Voluntary euthanasia legalized in Australian Territory

On the night of February 20, 1996, two weeks before Australia elected a conservative federal government, the Legislative Assembly of the Northern Territory (NT) quietly passed the "Rights of the Terminally Ill Amendment Act 1995" — the last hurdle to legalized voluntary euthanasia. Under the stringent terms of this historic legislation, a terminally ill patient who "is experiencing pain, suffering and/or distress to an extent unacceptable to the patient," may request a doctor's help to die. Although discussed for many years throughout Australia (where suicide is legal and the right of the terminally ill to refuse medical treatment is upheld by various state laws), attempts to introduce voluntary euthanasia legislation in other states have failed.

The new law, which is expected to take effect between April and June, is supported by the Territory Voluntary Euthanasia Society and by Doctors for Change. It is strongly opposed by the Coalition Against Euthanasia (CAE), a local group made up of Catholic, Anglican and Uniting Church leaders, as well as leaders of the aboriginal community. Chris Wake, President of the NT branch of the Australian Medical Association (AMA), and a moving force behind the CAE, is the bill's most vocal opponent. Although his efforts have gained him support of the AMA national board, he has been unsuccessful in getting the Federal Government to intervene. Wake argues that the Act's psychiatric protection is inadequate, as is the definition of "terminal illness." He also charges that the aboriginal community — which makes up about a quarter of the population of the Northern Territory — was not consulted before the Act was passed. Wake expresses fears that the Territory would become the "dying center of the world," overwhelming its already overstretched medical facilities.

Philip Nitchke, representative of the Doctor's Reform Society, says the AMA is out of touch with community sentiment, pointing to a recent national Morgan Gallup Poll that found 78 percent support for voluntary euthanasia. Nitchke also accused Wake of using the AMA to promote his personal views on euthanasia.

As far as the aboriginal community is concerned, there is much confusion about the meaning of the bill. Djiniyini Gondarra, Executive Officer of the Northern Regional Council of the Uniting Church in Australia and a pastor to remote aboriginal communities in Arnhem Land and Central Australia, expressed concern that people under his pastoral care have not been allowed to discuss and fully understand the implications of the new law, which he says appears to contravene aboriginal laws.

The conditions for compliance laid out in the Act are quite stringent. The patient must be over 18 years of age. Two doctors (each with more than five year's experience and not in the same practice) and one psychiatrist must agree that the patient's condition is terminal. The psychiatrist must ascertain that the patient is not suffering treatable depression caused by the illness. The patient must be fully informed, in his or her first language, about other options available to relieve suffering, including palliative care and counseling. The doctors must ensure the patient has considered all the consequences of the request, which must be voluntary.

In addition, the Act provides a nine-day "cooling-off" period between the request and the signing of forms. If the patient still wishes to go through with it, then the patient's signature must be witnessed by the two doctors. If he or she is physically unable to sign, the person signing must be someone other than the doctors or persons who may benefit from the patient's death. Finally, once the request form is signed, there is a two-day waiting period before the request is granted.

The original legislation, the "Rights of the Terminally Ill Act 1995," was hastily steered through the bureaucracy last year by former Chief Minister Marshall Perron, a popular politician with 20 years in local politics. A Select Committee on Euthanasia, set up by the current Chief Minister Shane L. Stone, was given three months to conduct public hearings on the mechanics of the bill, but not on the issue of euthanasia itself. The 25-member Legislative Council considered the Committee's recommendations, added some 50 amendments to the Act, and passed it by a narrow margin in May. Some legally technical flaws made the original Act unworkable, and it is these that were corrected by the recent amendments.

With the federal elections out of the way, the new law will attract much more scrutiny from throughout Australia. Lawyers and medical ethicists are studying it carefully, but are waiting to see how it will work in practice before making any public pronouncements. Meanwhile, the opposition is planning its new strategy, possibly mounting a high court challenge in cooperation with religious groups. "We do not exist in an egalitarian society as regards health," says Wake, "and until we do, this is a dangerous legislation." But Chief Minister Stone, who originally opposed the bill, disagrees. The new law "should be given a chance to work," he says.

ELIZABETH BAN
Sydney, Australia

Meanwhile, in the United States . . .

A United States court has struck down a Washington state law that criminalized physician-assisted suicide. The Federal Court of Appeals for the Ninth Circuit stated that the law was a violation of the 14th Amendment's implicit guarantee of personal liberty, and also cited several US Supreme Court decisions relating to abortion and the right to refuse medical treatment.

The ruling only applies to Washington and the other Western states in the judicial district, seven of which (Alaska, Arizona, California, Hawaii, Idaho, Montana and Nevada) have either judicial rulings or statutes that prohibit assisted suicide. Oregon, the remaining state, has a 1994 law permitting assisted suicide which was never put into effect, but there is speculation that the decision may allow the Oregon law to be enforced.

A Federal Appeals Court in New York has heard arguments pertaining to a similar case that challenges New York's prohibition on assisted suicide, but no decision has been reached as yet. A third case is being considered in Florida.

Although the State of Washington has not yet decided whether to appeal the decision to the Supreme Court, many legal scholars see this case as the ideal vehicle to bring the issue of assisted suicide before the Court.

HANNAH KERBY