

To be or not to be?

By Geraldine Collins



‘Assisted dying’ is an issue that has recently crept back into the news with the case of Mr Steve Guest and Dr Rodney Syme.

Mr Guest was diagnosed with oesophageal cancer and died in mid-2005 from an overdose of Nembutal, the barbiturate used by veterinarians to euthanase animals. It is alleged that this drug is increasingly being traded on the black market in Australia.

Recently, Dr Syme publicly admitted his involvement in the case. In July 2005, he met Mr Guest and supplied him with information relating to the use of the drug, and the drug itself. Approximately two weeks later, Mr Guest ended his own life by taking the drug. Dr Syme has agreed it was foreseeable that Mr Guest might use the barbiturate to end his own life; but has maintained that he was motivated by his ability to provide peace of mind and choice to Mr Guest.

Euthanasia is and always will be contentious. It can mean different things to different people. Euthanasia may be ‘active’ or ‘passive’, involving either a conscious act – commonly a deliberate dosage of medication – to end a terminally ill person’s life, or the intentional refusal of life-prolonging medical treatment, resulting in a patient’s death. This is an established part of medical practice and is now relatively uncontroversial.

Euthanasia may be ‘voluntary’ (performed at the person’s request); ‘involuntary’ (performed when the person has not requested it, for the purpose of relieving suffering) and ‘non-voluntary’ (when the person is incapable of consenting).

Most commonly, the euthanasia debate centres on ‘active voluntary euthanasia’ (the methodical act to end a terminally ill person’s life, usually through the administration of lethal drugs at his or her request). The main difference between active voluntary euthanasia and assisted (doctor and non-medical) suicide is that in the latter situations, the patient performs the terminal act. Assisted suicide is when someone intentionally assists a person, at their request, to terminate his or her life. Physician-assisted suicide refers to a situation where a doctor intentionally assists a patient, at their request, to end his or her life – for example, by the provision of information and drugs.

Doctors have been charged with assisted suicides in Australia. However, many years have passed since the last prosecution, apart from a 2000 case in Western Australia, where a Perth doctor was charged with murder for allegedly assisting a terminally ill patient to die. The jury found him not guilty.

The *Rights of the Terminally Ill Act 1995* (NT) was the first time, anywhere in the world, that a Parliament sanctioned the rights of the terminally ill to be able to choose to end their own lives, with medical assistance.

It was nullified by the Commonwealth Parliament in 1997, when the *Euthanasia Laws Act 1997* (Cth) was passed. This amended the *Northern Territory (Self-Government) Act 1978* by eradicating the Territory’s constitutional power to pass any law permitting euthanasia. The *Rights of the Terminally Ill Act* technically remains in force in the NT, but to the extent that it permits euthanasia, it is constitutionally invalid and of no legal effect.

Although passed as a reaction to the situation in the NT, the *Euthanasia Laws Act 1997* (Cth) made similar amendments with respect to Australia’s two other self-governing territories (ACT and Norfolk Island), also preventing them from passing a law permitting euthanasia.

The practice of euthanasia is to be distinguished from that of withholding or withdrawing life-prolonging treatment. This may be carried out as a result of a directive from the person, their power of attorney/representative, or when it is considered to be in the best interests of the person. Such action may be conducted under legislation: *Natural Death Act 1983* (SA); *Natural Death Act 1988* and *Natural Death Regulations 1989* (NT); and *Medical Treatment Act 1988* (Vic). The common law alone governs withdrawal of treatment in all other states and the ACT.

The fall-out from Dr Syme’s disclosures has yet to be seen. He has spoken openly, he says, in order to raise euthanasia as an issue in the collective minds of the public and legislatures. Since Mr Guest’s death, some 16 Private Members Bills supporting voluntary euthanasia have been defeated throughout Australia.

Dr Syme potentially faces criminal prosecution. The vexing legal and moral issues remain, apparently to be dealt with on another day. ■

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