



**Topic: Legal: Should the following law be maintained?**

**A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.**

I am going to base my argument on this topic today on Australian Capital Territory laws; specifically the ACT Human Rights Act, The ACT Crimes Act and the ACT Self-Government Act. The ACT Human Rights Act states that

**Human rights may be subject only to reasonable limits set by territory laws that can be demonstratively justified in a free and democratic society.**

**Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.**

- Article 26 of the International Covenant on Civil and Political Rights which is embedded in the ACT Human Rights Act states that

‘All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

**In ACT law *The Crimes Act 1900* states**

### **Suicide**

Section 16 Suicide etc – not an offence

The rule of law that it is an offence to commit, or to attempt to commit, suicide is abolished.

Having made this law, ACT politicians had an opportunity to think differently about the act of ending one’s own life. As I see it this law means that ending one’s own life is a lawful act. However the word ‘suicide’ means self-murder. So what are people who end their own lives doing if they are not murdering themselves? DWDACT believes that they are making a choice **for** death. Given that, it would be good to call this choice something different. Let’s propose that this choice was called an elective death and described in the following way.

## **AN ELECTIVE DEATH**

An Elective Death would be based on the following principles

- It is the responsibility of government to ensure that everyone dies with dignity.
- A good health system should be able to guarantee a good death.
- A good death is defined as a peaceful, pain free and quick death.
- Like birth, death is a matter of individual choice and in the same way it should be supported by the state.
- To elect death is a legitimate goal that people may have for themselves.
- An Elective death respects people's right to die at the time of their choice.
- An Elective death is defined as a voluntary decision to shorten one's own life.

### **An Elective Death would be provided in an Elective Death Unit**

1. An Elective Death unit would be well-publicized in or linked to a local hospital.
2. The Elective Death Unit would have a) a 24 hour a day service with the resources to make professional personal, financial, and relationship counselling available to clients as well as immediate access to police, the coroner, organ donation and funeral services; b) an education facility designed for all members of the community and targeted for specific age groups and their particular stage of life needs to educate and inform people about death; to assist people to let go of life, to understand what death is and to prepare themselves for death; c) rooms with the facilities to assist those wanting an elective death to die comfortably in the presence of people they select; d) provision of the facilities to enable a peaceful, pain free and quick death to be undertaken independently without the help of other people.
3. The Elective Death Unit would provide any adult ACT citizen with an elective death following a) provision of a reason for the wish for death, b) offers of help through counselling or other assistance as needed, c) a cooling off period negotiated with the person wanting to die. The decision to die would be respected as would the decision to live.
4. On diagnosis of a terminal illness, terminally ill people may request a referral from their doctors to the Elective Death unit for an elective death at the time of their choice. Accessing the counselling services of the Elective Death Unit would be a matter for them.
5. The Elective Death unit would be required to maintain records of the reasons for people requesting an elective death and report regularly to the Assembly on their findings.
6. The ACT Government would co-ordinate public and private health systems to link into the Elective Death unit so that they can refer clients to it.

Death by Disease	An Elective Death
Suicide	Elective Death
People die by hanging, gassing, shooting, drowning, jumping etc.	People receive counselling and if they still want death they are provided with a peaceful death
Doctors who assist a death are criminals	Doctors refer patients to elective death unit
People die without assistance in a variety of places as a result of their diseases.	People would take their referral to the elective death unit to die there. Alternatively the elective death unit staff would go where they were required to assist people to die.
Medical staff are currently required to make people comfortable but have to stand by watching while people die as do families.	Staff, are trained in the processes required and use of medications specifically to assist people to die. They don't necessarily have to have medical backgrounds.

Let's look at how politicians actually responded when they passed Section 16. Section 17 says,

Section 17 Suicide – aiding etc

- 1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Outraged by the Northern Territory's bold Rights of the Terminally Ill Act the Federal Parliament decided to pass the Euthanasia Laws Act in 1997 to prevent all its territories from making laws about Euthanasia. It embedded this remarkable statement in the ACT Self-Government Act

### Federal Law

*Australian Capital Territory (Self Government) Act 1988*

Part IV Powers of the Legislative Assembly

Section 23 Matters excluded from power to make laws

(1A) The Assembly has no power to make laws permitting or having the effect of permitting (whether subject to conditions or not) **the form of intentional killing of another called euthanasia (which includes mercy killing)** or the assisting of a person to terminate his or her life.

### Consequences

In making and maintaining these laws the Federal and ACT Australian governments have clearly indicated their views about how they prefer people to die.

- The person who assists a person to die is criminalized. Giving assistance to die is equated with murder.
- Life becomes a prison from which we can only escape by terminal illness or by self-termination.



- The person who wishes to die any way other than by disease is forced to hang, gas, shoot drown, asphyxiate her or himself and is still described as having committed suicide and called a suicide. No-one can help a person to who is dying even if they beg for death.
- This is an arbitrary use of the law to force citizens to die by disease.

How is this law then to be seen in relation to human rights? The ACT Human Rights Act states that;

**Human Right:** Everyone has the right not to have his reputation unlawfully attacked.

**DWDACT Commentary:** Today I am going to argue that naming a person a suicide is discriminatory. It specifically discriminates against a person who chooses to end her/his own life. We all die. The victim of a murder is not given a special name; neither should people who end their own lives. Despite the decriminalization of suicide the act of ending one's own life is promoted as a shameful, undesirable act of failure. There is no effort made to let people know that it is not a crime to end one's own life. Suicide is kept quiet, discouraged and regarded as a great 'tragedy'. People who end their lives are called 'depressed' and mentally ill' as if it is unthinkable that anyone would not want to live. This is consistent with the treatment of other forms of discrimination. The label 'suicide' is demeaning making families of those who have a relative who undertakes the end of her or his life subject to shame. It reflects the general failure by society to understand that to end one's life is a choice a person can intentionally make in the exercise of their own lawful right. The choice is not respected as a choice that is made like every other choice people make in their lives. Since ending one's own life is no longer a crime no one should be called a suicide (a self-murderer).

The ACT Human Rights Act also states;

**Human Right:** No-one may be treated or punished in a cruel, inhuman or degrading way.

**DWDACT Commentary:** No one should be forced to hang themselves just because they do not want to live. Making a person who assists someone to die into a criminal inevitably results in people having to die in this and other unacceptable ways. Section 17 forces people who want to die, to die horribly. Many people die bad deaths in hospitals, hospices, nursing homes or at home through neglectful treatment or because their particular diseases ravage their bodies and there is little that can be done by medical staff to alleviate their suffering. This has been documented systematically over time by many people in Australia and elsewhere. Deathist laws such as Sections 17 and 23A exclude people from the guarantee of the peaceful, pain free quick deaths that they should be entitled to in a free and democratic society.

It is useful to look at the ACT definition of murder to consider the intention of the government in relation to its citizens' lives and deaths.

## **Murder**

- (1) A person commits murder if he or she causes the death of another person—  
    (a) intending to cause the death of any person; or  
    (b) with reckless indifference to the probability of causing the death of any person;

If we look at Sections 17 and 23A it is clear that these laws intend that no-one will die by their own hand or the hand of another human being. They are designed to ensure that as many people as possible will die the only way that is acceptable to these governments and that is by 'natural causes' or disease. Dying of disease is required for two reasons; 1) criminal; to establish the innocence of those around the dead body and 2) ideological; to establish that the death was a result of the action of God or nature.

However is death by natural causes that is forced on us still natural especially when there is an alternative to which we are denied access?

The fact that around 30 people elect to die in the ACT every year is a matter of relative indifference to our governments. Despite the statistics the Federal and ACT governments are not inclined to see a connection between Sections 17, and 23A and the way these people die. However ACT Human Rights law states that

**Human Right:** Everyone has the right to liberty and security of person.

**DWDACT Commentary:** Sections 17 and 23A deny the person wanting to die the genuine liberty to undertake her/his death and only allows it to be undertaken by insecure means i.e. self-assault.

The ACT Human Rights Act also states:

**Human Right:** Every person has the right to life and has the right not to be arbitrarily deprived of life.

**DWDACT Commentary:** The law indicates that the government's unstated intention is that we will die by disease and puts people into the position where they have no other choice. When they are dying the only way people can be sure that they will not be deprived of life by doctors, hospitals, family members or the State, **is to have control over their deaths. If they were to have this control this would mean that people would have to be well enough to make a reasoned, non-random decision free from the dictates of others and other arbitrary factors about when and how to die, by medication they can take by themselves in a safe environment when ready.** Laws which prevent people from making their own decisions about their right to life and the right not to be arbitrarily deprived of life are in breach of this human rights law. In February 2015, the Supreme Court of Canada, in a unanimous decision, determined that the deprivation of seriously ill Canadians' rights to life, liberty and the security of the person is not in accordance with the principles of fundamental justice, because the prohibition on assisted dying is overbroad.

The Universal Declaration of Human Rights states

**Human Right:** Every person has the right not to be arbitrarily deprived of their property.

ACT Human Rights law states

'.....the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as .....property.'

**DWDACT Commentary:** Section 17 of the Crimes Act arbitrarily deprives people of their right to their most precious property, their bodies. They cannot dispose of their property (their bodies) as they see fit due to the exclusion by law of methods of death other than disease or violence. Most people accept the convention of dying by disease and in doing so they lose the ability to manage and dispose of their bodies themselves. Their bodies then become the property of others due to illness that is the inevitable consequence of the law.

Federal Senator Leyonhjelm who wishes to repeal the Euthanasia Laws Act which is embedded in the ACT Self-Government Act in Section 23 stated last year

'it is fundamentally wrong for governments to make choices for us about our own bodies. People do not belong to the government. The denial of the right to die at a time of our choosing can result in a lingering, painful death. If the law prevents us from making free choices about our lives, then we are not free at all.'

Section 17 of the Crimes Act and Section 23,1A of the Self-Government Act are not reasonable limits on the rights of the citizens of the ACT. They cannot be demonstratively justified in a free and democratic society. In order to ensure that ACT citizens have the right to enjoy their human rights without distinction or discrimination of any kind these laws must be repealed.

So to address the topic directly we believe that

1. The label 'suicide' should be allowed to drop out of modern languages and be replaced by the term elective death because it has no meaning in modern law.
2. People should be given assistance to die. Law to the contrary should be repealed.
3. People who give assistance do not have to be medical staff. They should be specifically trained to provide the full range of assistance required but helping people to die does not need high level medical skills.
4. All the issues around people wishing to die should be fully discussed, not just the issue of giving assistance when people are dying of disease.
5. Law that denies assistance to die actively and cruelly discriminates against those who wish to die in any way other than by disease. This is unacceptable.

6. Governments' assumption that we can only have safety in death if we agree to maintain the laws as they are is incorrect because with an Elective Death we could have not only safety but also freedom, compassion and a good death.