

OCTOBER 2011

dying with dignity^{nsw}



respect for the right to choose

Over 85% of Australians believe in the right of the terminally or incurably ill to obtain medical assistance to end their lives



Dying with Dignity NSW
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Dying with Dignity NSW is a non-profit organisation that promotes end-of-life choices. Our mission is to lobby for legislative change that will enable any adult who is suffering from a terminal or incurable illness to be able to access medical assistance to help them die in accordance with their wishes.

DWDnsw Board:

President - Dr Robert Marr
Vice President - Dr Sarah Edelman
Treasurer - Mr Barry Hill

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Mr Richard Mills (2009)
Dr David Leaf (2009)
Mr Tom Kelly (2009)
Mr John Hogan (2011)
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Our Patron is Professor Peter Baume AC

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Office Administrator:
Gabrielle Brown

Communications Coordinator:
Gideon Cordover

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Please submit articles, letters etc to:
The Editor, DWDnsw Newsletter
PO Box 25 Broadway NSW 2007

President's



Message

There is increasing momentum in Australia and overseas towards the introduction of physician-assisted dying legislation. Recent encouraging developments, especially in South Australia, Canada and Massachusetts, are set out later in the Newsletter.

Your Committee members have continued to be active in encouraging public debate and we are happy to provide guest speakers to talk to community organisations. If you have a local organisation that would like to have a presentation on medically assisted dying, please contact us on 02 9212 4782.

Best wishes to you all,

Robert Marr
President, DWDnsw

We hope to see you at the Forum we are holding with the Greens on 15 November. We have a great array of speakers – see the back page of this Newsletter for details.

DWDnsw and The Greens invite members and friends to our **Parliamentary Forum** on 15 November from 2pm. Tickets are \$20 (Pensioners and Students \$10).

We have only 175 seats available!

To reserve your seat post this cut-off to **DWDnsw PO Box 25 Broadway NSW 2007** and enclose a cheque OR complete the credit card details below to charge your Visa or Mastercard.

DWDnsw Parliamentary Forum on November 15

Full Name: _____
 Address: _____
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Please circle the correct amount

Standard \$20
Student / Pensioner \$10



Overwhelming support for dying with dignity

The latest Newspoll survey again confirms the nation's **overwhelming support** for voluntary euthanasia. **The Australian** reported on 1 October that **77 per cent of Australians agreed** it should be legalized and only 18 per cent were opposed. Five per cent said they did not know or declined to answer.

The middle-aged were more likely than younger people to agree that voluntary euthanasia should be legalised, with 81% of 35 to 49-year-olds supporting the proposal compared to 73% of 18 to 34-year-olds. Men (78%) were more likely than women (75%) to agree, as were 81% of rural and regional Australians compared with 74% of people who live in cities.

Federal legislation and the Territories

The **"Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010"**, which would scrap Federal Ministerial power to overturn Territory laws, has passed the Senate after a fiery debate about its potential impact on gay marriage.

The Bill, tabled by **Greens Senator Bob Brown**, would mean Territory laws could only be disallowed with agreement from both houses of Federal Parliament.



Bob Brown

Passage of this Bill would give back to the legislative assemblies of the ACT, NT and Norfolk Island the power to make laws about voluntary euthanasia - should they choose to do so.

Federal Labor has said that it will support the bill, with two minor amendments. Northern Territory Chief Minister Paul Henderson welcomes the bill as "a small step towards statehood" but says his Labor government has no plans to enact legislation on voluntary euthanasia as it is not a mandate he asked for at the last election.

Chief Minister Henderson and Opposition Leader Terry Mills are both on record as being against voluntary euthanasia, although a survey last year showed that **85 per cent of Territorians supported it**.

New South Wales

Public Presentations and Debates

On 15 August, DWDnsw and the Griffin Theatre hosted a very interesting and informative **post-play forum** to discuss legalising assisted dying, in light of the Tom Holloway play "And No More Shall We Part", which we had all just seen. The play portrayed the harsh reality of a husband and wife facing terminal illness together. Speakers at the forum were Marshall Perron (NT Chief Minister 1988 – 1995), Lyle Shelton (Chief of Staff, Australian Christian Lobby) and Gideon Cordover (DWDnsw Communications Co-ordinator and son of the late Robert Cordover).

On 25 August, a **debate was held at the University of NSW** on the subject: "That the house should legalise voluntary euthanasia". Speaking in favour of the motion were Dr Sarah Edelman (Vice

President DWDnsw) and Dr Phillip Nitschke (Founder of Exit International). Speaking against the motion were Paul Russell (Chairman of HOPE / Right to Life NSW) and Lyle Shelton (Chief of Staff, Australian Christian Lobby). One of the aims of participating in such debates at University campuses is to increase awareness amongst younger Australians of the issues relating to assisted dying.

On 29 August, Gideon Cordover appeared on the **Channel 10 TV show "Can of Worms"** as a studio audience member. Part of this episode was a discussion of "Should Euthanasia be Legalised?". Gideon explained very convincingly that he had come to support legalizing assisted dying because of the awful deterioration of his father suffering from motor neurone disease and his final "death with dignity".



Robert Cordover (Centre) with sons Michael and Gideon in 2009. Photo courtesy of Neil Francis.

On 10 September, Gideon gave a talk to a small but supportive group of members of the **Holdsworth Community Centre** at Woollahra.

On 11 September, two of our Committee members, Dr David Leaf and Dr Sarah Edelman, addressed the **Sydney Atheists** group at the Toxteth Hotel in Glebe. Although DWDnsw does not align itself to any particular organisation, it was clear that we share many common goals with this group. Of particular concern to both of

our organisations is the attempt by Church institutions and associated groups like the Australian Christian Lobby to impose their values on others on a range of social issues, including voluntary euthanasia.



DWDnsw Board members, Dr Sarah Edelman and Dr David Leaf

On 20 September, Gideon Cordover and Committee member Dr David Leaf addressed about 80 members of the **Canterbury Proboscis Club** on the issue of assisted dying. The presentation covered problems with the current laws and the case for legislative change, medical issues at the end of life and Advanced Health Care Directives. The presentation received a very positive response from all those present.

Arthur Smith

On 3 October **Channel 7 News** ran a story about one of our members, Arthur Smith, whose wife Margaret died recently in **Coffs Harbour Hospital**.

Arthur was forced to visit Margaret under guard and was warned that if he touched or kissed his wife he would be escorted from the premises. This was apparently because Arthur had expressed support for voluntary euthanasia.

The Hospital claimed that staff had been acting in accordance with established protocols and the law. We have asked the Department of Health for copies of these rules but have not yet had a response. Dr David Leaf from Dying with Dignity NSW appeared on the news item in support of Arthur Smith. Arthur has submitted a complaint with the Health Care Complaints Commission.

ACT News

Neil Francis Visit

Karen Jameson, Policy Director of The Health Care Consumers Association attended the **DWDnsw General Meeting** on August 18, along with some 30 other people. She kindly gave us a report on the presentation by Neil Francis.



Neil Francis
CEO of YourLastRight
and President of
Dying with Dignity Victoria.

"Neil began by explaining the three main aims of Dying with Dignity Victoria. These are:

- to promote legislation that gives **freedom of choice** to individuals and acknowledges the human right of terminally and incurably ill people with profound suffering to die with dignity;
- to carry out a continuing **public education** policy to achieve such legislation;
- to educate the public in the need for **Living Wills and Advance Directives** and to provide counselling and other assistance to people about their end-of-life rights....

Dying with Dignity NSW endorses these aims.

Much of Neil's presentation was based on the experiences of countries where voluntary euthanasia has been decriminalised for some years....The overwhelming view from all these countries is that voluntary euthanasia works well for its citizen. Giving people the right to choose and to talk openly about the option of voluntary euthanasia promoted peace, serenity and reassurance."

ACT Seminar on Dementia

Darryl Killen reports: "At our seminar on 28 April, there were speakers on the nature and projected rise in dementia, the case law position on dementia and suicide and a plea for less rigidity of courts being justified by the lack of legislative attention to the problem.

"Discussion included the effectiveness of an Enduring Power of Attorney (called an Advance Health Care Directive in NSW) and their portability from one state or territory to another. One speaker characterised a calm rationality when he announced: 'I don't want to have to kill myself too early'.

"DWDnsw has **urged Alzheimers Australia** to take a position on the need to assist sufferers from dementia if they have demonstrated a capacity to choose to suicide. However, they have not changed their position of neutrality."

Jeanne Arthur, President of the ACT Branch of DWDnsw, reports:

"In July I attended the first annual conference of YourLastRight.com. This was attended by the representatives of DWD societies from each State who met face-to-face for two days. (The regular monthly YLR Committee meetings are conducted by Skype). We discussed our goals and the different approaches taken by the various state societies.

"Earlier this year DWDnsw met with Council on the Ageing (COTA) and the Health Care Consumers Association (HCCA). We held discussions with COTA about possible 2012 forums on dying, with the possibility of YLR President Neil Francis returning to give his talk about legislative change that is occurring in other countries.

I attended a number of HCCA meetings and have been asked to attend a Palliative Care workshop in Sydney as a Health Care Consumer.

"I was selected for the "Older Person's Assembly" at the Legislative Assembly on 30 September. This is an opportunity for DWD to put forward recommendations for legislative change on assisted dying. I am hopeful that agreement will unite everyone in wanting to remove the archaic legislation we have in place in the ACT at present.

"I will report on these meetings and other items of interest at the **DWDACT AGM on 8 December at 2.00 p.m. at The Weston Club**. All members are invited to attend."

Central Coast News

On 16 September, Gideon Cordover gave a presentation to our Central Coast Branch, which was warmly received.

The Branch's next and final meeting for the year will be:

Date. Friday 18 November 2011

Time. 10am - 12 noon

Place. Meeting room, Erina Library, Erina Fair

As well as catching up with news from across Australia and beyond we shall be reviewing the year's achievements and discussing plans for 2012.

It is with deep sadness that we must report that the Central Coast treasurer, **Nora O'Neill** died suddenly on 27 September. She will be missed by all our members of this active branch.

Generous Bequests Received

The Committee of DWDnsw would like to thank the following people and their families from whom we have received generous bequests in recent times:

- The late Merron H. Farmery of Murwillumbah -\$1000. Ms Farmery joined DWDnsw in 1996.

- The late Kathleen Ida Millicent Friezer of Moore Park QLD - \$5000. Ms Friezer was the partner of Mr John Monro, who became a life member of DWDnsw in 1993.
- The late Hilary Webster of Lyneham ACT - \$1000. Ms Webster was a life member of DWDnsw since 1997.

We have also received letters and phone calls from some of our members who are very much alive, letting us know that they have made provision for Dying with Dignity NSW in their will. All contributions, no matter how small, are most welcome and appreciated! We hope that you will let us know if you leave a bequest to DWDnsw.

If you or your solicitor have any questions about making a bequest to DWDnsw you can contact our office on (02) 9212 4782 or email dwd@dwdnsw.org.au.

Death of DWDnsw members:

The committee of DWDNSW would like to send our condolences to the friends and family of the following long-standing members of our organisation:

Shirley Elizabeth Bennett of Mount Druitt

Martha Gordey of North Willoughby

Hedwig Schiller of North Epping

Albert Young of Queanbeyan

Barry Smithers of Ourimbah

Jane Inglis of Victoria

Avril Clark of Vacluse

Robert Clark of Drummoyne

Gillian MacDonald of North Qld

John MacDonald of Castle Hill

Betty Mckell of Bowra

Anne Boskovitz of Bondi

Jenny Chung of Castlecrag

Winifred Will of Tasmania

James Redmond of Farrer, ACT

Wendy Sargent daughter of Margaret

Sargent of Bundeena

Margaret Smith of Sapphire Beach

South Australia

In recent times, the South Australian Parliament has considered three private members' Bills addressing end of life choices:

"**The Voluntary Euthanasia Bill 2010**" was introduced into the Lower House by **Dr Bob Such** (Independent) and the "**Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill**" (The Consent Bill) was co-sponsored by Greens MLC **Mark Parnell** in the Upper House and Labor's **Steph Key** in the Lower House.

These two Bills aimed to allow a competent adult the statutory right to receive medical help for a peaceful death under specified circumstances. Whilst The Consent Bill was defeated in November 2010 - by two votes - the public gallery of the Legislative Council was at full capacity with both supporters and opponents of the Bill witnessing another historic SA debate on legislative change which lasted for several hours.

The current focus is on the third bill. The third bill, the "**Criminal Law Consolidation (Medical Defences - End of Life Arrangements) Amendment Bill 2011**", was introduced in March 2011 and is also a Parnell/Key Bill. It was drafted in response to the Minister for Health, John Hill, not

supporting The Consent Bill in November 2010. It proposes an amendment to the "Criminal Law Consolidation Act 1935" by inserting a new section (13B) which provides a legal defence (under certain circumstances) to a treating doctor who assists a person to die.



This Bill does not seek to legalise euthanasia, and does not prescribe a process of getting documentation, witnesses and second opinions that the earlier Consent Bill proposed. It also does not give the patient the right to request and receive assistance to die. It simply provides a defence for a doctor who is faced with a charge of murder. It requires that the patient be an adult of "sound mind" and be suffering from an illness, injury or other medical condition that irreversibly impairs their quality of life, such that living is intolerable. The patient must request help to die, and the provision of medical assistance must be a "reasonable response to the suffering of the person".

This Bill passed the Second Reading stage of the debate in the Lower House of the SA Parliament on 28 July, but has not yet had a Third

Reading. It will be subject to a conscience vote.

Ord Minnett executive chairman and devout Catholic, Karl Morris, has reportedly hired a lobbyist to work against this Bill.

Importation of Nembutal

On 26 September several media outlets (including the Medical Observer, news.com.au and Nine MSN) carried a story that euthanasia advocate **Dr Philip Nitschke** had secured permission from the Therapeutic Goods Administration (TGA) to import the barbiturate pentobarbital (Nembutal). According to the reports, Dr Nitschke had applied to access Nembutal under "Category A" of the "Special Access Scheme" of the TGA, which allows for individual patients who are expected to die within a few months to access drugs that have not been formally approved via clinical trials.

Later that day, the TGA website put out a statement that "**Contrary to media reports** today, the TGA has not approved the use of Nembutal by Dr Nitschke. Dr Nitschke has notified the TGA that he intends to use Nembutal for a patient under Category A of the Special Access Scheme. ...Determining whether use of a medicine by a medical practitioner is in accordance

with good medical practice is not a matter for the TGA, but rather for the relevant state medical board. The TGA has written to Dr Nitschke advising him of these requirements and of the need for him to ensure his prescribing is in accordance with good medical practice".

So at this stage it is unclear whether Dr Nitschke will be allowed to provide Nembutal to the Category A patient, as the move still needs to be approved by the relevant State medical boards.

Victoria



Cancer sufferer, Alan Rosendorff

In July, Melbourne lawyer Alan Rosendorff, who has terminal cancer and is likely to face a long, painful death, asked the Victorian Liberal Premier Ted Baillieu to initiate public debate on voluntary euthanasia.

The Premier declined to meet with Mr Rosendorff or do anything about aid-in-dying law reform, despite his personal support for it.

Greens member of the Legislative Council, Colleen Hartland, was very moved by Alan Rosendorff's plea in the media and met with him. She asked the Government to refer the issue to the Victorian Law Reform Commission.

Ms Hartland's request was rejected on 31 August by the Upper House, despite **unanimous support from Labor**.

Tasmania

A motion was moved in late August by the Liberal party's Devonport City branch calling on members to acknowledge overwhelming public opinion and enact laws to "allow people with a terminal illness suffering extreme pain to die with dignity". This is a welcome development in the political arena, even though the motion was lost on the voices, with MP Rene Hidding saying – mistakenly – "there is no such thing as unmanageable pain".

More encouragingly, the Labor Premier of Tasmania – Lara Giddings – and the Greens leader and coalition partner Nick McKim plan to introduce legislation next year to allow voluntary euthanasia.

Elderly couples' suicide pacts

Within the last year there have been several reports of elderly couples dying in suicide pacts. One such couple was found dead in their Buderim retirement village home in August. They were both aged in their 90s and had been together for over 60 years. Both were very frail and in poor health. According to fellow Buderim resident and former Northern Territory chief minister, Marshall Perron, the couple's suspected suicide pact and the subsequent shock of family and friends is an unnecessary result of laws prohibiting assisted suicide.

Also in August this year, New Zealand couple Bob and Betty Jackson, both in their 80's, were found dead, in what police describe as a case of suicide and assisted suicide. Spokesman for the Nelson branch of Exit International, Christopher Vine, told journalists the couple had attended Exit meetings and "they were very, very devoted, and just felt the life of one without the other wasn't worth it."

In April this year an elderly Victorian couple acted on a suicide pact. The couple had recorded a farewell message prior to their suicides, saying dying together would give them "great peace".

The husband Don Flounders, suffered from mesothelioma. His wife, Iris, was not terminally ill, however she stated that they had no doubt they were making the right decision. The couple had been together for 60 years.

Although very sad, it is understandable that after many decades of life together, some people cannot face the prospect of continuing to live after their lifelong partner has died. This is particularly true for those who are elderly and in poor health themselves. Under current Australian legislation, whilst suicide is not illegal, assisting your partner to commit suicide is.

Overseas News

Did you know?

Laws enabling physician-assisted dying exist in **Belgium** (2002), **Luxembourg** (2009), the **Netherlands** (2002) and **Switzerland** (1942). In the United States, **Oregon** (1997) and **Washington State** (2009) also have Death with Dignity legislation.

There is an important distinction between those laws that provide for a physician to supply the medication for the patient to take without help, and those where the life-ending treatment is administered by a physician.

In Switzerland, Oregon and Washington the patient must self-administer the medication. In Belgium, Luxembourg and the Netherlands the law provides for both types of assisted dying.

Another important distinction is between terminal and incurable illness. In Oregon, the patient must be terminally ill, which is defined as having six months to live. On the other hand, Belgian law provides for people who are incurably ill but who are not expected to die in the near future.

Canada

In 1993, Sue Rodriguez, then 43 years old, faced an awful paralytic death from ALS ("Lou Gehrig's disease"). She began petitioning legal authorities for the right to an assisted death. The **Supreme Court of Canada** ruled against her with a **5-4 vote**, arguing that Parliament, not the courts, should decide this issue. Unable to walk or talk, in the following year, Rodriguez **illegally** accessed assistance to end her life.

Since that time, **three U.S. states and four European countries** have legalised assisted dying (under various protocols) and public opinion in Canada has shifted dramatically in favour of legalising assisted suicide for the terminally ill.

In April 2011, the **British Columbia Civil Liberties Association** (BCCLA) challenged the legality of Section 241 of the Criminal Code, which makes assisting a suicide a serious offence. Several residents of British Columbia (Canada) have also launched challenges in an attempt to overturn the 1993 Rodriguez ruling. They include a doctor who wants to provide compassionate care for his terminally ill patients, a civil rights lawyer who has offered his services pro bono, and **Gloria Taylor**, 63, who also has ALS and is dying of the disease. Gloria says "I'm asking the mercy of the court to allow me the option to work with my doctor to ease my pain and help me end my life peacefully and with dignity. I should be able to make the choice about how much suffering to endure, based on my own beliefs and values."

Massachusetts

Developments in Massachusetts indicate how a different political system works, point to the inevitability of our success and demonstrate how the opposition (especially the Church hierarchy) reacts.

The Massachusetts Death With Dignity Coalition (aka "Dignity 2012") is proposing a Death with Dignity Act that mirrors similar laws in Oregon and Washington State. As occurred in these States, a major step is to organise an initiative petition to legalise physician-assisted suicide. On 7 September, the Massachusetts Attorney General certified that the language of this petition met all the required legal criteria.

Dignity 2012 must **collect 70,000 signatures** of registered voters by November 2011. If the signature drive succeeds, lawmakers have until May 2012 to back the proposal, offer an alternative, or let the plan go to the general election in November 2012.

The Archbishop of Boston, Cardinal O'Malley said "We hope the citizens of the Commonwealth will not be seduced by language [such as] dignity and compassion, which are means to disguise the sheer brutality of helping people to kill themselves." However, nearly three quarters of respondents in a recent Massachusetts poll said they supported reform.

New Zealand

New Zealand Prime Minister John Key has indicated he supports reviewing legislation on voluntary euthanasia. National polls showed **public support for voluntary euthanasia in New Zealand is around 70 per cent.**



New Zealand Prime Minister, John Key

Auckland-born scientist Sean Davison is currently before the courts over the attempted murder of his mother in 2006. He has admitted giving his mother morphine before her death.

Sean Davison, who lives in **South Africa**, has formed an organisation "Dignity SA" to inform the public about the issues of death and dying, and to change the law to allow for voluntary euthanasia under strictly controlled circumstances.

Another pro-euthanasia campaigner, Lesley Martin, was convicted and sentenced in 2004 under similar circumstances following the publication of her book "*To Die Like a Dog*".



Legislative Safeguards

Sometimes opponents of physician-assisted dying claim that legislative safeguards can never prevent abuse. In fact, standard safeguards in legislation in Europe and the United States are designed to ensure that:

- the patient is suffering unbearably and hopelessly and the patient is acting voluntarily and is not being coerced or seeking to die for the sake of others;
- the patient is mentally competent (and not suffering from depression), that he/she makes a fully informed decision and the request is well-considered and repeated; and
- the attending doctor consults at least one other doctor, who must see the patient and give a written opinion.

Legislative Safeguards from page 11

The European and US DWD laws are regularly reviewed by governmental authorities and independent academics, and all the evidence is that they are working well.

Three areas of special interest include:

1. **the number of people** using physician-assisted dying: Very few people actually avail themselves of their legal right to die with dignity. For example, in Oregon there were 65 physician-assisted deaths in 2010, accounting for **0.2%** of total deaths in that year.

Reports in 2010 found that there had been no increase in requests for euthanasia after implementation of the Euthanasia Act in the Netherlands. The number of deaths due to voluntary euthanasia and physician-assisted dying decreased from 2.8% of all deaths in 2001 to 1.8% in 2005. There were 2,636 cases notified in 2009, which represented about 2% of all Dutch deaths in that year.

2. **the incidence of non-consent:** Non-voluntary euthanasia is concerning. However, a report in 2010 on Belgian practice found that despite fears to the contrary, the ending of patients' lives without an explicit patient request had not increased since euthanasia was legalised. In the Netherlands, the rate of such non-voluntary euthanasia is **0.7%** of deaths. In Australia, it is **3.5%** of deaths and we have **no physician-assisted dying law.**

3. **transparency:** Where voluntary euthanasia and physician-assisted dying are illegal and are therefore practised secretly, they are more likely to result in mistakes and abuse. Research in 2010 found that the Netherlands legislation had improved communication on euthanasia, which in turn had benefited the quality of euthanasia practice.

DWDNSW PARLIAMENTARY FORUM

• When:
November 15 from 2pm - 4.30 pm

• Where:
**NSW Parliament House,
Macquarie Street, Sydney**

• Entrance Fee to Cover Cost:
Adult: \$20 or Concession: \$10

Guest speakers include:

- **Mike Bowers** - Freelance photographer and host of 'Talking Pictures' on Insiders (ABC1)
- **Jane Caro** - Freelance copywriter, lecturer, author, media commentator & Gruen Transfer panellist
- **Nicholas Cowdery AM QC** - Director of Public Prosecutions for NSW, 1994 to 2011
- **Cate Faehrmann** - Greens NSW MLC
- **Neil Francis** - CEO of Your Last Right.com
- **Marshall Perron** - Chief Minister of the Northern Territory 1988 to 1995

Only 175 seats available!

To reserve your seat post the cut-off on page 3 to:

DWDnsw
PO Box 25
Broadway NSW 2007

