campaign, Lynda Cracknell sent out letters to get some donations in, but mainly used personal funds. In total the group conducted the campaign on approximately $2,500, which was mainly spent on advertising. The spontaneous initiative taken by Mrs Cracknell, together with her organisational skills and ability to enthuse and motivate, were a key element in the success of the campaign. Throughout this time Mrs Cracknell remained committed to the campaign, whilst coping with a number of personal challenges, which included an operation for suspected breast cancer (discovered after the campaign commenced) and on-going angina. In addition, her husband was hospitalised for seventeen days during this period with unstable Type 1 diabetes and a broken shoulder.

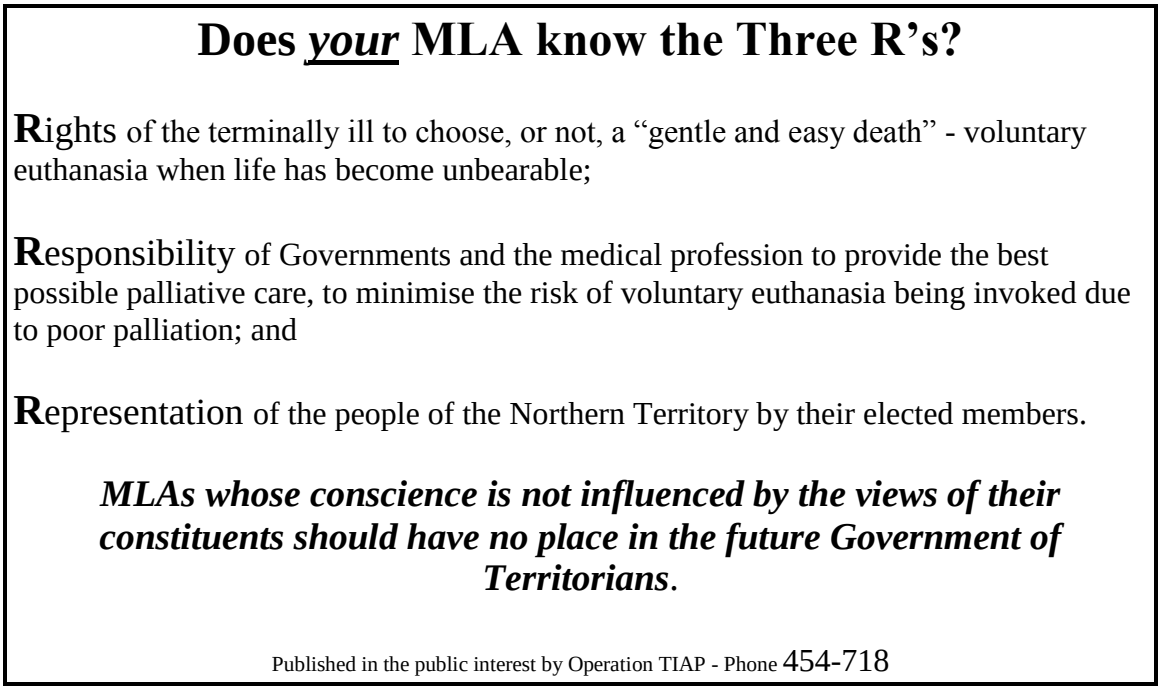
iii. Political Representation

Operation TIAP conducted a multifaceted campaign, which focussed on educating the public and raising awareness about voluntary euthanasia in the Northern Territory. One of the most effective aspects of their campaign involved utilising a specific notion of representative democracy to encourage MLAs to represent the majority of Territorians who supported voluntary euthanasia. In the states, a recurring feature of the campaign to legalise voluntary euthanasia has been a large disconnect between high levels of public support of the reform on voluntary euthanasia and the opinions of legislators in parliament. The unwillingness of MPs to vote for liberalising bills, despite public opinion showing overwhelming public support for change on the issue, has been a strong feature of the campaign since the Northern Territory Bill was overturned. In contrast, in the Northern Territory, legislators tended to be more willing to take into consideration the high level of public support on the issue when making their vote. The evidence for this is quotes from MLAs' speeches in the Second Reading Debate, which are presented later in this section of the chapter.

An example of this approach is apparent from observing the ads the group placed in the local media. Figure 8.1 shows an example of an advertisement placed in the local media during May 1995.

[330] Interview with Lynda Cracknell, Bundaberg Queensland, 18.05.2012.

Figure 8.1. Advert by Operation TIAP '3 Rs', Northern Territory May 1995



Does *your* MLA know the Three R's?

Rights of the terminally ill to choose, or not, a "gentle and easy death" - voluntary euthanasia when life has become unbearable;

Responsibility of Governments and the medical profession to provide the best possible palliative care, to minimise the risk of voluntary euthanasia being invoked due to poor palliation; and

Representation of the people of the Northern Territory by their elected members.

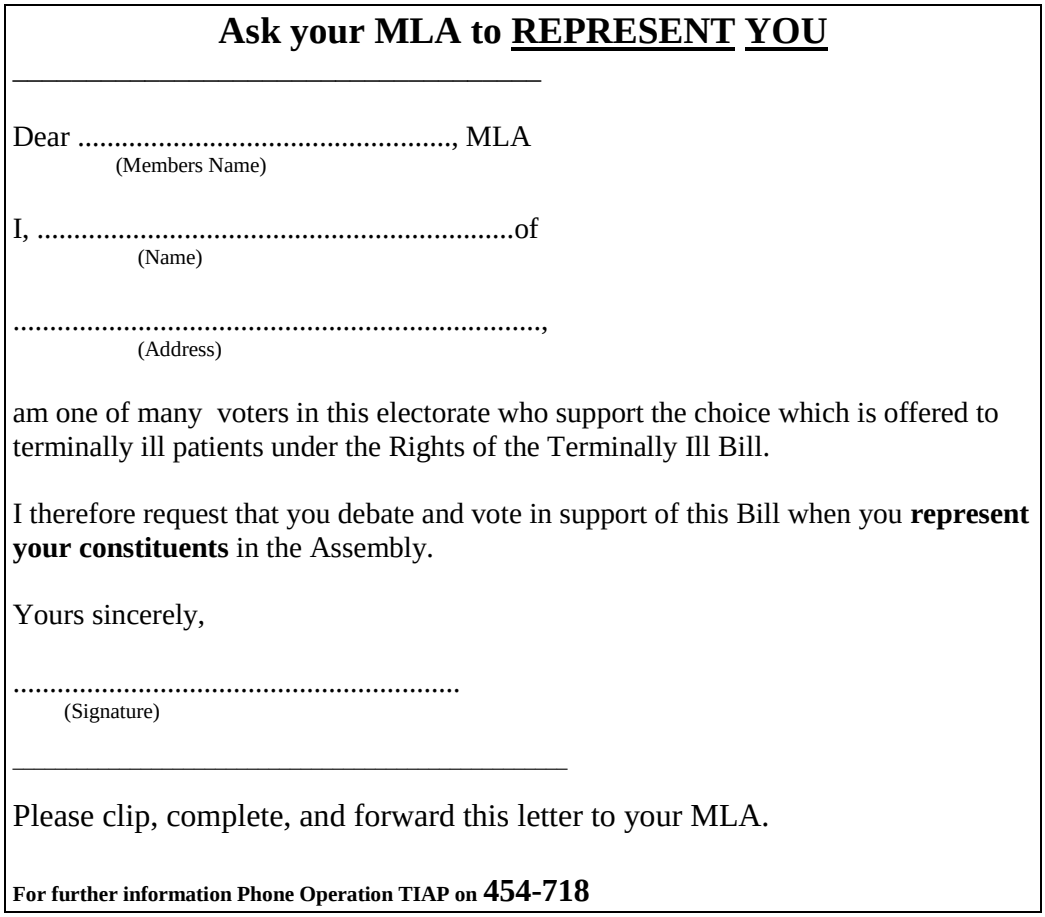
MLAs whose conscience is not influenced by the views of their constituents should have no place in the future Government of Territorians.

Published in the public interest by Operation TIAP - Phone 454-718

The advertisement emphasises 'the Three R's', that is: the rights of the terminally ill, the responsibility of governments to provide the best palliative care and the third, representation of the people of the Northern Territory. The advertisement stresses a specific form of representative democracy based on the 'delegate model' stating that: '*MLAs whose conscience is not influenced by the views of their constituents should have no place in the future Government of Territorians*' (italics in the original).

A second example of how the group sought to cultivate the delegate notion of representative democracy was through an interactive advertisement, which asked members of the public to send in a clipping to their MLA. Figure 8.2 below shows the clipping, which urged readers to 'ask your MLA to represent you', placing emphasis on the words *represent you*.

Figure 8.2. Operation TIAP 'Ask your MLA to Represent You' ad., 2 May 1995, Northern Territory



Ask your MLA to REPRESENT YOU

_____

Dear ....., MLA
(Members Name)

I, ...of
(Name)

.....,
(Address)

am one of many voters in this electorate who support the choice which is offered to terminally ill patients under the Rights of the Terminally Ill Bill.

I therefore request that you debate and vote in support of this Bill when you **represent your constituents** in the Assembly.

Yours sincerely,

.....
(Signature)

_____

Please clip, complete, and forward this letter to your MLA.

For further information Phone Operation TIAP on 454-718

One of the most innovative methods the group used to lobby MLAs was during a rally outside Parliament House before the debate on the Bill in May 1995. Lynda Cracknell went back to the maiden speeches of the MLAs in the Northern Territory Legislative Assembly searching for pledges they had made to their electorates to represent them in parliament. In total, 12 MLAs made pledges in their maiden speeches. Subsequently, the group had the quotes blown up and pasted onto large sandwich boards, which were used in the demonstration outside Parliament House. The maiden speech pledges are outlined in Figure 8.3 below.

Figure 8.3. MLAs Maiden Speech Pledges to Represent their Electorates used at Operation TIAP Rally

- "*I intend to give the people of Victoria River a strong voice in this forum."* Terry McCarthy, MLA Victoria River, 29 February 1984.
- *"My role is to represent all the electors in Wanguri, whatever their political persuasion."* John Bailey, MLA Wanguri, 30 August 1989.
- *"I promise all constituents that I will do my very best to give them fair, honest and equal representation."* Maggie Hickey, MLA Barkly, 4 December 1990.
- *"I have the honour to represent the seat of Stuart."* Brian Ede, MLA Stuart, 28 February 1984.
- *"I will work to the best of my ability to provide strong representation for everyone in the electorate."* Peter Adamson, MLA Casuarina, 29 June 1994.
- *"I want to take your thoughts and ideas to the Parliament, and I want to take the Parliament's thoughts back to you. I want to be a go-between."* Neil Bell, MLA MacDonnell, 2 June 1981.
- *"I thank the... (electorate) for placing their trust and confidence in me as their representative."* Syd Stirling MLA Nhulunbuy, 4 December 1990.
- *"I am proud to represent the seat of Brennan.... and look forward to serving my electorate to the best of my ability."* Denis Burke, MLA Brennan, 23 August 1994.
- *"My electors will find me a tireless advocate of their behalf, without fear or favour."* Shane Stone, MLA Port Darwin, 4 December 1990.
- *"...they (the voters) believe that I can promote their interests.."* - *"interest...in working for my electorate..."* Lorraine Braham, MLA Braitling, 23 August 1994.
- *"...to ensure that the interests of Nightcliff are fully and effectively represented in this Assembly."* Steve Hatton, MLA Nightcliff, 29 February 1984.
- *"It is the role of every member of this Assembly to promote the interests of his or her electorate... to debate legislation ...and to represent the interests of all Territorians."* Steve Hatton, MLA Nightcliff, 29 February 1984
- *"I feel most humbled and honoured that the people of... Greatorex have chosen me... to represent them" ..."To me, this party (CLP) stands for freedom of choice..."* Dr Richard Lim, MLA Greatorex, 23 August 1994.

The contribution of one MLA to the subsequent debate, who referred to the pledges made by MLAs in their maiden speeches, suggests that Operation TIAP's approach may have been influential amongst some MLAs:

> Those members who said in their maiden speeches that they were here to represent the views of the people of their electorates will be sorely tested today. Are they representing the views of their electorate, or not? Barry Coulter, CLP, Palmerston.

Indeed, as Marshall Perron outlined, it was difficult for MLAs in the Territory to ignore public opinion on the issue, due to the nature of Territory politics:

> The Territory was different to the other places for a couple of reasons and one of them is that we were small, we have small electorates, tiny electorates compared to State politicians. Our politicians are very accessible, we have, or had in those days, electorates of between 4 and 6 000 people, whereas in the states you can have 50 000. So what having small electorates means is that you are much more responsive to your community, you are much more accessible, people can, and do, give you their views on a regular basis. Whereas then you are in a huge electorate you often find that people can't get anywhere near their local politician who always have the excuse 'I'm so busy, I have all these things and organisations to attend to, I'll just go and talk to my staff'. So they can shield themselves from real pressure from the community quite easily and it is done all the time. Also they can size up an electorate and think, how strongly do people feel about this, and will they remember it for the next three years and hold it against me at the next election.
>
> So when you have got a huge electorate you can get away with much more than you can in a small electorate. …But what happened in the Northern Territory was that all our politicians, all 25 of them, were you might say embroiled in the debate. None of them could avoid it. The issue would have been raised at BBQs on weekends, whenever they went shopping in the supermarkets, so they would have had the views of their constituents well and truly made clear to

them. So, they were well aware that the vast majority of people supported this measure; they thought it was a great idea.[331]

Extracts from MLAs speeches on the *ROTTI Bill* further reveal the extent to which Operation TIAP's campaign influenced the outcome of events. From the speeches it is clear that the MLAs who supported the Bill were more likely to see themselves as representatives of the views of their electorate and viewed their role in the debate and vote as 'delegates' expressing the will of electorate. The following statements made during the debated by MLAs who supported the Bill and represented this view:

> I advised my electorate fairly early in the debate of my personal view in favour of the bill and I asked for feedback from my constituents. The majority of the feedback that I received was in support of the bill. Nevertheless, the response was fairly small and I am not saying that the views of these few provide a clear and concrete indication of the views of the total electorate. Therefore, I will take the stand that I will vote as my conscience tells me, and that is not to change my original stance but to vote in support of the bill. If I disappoint any section of my electorate, and some members have raised the matter of whether they should vote as their electorate tells them or otherwise, that cannot be helped. Let me assure my constituents, however, that I have not reached this point without extensive thought and discussion (Loraine Braham, CLP, Braitling).

> I have the utmost support and respect for the medical profession. …To those like Dr Wake, who set themselves up on a pedestal and say that they are doctors and therefore they are on the right hand of God, I say phooey. I do not believe that he has any greater say in this debate than any one of my 4 500 constituents (Fred Finch, CLP, Leyaner).

> …As politicians, we must take account of that and we need to be very sure about what the community wants. I do not believe we have the luxury to sit in this House and ignore community views. We are elected by the community and the people who elect us expect us to promote their views and carry out their wishes (Daryl Manzie, CLP, Sanderson).

[331] Interview with Marshal Perron, Buderim, Queensland 16.05.2012.

> In my job as the representative of the people of the Millner electorate, I have the responsibility to: firstly, research the issues surrounding voluntary euthanasia; secondly, listen to the presentations of the expert witnesses in the debate; thirdly, seek the opinion of the people I represent and be satisfied that they are informed; and, finally, make a decision. With all indications being that a significant proportion of the population supports the concept of voluntary euthanasia, I believe it is our duty to consider the legislative requirements for voluntary euthanasia (Phillip Michell, CLP, Milner).

> Basically, when we are elected as MLAs, we are elected to do a job and we are paid very well to do that job. We are paid from the public purse to which the taxpayers contribute, and those taxpayers are my constituents. My constituents pay my salary. Consequently, I have a duty to represent their views. I have it easy in this debate because it happens that my views coincide with those of 89% of my constituents. …If the numbers had been reversed, and 89% of the people in my electorate were against the legislation, then I would have been compelled to vote against the legislation. It would not have reflected my personal view, but it would have been the view of the vast majority of the people in the electorate (Noel Padgham-Purich, Independent, Nelson).

Of course, there were limitations to the impact of the campaign though. A second group of MLAs, who opposed the Bill, were more sceptical about the notion of democracy being promoted by Operation TIAP and were more likely to see themselves as 'trustees' of public wellbeing and safety. At least five of the MLAs who had excerpts from their maiden speeches used in the protest, maintained that they would not be voting for a voluntary euthanasia bill just because it represented the will of the people. Instead, this group of MLAs argues that they were acting in congruence with opinion of the experts, such as the members of the medical profession. As one MLA stated:

> As members are aware, the Australian Medical Association states that euthanasia is unethical. Would we pass a measure in any other field, which in the opinion of the industry peak body, was unethical? I think not. The House of Lords committee was in no doubt as to how big a role the British Medical Association should play in any debate on legalising assisted suicide (Peter Adamson, CLP, Casuarina).

Those who opposed the Bill remarked that they were acting on their consciences, to protect members of their electorate, and were more sceptical of trusting public opinion:

> Views have been expressed by some speakers that parliamentarians should simply be 'spokesdigits'. They should simply work out what the numbers are in the electorate and put their hand up accordingly. I have never shared that view. I believe basically that electoral politics is one of the most exciting and challenging businesses. It is a matter of balancing the numbers with personal conviction (Neil Bell, ALP, Macdonell).

> There are certain things people should expect from their politicians. We should care more about our constituents than about ourselves. We should care more about what is right than what is popular. I vote with my conscience, and I am fortunate in that I find my electorate supports my view. The eyes of the nation and the world are upon us (Richard Lim, CLP Greatorex).

> When asked whether I might change my view if my electorate indicated its support for euthanasia, I have readily said no. Members have been given the right of a conscience vote on this matter. If this right had not been offered, it would have been taken, so certain am I that this proposed legislation is wrong in intent, flawed in principle and divisive in nature. I make no secret of my religious conviction - in fact, I am proud to claim it. However, I refute claims that that is the sole basis of my objection to this bill (Terry McCarthy, CLP, Goyder).

> It would be easy to argue that the majority of constituents in my electorate of Katherine support the legislation and ask what I should do as a politician. Obviously, one would consider at one level that the truth is the numbers and that one's future might well lie in the numbers. However, from a personal point of view, I have to look a little deeper than that, and I do not have the faith in the legislation that others may have (Mike Reed, CLP, Katherine).

> I want to address the matter of this being a free vote or a conscience vote. The advocates of the bill have made much of the need for each member to ascertain

> the views of their constituents, but I have a question for them: whose conscience is on the line at the end of this debate when the vote is taken? Is it the collective conscience of the 3000-plus constituents of each electorate or is it the conscience of the individual member? It is the consciences of the 25 individual members of this Assembly (Syd Stirling, ALP, Nhulunbuy).

Of course, it is not easy to establish whether the MLAs who supported the legislation would have voted the same way if their electorate was strongly opposed to the Bill. MLAs whose personal views were congruent with their electorate were in an easier situation than those whose views differed. This also makes the task of assessing the impact of the campaign by Operation TIAP more difficult. It is possible to conclude however, that the way in which the group utilised a certain notion of representative democracy in its campaign, brought questions about the nature of political representation to the forefront of the debates on voluntary euthanasia, which continue to be relevant today.

Conclusion

This chapter has examined three political processes involved when legislating on voluntary euthanasia: first, the Private Members' Bills process; second, spontaneous political group formation; and third, political representation. Section one examined the Private Members' Bills process in greater detail, specifically the extent to which the Private Members' Bills process itself represented a barrier to reform and how bill sponsors negotiated the process. The main finding here was that the Private Members' Bills process represented a barrier to the passage of legislation in all the parliaments. The specific difficulties reported by MPs, such as a lack of time to discuss proposals and lack of access to bill-drafting services, are significant because they demonstrate how the executive continues to dominate the Australian Parliaments. The experiences of the bill sponsors varied, but all had encountered some problems with the process. The most extreme case was Tasmania, where MPs still receive very limited assistance in drafting non-government bills. However in South Australia, even though MPs are given extensive access to Parliamentary Counsel for assistance with drafting Bills, the success rate of Private Members' Bills is only 2 per cent higher than in Tasmania.

Under these circumstances the strategies developed by individual legislators to overcome such barriers are important. An Independent ACT MLA reported how he

faced difficulty with gaining access to bill drafting services when he first entered into the Legislative Assembly. However, he explained that the situation changed once the Parliamentary Counsel realised that he was prepared to introduce bills without their assistance. Furthermore, after he gained leverage in relation to the balance of power in the Assembly, the Government was more willing to accommodate his legislative proposals and even created a special category of business for him to pursue his agenda. This finding is significant to Australian politics more broadly, as it demonstrates one way in which executive dominance may be challenged when there is a minority government, although at present, non-government legislation continues to occupy a marginal position.

Section two and section three examined the activities of the pro-euthanasia group 'Operation TIAP' in greater detail. Particular attention was given to this organisation, which had been seen as being responsible for the success of the Northern Territory Bill. In section two, it was noted that as the group formed spontaneously, an examination of group's activities also contributed an example of spontaneous political group formation to the literature. It was noted that, prior to the passage of the *Rights of the Terminally Ill Bill*, the Northern Territory had no formal pro-euthanasia lobby. This is unusual; such groups frequently play a role in the introduction of such bills, including recruiting bill sponsors. However, a key finding of this case study was that the lack of formal structure and spontaneity of the pro-euthanasia campaign in the Northern Territory was in fact, an asset and a key element in the successful passage of the *Rights of the Terminally Ill Bill*. The innovative methods utilised, informal decision making structure and consequently, the speed with which the campaign was conducted, caught the pro-life lobby off-guard. The composition of the group was also important. The campaign was founded and run by local Territorians, many of whom had no prior involvement in politics, but felt strongly about the issue and had a deep connection with their community and local area. In contrast, a strategy of anti-euthanasia lobby in the Territory was to bring in experts from elsewhere in Australia; a tactic which was not positively received.

Section three also examined the strategies and tactics of 'Operation TIAP', focussing on an interesting, and arguably very successful, tactic of the group: the use of the theme of representation throughout the campaign. Through the use of petitions, the group demonstrated that there was widespread support for the *Rights of the Terminally Ill Bill*.

The group followed this up with newspaper ads stressing that it was the responsibility of MLAs directly to represent their electorate's wishes. Subsequently, the group used large posters with quotes from MLA's maiden speeches in which they had made pledges to represent their electorate views in the Legislative Assembly. The impact of this tactic was demonstrated by the number of supporters of the Bill who referred to the support for the practice in their electorate as being one of the reasons they supported the Bill; although, of course some legislators maintained their right to their own personal conscience vote on the issue.

This finding was significant, as it gives an insight into the way legislators view their role as representatives and demonstrates that MLAs have quite different views about political representation. In this case, opposition MLAs operated with a different, 'trustee', notion of representation. Several of these MLAs expressed a distrust of public opinion polls and argued that it was their duty to protect the public from what they viewed as a dangerous practice. This group of MLAs opposed any moves towards legalisation of the practice. Subsequent analysis of debates on the issue in the states revealed that such notions of representation have prevailed amongst MPs there and that this is a key factor explaining the disjuncture between strong public support on the issue and legislative outcomes.

Conclusion: Euthanasia Politics in the Australian State and Territorial Parliaments

For over two decades the issue of euthanasia has stimulated prolonged controversy, debate and activity in Australian politics. One of the most pronounced features of the euthanasia debate in Australia is the disjuncture between opinion polls, which report strong public support for a change in the law on the issue, and legislative outcomes. Taking this observation as its point of departure, this thesis has sought to answer the puzzle posed: why has subsequent law reform on voluntary euthanasia not taken place in Australia, despite widespread support from the public and considerable support from the medical profession? Consequently, two main research questions were developed: After the successful passage of the *Rights of the Terminally Ill Act* in the Northern Territory, why have subsequent attempts to reform the law failed? Are the proposals currently being discussed in the state parliaments likely to succeed and what are the future prospects for law reform?

In addition to the explanation of the fate of bills, the thesis has considered the prospects for law reform on voluntary euthanasia in the future and examined four issues of broader relevance in Australian politics, including: conscience voting; the Private Members' Bills process; the strategies and tactics of lobby groups and their impact; and the phenomenon of spontaneous political group formation. The concluding chapter of this thesis will draw out the main findings of the thesis, discussing their significance, with specific reference to the original contributions the thesis has made to the literature and outline the prospects for future research on this topic.

Contribution to research on 'Morality Politics'

A key aim of the thesis was to uncover new knowledge in relation to the following three important debates in political science and link them to the unique aspects of voluntary euthanasia as a morality politics issue: first, the role of parliament in contemporary parliamentary democracy; second, governance of modern political parties and the nature of intra-party politics; third, the distinction between interest groups and social movements. The following section will revisit each of those debates and outline the contribution the thesis has made.

The first debate that the thesis dealt with involved the role of parliament in contemporary parliamentary democracy. It has already been argued that there is agreement in the governance literature and elsewhere that the role of parliament is diminishing because of a combination of the increased roles of the executive and broader interests. However, morality politics issues are traditionally a particular category of business that executives have generally shied away from because they are vote losers.[332] As such, the present study has provided an insight into the working of legislatures on an issue, where they play a key role, in an era generally seen as one of decline. In particular, in relation to the Private Members' Bills process, the thesis has demonstrated that it is possible for individual legislators to play a pivotal role in the legislative process by developing their own strategies to overcome barriers to law reform. This finding is significant to Australian politics more broadly, as it demonstrates one way in which executive dominance may be challenged when there is a minority government. However, at present non-government legislation continues to occupy a marginal position in Australian politics.

The second debate that the thesis has shed light upon concerns governance of modern political parties and the nature of intra-party politics. As noted above, morality politics issues, such as voluntary euthanasia, are usually avoided by the executive and so remain absent from both the literature on both intra-party politics and party discipline. This makes them particularly interesting to study because, as Kam writes (although in relation to party discipline and backbench dissent), much intra-party politics happens behind closed doors, in the party room. This is certainly not the case with morality politics issues in Westminster democracies, where the politics of the issues play out on the floor of parliament. However, as the executive usually avoids morality politics issues, they are usually left to be resolved through the more public processes involving backbenchers: Private Members' Bills and free votes. The thesis has presented a detailed examination of these issues in relation to voluntary euthanasia, a key 'morality politics' issue.

The third broader debate that the thesis has addressed concerns in is the distinction between interest groups and social movements. For the reasons mentioned above, much of the lobbing of politicians on morality politics issues focuses on the legislature, rather than the executive. Consequently, the field is ripe for studying the unique

[332] See Mylchreest, "Avoiding the Issue Down Under".

characteristics of interest groups and social movements. It was noted that the literature is not useful on the distinction between the two. The case studies here have provided an insight into whether the euthanasia lobby is an interest group, a social movement or both. Specifically, it was demonstrated how the euthanasia lobby started as a single issue interest group and has evolved into a social movement over time. Specifically, through the nature of its campaign (on all issues related to the end of life law and dying) and through its diverse membership (cross party, trans-national and across age groups) it can now be considered to be a social movement.

Explaining the Fate of Bills

Each of the individual case studies offered an explanation of the fate of euthanasia bills in the particular parliament. To add to the explanation offered in each of the case studies, chapter six compared the findings of these case studies, to reveal similarities and differences in the factors that affected the fate of euthanasia bills revealed in each parliament, and their relative importance was evaluated. Through this comparative overview, the chapter sought to further explain the failure of subsequent attempts to reform the law and explain the first and main research question posed in the thesis: After the successful passage of the *Rights of the Terminally Ill Act* in the Northern Territory, why have subsequent attempts to reform the law failed?

The comparison of the voting patterns on euthanasia in the parliaments revealed one of the main findings of the thesis. There has been a striking similarity in the patterns of free voting on euthanasia bills in the ACT, South Australian and Tasmanian Parliaments, which led to the failure of bills. In the Northern Territory, a larger proportion of MLAs in the Assembly's conservative/right-wing 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 three 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 finding, the comparison sought further to explain the opposition to euthanasia proposals, through analysis of the contributions that opponents made to

debates on the bills. The analysis revealed a key difference in the debates on euthanasia: that, in the more recent debates, legislators who oppose euthanasia are more likely to refer to opposition from the AMA in their speeches. It was argued that the key reason for this 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 NT Branch of the AMA, Dr Chris Wake's opposition to the practice was well-known during the passage of the *ROTTI Bill*, but 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, although the organisation does not have a position on the issue of law reform. It is difficult to calculate the exact influence, but it is likely that the AMA's implicit position has influenced the voting, in particular in the Liberal Party, by persuading any 'wavering' legislators not to vote for law reform.

Future Prospects for Reform

Each of the individual case studies dealt with the second research question posed: Are the proposals currently being discussed in the State Parliaments likely to succeed and what are the future prospects for law reform? Chapter Three examined the prospects for future law reform in the Territories, but concluded that reform in the near future is very unlikely. There have been several attempts by the Greens in the Federal Parliament to overturn the *Euthanasia Laws Act*, which would give back the power to the Territories to legislate on voluntary euthanasia, but all have failed. Moreover, the bills introduced would not reinstate the *Rights of the Terminally Ill Bill*, but would allow the territories to hold a debate on voluntary euthanasia and legislate on the issue if there is appropriate support for change. This means that the Territory would have to go through the process of law reform over again. In the Northern Territory, both the Attorney General John Elferink and the Opposition Leader Delia Lawrie have indicated that they would support the reintroduction of voluntary euthanasia, but share the view that the Federal legislation is unlikely to succeed. For the foreseeable future, reform on the issue will have to originate from one of the states.

Chapter Four considered whether proposals that will come before the South Australian Parliament in 2013 are likely to be successful. It was argued that the future liberalisation of the law on end of life choices in South Australia rests upon two factors. First, that cooperation between ALP and Greens members continues. The introduction of another joint bill may be helpful to expedite the process, as the Northern Territory case demonstrated that timing is key to the successful passage of a bill. Second, the votes of the five 'undecided' MPs, who did not vote in the recent vote on the 2012 Such Bill, will decide future votes. It is important that the 'social liberal' MPs in the Liberal Party continue to vote for proposals, to counter the existence of a strong right-wing faction in the ALP, who were responsible for the defeat of the 2012 Such Bill.

Chapter Five considered why a proposal that came before the parliament in 2013 was unsuccessful. 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 demise. 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 down by opposition in the Legislative Council. Even if a proposal passes the House of 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, the same-sex marriage issue can be used as a barometer of the ideological commitments of MLCs.

Overall, however, across Australia the Australian Medical Association is likely to continue to play a key role in the campaign to legalise voluntary euthanasia. The appointment of anti-euthanasia doctors on the local and national executive committees of the AMA, who have criticised euthanasia bills in the media under the banner of the organisation, poses a major problem for those seeking reform. As such, the personal views of state branch Presidents have frequently been attributed to the AMA as a whole, which does not actually comment on the issue of law reform. This is significant, because a key finding of this thesis, based on evidence from the parliamentary debates, is that legislators have understood the position of the AMA, and indeed the medical

profession as a whole, as being opposed to law reform. As such, it is likely that one of the reasons legislators have voted against proposals to legalise is opposition from the AMA. In fact, there is a diversity of opinion on the practice and law reform in the AMA, which is demonstrated by surveys of doctors' attitudes to the practice and also by the significant number of members who have formed or joined alternative, pro-reform groups.

The Political Processes Involved

To locate the study in a broader set of literature, the thesis examined four areas of broader interest, relating to the treatment of moral issues and to Australian politics more broadly. These were: conscience voting; the Private Members' Bills process; the phenomenon of spontaneous political group formation; and, finally the strategies and tactics of interest groups.

Each of the individual case studies examined legislators' voting behaviour during 'conscience' voting on euthanasia bills and subsequently, chapter six compared the patterns observed. Although there have been limited analyses of MPs behaviour in the Australian Federal Parliament, the thesis makes an original contribution by providing an insight into the process at the state and territorial level. The analysis revealed several insights into MPs' voting patterns. Voting in the Northern Territory did not conform to any of the existing patterns observed during free voting in the Australian Federal Parliament, or Westminster-style parliaments more broadly. None of the usual variables, including party, gender and religion could predict voting patterns amongst MLAs. This suggests that there was an absence of the type of pressure from parties and also factional groups that exist in larger legislatures.

In contrast, voting in the states conformed more closely to regular patterns. In Tasmania, party had a significant impact on voting patterns. Interview material revealed some of the reasons for this, including the claim that ALP MPs had been given instructions not to give the Greens 'a win' prior to the election. In the South Australian House of Assembly, factionalism along religious lines played an important role in the defeat of the recent *Voluntary Euthanasia Bill 2012*. Here, Catholic members of the ALP split from the majority of the Party and, combined with the votes of with Liberal MPs, this proved enough to defeat Bob Such's proposal in a very close vote. The

comparison of the voting patterns revealed one of the main findings of the thesis, that there has been a striking similarity in the patterns of free voting on euthanasia bills in the ACT, South Australian and Tasmanian Parliaments, which has led to the failure of bills. In the Northern Territory, a larger proportion of MLAs in the Parliament's conservative/right-wing party, the CLP, were willing to support the law reform than their equivalent, Liberal MPs, in the other parliaments. In the other three Parliaments, Liberal MPs have almost unanimously opposed proposals to reform the law and have combined with 'right-wing' ALP legislators to defeat proposals.

Chapter seven also examined the Private Members' Bills process in greater detail, specifically the extent to which the Private Members' Bills process itself represented a barrier to reform and how bill sponsors negotiated the process. The main finding here was that the Private Members' Bills process represented a barrier to the passage of legislation in all the parliaments. The specific difficulties reported by MPs, such as a lack of time to discuss proposals and lack of access to bill-drafting services, are significant, because they demonstrates how the executive continues to dominate the Australian Parliaments. The experiences of the bill sponsors varied, but all had encountered some problems with the process. The most extreme case was Tasmania, where MPs still receive very limited assistance in drafting non-government bills. However, in South Australia, even though MPs are given extensive access to Parliamentary Counsel for assistance with drafting bills, the success rate of Private Members' Bills is only 2 per cent higher than in Tasmania.

Under these circumstances the strategies developed by individual legislators to overcome such barriers are important. An independent ACT MLA reported how he faced difficulty with gaining access to bill drafting services when he first entered into the Legislative Assembly. However, he explained that the situation changed once the Parliamentary Counsel realised that he was prepared to introduce bills without their assistance. Furthermore, after he gained leverage in relation to the balance of power in the Assembly, the Government was more willing to accommodate his legislative proposals and even created a special category of business for him to pursue his agenda. This finding is significant to Australian politics more broadly, as it demonstrates one way in which executive dominance may be challenged when there is a minority government; however, at present non-government legislation continues to occupy a marginal position.

In addition, chapter seven focussed on the activities of pro-euthanasia group 'Operation TIAP' in greater detail. Particular attention was given to this organisation, which had been seen as being responsible for the success of the Northern Territory Bill. Moreover, as the group formed spontaneously, an examination of the activities of the group also contributed an example of spontaneous political group formation to the literature. It was noted that, prior to the passage of the *Rights of the Terminally Ill Bill*, the Northern Territory had no formal pro-euthanasia lobby. This is unusual as such groups frequently play a role in the introduction of such bills, including recruiting bill sponsors. However, a key finding of this case study was that the lack of formal structure and spontaneity of the pro-euthanasia campaign in the Northern Territory was in fact, an asset and a key element in the successful passage of the *Rights of the Terminally Ill Bill*. The innovative methods utilised, informal decision making structure and consequently, the speed with which the campaign was conducted, caught the pro-life lobby off-guard. The composition of the group was also important. The campaign was founded and run by local Territorians, many of whom had no prior involvement in politics, but felt strongly about the issue and had a deep connection with their community and local area. In contrast, a strategy of the anti-euthanasia lobby in the Territory was to bring in experts from elsewhere in Australia; a tactic which was not positively received.

Chapter seven also examined the strategies and tactics of 'Operation TIAP', focussing on an interesting and arguably, very successful tactic of the group: the use of the theme of representation throughout the campaign. Through the use of petitions, the group demonstrated that there was widespread support for the *Rights of the Terminally Ill Bill*. The group followed this up with newspaper ads stressing that it was the responsibility of MLAs directly to represent their electorate's wishes. Subsequently, the group used large posters with quotes from MLA's maiden speeches in which they had made pledges to represent their electorate views in the Legislative Assembly. The impact of this tactic was demonstrated by the number of supporters of the Bill who referred to the support for the practice in their electorate as being one of the reasons why they supported the Bill; although, of course some legislators maintained their right to their own personal conscience vote on the issue.

This finding was significant, as it gives an insight into the way legislators view their role as representatives and demonstrates that MLAs have quite different views about

political representation. In this case, opposition MLAs operated with a different, 'trustee', notion of representation. Several of these MLAs expressed a distrust of public opinion polls and argued that it was their duty to protect the public from what they viewed as a dangerous practice. This group of MLAs opposed any moves towards legalisation of the practice. Subsequent analysis of debates on the issue in the states revealed that such notions of representation have prevailed amongst MPs there and that this is a key factor explaining the disjuncture between strong public support on the issue and legislative outcomes.

Future Research

The present research has highlighted a number of possible directions for future research on the politics of the euthanasia issue and moral issues in politics more broadly.

a) The campaign continues. The most interesting avenue for future research would be an investigation of the passage of a successful bill in the event that one of the states becomes the first in Australia to legalise the practice. The campaign to legalise the practice of voluntary euthanasia in Australia continues and, at the time of writing (February 2013), recent developments indicate that the campaign is likely to intensify in the future. For example, in Tasmania a discussion paper had just been released on the issue and two bills will probably be introduced in the South Australian Parliament in 2013. If one of the states does legalise the practice, it would present an interesting case of successful legislation which would certainly merit further study. Why did the state in question become the first in Australia to legalise the practice? What kind of model was developed and how? What was the role of the bill sponsor, lobby groups or other legislators? Did the opinions of legislators change or was the composition of Parliament responsible for the change? Overall, a study addressing some of the questions raised above would provide further insight into the necessary conditions and reasons for successful law reform on euthanasia.

b) Extended research on the euthanasia lobby. The thesis has primarily focussed on the role of the pro-euthanasia lobby in the Northern Territory and its impact on the successful passage of the *Rights of the Terminally Ill Bill* in 1995. This presented an example of the phenomenon of spontaneous political group formation; however there has been a lack of other research completed on such groups necessary to make broader

comparative or theoretical claims, which leaves important questions unanswered. Do spontaneous groups usually achieve their aims in such a short time, or was the case of 'Operation TIAP' unusual? Do the individuals involved continue to be active in politics once they have achieved their aims, or if not, do they become disillusioned with the process? Do spontaneous groups tend to become more formalised over time?

In addition, future research could also focus specifically on the role of the anti-euthanasia lobby, including the Catholic Church and pro-life groups, who have been successful in preventing the passage of legislation, particularly in South Australia. This research could analyse their strategies and tactics and their relationship with legislators and the Australian Medical Association. Future research could focus specifically on the influence of individuals and networks associated with the AMA in the national campaign to change the law on euthanasia and other health care reforms.

c) Other States. This thesis has focussed on two state and two territorial parliaments. However, euthanasia bills have been introduced in all of the state parliaments, except Queensland. Three of the parliaments here were different to the other Australian parliaments, in that they were small sized legislatures and this was one of the key factors in the passage of the Northern Territory Bill. The small size of the legislature meant that there was an absence of party factions which exist in larger parliaments, where members of certain groups work together to block legislation. The South Australian case has provided some insight into the way the issue played out in a larger parliament, where right wing members of the ALP blocked debate on bills, but research focussing on other state parliaments would provide a broader insight. Moreover, although reform looks most likely to come from South Australia or Tasmania, it is possible that one of the other states could be the first to legalise. In this case the questions raised in the first section would be relevant here.

d*) Other countries.* The campaign to legalise voluntary euthanasia is playing out across the world. The thesis demonstrates that legislative change is unlikely to take place in other countries where there is not symmetrical intergovernmental power. However, the practice has already been legalised (through the passage of legislation) in the Netherlands, Belgium and Luxembourg, and in the states Oregon and Washington in the United States. The present empirical work has provided a basis for future research, which could investigate why legislation passed successfully in other jurisdictions.

Subsequently comparisons with Australia could be undertaken. Active campaigns are also occurring in many other countries, including the UK, Canada and South Africa. Once again, new possibilities for comparisons arise alongside new research questions: How do legislators vote on euthanasia across Westminster-style parliaments? How has the campaign to legalise played out in different political systems, such as in the US states? Do the same barriers exist in relation to the passage of legislation? How do federal structures and models of intergovernmental power effect the passage of legislation elsewhere? Moreover, both pro-euthanasia and anti-euthanasia movements now operate in a global network. Research into how these networks have emerged, how they are evolving and the impact the international element in the campaign has had on the passage of legislation would be an interesting avenue for future research.

e) Other issues. There are currently several moral issues that activists are campaigning for reform on in the Australian Parliaments. In August 2012, the Tasmanian Premier Lara Gidings announced in her speech to the ALP State Conference that she maintained a commitment to her social reform agenda. Issues mentioned in the speech were, same-sex marriage and adoptions, surrogacy, prostitution, euthanasia and abortion. A bill on same-sex marriage has already been introduced in Tasmania but was narrowly defeated in the Legislative Council. If the ALP Government continues with its programme, and more bills are introduced, Tasmania would offer a collection of case studies of moral issues in a single parliament.

Across Australia however, the most prominent issue at the moment is same-sex marriage. Civil union bills have passed in several states in recent years. In South Australia, Steph Key, who has sponsored euthanasia bills, has also introduced Private Members' legislation to legalise prostitution. Another interesting case was the passage of legislation in 2010 that sought to make the medically supervised injecting centre in Sydney permanent: although this was Government legislation, the Liberal Party allowed a conscience vote. Embryo research also offers an interesting comparison focussing on another medical issue, as does abortion. Such research could focus on either the Federal or state parliaments and would offer broader insights into the treatment of moral issues in Australian parliaments. This would also offer more knowledge of conscience voting at the state level on a broader range of issues.

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Appendix

Appendix A. Voluntary Euthanasia and Physician Assisted Dying Legislation in the South Australian Parliament

Upper House: The Legislative Council

Year	Bill	Sponsor	Stage
6.11.96	Voluntary Euthanasia Bill	Anne Levy, ALP	Lapsed 10.97
6.11.96	Voluntary Euthanasia (Referendum) Bill	Sandra Kanck, Democrats	Lapsed
14.3.01	Dignity in Dying Bill	Sandra Kanck, Democrats	Lapsed
12.11.08	Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill	Mark Parnell, Greens	Negatived 18.11.2009
29.09.10	Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill	Mark Parnell, Greens	Defeated 24.11.2010

Lower House: The House of Assembly

Date	Bill	Sponsor	Stage
9.3.95	Voluntary Euthanasia Bill	John Quirke, ALP, Playford	Failed 2R vote
23.3.03	Dignity in Dying Bill	Bob Such, Independent, Fisher	Lapsed
24.9.03	Dignity in Dying Bill	Bob Such, Independent, Fisher	Lapsed
16.2.05	Dignity in Dying Bill	Bob Such, Independent, Fisher	Lapsed
2006	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Lapsed
14.3.07	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Lapsed 5.4.07
31.5.07	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Lapsed 14.8.98
16.10.08	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Lapsed 20.2.10
24.6.10	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Lapsed
16.09.10	Consent to Medical Treatment and Palliative Care (End of Life Arrangements) Amendment Bill	Steph Key, ALP	Lapsed
10.03.11	Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill	Steph Key, ALP	Lapsed
2012	Voluntary Euthanasia Bill	Bob Such, Independent, Fisher	Failed 2R vote 20-22