

# EUTHANASIA - THE UNRESOLVED ISSUE

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In February 2012, a Queensland Court convicted Mr Merin Nielsen of aiding the suicide of 76 year old, Mr Frank Ward. Mr Nielsen procured the drug Nembutal (a barbiturate anaesthetic that is frequently used in euthanasia) in Mexico and provided it to Mr Ward. On 20 June 2009, Mr Ward died after taking the Nembutal.

There were indications that Mr Ward had pre-existing health problems and endorsed euthanasia. Mr Ward had suffered a minor stroke in 2007. Mr Nielsen asserted at his trial that Mr Ward had another stroke on 11 June 2009. Further according to Justice Dalton “[t]here is no doubt...that [Mr] Ward wished to take his own life...where he was no longer independent...”.<sup>1</sup> In spite of this finding, and with Mr Nielsen pleading Not Guilty, other factors were relevant in the finding against Mr Nielsen. Notably, Mr Ward had not had his condition diagnosed by a doctor. He had also changed his will, naming Mr Nielsen the sole beneficiary.<sup>2</sup>

Mr Nielsen was sentenced to 3 years jail with a non parole period of 6 months.

The case raises (again) the ongoing euthanasia debate in Australia. Euthanasia is currently illegal in Australia. In spite of this, Australia has had an eventful euthanasia history. In 1995, the Northern Territory was one of the first places in the world to legalise euthanasia with the enactment of the *Rights of the Terminally Ill Act 1995* (NT). Under the legislation, 3 people were assisted with suicide with the help of Dr Philip Nitschke. The legislation was subsequently voided by the Commonwealth Government soon after its enactment.

Euthanasia was once again raised in 2009 in the Supreme Court of Western Australia case of *Brightwater Care Group (Inc) v Rossiter* [2009] WASC229. In that case, the previously active, Mr Rossiter (49 years of age) was rendered a quadriplegic after 3 independent incidents including a car accident<sup>3</sup>. Mr Rossiter had no prospect of physical improvement. Mr Rossiter’s nutrition to survive was provided through a percutaneous endoscopic gastrostomy tube (PEG) inserted into his stomach via surgical intervention.

Mr Rossiter sought to cease the administration of nutrition via the PEG, an action that would lead to his death. The Court was required to determine the legal obligations of Brightwater in these circumstances. The Court found that if Mr Rossiter requested the cessation of nutrition,

Brightwater could not lawfully continue administering nutrition unless the direction was revoked by Mr Rossiter. The Court also concluded that providing Mr Rossiter had made an informed decision, persons working at Brightwater would not be held criminally responsible for the cessation of nutrition. The same result will not necessarily be reached in other states with differing criminal laws.

More recently, a euthanasia bill entitled, the Voluntary Euthanasia Bill 2012 (the Bill) has been put to the lower house of the South Australian Parliament, by the Hon Bob Such (an independent member of Parliament). The Bill received its second reading on 1 March 2012. If the Bill were to pass:

*“An adult person of sound mind who is terminally ill may make a request for voluntary euthanasia.”*<sup>4</sup>

The Bill sets out a process by which voluntary euthanasia could be legally undertaken by a person meeting the above criteria. Under the Bill, the administration and prescribing of drugs to end life and the withholding and withdrawing of medical treatment to end life would be permissible. Further, a medical practitioner or a person who assists in voluntary euthanasia *“...incurs no civil or criminal liability...”*<sup>5</sup>

There is limited information on the support for the Bill. However, this is not the first time the South Australian Parliament has considered and failed to implement proposed euthanasia legislation.

Euthanasia in Queensland is currently illegal. Section 282A of the *Criminal Code Act 1899* (Qld) (the Criminal Code) provides guidance on the provision of palliative care in the State. The section goes on to set out that nothing in that section justifies or excuses a palliative care provider aiding another person to kill himself or herself.

Euthanasia will continue to be debated and considered within our society. This is especially the case given our ageing population and our well advanced medical technology.

Article by [Kristina Fox](#), Lawyer.

<sup>1</sup>*The Queen v Merin Nielsen* [2012] QSC 29 [1-7] [1-13]

<sup>2</sup> *Ibid* [1-10]

<sup>3</sup> *Brightwater Care Group (Inc) v Rossiter* [2009] WASC229 [6]

<sup>4</sup> *Ibid* s 13

<sup>5</sup> Voluntary Euthanasia Bill 2012 (SA) s 5

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