

Suicide, ethics and the law

Parliamentary debates on suicide in South Australia

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Case study:

You are 90 yrs old, living in an aged care facility. You have completed a South Australian advance care directive. In Section 4 you have written, that if I am dying I do not want to be resuscitated or given any treatment to keep me alive, only palliative care.

As your frailty is increasing and you are tired of living you decide to take an overdose of pills which you have access to. The staff find you unconscious, ring the ambulance, and you are taken to the acute hospital, where staff are informed about the overdose. The doctors decide to treat you as this is an attempted suicide and commence life saving measures.

Three types of Bills on suicide debated recently in the SA Parliament:

- Voluntary Assisted Dying Bill 2020
- Suicide Prevention Bill 2021
- amendments to the Advance Care Directives (Review) Amendment Bills of 2021 and 2022

Suicide definitions and history

Voluntarily and consciously ending one's own life.

Noted across cultures and times: Socrates, Antony and Cleopatra.

Views of suicide shaped by Christian churches, sociology (Durkheim), medicine (including Freud).

Suicide rates

- Respond to historical events: Great Depression, World War 2.
- Increase with better reporting and reduced stigma.
- May be unclear whether a death is suicide.
- Australia in 2022: 3249 deaths by suicide: 2455 males and 794 females.
- Men: most common aged 45-49 and 85+
- Women: most common 85+
- Higher rates among Aboriginal people, veterans, LGBTI, people with disability.

Voluntary assisted dying

- Euthanasia ('good death')
- First legalised in the Netherlands in 2001
- Most Australian VAD Acts say that VAD is not suicide.
- But this is only in the law of those states and does not change Commonwealth law. The *Criminal Code Act* makes providing advice about suicide by phone or email a crime. This interferes with the implementation of the state schemes.

Law on suicide in Australia

- Old common law crime of suicide overturned by legislation in Australia, e.g. in 1967 in Victoria, 1983 in SA and NSW.
- Suicide and attempting suicide are now not crimes.
- ‘Suicide is a tragedy, not a crime’ (Supreme Court of Victoria)
- Assisting someone to commit suicide is still a crime, but may attract a lenient sentence.
- VAD (performed under a statutory scheme) is not a crime in all SA states and the ACT. VAD was legal in the NT from 1995 to 1997, and the NT is now conducting consultations on its new VAD scheme.

Voluntary Assisted Dying Bill 2020 (SA)

- 17th VAD Bill introduced in SA Parliament over 25 years
- Conscience vote
- Passed in June 2021 and came into effect in January 2023
- Assisted dying is available to adults with decision-making capacity who have an incurable illness and are expected to die within six months

Suicide Prevention Bill 2021

- Established the Suicide Prevention Council
- Set up a suicide register
- Gives Health Minister power to ban or restrict access to ‘lethal means’
- Passed with minimal debate

Advance Care Directives Amendment Bills 2021 and 2022

- 2019 recommendation that the ACD Act be amended so that an ACD cannot be used to refuse life-saving treatment after a suicide attempt (Lacey Review).
- 2019 amendment disallowed
- 2021 amendment lapsed
- 2022 amendment passed (conscience vote). Gives health professionals discretion to ignore a refusal of life-saving treatment in an ACD after a suicide attempt, but must report occasions when they do. Chief Psychiatrist of SA wrote an influential briefing paper to MPs.

Medical ethics and suicide

- Beneficence, non-maleficence, autonomy, justice
- May need to balance conflicting principles, e.g. a patient with legal capacity can refuse treatment that a health professional believes is essential to save their life.
- Autonomy limited: in an emergency when a patient cannot consent, involuntary treatment under a mental health Act, restrictive practices.
- Health professionals should not provide treatment that is futile.
- Human rights: equal treatment, non-discrimination, access to health care, personal integrity and dignity.

SA parliamentary debates

Voluntary Assisted Dying Bill 2020:

- autonomy (right to choose, control, choice)
 - beneficence (compassion for those who are suffering)
 - non-maleficence (protecting the vulnerable, sanctity of life)
 - consequences of passing the Bill (prevents lonely or painful suicides, 'slippery slope')
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- Same principles used on both sides of the debate: best interests, human rights, equality.

SA parliamentary debates

Suicide Prevention Bill 2021:

- Supported by all parties and passed with minimal debate and no explicit discussion of ethical principles.
- Suicide spoken about as if did not involve choice or autonomy, as if it were a category of accidental death.

SA parliamentary debates

Amendments to the Advance Care Directives (Review) Amendment Bills 2021 and 2022

- **Autonomy:** amendment undermines the principles of the ACD Act. If a patient can refuse treatment when conscious, should be able to in an ACD.
- **Beneficence:** health practitioners acting in person's best interests, using clinical judgement
- **Sanctity of life, 'person's own protection'**
- Some parliamentarians were confused about which principle to prioritise.
- Uncertainty about 'original intent' of the ACD Act.

Conclusion

- Law and ethics are shifting from paternalistic focus on best interests to rights-based approaches.
- Need to balance individual autonomy with protecting vulnerable members of society.
- Law making on suicide inevitably involves balancing competing rights and principles. Will always be complex.
- Parliamentary debates reveal MPs' limited understanding of the complexities of the ethical and social issues.
- SA Parliament, and even some individual MPs, did not reach a consistent ethical position across the three contexts, e.g. support for autonomy in VAD Act, and undermining autonomy in ACD amendment.

Recommendations

- Parliamentary ethics committee or human rights committee to scrutinise Bills. Could consider clarity, proportionality and how Bills affect people's rights.
- Set out rights in a *Human Rights Act*, a bill of rights or a statement of rights. Would not bind future parliaments, but a good reminder and education for MPs and the community.

M Brown and K Leeson, 'Suicide, Ethics and the Law: Parliamentary Debates on Suicide in South Australia', *Journal of Law and Medicine*, (2024) 31(1): 1-12.