

INFORMING THE EUTHANASIA DEBATE: PERCEPTIONS OF AUSTRALIAN POLITICIANS

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In the debate on euthanasia or assisted dying, many different arguments have been advanced either for or against legal reform in the academic literature, and much contemporary academic research seeks to engage with these arguments. However, very little research has been undertaken to track the arguments that are being advanced by politicians when Bills proposing reform are debated in Parliament. Politicians will ultimately decide whether legislative reform will proceed and, if so, in what form. It is therefore essential to know what arguments the politicians are advancing in support of or against legal reform so that these arguments can be assessed and scrutinised. This article seeks to fill this gap by collecting, synthesising and mapping the pro- and anti-euthanasia and assisted dying arguments advanced by Australian politicians, starting from the time the first ever euthanasia Bill was introduced.

I INTRODUCTION

Euthanasia attracts continued media, societal and political attention.¹ In particular, voluntary active euthanasia ('VAE') and physician-assisted suicide

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1 There has been sustained coverage of voluntary active euthanasia and physician-assisted suicide in Australia in the mainstream media since the beginning of 2017. See, eg, Tom Minear, 'Conservatives Set Up Euthanasia Debate for Liberal Party Members', *Herald Sun* (online), 11 July 2017 <<https://www.heraldsun.com.au/news/victoria/conservatives-set-up-euthanasia-debate-for-liberal-party-members/news-story/ee708f0c1f71afa193106f2e1904e55c>>; Greg Brown, 'Steve Bracks Backs Euthanasia Push', *The Australian* (online), 13 July 2017

(‘PAS’) remain controversial topics provoking passionate support or opposition. Whether for or against, VAE or PAS (which we will call ‘EAS’ when we mean to refer to both)² have a tendency to strongly polarise opinions. This is evident in the arguments advanced by politicians debating proposed legislative reform in Australia.³ A convergence of factors including high and sustained public support for reform,⁴ an ageing and increasingly informed population seeking choices for their end-of-life experience, the changing international landscape, and the regular and sustained legislative reform attempts domestically,⁵ makes this issue increasingly difficult for politicians to ignore. Indeed, as recent experience has shown in Victoria with the passing of the *Voluntary Assisted Dying Act 2017* (Vic), and with parliamentary committees now established on this issue in Western Australia and the Australian Capital Territory, there may be a shift in the political willingness to grapple with EAS.

Many different arguments have, of course, been advanced either in favour of or against legislative change in the academic literature on this subject. This literature is vast, but very little research has been undertaken to track the politico-legal, as opposed to the academic, landscape – what are the arguments being advanced by *politicians* in support of, or in opposition to, legal reform when the Bills proposing reform are introduced into Parliament? This article seeks to fill this gap by collecting, synthesising and mapping the pro- and anti-EAS arguments advanced by politicians within Australia over more than two decades from 1993–2017 which are contained in the parliamentary debates surrounding the introduction of the relevant Bill (see Annexure A for a list of these arguments). The year 1993 is our starting point because this is the year the first ever Bill seeking to legalise EAS was introduced in Australia.⁶

<<http://www.theaustralian.com.au/national-affairs/state-politics/steve-bracks-backs-euthanasia-push/news-story/7f4644c16d67e177387dd6b0028282de>>; Dylan Caporn, ‘Labor to Vote on Legalising Euthanasia Inquiry for WA Parliament’, *The West Australian* (online), 14 June 2017 <<https://thewest.com.au/politics/state-politics/labor-to-vote-on-euthanasia-inquiry-for-wa-parliament-ng-b88500772z>>.

- 2 See Table 1. The term ‘euthanasia’ is often used to refer to both VAE and PAS, and most arguments used about one have been used about the other. Except where an express difference has been drawn between them, we use the term ‘EAS’ to reflect this. In each case in this article, our choice of the relevant word as defined in the table has been deliberate. Thus, there are times when it is appropriate to use ‘euthanasia’, ‘EAS’ and ‘VAE’ as defined in the table.
- 3 Ben White and Lindy Willmott, ‘How Should Australia Regulate Voluntary Euthanasia and Assisted Suicide?’ (2012) 20 *Journal of Law and Medicine* 410, 418–22.
- 4 In 1962, the earliest Morgan Gallup poll indicated VAE support was at 47 per cent. Similar polls were conducted on a regular basis until 1995 when public support for VE had increased to 78 per cent: Margaret F A Otlowski, *Voluntary Euthanasia and the Common Law* (Clarendon Press, 1997) 263. More recent polls from varying sources (Morgan Poll, Newspan and other independently administered surveys) in 2002–12 indicate that national support has varied between 78 per cent and 86 per cent: Your Last Right, ‘Australian Public Desire for Legalisation of Assisted Dying in Restricted Circumstances’ (White Paper, 2012) 7; South Australian Voluntary Euthanasia Society, ‘Public Opinion Polls on Voluntary Euthanasia Law Reform in Australia’ (Factsheet No 2, 2012) <https://docs.wixstatic.com/ugd/1062e1_b773146435ff40c6a4541a0947064def.pdf>.
- 5 For details, see Lindy Willmott et al, ‘(Failed) Voluntary Euthanasia Law Reform in Australia: Two Decades of Trends, Models and Politics’ (2016) 39 *University of New South Wales Law Journal* 1.
- 6 Voluntary and Natural Death Bill 1993 (ACT).

Politicians will ultimately decide whether legislative reform will proceed and, if so, in what form. It is their views that will determine the fate of a particular Bill. For this reason, it is critical to identify the arguments that politicians advance in Parliament both supporting and opposing reform. Charting these arguments is important because it provides a comprehensive picture of the reasons that politicians, as the final decision-makers on this issue, regard as important (or at least purport to regard as important). The analysis undertaken in this article can also inform public debate by making transparent the issues that are discussed in Parliaments of Australia when EAS is being considered. This mapping of arguments will allow readers to draw conclusions about their quality, or otherwise help to inform future debate.

We begin by clarifying the terms we use in this article. This is especially important as some terms are often used by different stakeholders in different ways, generating further misunderstanding. We will then outline the methodology we have adopted. A brief overview of the sociopolitical landmarks relating to the arguments underpinning the EAS debate will be provided before exploring those arguments in detail. When discussing the arguments in detail, we will sometimes divide the pro- and con-arguments in a given category. For example, both proponents and opponents of EAS make appeals to the concept of autonomy. We keep the pro- and con-arguments separate to present the clearest picture of the arguments used by each side and avoid the presentation bias involved in stating one position as a thesis and another as merely an objection to that thesis, and not a position in its own right. Not every argument is advanced in this debate as an objection or counter reply to some other argument made in the debate, although some arguments are advanced *both* as an objection to some other argument *and* as an argument in its own right. Where the argument is also used as a rebuttal to a pro-argument, we shall also mention that in the presentation of the pro-argument, for completeness. For example, in the ‘arguments against EAS’ section, one argument that we present is the ‘right to life’ argument. Often, in rebuttal of this argument, politicians appeal to what we call the ‘autonomy objection’. We therefore mention this rebuttal argument briefly in presenting the ‘right to life’ argument, even though we cover the ‘autonomy’ argument in more detail when presenting arguments for EAS in the ‘arguments for EAS’ section.

II TERMINOLOGY

Given that the EAS debate can sometimes be clouded by semantic uncertainty, we will first clarify the terminology we have adopted in this article in the following table.⁷

7 This table is based on that included in Willmott et al, above n 5, 6.

Table 1: Terminology

Term	Meaning	Example
Euthanasia	For the purpose of relieving suffering, a person performs a lethal action ⁸ with the intention of ending the life of another person	A doctor injects a patient with a lethal substance to relieve that person from unbearable physical pain
Voluntary active euthanasia ('VAE')	Euthanasia is performed at the request of the person whose life is ended, and that person is competent	A doctor injects a competent patient, at their request, with a lethal substance to relieve that person from unbearable physical pain
Competent	A person is competent if he or she is able to understand the nature and consequences of a decision, and can retain, believe, evaluate, and weigh relevant information in making that decision	
Non-voluntary euthanasia	Euthanasia is performed and the person is not competent	A doctor injects a patient in a post-coma unresponsive state (sometimes referred to as a persistent vegetative state) with a lethal substance
Involuntary euthanasia	Euthanasia is performed and the person is competent but has not expressed the wish to die or has expressed a wish that he or she does not die	A doctor injects a competent patient who is in the terminal stage of a terminal illness such as cancer with a lethal substance without that person's request
Withholding or withdrawing life-sustaining treatment⁹	Treatment that is necessary to keep a person alive is not provided or is stopped	Withdrawing treatment: A patient with profound brain damage as a result of a heart attack is in intensive care and breathing with the assistance of a ventilator, and a decision is made to take him or her off the ventilator because there is no prospect of recovery Withholding treatment: A decision is made not to provide nutrition and hydration artificially (such as through a tube inserted into the stomach) to a person with advanced dementia who is no longer able to take food or hydration orally

8 Note that the authors do not include within this definition positive steps taken by a person to stop treatment which results in death (such as removing a breathing tube). See also our definition of 'Withholding or withdrawing life-sustaining treatment' in Table 1 and accompanying footnote references.

9 This is sometimes referred to as 'passive euthanasia' as the death arises from not giving life-sustaining treatment. There has been considerable debate concerning whether withdrawing life-sustaining treatment can relevantly be distinguished from giving a lethal injection. We will not discuss that controversy here because we are concerned with how VAE has been understood in the context of the legislative reforms that have been proposed. For discussion of the debate, however, see Andrew McGee, 'Does Withdrawing Life-Sustaining Treatment Cause Death or Allow the Patient to Die?' (2014) 22 *Medical Law Review* 26; Andrew McGee, 'Acting to Let Someone Die' (2015) 29 *Bioethics* 74.

Assisted suicide	A competent person dies after being provided by another with the means or knowledge to kill him- or herself	A friend or relative obtains a lethal substance (such as Nembutal) and provides it to another to take
Physician-assisted suicide ('PAS')	Assisted suicide where a doctor acts as the assistant	A doctor provides a person with a prescription to obtain a lethal dose of a substance
Voluntary active euthanasia or physician-assisted suicide ('EAS')	Voluntary euthanasia or physician assisted suicide	The term 'euthanasia' is sometimes used more broadly to refer either to VAE or PAS, or both. We use EAS to capture this use. Many of the comments in Hansard do not distinguish between the terms, and the arguments offered have been applied to both (a politician might make the same argument against a VAE Bill and against a later or earlier PAS Bill, or the argument applied by one politician to a VAE Bill is applied by another to a PAS Bill, or the politician may make a point about 'euthanasia' in a Bill that seeks to legalise both VAE and PAS, or just PAS, or may support an argument about VAE with a point about PAS). Except where there has been an express differentiation in Hansard and the meaning is clear, we use the term EAS. ¹⁰

III RESEARCH METHODOLOGY

Legal doctrinal analysis was used to access the relevant Hansard, Bills and legislation. Data was collected by searching all Australian parliamentary debates contained on the government websites of each jurisdiction. Existing annotated Bill collections were used as the foundation for determining the number and descriptive details of each EAS Bill introduced into Parliament throughout Australia.¹¹ The annotated Bill collections were then supplemented through additional research into parliamentary debates and other records and memoranda, specifically Hansard and Notice Papers. Most jurisdictions examined (details

¹⁰ See above n 2. To give one example of how PAS and VAE can be elided, in a debate about the Dying with Dignity Bill 2009 (Tas), one Member of Parliament said, 'I read in an article recently that "physician-assisted suicide" – voluntary euthanasia – "is the deliberate dealing-out of death and it is uniformly black, not grey by any measure": Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 126 (Brett Whiteley). Although this Bill included both VAE and PAS, we cannot be sure that the article referred to here meant to refer to VAE by the term 'physician-assisted suicide'. It can also be argued that a competent patient voluntarily exercising a desire to end his or her life, but who needs the doctor to inject the fatal dose, is still being assisted to end his or her own life; thus, the distinction between VAE and PAS is inevitably blurry.

¹¹ The annotated Bill collection was initially obtained from Ben White and Lindy Willmott, 'How Should Australia Regulate Voluntary Euthanasia and Assisted Suicide?' (Background Paper, Australia21, November 2012) <<http://www.australia21.org.au/wp-content/uploads/2013/08/ASAssisteddyingBP1.pdf>>.

below) provided a fully searchable database through which complete copies of parliamentary debates could be obtained. If fully searchable databases were not provided, electronic indices were used to search for the time periods within which debates occurred. Written records were reviewed if electronic records were unobtainable.

The debates were reviewed and an annotated arguments schedule was prepared specifying each argument advanced by every politician debating the subject matter of EAS in respect of a Bill. Bibliographic details of the debate, including the speaker's name and the date on which the speech was presented, were identified. A thematic schedule recording the nature and frequency of the arguments was prepared with references to the annotated schedule of arguments. The categories of argument adopted by the research team were iteratively refined over time with reference to the data set. Each category of argument was assigned a numerical identifier (for example '(P33)') and a brief description. Where a single statement by a politician contained several categories of arguments, multiple numerical identifiers were assigned to the statement to accurately reflect its nature. Repeat incidents of a single argument by the same speaker within a single speech were removed to avoid distortion of the data set. Where the same politician presented the same argument across different speeches, the first occasion on which the argument occurred within each speech was recorded. In a small number of cases, Bills went to the Committee stage, where each clause of the Bill is considered in detail. We have included data from the Committee stages for each of these Bills. However, the Committee stage normally involves a number of opponents to the Bill asking questions of the Bill's sponsor about the specificities of the clause. Most of these comments are too specific to a particular clause to be included in the general arguments for or against, but any general arguments made have been included. Arguments presented within unofficial statements (such as interjections) were removed. Preliminary data analysis occurred simultaneously with the data collection to ensure that the correct classification of data was occurring. A thematic approach was adopted because it facilitated the systematic content analysis and identification of the main themes, best achieving the aim of analysing the publicly recorded arguments advanced by politicians in the EAS debate.

The limitations of the research must be acknowledged. As with all research, there is an issue of researcher error and bias; some degree of subjectivity is inevitable, for example in relation to how the data was collected, collated and interpreted. The authors sought to recognise the subtle distinctions between different categories of arguments and only combined the statements where the argument was substantially the same. Where there was a concern about conflating arguments, even arguments which may appear similar, the arguments were kept separate to ensure the internal rigour of the data presented. For example, the 'slippery slope' argument, although similar to the argument about whether it is possible to include adequate safeguards, was kept separate. We should also note that this article reports on the arguments made during parliamentary debates as recorded by Hansard. This does not, however,

necessarily reflect the politicians' personal opinions or their actual reasons for voting a particular way. For example, a person may vote against a VAE Bill because they personally believe that it is wrong to ever kill another human being, but may actually say that VAE is wrong because it is difficult to protect the vulnerable. The researchers have no way of knowing or verifying whether, and to what extent, this is in fact the case.

IV THE POLITICO-LEGAL HISTORY OF EAS IN AUSTRALIA

EAS has a turbulent politico-legal history both internationally and within Australia.¹² In total, as at 22 December 2017, 58 Bills have been introduced in Australian jurisdictions seeking to legalise or decriminalise EAS, demonstrating support for progressive end-of-life policies. Figure 1 outlines the frequency with which both pro- and anti-EAS arguments have been advanced throughout Australia from the period 1993–2017 (arguments presented more than once by the same politician not repeated, as noted above). As can be seen, in 1996 the arguments advanced against legalising EAS far outweighed those in support. As of December 2017 however, this position has changed so that the frequency of arguments both in support of and against legalising EAS, as advanced by politicians throughout Australia, are closer aligned, with the Voluntary Assisted Dying Bill 2017 (Vic) being passed in Victoria in late 2017.

Figure 1: Frequency of Pro- and Anti-EAS Arguments Advanced in Parliament (across Australia)

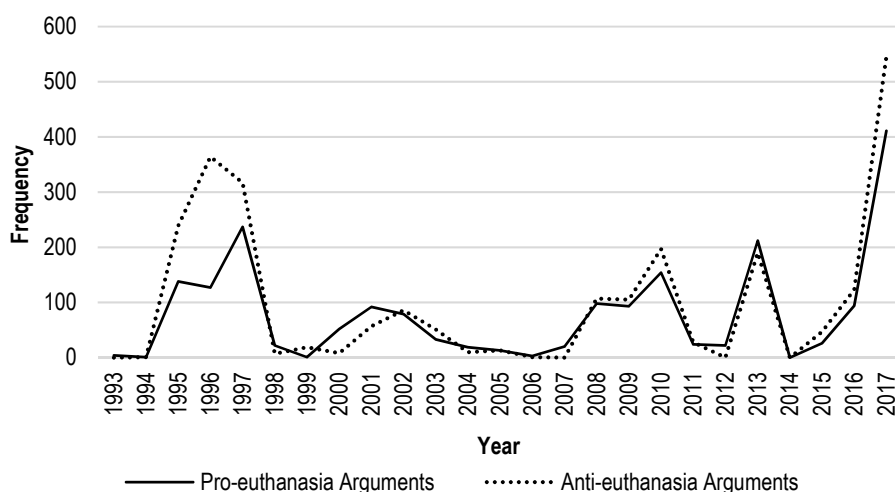
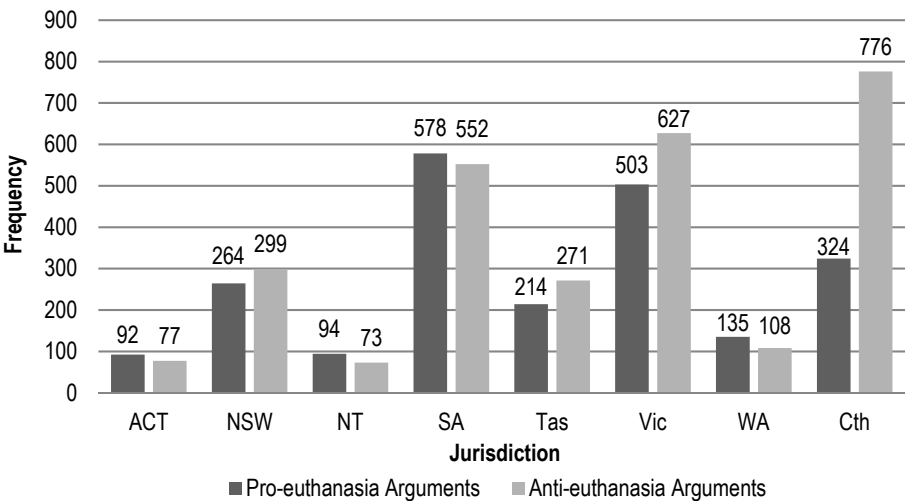


Figure 2 sets out the frequency of the arguments advanced within each Australian jurisdiction. There is a prevalence of anti-EAS arguments in the

¹² For a detailed discussion of the attempted law reform history in Australia, see Willmott et al, above n 5.

Commonwealth Parliament. Anti-EAS arguments are also prevalent, albeit to a lesser degree than in the Commonwealth, in Victoria, Tasmania, and New South Wales. In the remaining states and territories, pro-EAS arguments are slightly more prevalent.

Figure 2: Frequency of Pro- and Anti-EAS Arguments Advanced in Parliament (per Jurisdiction)



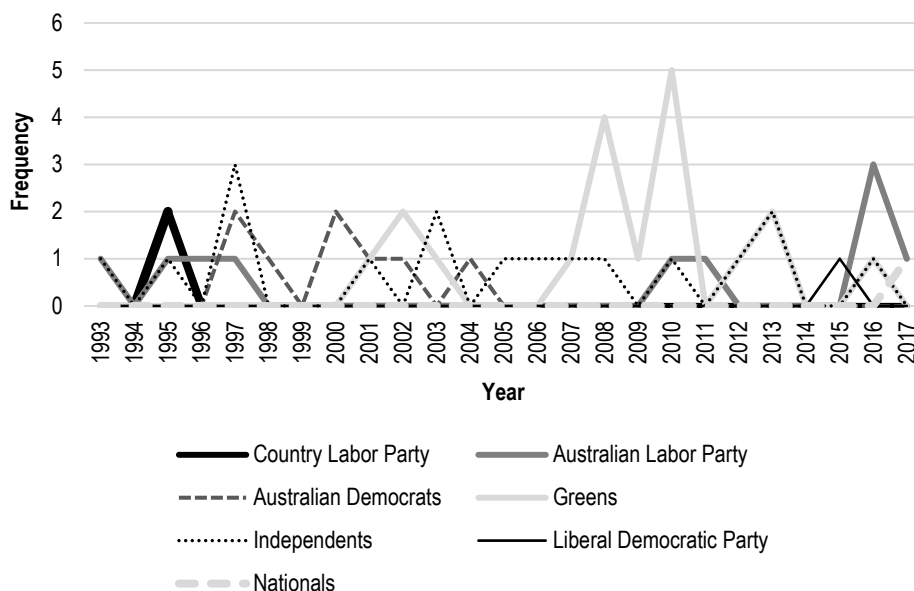
Of the 58 Bills introduced, 89.7 per cent reached the Second Reading, while only 15.5 per cent proceeded to the Committee Stage. Nearly half of the Bills (48.3 per cent) lapsed, 10.4 per cent were discharged or withdrawn and 31 per cent were defeated.¹³ The high rate of lapsing or defeat reflects the fact that 81 per cent of Bills were introduced by independent Members of Parliament (29.3 per cent) or minority parties (51.7 per cent), and that the remaining 19 per cent of Bills were introduced by members of the two major parties, either independently or together with a member of a minority party, as Private Members' Bills (see Figure 3).¹⁴ Only 26 members have been responsible for introducing the 58 Bills seeking to regulate EAS, reflecting the fact that a disproportionate burden for initiating debates lies on individual members.¹⁵

13 Ibid.

14 Note that where a Bill was co-introduced it has only been recorded once according to who first introduced the Bill.

15 Willmott et al, above n 5.

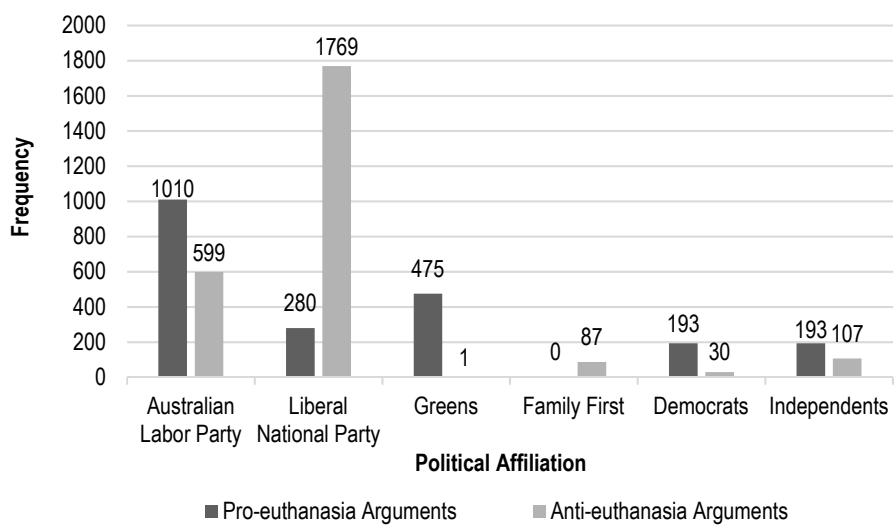
Figure 3: EAS Bills Introduced per Party/Independents over Time



Of particular note, although each division on EAS within Australia has been a conscience vote, the votes of individual members tend to strongly correlate with their party affiliations and coalitions. Some minor parties, such as the Greens and the Democrats, are more likely to support pro-EAS measures (99.7 per cent Greens and 86.5 per cent Democrats). However, conservative minor parties with direct religious affiliations, such as the Family First Party and Christian Democratic Party, have universally opposed the passage of EAS legislation. Whilst the Liberal and Labor parties permit conscience votes, Liberal Party members are more likely to oppose EAS (86.3 per cent), whereas Labor Party members are more likely to be in support (62.8 per cent).¹⁶ Figure 4 sets out the frequency of arguments advanced in accordance with political affiliation. This figure illustrates the frequency of arguments advanced by the major parties, some minor parties, and independent members. Not all parties with members involved in the EAS debate have been included in the table in deference to ease of reading.

¹⁶ Ibid.

Figure 4: Political Affiliation (Main Parties and Independents)



Figures 5 and 6 detail the gender of the politicians advancing the arguments. As can be seen from these tables, male Labor and Liberal Party members put forward significantly higher numbers of anti-EAS arguments. Male Liberal Party members appear to be significantly anti-reform.

Figure 5: Male Politicians' Arguments (by Party)

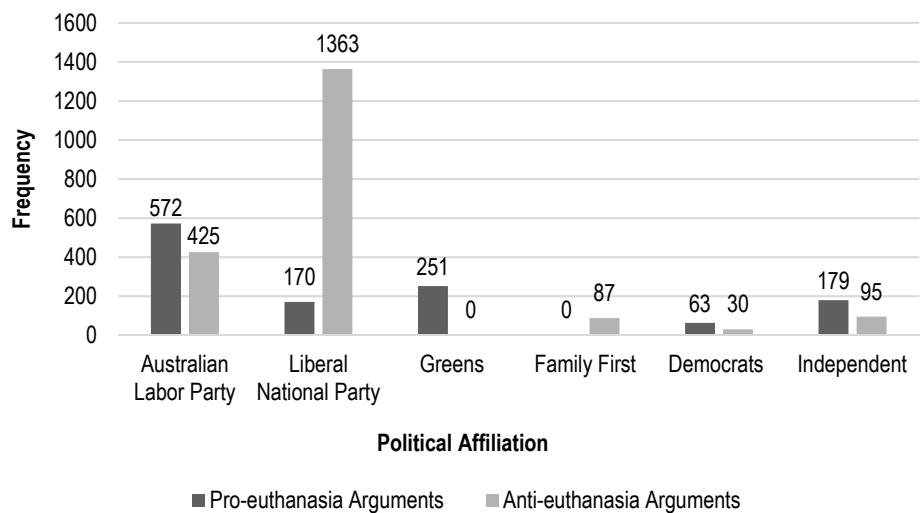
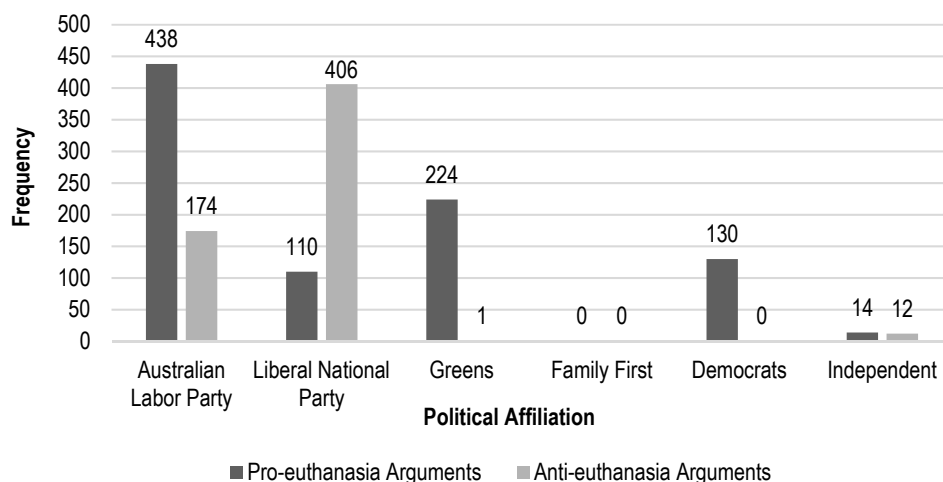


Figure 6: Female Politicians' Arguments (by Party)



This Part has provided an overview of the frequency of the arguments for and against EAS, and who is making them. The next Part will examine the basis and content of those arguments in detail.

V POLITICIANS' PERCEPTIONS REGARDING VOLUNTARY ACTIVE EUTHANASIA AND PHYSICIAN-ASSISTED SUICIDE

EAS is a controversial subject provoking intense emotional responses, reflecting the fundamental convictions and values of disparate segments of society. Consequently, it has been perceived as an intractable issue, with little scope for the possibility of reaching agreement between various interest groups. However, the existence of equally passionately held positions within a debate does not imply that the arguments are equally persuasive and that there is no basis to decide between them. Within Australia, a significant obstacle to legalising EAS despite overwhelming public support has been a political reluctance to consider reform. This Part will present the arguments that have been advanced by politicians against and in support of EAS with a view to providing an overview of those arguments. This will facilitate assessment of the political landscape which will contribute to the progression of the EAS debate. Annexure A provides a skeletal outline of the politicians' arguments that will be presented in this Part.

A Arguments against EAS

The arguments advanced against EAS may be categorised very broadly into non-consequentialist, consequentialist, or legalistic arguments. We use the term 'non-consequentialist' here to include any argument that appeals, not to the

consequences of legalising EAS, but to the intrinsic moral status of EAS. To illustrate, a politician might say that it is always wrong to take a person's life because life is a gift from God, and only God has the right to take away life (we give examples of politicians raising this argument below). This is a non-consequentialist argument. By contrast, arguments that appeal to the *consequences* of EAS discuss the possible impacts of legalisation on vulnerable patients who may not want EAS. For example, the question, 'How can we be sure that only those who qualify for EAS under the proposed law will have access to EAS?' is a consequentialist question in our definition because it is asking about the possible consequences of legalising EAS, namely, that some people who do not qualify for EAS may nonetheless gain access. A proponent of this argument may accept that, in principle, it would be right to allow EAS for the patient who fulfils the required criteria under the proposed statute, but might still claim that EAS should not be legalised because no statute can ever provide sufficient safeguards to protect those who do not qualify from having their lives ended under the legislation. We call arguments that focus on the consequences for others, as this argument does, a 'consequentialist' argument. Note, however, that, as we use that term here, 'consequentialist' does *not* coincide with the ethical position known as *consequentialism*, which has a technical meaning in ethical philosophy.¹⁷ Instead, we use the term here in a non-technical and non-philosophical way to refer only to those arguments that appeal to the consequences of legalising EAS. The term 'legalistic arguments' refers to arguments that generally attack the drafting of legislation or the workability of safeguards included in legislation, seeking to argue that it is impossible for drafters to make them sufficiently robust and avoid unforeseen loopholes.

1 Non-consequentialist Perspectives

The first class of non-consequentialist arguments is theistic. The theistic arguments are generally premised on the sanctity of life as a gift from God, and the mysteries surrounding the dying process. The second class of non-consequentialist arguments is secular. They are premised on the inalienability of the right to life¹⁸ or a belief that life has absolute value. We shall now deal with each of these, and their subcategories, in turn.

(a) Theistic Propositions

(i) 'Religious Sanctity of Life' Argument

The 'religious sanctity of life' ('SOL') argument holds that the intentional destruction of life is morally wrong in an absolutist sense (raised 35 times; 1.39

17 Under that technical meaning, an action or omission is right if it produces, overall, the greatest amount of happiness, understood in net terms, or, on alternative definitions, the greatest amount of welfare (again, understood in net terms). As such it is a philosophical theory about what makes an action or omission right or wrong and is *also* contrasted with arguments that appeal to the intrinsic rightness or wrongness of an action or omission. However, despite this commonality, this technical and philosophical sense is *not* the meaning we give to 'consequentialist' in this article.

18 For instance, on this view one cannot 'waive' one's right to life nor can one choose to end it.

per cent of all anti-EAS arguments ('AEA')).¹⁹ For example, Brett Whiteley²⁰ has stated that, whilst in some circumstances a person might feel that another should be killed, 'it is my understanding that God has a "no-kill policy"'.²¹ Consequently, insofar as VAE involves the destruction of a person's life, it cannot be permitted.²² Indeed, one proponent of this argument has expressly stated that life possesses an 'absolute value'.²³ This approach assumes the existence of some absolute moral objective value which may be attributed to a person's life or, alternatively, a moral prohibition against intentional killing.²⁴ In response to arguments promoting a right or interest in self-determination, a 'religious SOL' claim has been 'God giveth and God taketh'.²⁵ A succinct statement of this view is given by Paul Gibson²⁶ in the following terms: 'God gave us the greatest gift of all: the gift of life. In my opinion He created us and He is the only person that has the right to take away that life'.²⁷

The basis of this claim is that, because life was conferred by God, it does not 'belong' to the individual and therefore they are entitled to self-determination only within the prescriptions made by God. The conferral of life by God appears to have two corollaries: (a) that God is the only entity entitled to take life;²⁸ and (b) life possesses a special sanctity.²⁹ Other politicians seek to justify the existence of this objective moral imperative on the basis that all other world

19 That is, it is an exception-less principle. Although, in the Catholic version of this principle, Aquinas recognises that one may kill in self-defence provided one meets the requirements of the doctrine of double effect, this is *not* an exception because, if the requirements of that doctrine are met, death will be foreseen but not intended.

20 Liberal Member in the Tasmanian House of Assembly 2002–10 and the Commonwealth House of Representatives for Braddon, Tasmania 2013–16.

21 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 126 (Brett Whiteley). See also Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2111–13 (Julian McGauran); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1891–3 (Hedley Chapman); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4880 (Paul Gibson), 4883 (John Aquilina), 4906 (Michael Clough); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2629 (Steve Condous).

22 Ibid.

23 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6756 (Paul Zammit).

24 On these religious views, God would be the source of that value.

25 South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2629 (Steve Condous). See also New South Wales, *Parliamentary Debates*, Legislative Council, 23 May 2013, 20 775 (Paul Green); New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2013, 20 306–7 (Fred Nile).

26 Australian Labor Party ('ALP') Member in the New South Wales Parliament 1988–2011.

27 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4880 (Paul Gibson). For similar sentiments, see New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4906 (Michael Clough); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1585–6 (Martin Hamilton-Smith); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 98 (Marinus Hidding).

28 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4906 (Michael Clough); Commonwealth, *Parliamentary Debates*, House of Representatives, 16 October 1995, 2070–1 (Tony Abbott).

29 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 98 (Marinus Hidding).

religions support the prohibition against killing and the SOL.³⁰ Only one politician adopting the 'religious SOL' approach discussed exceptions to the commandment 'thou shalt not kill': such exceptions are stated in the Bible, and include self-defence and war, but not the relief of intolerable suffering.³¹

Politicians advance four arguments rebutting this 'religious SOL' approach. The first, which is generally raised in response to most religious arguments, is that, in a diverse and pluralistic society, the religious beliefs and attitudes of certain segments of the community should not be imposed by law on others who do not possess the same beliefs and attitudes (raised 109 times; 5.5 per cent of all pro-EAS arguments ('PEA')).³² The second argument is that a compassionate God would not permit the extreme suffering experienced by some terminally ill persons (raised 16 times; 0.8 per cent of PEA).³³ The third argument is that if God possesses the exclusive domain over life and death, then to extend life through artificial means must be equally wrong as ending life prematurely (raised two times; 0.1 per cent of PEA).³⁴ The fourth argument is that there are existing exceptions to the sanctity of life, such as war (raised 11 times; 0.6 per cent of PEA).³⁵

(ii) 'Suffering Serves a Higher Purpose' Argument

Another theistic argument advanced is that suffering serves a 'higher purpose'. Richard Alston,³⁶ for example, recounted the experience of his father suffering in a nursing home and stated that 'he would have realised that the

30 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6756–7 (Paul Zammit); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1554–6 (Eric Abetz).

31 South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 253 (Andrew Evans).

32 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 5 November 1997, 3671 (Michael Moore); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2299–302 (Wayne Berry); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 23 August 1995, 1313, 1317 (Michael Moore); New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 933 (Ian Cohen); New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 136 (Ian Cohen); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4900 (Ernest Page); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3653 (Lorraine Braham); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2499–500 (Marshall Perron); South Australia, *Parliamentary Debates*, Legislative Council, 26 November 2008, 941 (Sandra Kanck); South Australia, *Parliamentary Debates*, House of Assembly, 16 February 2005, 1652 (Bob Such); South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1415 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 24 July 2001, 2030 (Terance Roberts); South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1037–8 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 6 November 1996, 342 (Anne Levy).

33 South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1415 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 15 May 2002, 151 (Gail Gago).

34 South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2077 (Sandra Kanck).

35 See, eg, South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3767 (David Winderlich); South Australia, *Parliamentary Debates*, Legislative Council, 12 April 2000, 891 (Sandra Kanck); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7024 (Alison Xamon).

36 Liberal Senator for Victoria in the Federal Senate 1986–2004.

suffering that he was going through did have a higher purpose'.³⁷ Few of the statements advanced by politicians along these lines serve to explain what 'higher purpose' suffering might be regarded as advancing. Some of those who do offer more clarity suggest that to terminate a person's life may prevent them from making their peace with God and cause further suffering.³⁸ This presumes, of course, that the individual adheres to the Christian faith.

Politicians have responded to this argument with similar arguments to those used in their rebuttal of the 'religious SOL' approach, discussed above. However, Bob Such³⁹ adds the following rebuttal:

The Social Development Committee heard evidence from a senior cleric ... who indicated that pain was good because it had a purpose. My view is that if someone is saying that pain is good, they mean pain for someone else, not for their own situation.⁴⁰

(iii) 'EAS Contravenes Australia's Judaeo-Christian Social Values' Argument

Some anti-EAS politicians have rejected EAS on the basis it contravenes Australia's 'Judaeo-Christian social values' (raised 10 times; 0.4 per cent of AEA). This argument proceeds on the assumption that society, and Australia's democratic system, are underpinned by Judaeo-Christian values, and therefore laws should not be passed which significantly conflict with the central Judaeo-Christian tenets. For example, Gary Humphries⁴¹ has stated: 'whether or not we profess to have particular religious convictions ... it remains true that Judaeo-Christian values and tenets underpin the basis of our society, including our obligations and rights as citizens to observe the law'.⁴² Similarly, Nicholas Sherry⁴³ has stated: 'To me, much of the central tenets of Christianity, which have played a very important role in the set of ethics that we as a Western society observe, are particularly important'.⁴⁴

While similar rebuttals to those levelled against the SOL approach have been raised against this argument, other politicians have reflected on the increasing diversity and secularity of Australia (raised 109 times; 5.5 per cent of PEA). For example, Ernest Page⁴⁵ has argued:

37 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2068–9 (Richard Alston).

38 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4873 (Stephen O'Doherty).

39 Member of the South Australian House of Assembly for Fisher 1989–2000 (Liberal) and 2000–2014 (Independent).

40 South Australia, *Parliamentary Debates*, House of Assembly, 16 October 2008, 512 (Bob Such).

41 Liberal Member of the ACT Legislative Assembly 1989–2003 and Liberal Senator for the ACT in the Federal Senate 2003–13.

42 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 443 (Greg Humphries).

43 ALP Senator for Tasmania in the Federal Senate 1990–2012.

44 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2076 (Nicholas Sherry). Similarly, Terence McCarthy has suggested that Christian values underpin the Westminster democratic system: Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3729. Maurice Rioli also alleges that EAS was contrary to both Christian and Indigenous values: at 3660–1. See generally South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1995, 2868 (Kent Andrew).

45 ALP Member of the NSW Legislative Assembly 1981–2003.

While I might have one moral view on a matter and Fred Nile might have another moral view, it is not the right of a pluralist society to enact laws to reflect my moral view on that matter. The laws are passed to benefit and safeguard people in this pluralist society, not to impose upon others a moral or ethical view that I might have. We have to treat this matter in that light. I cannot say that merely because I believe something is morally or religiously correct somehow my view should be imposed by law on other people. About 10 years ago people had their legitimate moral objections to amendments to provisions of the Crimes Act which dealt with homosexual law reform.⁴⁶

The view that the law is based on Judaeo-Christian moral values has been rejected by other politicians on the grounds that such a view fails to reflect our culturally diverse society and that it is wrong to impose one set of moral values on others in such a culturally diverse society.⁴⁷ Bob Such expressed this point particularly strongly by drawing an analogy between the imposition of religious moral values by the prohibition of EAS (preventing people from having the freedom to choose it for themselves should they wish) and the Taliban's draconian legal regime.⁴⁸

(b) *Secular Perspectives*

Some politicians on both sides of this issue have also recognised the fundamentally *secular* nature of Australia's democracy.⁴⁹ For example, Kim Carr⁵⁰ has stated:

[First] the sacredness of life, and the argument that no human being has the right to intentionally take away 'a gift from God'. Obviously, these are religious concepts, and I respect the right of any Australian to declare or practice [sic] their religion, and to choose life over any other consideration for themselves. However, Australia is a secular nation, and as its Parliament, we have an obligation to make secular laws, not religious ones.⁵¹

We will present the secular arguments advanced against EAS in this section.

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- 46 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4900 (Ernest Page). See also New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 933 (Ian Cohen); New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135–6, 19 139, 19 141 (Ian Cohen); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 11 August 1998, 1667 (Daryl Manzie); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2500–1 (Marshall Perron); South Australia, *Parliamentary Debates*, Legislative Council, 17 November 1999, 499 (Carolyn Pickles); South Australia, *Parliamentary Debates*, Legislative Council, 6 November 1996, 342 (Anne Levy).
- 47 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2296–9 (Andrew Whitecross).
- 48 South Australia, *Parliamentary Debates*, House of Assembly, 16 February 2005, 1652 (Bob Such). The authors note that this may constitute an unfair analogy as there are secular arguments against EAS.
- 49 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2098–101 (Kate Lundy), 2101–4 (Kim Carr); New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2013, 20 312–14 (Lynda Voltz); South Australia, *Parliamentary Debates*, House of Assembly, 9 June 2016, 5927 (Eddie Hughes); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 106 (Cassandra O'Connor); Tasmania, *Parliamentary Debates*, House of Assembly, 17 October 2013, 74–80 (Cassandra O'Connor), 88–90 (Scott Bacon), 90–4 (Elise Archer).
- 50 ALP Senator for Victoria in the Federal Senate from 1993 to present.
- 51 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2101–4 (Kim Carr).

(i) *'Secular Respect for Life' Argument*

A common secular position advanced in 3.9 per cent of political arguments opposing EAS is the respect for life ('RFL') argument (raised 97 times). The RFL argument appeals to the purported inherent value of human life whilst simultaneously avoiding the criticism of 'religious zealotry'.⁵² As with the 'religious SOL' argument, the RFL approach is used to reinforce the proposition that killing is fundamentally wrong.

These arguments call upon either the fundamental values of Australia⁵³ or civilised societies generally⁵⁴ to support the proposition that euthanasia is fundamentally wrong. In killing another person, we are, on this argument, necessarily failing to respect life.

The primary response (raised 261 times; 13.2 per cent of PEA) to the RFL approach is the 'autonomy objection'. This holds that every person is an autonomous being and is therefore entitled to decide the circumstances under which their life ends when they are experiencing intolerable and interminable suffering.⁵⁵ A related argument (based on autonomy) is that the state should not interfere with exercises of autonomy within the private sphere of a person.⁵⁶

52 For examples of criticisms of 'religious zealotry', see Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2105–9 (Christopher Schacht), 2098–101 (Kate Lundy). The authors do not endorse the views of these politicians as religious organisations are legitimate special interest groups within the debate and should not be dismissed as mere 'zealotry'. With that being said, nor do the authors agree with the proposition that a specific set of norms and values should form the foundation of legislation with uniform application throughout Australia.

53 See, eg, Lawrence Anthony who claims that Australia's culture is the culture of 'life', not 'death': Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1996, 7928–9 (Lawrence Anthony); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1704–7 (Ronald Boswell).

54 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1752 (Christopher Ellison); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 434–8 (Trevor Kaine); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4901–2 (Michael Richardson), 4903 (Grant McBride); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3617–19 (Stephen Hatton); South Australia, *Parliamentary Debates*, Legislative Council, 28 March 2001, 1155 (Carmel Zollo); South Australia, *Parliamentary Debates*, Legislative Council, 20 October 1999, 143 (Caroline Schaefer).

55 See, eg, Western Australia, *Parliamentary Debates*, Legislative Council, 20 May 2010, 3017–18 (Robin Chapple); Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7750–1 (Robert McMullan); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 441 (Lucy Horodny); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 19 February 1997, 84–7 (Michael Moore); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2296–9 (Andrew Whitecross), 2299–302 (Wayne Berry); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 14 April 1994, 818–19 (Michael Moore); New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135 (Ian Cohen); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1585 (Murray De Laine); South Australia, *Parliamentary Debates*, Legislative Council, 6 November 1996, 342 (Anne Levy); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 117 (Alan Butler); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2836 (Jaala Pulford); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7030 (Philip Gardiner), 7053 (Lynn McLaren); Western Australia, *Parliamentary Debates*, Legislative Council, 16 October 1997, 6932 (Norm Kelly).

56 Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1701 (David Leyonhjelm); South Australia, *Parliamentary Debates*, House of Assembly, 16 November 2016, 7928–9 (Tony Piccolo); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1700 (Carmel Zollo);

Andrew Whitecross,⁵⁷ for example, has argued that autonomy is a value just as sacred as human life is said to be. So, by slavishly pursuing the sanctity of life value, we may end up diminishing other equally sacred values.⁵⁸ Even some opponents of EAS have recognised the importance of autonomy by claiming that it coexists with the sanctity of life.⁵⁹

The second response to the RFL approach, which is less common, is the *reverse sanctity of life objection*. The objection is that EAS in fact *respects and advances* the sanctity of life by ensuring that persons are not required to suffer a protracted, painful and undignified death (this argument has been invoked both against the religious version⁶⁰ and the secular one).⁶¹ Another, third, argument (raised 11 times; 0.6 per cent of PEA) is the *limited value objection*. This is that the sanctity of life value is not an 'absolute value'.⁶² Sam Bass,⁶³ for example, argued that the sanctity of life must, at some point, give way to the respect for quality of life.⁶⁴

A fourth response to the RFL approach is the *selective deployment argument* (raised 14 times; 0.7 per cent of PEA). This stresses the exceptions to the sanctity of life, criticising proponents of the SOL⁶⁵ and RFL⁶⁶ arguments for selectively deploying them. For instance, Alison Xamon⁶⁷ claimed that there is a certain hypocrisy to permitting young soldiers to die at war, but simultaneously refusing the elderly the right to die with dignity.⁶⁸ Those who refuse the latter, without recognising its inconsistency with the former, are selectively deploying SOL or RFL. The fifth objection is the *pluralistic morality objection* (raised 109 times; 5.5 per cent of PEA), which applies equally to the SOL argument and the RFL approach and also overlaps with the rebuttal of the Judaeo-Christian social values argument discussed above. The objection is that the moral values, beliefs and

South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3778 (Robert Lawson); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 117 (Alan Butler).

57 ALP Member of the ACT Legislative Assembly 1995–97.

58 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2297 (Andrew Whitecross).

59 New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 923 (Greg Pearce); South Australia, *Parliamentary Debates*, House of Assembly, 5 May 2011, 3568 (John Gardner).

60 South Australia, *Parliamentary Debates*, Legislative Council, 15 May 2002, 151 (Gail Gago).

61 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3656 (Lorraine Braham); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2077 (Sandra Kanck).

62 South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1991 (Sam Bass); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4863 (Sandra Nori); South Australia, *Parliamentary Debates*, Legislative Council, 15 May 2002, 151 (Gail Gago); South Australia, *Parliamentary Debates*, Legislative Council, 9 July 1997, 1780 (Terance Roberts).

63 Liberal Member of the South Australian House of Assembly, 1993–97.

64 South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1991 (Sam Bass).

65 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2083–6 (Bruce Childs).

66 South Australia, *Parliamentary Debates*, House of Assembly, 23 March 1995, 2120 (Frank Blevins).

67 Greens Member in the Western Australian Legislative Council from 2009 to present.

68 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7024 (Alison Xamon).

attitudes of one set of persons should not be imposed on others.⁶⁹ The sixth objection is the *humane consequentialist objection* (raised 55 times; 2.8 per cent of PEA), which points out that the effect of rigorously adhering to the sanctity of life argument is to cause people to suffer degrading, undignified and painful deaths, frequently through starvation, due to the refusal of nutrition and hydration.⁷⁰

(ii) 'Suffering Is Ennobling' Argument

Another argument, which is similar to the theistic 'higher purpose' argument, is the secular position that suffering is ennobling (raised seven times; 0.3 per cent of AEA) and that the dying process can be a beneficial experience for self-discovery and family healing (raised 21 times; 0.8 per cent of AEA). For example, Patricia Worth⁷¹ has argued that the end of a person's life can be a time of enormous growth and understanding which should not be prematurely curtailed by permitting VAE.⁷² The argument that pain can be ennobling has been criticised on the basis that there is nothing noble, beautiful, or redeeming about pain and suffering and,⁷³ further, that the persons advancing this argument are rarely the ones in pain.⁷⁴

(iii) 'Social Cornerstone' Argument

The 'social cornerstone' argument has been regularly invoked by Australian politicians against permitting EAS (raised 92 times; 3.7 per cent of AEA).⁷⁵ This

69 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 5 November 1997, 3671 (Michael Moore).

70 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1894–6 (Kerry O'Brien); South Australia, *Parliamentary Debates*, House of Assembly, 16 October 2012, 3163 (Stephanie Key); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3779 (Ian Hunter), 3789 (Mark Parnell).

71 Liberal Member of the House of Representatives for Adelaide, South Australia 1993–2004.

72 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6734–6 (Patricia Worth). See also Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1712 (Bob Day); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1723–5 (Brian Harradine); Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2008, 3207 (Gavin Jennings).

73 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6743–5 (Colin Hollis); Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1719 (Doug Cameron); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1709–11 (Cheryl Kernot); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3690 (Fred Finch); South Australia, *Parliamentary Debates*, House of Assembly, 9 June 2016, 5927 (Eddie Hughes).

74 South Australia, *Parliamentary Debates*, House of Assembly, 15 March 2001, 1095 (Bob Such); South Australia, *Parliamentary Debates*, House of Assembly, 16 October 2008, 512 (Bob Such).

75 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2111–13 (Julian McGruan); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1905–7 (Paul Calvert); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1560 (Brian Harradine); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3823 (Gordon Moyes); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 282 (Fred Nile); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4865 (Malcolm Kerr); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3631–2 (Denis Burke), 3684 (Peter Adamson); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3772 (Stephen Wade); South Australia, *Parliamentary Debates*, Legislative Council, 20 October 1999, 143

derives from a House of Lords Select Committee Report which stated that the prohibition on intentional killing is 'the cornerstone of law and of social relationships'.⁷⁶ It has been said that Australia possesses a culture of 'life', and that transitioning towards EAS would convert Australia's culture into one of 'death'.⁷⁷ This would occur through the 'normalisation' of death.⁷⁸ This position is similar to the SOL, Judaeo-Christian values and RFL arguments insofar as it assumes the existence of a uniform Australian value set. The 'social cornerstone' argument has been countered with the pluralistic morality objection discussed above (raised 109 times, 5.5 per cent of PEA). Opponents of the argument have also objected that jurisdictions which have legalised EAS, such as Oregon or the Netherlands, have not transitioned towards a culture of death.⁷⁹

(iv) 'Indigenous Interests' Argument

An argument less commonly advanced against EAS is the 'Indigenous interests' argument (raised 20 times; 0.8 per cent of AEA). There are two aspects to this argument. The first is that EAS is fundamentally incompatible with Indigenous values because if EAS becomes a common feature of medical facilities it may result in a worsening in Indigenous health outcomes due to either: (a) fear that they will be killed;⁸⁰ or (b) the inconsistency between the practice of EAS and fundamental cultural values.⁸¹ The second aspect of the argument is that Indigenous persons are especially susceptible to influence by

(Caroline Schaefer); South Australia, *Parliamentary Debates*, Legislative Council, 2 July 1997, 1638 (Caroline Schaefer).

76 Select Committee on Medical Ethics, *Report of the Select Committee on Medical Ethics*, House of Lords Paper No 21, Session 1993–94 (1994) [237].

77 Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1996, 7928–9 (Lawrence Anthony); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1723–5 (Brian Harradine); Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1996, 7916–18 (Danna Vale); Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6737–9 (Janice Crosio); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1557 (John Woodley), 1560 (Brian Harradine); South Australia, *Parliamentary Debates*, Legislative Council, 2 July 1997, 1640 (Jamie Irwin).

78 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7775–6 (Phillip Barresi).

79 See, eg, South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1035 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 9 July 1997, 1781 (Anne Levy).

80 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1872–4 (Jeannie Ferris), 1896–9 (William Heffernan); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1723–5 (Brian Harradine), 1741–4 (Eric Abetz), 1750–1 (Christopher Ellison); Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 1996, 8019 (Brendan Nelson); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1561–2 (Brian Harradine); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3629 (Sydney Stirling); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1714 (Ronald Brokenshire).

81 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3660 (Maurice Rioli), 3713 (Neil Bell); Commonwealth, *Parliamentary Debates*, Senate, 17 March 1997, 1626 (Nicholas Minchin); Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3480–1 (Guy Barnett); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1714 (Ronald Brokenshire).

community groups and relatives and therefore are more likely to accept VAE under duress.⁸²

The Indigenous values argument can be challenged by the pluralistic morality objection discussed above. Politicians have argued that cultural value differences within the Indigenous population cannot dictate public policy.⁸³ Sandra Kanck⁸⁴ has objected to the argument on the basis that when the *Rights of the Terminally Ill Act 1995* (NT) ('*ROTTIA*') was in force in the Northern Territory,⁸⁵ there was no evidence of a decline in Indigenous attendance at medical facilities.⁸⁶ Peter Andren⁸⁷ has argued that Indigenous customary law, which is arguably inconsistent with EAS, is not an appropriate foundation to refuse to permit EAS.⁸⁸ Politicians have also reflected on the fact that Indigenous persons' fears that they will be involuntarily euthanised are directly inconsistent with the fact that the Bills have only permitted *voluntary* euthanasia.⁸⁹

(v) 'Equality' Argument

The 'equality' argument is relatively uncommon (raised 21 times; 0.8 per cent of AEA). It holds that the prohibition against intentional killing reflects the principle of equality and equal justice insofar as it protects all persons equally.⁹⁰ Opponents of EAS have buttressed this contention by reference to John Stuart Mill's principle that no person could, in the name of freedom, sell themselves into slavery, and this is also why the law rejects consent to grievous bodily harm as a defence to that offence.⁹¹ The rationale is that although a person may make a rational decision to sell themselves into slavery, even if morally offensive, it may result in other vulnerable persons being sold into slavery without making the same rational decision.⁹² The same logic applies to EAS. Sandra Kanck, however, has responded that the analogy with the prohibition against slavery is a sophistic rhetorical device used simply to score points in an argument, with no

82 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3664 (Wes Lanhupuy).

83 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3727 (Eric Poole); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1734–5 (Mark Parnell); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1881 (Grant Tambling).

84 Australian Democrats Member of the South Australian Legislative Council from 1993–2009.

85 For further discussion of *ROTTIA*, see Willmott et al, above n 5.

86 South Australia, *Parliamentary Debates*, Legislative Council, 12 April 2000, 894 (Sandra Kanck).

87 Independent Member of the House of Representatives for Calare, New South Wales 1996–2007.

88 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7747 (Peter Andren).

89 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3670 (Richard Setter); Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2109–11 (Shayne Murphy).

90 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2265–8 (Gary Humphries); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3729–31 (Terence McCarthy); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3772 (Stephen Wade).

91 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5905–7 (Kevin Andrews); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1723–5 (Brian Harradine); Commonwealth, *Parliamentary Debates*, Senate, 12 December 1996, 7359–60 (John Herron); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 251 (Andrew Evans).

92 South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 251 (Andrew Evans).

relationship with reality.⁹³ Others have argued that legalising EAS in fact *promotes inequality* because currently persons who are well-connected and resourced may access EAS, while those who are socio-economically disadvantaged may not.⁹⁴ Similarly, the current laws permitting suicide but not assisted suicide may operate to indirectly discriminate against persons who are unable to bring about their own death.⁹⁵

(vi) 'Privacy' Argument

The 'privacy' argument (raised nine times; 0.4 per cent of AEA) holds that the deathbed of a person is an extremely private and sensitive place which should be entirely free from legislative intervention. EAS would involve the intrusion of the state into this private space by imposing cumbersome rules and procedures.⁹⁶ A related contention is that the law is a 'blunt instrument' maladapted to the subtle nuances of end-of-life decisions.⁹⁷ However, Alison Xamon has argued that the prohibition against EAS is intruding on the privacy of a person's deathbed, and that, by providing the option of EAS, the state would remove an incursion on the privacy of the dying process.⁹⁸ As well, without an appropriate legislative framework, compassionate medical practitioners and families are currently exposed to the risk of prosecution for advancing the wishes of the patient.⁹⁹ This is also an unacceptable intrusion of privacy and so the 'privacy' argument, for Alison Xamon, actually undermines the arguments against EAS.

93 South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1412 (Sandra Kanck).

94 New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 935 (Ian Cohen); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5920–2 (Anthony Albanese).

95 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 90 (Nicholas McKim).

96 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1744–6 (Alan Eggleston); Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7743–4 (Bronwyn Bishop); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1700 (Carmel Zollo); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3778 (Robert Lawson).

97 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4897 (George Thompson); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1905 (John Tierney); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5943 (Brendan Nelson); South Australia, *Parliamentary Debates*, Legislative Council, 20 October 1999, 145 (Caroline Schaefer).

98 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7022 (Alison Xamon); Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2010, 6916 (Alison Xamon); Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1701 (David Leyonhjelm); Commonwealth, *Parliamentary Debates*, House of Representatives, 21 November 1996, 7358–9 (Gareth Evans).

99 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2302–8 (Michael Moore); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1705–6 (Gail Gago); South Australia, *Parliamentary Debates*, Legislative Council, 8 May 2002, 55 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 24 July 2001, 2031 (Terance Roberts); Western Australia, *Parliamentary Debates*, 21 September 2010, Legislative Council, 6899 (Sue Ellery).

(vii) 'Message' Argument

This argument involves the claim that the legalisation of EAS will send the 'wrong message' to the community, in particular to vulnerable segments of the community which have a higher propensity for suicide (raised 71 times; 2.8 per cent of AEA).¹⁰⁰ The 'message' is that suicide is a valid solution to their problems,¹⁰¹ some lives are not worth living,¹⁰² or that some lives are not worth protecting.¹⁰³ Some politicians have countered that existing high rates of suicide have not been caused by the presence of EAS, and that the legalisation of EAS cannot be logically connected, except in the most tenuous way, to high rates of suicide (raised seven times; 0.4 per cent of PEA).¹⁰⁴ It has been noted that any supposed 'message' is limited to a very specific group of persons in confined circumstances, and does not equate to people dying 'at whim'.¹⁰⁵ Finally, Robin Chapple¹⁰⁶ has argued that EAS 'is about choice. It is not about encouraging suicide or passing moral judgment'.¹⁰⁷

(viii) 'Medical Compulsion' Argument

The 'medical compulsion' argument expresses the concern that, if legalised, physicians may be compelled to administer EAS contrary to their beliefs and values (raised 10 times; 0.4 per cent of AEA).¹⁰⁸ This argument may be limited because all EAS Bills have expressly permitted conscientious objection or refusal to participate in administering or providing a lethal dose.¹⁰⁹ However, Dennis Hood¹¹⁰ has noted that some medical practitioners may seek to refuse even to

100 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4860 (Gabrielle Harrison); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5942–4 (Brendan Nelson); Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7755–7 (Chris Miles); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes); South Australia, *Parliamentary Debates*, Legislative Council, 10 November 2010, 1437 (Dennis Hood); South Australia, *Parliamentary Debates*, Legislative Council, 14 October 2009, 3562–3 (Dennis Hood); South Australia, *Parliamentary Debates*, Legislative Council, 3 June 2002, 293 (Ian Gilfillan).

101 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5942–4 (Brendan Nelson).

102 New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes).

103 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1737–9 (Helen Coonan).

104 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2099–101 (Kate Lundy); South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1413 (Sandra Kanck).

105 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2102–3 (Kim Carr).

106 Greens Member of the Western Australian Legislative Council 2001–05 and 2008 to present.

107 Western Australia, *Parliamentary Debates*, 18 September 2002, Legislative Council, 1129 (Robin Chapple).

108 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5911–13 (Leo McLeay); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 23 August 1995, 1319 (Trevor Kaine); South Australia, *Parliamentary Debates*, Legislative Council, 10 November 2010, 1436 (Dennis Hood).

109 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2102–4 (Kim Carr); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 92 (Nicholas McKim); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2814 (Johan Scheffer).

110 Australian Conservatives (formerly Family First) Member of the South Australian Legislative Council from 2006 to present.

advise the patient that another physician may be willing to provide EAS¹¹¹ (as is required under some, but not all, EAS Bills).

(ix) 'Discrimination' Argument

The 'discrimination' argument embodies the claim that EAS may result in discriminatory perceptions and treatment of the elderly, ill and disabled (raised 34 times; 1.4 per cent of AEA).¹¹² For example, two politicians have noted that a physician might advise a young person requesting EAS to attend counselling, whereas they are more likely to accede to the request of an elderly person.¹¹³ It has also been suggested that VAE discriminates against the poor who may not have the resources to receive high quality palliative care.¹¹⁴ Others have contended that any legislation which limits the category of people who may access VAE may be discriminatory or create arbitrary lines by precluding access to children, the mentally incompetent, or even those who are not terminally ill.¹¹⁵ The argument is that, since it cannot be legalised in a non-discriminatory way, it should not be legalised at all. This contention is frequently connected with the consequentialist argument of 'scope creep'.¹¹⁶ The most common reply to the 'discrimination' argument (raised twice; 0.1 per cent of PEA) is to contend that the current framework is itself discriminatory, because able-bodied persons are able to terminate their own life legally through suicide,¹¹⁷ and persons who are well-connected and resourced may access VAE.¹¹⁸

111 South Australia, *Parliamentary Debates*, Legislative Council, 10 November 2010, 1436 (Dennis Hood).

112 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 1996, 8015–17 (Anthony Smith); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 436–7 (Trevor Kaine), 497–8 (Bill Stefaniak).

113 Commonwealth, *Parliamentary Debates*, Senate, 28 October 2010, 1089 (Suzanne Boyce); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 495–8 (Bill Stefaniak).

114 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4869 (Bob Harrison).

115 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1727–8 (John Woodley); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3622–3 (Stephen Hatton); South Australia, *Parliamentary Debates*, House of Assembly, 5 May 2011, 3566 (Martin Hamilton-Smith); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1717 (Stephen Wade); South Australia, *Parliamentary Debates*, Legislative Council, 18 November 2009, 4016 (Stephen Wade); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7043–4 (Michael Mischin).

116 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7043 (Michael Mischin); Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1704 (Cory Bernardi); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 442–5 (Gary Humphries); New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2013, 20 307–8 (Fred Nile).

117 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 90 (Nicholas McKim).

118 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5921–2 (Anthony Albanese); New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 935 (Ian Cohen).

(x) *'Maturity' Argument*

This argument holds that society is insufficiently 'mature' to legalise EAS, which is evidenced by the poor administration of public healthcare funds.¹¹⁹ This argument was advanced only by Jon Ford,¹²⁰ and appears to be connected with a fear that EAS may be used as a tool of economic rationalism, which is discussed under the 'slippery slope' argument below.¹²¹ No politician directly rebutted this argument and it is unclear what precise form the 'maturity' argument takes.

2 *Consequentialist Perspectives*

(a) *Secular Propositions*

(i) *'Slippery Slope' Argument*

The 'slippery slope' argument states that in the event that EAS is legalised, it will cause long-term adverse consequences which substantially outweigh the benefits derived from EAS (raised 160 times; 6.4 per cent of AEA). The two main versions of the 'slippery slope' argument are the universalised rule version and the 'scope creep' version. The 'universalised' rule version holds that even though a particular case of EAS may be ethically permissible on its facts, it would result in socially unacceptable consequences if we legalised EAS on the basis of the particular case. We cannot be sure that every case would be of exactly the same kind, so a universal rule is too blunt an instrument. The argument is that, since a universalised rule would cause these socially unacceptable consequences, the individual act must itself be unethical or prohibited.¹²² The distinction between the universalised rule and the 'scope creep' version is that the latter depends on the rational extension of the *categories* of persons to whom EAS may become available; there are no morally relevant differences to justify allowing some categories of people to have access while ruling out access for other categories.

The soundness of the universalised rule version of the 'slippery slope' argument relies on empirical assumptions about the consequences of legalising EAS, including:

1. Risks to the elderly, vulnerable, socially marginalised and frail (raised 39 times; 1.6 per cent of AEA).¹²³
2. Risks of avaricious relatives or unscrupulous medical practitioners abusing EAS (raised 42 times; 1.7 per cent of AEA).¹²⁴

119 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7025–6 (Jon Ford).

120 ALP Member of the Western Australian Legislative Council 2001–13.

121 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7025–6 (Jon Ford).

122 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4899 (Marie Ficarra); Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz).

123 This argument is very common and dispersed throughout the debates across jurisdictions. See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2271–2 (Harold Hird); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4887 (Ian Glachan), 4905 (Paul Crittenden).

3. Risks of misdiagnoses or inaccurate prognoses (raised 61 times; 2.4 per cent of AEA).¹²⁵

The scope creep version of the ‘slippery slope’ argument claims that the distinctions between the categories of persons to whom EAS is available are arbitrary and that the rational extension of these categories to others is inevitable, thereby producing socially unacceptable outcomes.¹²⁶ For example, should VAE be extended to children or persons who are mentally incompetent who experience a terminal illness causing unbearable pain?¹²⁷ The argument is based on the difficulty of drawing a clear line separating those entitled to have access to VAE from those who should be excluded.¹²⁸

A variation of the ‘slippery slope’ argument is the dilution of safeguards concern. This is the claim that the strict safeguards contained within the legislation may be diluted by future parliaments.¹²⁹

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- 124 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 24 November 2010, 2048–50 (Helen Polley); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1905 (John Tierney); Commonwealth, *Parliamentary Debates*, Senate, 17 March 1997, 1628 (Judith Troeth); Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1996, 7919–20 (Patricia Draper); Commonwealth, *Parliamentary Debates*, House of Representatives, 7 November 1996, 6901–2 (Joel Fitzgibbon); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 315–16 (Peter Breen); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2628 (Colin Caudell); Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2008, 3210 (Bernie Finn); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2833 (Martin Pakula).
 - 125 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2258–60 (Trevor Kaine); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4899 (Marie Ficarra), 4902 (Michael Richardson); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3781 (Robert Brokenshire); South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1995, 2870 (Elizabeth Penfold); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2803 (Peter Kavanagh); Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2010, 6878–82 (Nicolas Goiran).
 - 126 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 430–2 (Kate Carnell); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5911–12 (Leo McLeay), 5918–19 (Lindsay Tanner); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4860–1 (Gabrielle Harrison); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3623 (Stephen Hatton), 3625 (Sydney Stirling), 3721 (Richard Lim); South Australia, *Parliamentary Debates*, House of Assembly, 2 March 2005, 1824 (Giuseppe Scalzi); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1587 (Giuseppe Scalzi); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7044 (Michael Mischin).
 - 127 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 3 March 2016, 1704 (Cory Bernardi), 1713–14 (Bob Day); New South Wales, *Parliamentary Debates*, Legislative Council, 23 May 2013, 20 775–7 (Paul Green); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3625 (Sydney Stirling).
 - 128 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1552–3 (Barney Cooney); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 308 (Peter Wong).
 - 129 Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2010, 6896 (Liz Behjat), 6878 (Nicolas Goiran); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2294–5 (Greg Cornwall); Victoria, *Parliamentary Debates*, Legislative Council, 10 September 2008, 3615 (Robert Smith); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2805 (Peter Kavanagh).

The ‘universalised rule’ version has been rebutted on the basis that the perceived adverse consequences of universalising the rule are merely illusory, with reference to empirical support from the Netherlands and Oregon experience (raised 39 times; two per cent of PEA).¹³⁰ Others argue that the ‘slippery slope’ argument ignores the presence of procedural safeguards within the legislation designed to preserve the voluntariness of euthanasia (raised 71 times; 3.6 per cent of PEA).¹³¹ Ian Cohen has noted that the fear of the slippery slope is exacerbated where VAE is unregulated.¹³² Furthermore, VAE legislation merely operates to decriminalise and regulate an existing practice, rather than actually create a new permissive regime.¹³³ Some politicians have noted that EAS will prevent the kinds of undesirable behaviours targeted by the ‘slippery slope’ argument, because it safeguards and promotes awareness of patients’ rights (raised 80 times; 4.1 per cent of PEA).¹³⁴ In relation to the scope creep argument, a common rebuttal is that society is perfectly capable of making meaningful moral distinctions between categories of individuals and classes of acts (raised 18 times; 0.9 per cent of PEA).¹³⁵

(ii) ‘Duty to Die’/‘Perverse Altruism’ Arguments

The ‘duty to die’ and ‘perverse altruism’ arguments are distinct, but related, positions which state that the social pressures created by the legalisation of EAS would result in situations where people who do not want EAS end up choosing it. The ‘duty to die’ argument (raised 89 times; 3.5 per cent of AEA) suggests that

130 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2305 (Michael Moore); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 11 August 1998, 1671 (Stephen Balch); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3701–2 (Phillip Mitchell); South Australia, *Parliamentary Debates*, House of Assembly, 11 February 2016, 4229 (Stephanie Key); South Australia, *Parliamentary Debates*, Legislative Council, 4 June 1997, 1521 (Sandra Kanck); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 88 (Nicholas McKim).

131 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 19 February 1997, 84–7 (Michael Moore); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2497 (Marshall Perron).

132 New South Wales, *Parliamentary Debates*, Legislative Council, 13 November 2003, 4929. See also Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3695 (Brian Ede); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2497–9 (Marshall Perron).

133 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2502 (Marshall Perron).

134 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 5 November 1997, 3660 (Kerrie Tucker); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 19 February 1997, 84–7 (Michael Moore); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 324 (Richard Jones); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3724 (Eric Poole).

135 South Australia, *Parliamentary Debates*, Legislative Council, 9 July 1997, 1781 (Anne Levy); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 499–500 (Kerrie Tucker); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2291–2 (Kerrie Tucker); South Australia, *Parliamentary Debates*, Legislative Council, 12 November 2008, 633 (Mark Parnell); South Australia, *Parliamentary Debates*, House of Assembly, 14 March 2007, 2063–4 (Bob Such); South Australia, *Parliamentary Debates*, Legislative Council, 3 June 2002, 289 (John Gazzola); Victoria, *Parliamentary Debates*, Legislative Council, 10 September 2008, 3611–12 (Theo Theophanous).

legalising EAS will generate subtle and overt pressures on vulnerable persons, converting their right to die into a moral duty or obligation to die.¹³⁶ Politicians advancing this argument say that this may occur where the vulnerable person perceives that they are a burden on their family or society generally.¹³⁷ The 'perverse altruism' argument (raised 59 times; 2.3 per cent of AEA) appeals to the same circumstances, but argues not that the individual will feel coerced or pressured into receiving EAS, but rather that they may decide to receive EAS because they perceive it to be the most appropriate outcome for their family.¹³⁸ The difference is that, in the 'duty to die' version, the vulnerable person may still make the decision to die but not want that outcome. By contrast, in the 'perverse altruism' version, it becomes part of the vulnerable person's own moral framework that she or he ought not to be a burden, and so the decision to die remains, in essence, their decision. We may not, however, want our society to embrace such a moral position, or want it to become so prevalent a position taken by vulnerable people in our society. A common reply (raised 71 times; 3.6 per cent of PEA) to the 'duty to die' and 'perverse altruism' arguments is that appropriate regulation and procedural safeguards may protect against a patient choosing EAS in circumstances where they are motivated by subtle community pressures or familial circumstances.¹³⁹ As well, it has been argued that because the threshold and procedural requirements of EAS encourage open discussion, this enables medical practitioners to address any patient concerns, including the perception that they are a burden (raised 57 times; 2.9 per cent of PEA).¹⁴⁰

(iii) 'Social Risk' Argument

The 'social risk' argument holds that EAS, although ethically permissible, should not be legalised because this may result in exposing the marginalised, frail and elderly to unacceptable social hazards (raised 192 times; 7.6 per cent of AEA).¹⁴¹ These social hazards derive from concerns about subtle social pressures

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- 136 Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3481–3 (Andrew Bartlett); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1730–1 (Charles Kemp); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3675 (Shane Stone); South Australia, *Parliamentary Debates*, Legislative Council, 14 October 2009, 3562–3 (Dennis Hood); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2074 (Nicholas Xenophon); South Australia, *Parliamentary Debates*, Legislative Council, 18 March 1998, 548 (Carmel Zollo); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1991 (Michael Atkinson).
 - 137 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 442–5 (Gary Humphries), 447–53 (Paul Osborne); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4860 (Gabrielle Harrison), 4862 (Jillian Skinner), 4905 (Paul Crittenden).
 - 138 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2090 (Kay Patterson).
 - 139 New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135–6 (Ian Cohen); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1909–10 (Ian MacDonald); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2077 (Sandra Kanck).
 - 140 South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2079 (Sandra Kanck).
 - 141 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 440 (Harold Hird); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2254–5 (Tony De Domenico), 2245–50 (Paul Osborne), 2271–2 (Harold Hird); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes); New

to undergo EAS¹⁴² (and so overlap with the ‘duty to die’ and ‘perverse altruism’ arguments), and from concerns that the legislation may be manipulated or abused so as to result in the illegitimate killing of vulnerable persons.¹⁴³ A rebuttal to this (raised 39 times; two per cent of PEA) is that the social risks are not evident from the Netherlands and Oregon experience.¹⁴⁴ A further response (raised 71 times; 3.6 per cent of PEA) is that appropriate procedural safeguards can address the relevant social risks.¹⁴⁵

(iv) ‘Hippocratic Oath’ Argument

The ‘Hippocratic Oath’ argument is based on the premise that intentional killing is fundamentally inconsistent with medical ethics.¹⁴⁶ However, its force actually lies in concerns about the consequences of violating the medical ethic of first doing no harm.

Supporters of the ‘Hippocratic Oath’ argument claim that permitting EAS:

1. destabilises the structure underpinning the medical profession and the Hippocratic Oath (raised 73 times; 2.9 per cent of AEA);¹⁴⁷
2. erodes the trust underpinning the doctor–patient relationship (raised 39 times; 1.6 per cent of AEA);¹⁴⁸ and
3. alters the historic role of doctors (raised 29 times; 1.2 per cent of AEA).¹⁴⁹

South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile), 329 (Amanda Fazio).

142 Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3481–3 (Andrew Bartlett); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1730–1 (Charles Kemp).

143 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2271–2 (Harold Hird), 2257–60 (Trevor Kaine); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1904–5 (John Tierney); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile), 315–16 (Peter Breen); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4887 (Ian Glachan), 4905 (Paul Crittenden), 4899 (Marie Ficarra), 4902 (Michael Richardson); South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1995, 2870 (Elizabeth Penfold); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2628 (Colin Caudell); Victoria, *Parliamentary Debates*, Legislative Council, 30 July 2008, 2833 (Martin Pakula).

144 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2305 (Michael Moore); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3701 (Phillip Mitchell); South Australia, *Parliamentary Debates*, Legislative Council, 4 June 1997, 1521 (Sandra Kanck).

145 New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135–41 (Ian Cohen); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1909–10 (Ian MacDonald); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2077 (Sandra Kanck).

146 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4874 (Marie Andrews), 4894 (Bruce MacCarthy); New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 925 (John Hatzistergos); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3634–5 (Denis Burke); South Australia, *Parliamentary Debates*, House of Assembly, 27 July 1995, 2988 (Dorothy Kotz); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2629 (Steve Condous).

147 Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2008, 3198 (Jenny Mikakos); Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2010, 6895 (Liljanna Ravlich).

148 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1905–7 (Paul Calvert); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1704 (Carmel Zollo).

The argument is also partly based on a concern that EAS may be used as a tool of rationing, normalising death as a cost-effective solution to the patient's ailments (raised 44 times; 1.7 per cent of AEA).¹⁵⁰

Replies to the 'Hippocratic Oath' argument include:

1. The emergence of contemporary medical technologies has resulted in the ability to sustain life longer than desirable. Responsible medical treatment must involve consideration of euthanasia (raised 14 times; 0.7 per cent of PEA) in appropriate circumstances.¹⁵¹ However, this reply is open to the counter-objection that patients currently have the right to request the withdrawal of treatment (raised 56 times; 2.2 per cent of AEA), and so do not need euthanasia on this ground.¹⁵²
2. Euthanasia is already being administered by medical practitioners in a clandestine and secretive environment and it should be regulated (raised 105 times; 5.3 per cent of PEA).¹⁵³
3. A significant part of the Hippocratic Oath includes caring for patients and relieving their suffering, and EAS is consistent with these practices (raised two times; 0.1 per cent of PEA).¹⁵⁴
4. Focusing on the Hippocratic Oath may be inconsistent with the contemporary movement towards a patient-centric medical paradigm (raised once; 0.1 per cent of PEA).¹⁵⁵

(v) *'Existing Practices Are Sufficient' Argument*

This argument is commonly made by opponents of EAS (7.8 per cent of AEA). There are two limbs to the argument: (a) palliative care is the appropriate

149 See, eg, New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 282 (Fred Nile); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 11 August 1998, 1669–70 (Peter Toyne); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); South Australia, *Parliamentary Debates*, House of Assembly, 27 July 1995, 2988–9 (Dorothy Kotz).

150 South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1704 (Carmel Zollo).

151 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1719–22 (Rosemary Crowley); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 505–8 (Marion Reilly); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2302–8 (Michael Moore); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 16 June 1993, 1878–9 (Michael Moore).

152 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4905 (Paul Crittenden); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2628 (Peter Lewis).

153 See, eg, Commonwealth, *Parliamentary Debates*, Senate, 1 March 2016, 1458 (Richard Di Natale); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1709–11 (Cheryl Kernot); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 505–8 (Marion Reilly); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 19 February 1997, 84–7 (Michael Moore).

154 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 16 June 1993, 1878–9 (Michael Moore); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 120 (Daniel Hulme).

155 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1867–9 (Susan Mackay).

means of managing intolerable pain (raised 141 times; 5.6 per cent of AEA); and (b) the patient already has the right to seek the withdrawal of medical treatment and artificial nutrition and hydration ('ANH'), and may receive potentially lethal dosages of analgesics under the doctrine of double effect (raised 56 times; 2.2 per cent of AEA). A compassionate society may satisfy its obligations to suffering patients through palliative care and so it is unnecessary to legalise EAS.¹⁵⁶ A central assumption in this argument is that only a very small percentage of persons are unable to get adequate pain relief with appropriate palliative care programs.¹⁵⁷ Public policy cannot be justified by reference to such a small fraction of persons within the community.¹⁵⁸ It has also been argued (raised five times; 0.2 per cent of AEA) that as medical technology becomes increasingly advanced, and palliative care becomes more sophisticated, EAS will become progressively less relevant.¹⁵⁹ Finally, some politicians have argued that any deficiencies in palliative care services should be remedied through improving palliative care facilities rather than by making EAS available.¹⁶⁰

The main objections to the palliative care limb of the argument are:

1. Palliative care has limitations (raised 135 times; 6.8 per cent of PEA). It may mitigate most physical pain, but it may be inadequate to mitigate existential, emotional and psychological suffering.¹⁶¹ Also, palliative care is ineffective for a small number of patients, and may not even be available to persons who are socio-economically disadvantaged or geographically remote.¹⁶²
2. Palliative care and EAS are not mutually exclusive and are simply two ends of a continuum. Both must be available to promote effective patient decision-making (raised 59 times; 3 per cent of PEA).¹⁶³

The second limb of the argument appeals to existing medical procedures which may already lawfully be used to bring about the death of the patient. Some

156 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4857 (Peter Collins), 4868 (Barry O'Farrell).

157 New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 285 (Helen Sham-Ho); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 20 February 1996, 6413 (Clare Martin).

158 New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 285 (Helen Sham-Ho); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1990 (Michael Atkinson).

159 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 442–5 (Gary Humphries); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4879 (James Small).

160 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 September 1996, 3672 (Kevin Andrews); Commonwealth, *Parliamentary Debates*, House of Representatives, 16 October 1995, 2074–5 (Brendan Smyth); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 434–8 (Trevor Kaine); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3766 (Bernard Finnigan); Western Australia, *Parliamentary Debates*, 11 September 2003, Legislative Council, 11 032 (Tom Stephens).

161 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 505–8 (Marion Reilly); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4884 (Peter Macdonald), 4901 (Michael Richardson).

162 New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 924 (John Jobling).

163 Ibid 926 (Lee Rhiannon); Western Australia, *Parliamentary Debates*, Legislative Council, 16 March 2000, 5084 (Norm Kelly).

have argued that the right to refuse treatment (including ANH) is sufficient to enable the termination of a person's life (raised 56 times; 2.2 per cent of AEA).¹⁶⁴ Some have also noted that suicide is permitted in Australia (raised twice; 0.1 per cent of AEA).¹⁶⁵ As well, some note that appropriate palliative care may involve hastening death by administering high dosages of analgesics, which can achieve substantially the same result as VAE.¹⁶⁶ However, they distinguish this component of palliative care from VAE on the basis of the intention–foresight distinction under the doctrine of double effect (raised 60 times; 2.4 per cent of AEA).¹⁶⁷ Some politicians have, however, noted that the distinction between proper palliative care under the doctrine of double effect and VAE is ‘a very fine one indeed’.¹⁶⁸

The primary replies to this limb of the argument are:

1. There is legal hypocrisy in permitting the withdrawal of ANH and medical treatment, which may cause a prolonged and inhumane death, while prohibiting the same outcome by the administration of euthanasia for a quick and painless death (raised 49 times; 2.5 per cent of PEA).¹⁶⁹ The counter-objection advanced by opponents (raised 18 times; 0.7 per cent of AEA) is that it does not involve causing death,¹⁷⁰ or the intention to bring about death.¹⁷¹
2. The appeal to the doctrine of double effect embodies another example of legal hypocrisy because a medical practitioner intending to relieve pain

164 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 495–8 (Bill Stefaniak); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4905 (Paul Crittenden); South Australia, *Parliamentary Debates*, House of Assembly, 27 July 1995, 2989 (John Cummins); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2628 (Peter Lewis).

165 South Australia, *Parliamentary Debates*, House of Assembly, 5 May 2011, 3572 (Jack Snelling); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1989 (Michael Atkinson).

166 Queensland, *Parliamentary Debates*, Legislative Assembly, 26 March 1997, 873 (Dean Wells); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2627 (Peter Lewis).

167 See, eg, New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4872 (Stephen O'Doherty), 4897 (George Thompson); South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1995, 2871 (Julie Greig); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1989 (Michael Atkinson).

168 New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 328 (Doug Moppett). See also South Australia, *Parliamentary Debates*, House of Assembly, 15 March 2001, 1094 (Bob Such); South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1037 (Sandra Kanck); Western Australia, *Parliamentary Debates*, 22 September 2010, Legislative Council, 7081 (Adele Farina).

169 South Australia, *Parliamentary Debates*, House of Assembly, 22 November 2007, 1835–6 (Isobel Redmond).

170 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 495–8 (Bill Stefaniak); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4905 (Paul Crittenden); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3672 (Shane Stone), 3714–15 (Richard Lim); South Australia, *Parliamentary Debates*, Legislative Council, 10 November 2010, 1433 (Dennis Hood).

171 Queensland, *Parliamentary Debates*, Legislative Assembly, 2 April 2003, 1190 (Terry Sullivan); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3761 (Bernard Finnigan); South Australia, *Parliamentary Debates*, House of Assembly, 27 July 1995, 2989 (John Cummins).

by causing death would commit murder, whereas a medical practitioner intending to relieve pain while merely foreseeing that death is a likely result would be engaging in proper medical practice (raised 14 times; 0.7 per cent of PEA).¹⁷²

3. The doctrine of double effect is a doctor-centric approach which permits medical practitioners to effectively control the circumstances and time of the patient's death without their consent; it results in a clandestine and secretive system exposing patients to the risk of involuntary euthanasia (raised 35 times; 1.8 per cent of PEA).¹⁷³
4. The doctrine of double effect exposes compassionate medical practitioners to the risk of prosecution (raised 50 times; 2.5 per cent of PEA).

(vi) *'Marginalisation of Palliative Care' Argument*

The 'marginalisation of palliative care' argument (raised 30 times; 1.2 per cent of AEA) holds that legalising EAS may have a negative impact on the quality of palliative care units, with resources being diverted to EAS as a more economical way of managing terminally ill patients.¹⁷⁴ The primary reply to this concern is that society will see EAS as a last resort, and therefore increase funding for curative therapies and improved palliative care to prevent patients from seeking EAS.¹⁷⁵ Another reply is that EAS complements palliative care, and therefore funding will be provided to both programs.¹⁷⁶

172 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 20 February 1996, 6389 (Cecelia Padgham-Purich); South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1037 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 4 June 1997, 1520 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 28 May 1997, 1422 (Diana Laidlaw).

173 Western Australia, *Parliamentary Debates*, 22 September 2010, Legislative Council, 7079–82 (Adele Farina); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1867–9 (Sue Mackay); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2302–8 (Michael Moore); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 505–8 (Marion Reilly); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1706 (Gail Gago); Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 107–8 (Cassandra O'Connor); Tasmania, *Parliamentary Debates*, House of Assembly, 18 June 2009, 83 (Kim Booth).

174 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2265–8 (Gary Humphries); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4905 (Paul Crittenden); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7025–6 (Jon Ford).

175 New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 139 (Ian Cohen); South Australia, *Parliamentary Debates*, House of Assembly, 20 September 2012, 3092 (Stephanie Key); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7086–7 (Robin Chapple).

176 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 21 September 1995, 2251–3 (Rosemary Follett).

(vii) 'Loss of Association' Argument

The 'loss of association' argument holds that EAS may be regretted because it deprives the individual and family members of time and the end-of-life experiences which may be associated with the dying process (raised 21 times; 0.8 per cent of AEA).¹⁷⁷ For example, Paul Gibson stated that no one has the right to make the decision to prematurely terminate their life on behalf of their family, who may consider it rewarding to nurse them through sickness.¹⁷⁸ Sandra Kanck has responded to this argument, countering that it is:¹⁷⁹

perfectly possible to be complete in your family relationships without having an incurable illness. It is extremely high handed for those with the power to force people to stay alive because they think it is good for people to go through the Kubler-Ross stages of dying, to do so because they think it is life enhancing.

(viii) 'Limitations of Medicine' Argument

This argument involves the claim that there are significant limitations to contemporary medicine and these justify the retention of the prohibition against intentional killing (raised 61 times; 2.4 per cent of AEA). Examples of the prospect of a 'miracle', unexpected recovery,¹⁸⁰ misdiagnosis¹⁸¹ or inaccurate prognosis are given to support the argument.¹⁸² Allowing EAS in these circumstances may end someone's life in circumstances where, if treatment were sustained, they may recover fully or partially to have a reasonably long and comfortable life.¹⁸³ The main counterargument (raised 71 times; 3.6 per cent of PEA) is that the legislation involves safeguards and independent reviews which significantly reduce the risks involved, including misdiagnosis.¹⁸⁴

3 Legalistic Perspectives

Legal arguments against EAS also exist, which generally attack the drafting of the legislation and the workability of the safeguards, and invoke international law. These will be discussed in this section.

177 South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2628 (Colin Caudell); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1723–5 (Brian Harradine); Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6736 (Patricia Worth).

178 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4880 (Paul Gibson).

179 South Australia, *Parliamentary Debates*, Legislative Council, 12 April 2000, 894 (Sandra Kanck).

180 South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1712 (Ronald Brokenshire); Commonwealth, *Parliamentary Debates*, Senate, 28 October 2010, 1095–8 (Ursula Stephens).

181 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4899 (Marie Ficarra).

182 South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3782 (Robert Brokenshire).

183 Ibid.

184 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2101–4 (Kim Carr).

(a) 'Definitional' Argument

As noted above, one reason the EAS debate stalls is that there is no consistent use of clearly defined terms. Arguments generally relate to the definitions of 'terminal illness' and 'suffering'. They account for 2.6 per cent of politicians' arguments advanced against EAS (raised 65 times). In particular, if the term 'terminal illness' is used, this term normally (on its natural and ordinary meaning) applies only to those who are in the dying phase of their illness.¹⁸⁵ But if this term is defined in the Bill to include incurable illnesses or a disease which, if left untreated, will cause death, then this might mean that the scope of EAS legislation significantly exceeds that implied by the natural and ordinary meaning of the word 'terminal'. There have been suggestions that loose definitions will permit persons with chronic depression, arthritis or the early stages of multiple sclerosis to receive EAS.¹⁸⁶ One opponent suggested that it might include diabetics who, without insulin, may die.¹⁸⁷ However, Kim Carr has rebutted this argument on the basis that a medical practitioner is likely to refuse EAS in these circumstances, particularly where there are multiple independent opinions.¹⁸⁸

(b) 'Right to Life' Argument

The 'right to life' argument, grounded in international law, provides that Australia is bound to uphold the provisions in the *Universal Declaration of Human Rights*¹⁸⁹ and the *International Covenant on Civil and Political Rights*¹⁹⁰ which provide for the inalienability and inviolability of life (raised 17 times; 0.7 per cent of AEA).¹⁹¹ This argument has not been directly rebutted.

B Arguments Supporting EAS

We will now turn to the pro-euthanasia arguments. The arguments supporting EAS also include non-consequentialist, consequentialist or legalistic arguments. The dominant arguments are almost exclusively secular (raised 1960 times, 99.2 per cent of PEA). Generally, any reference to personal beliefs or conceptions of God are designed to refute arguments or support the 'pluralistic' argument,

185 For an illustration of this class of argument, see Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2261–3 (Terry Connolly).

186 South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3761 (Bernard Finnigan), 3778 (Caroline Schaefer).

187 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1903 (Jacinta Collins).

188 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2101–4.

189 GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/Res/217A (10 December 1948).

190 Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

191 Commonwealth, *Parliamentary Debates*, Senate, 24 November 2010, 2047–50 (Helen Polley);

Commonwealth, *Parliamentary Debates*, Senate, 28 October 2010, 1088–90 (Suzanne Boyce);

Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw);

Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1889 (Warwick Parer);

Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7749 (Andrew Southcott);

New South Wales, *Parliamentary Debates*, Legislative Council, 23 May 2013, 20 763

(Shaoquett Moselmane); South Australia, *Parliamentary Debates*, House of Assembly, 2 March 2005,

1826 (John Meier); South Australia, *Parliamentary Debates*, Legislative Council, 3 June 2002, 292 (Ian

Gillfillan); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 251 (Andrew Evans).

discussed below. This section is shorter than that which considered the arguments against EAS. This is partly because some of the issues raised below have already been discussed in examining the arguments against EAS and the rebuttal of those arguments, so we address them more briefly to avoid repetition. The other reason is that, numerically, there were fewer arguments raised supporting EAS and so there was not the same breadth of views expressed.

1 Non-consequentialist Perspectives

(a) Theistic Claims

There is only one theistic claim in support of EAS. This is that a compassionate God would not expect people to suffer unnecessarily and so would permit people to end their lives (raised 16 times, 0.8 per cent of PEA).¹⁹²

(b) Secular Claims

(i) 'Autonomy' Argument

We discussed the 'autonomy' argument briefly above when we presented the case against EAS. Here we are examining the argument as it is used in support of it.

The 'autonomy' argument is in fact the most common argument advanced in support of EAS (raised 261 times; 13.2 per cent of PEA). The argument is that, within a pluralistic secular democracy, each person has a fundamental right to autonomy and self-determination.¹⁹³ Encroachments on a person's right to autonomy are generally only justified where there is a significant and ethically relevant impact on others.¹⁹⁴ Having regard to the gravity of the dying process, which is intensely personal and private, there ought to be some provision enabling access to EAS.¹⁹⁵ A reply given by some politicians to the 'autonomy' argument is that autonomy is fundamentally limited.¹⁹⁶ I do not have the 'autonomy' not to wear a seatbelt. The following replies are also typically advanced in relation to the 'autonomy' argument:

192 South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1415 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 15 May 2002, 151 (Gail Gago).

193 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 117 (Alan Butler); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7030 (Philip Gardiner).

194 Tasmania, *Parliamentary Debates*, House of Assembly, 4 November 2009, 117 (Alan Butler).

195 Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7022 (Alison Xamon).

196 See Commonwealth, *Parliamentary Debates*, House of Representatives, 16 October 1995, 2066–7 (John Bradford); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1554–6 (Eric Abetz); New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 923 (Greg Pearce); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3674 (Shane Stone); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1587 (Giuseppe Scalzi); South Australia, *Parliamentary Debates*, House of Assembly, 27 October 1999, 279 (Giuseppe Scalzi).

1. 'No man is an island' and it is impossible to separate the interests of the individual from the interests of society (raised 34 times; 1.4 per cent of AEA).¹⁹⁷
2. The 'slippery slope' argument (raised 160 times; 6.4 per cent of AEA).¹⁹⁸
3. The RFL and SOL arguments (raised 132 times; 5.3 per cent of AEA).¹⁹⁹
4. Autonomy is subject to limitations within society, and the constraints ought to encompass prohibitions against intentional killing (raised 34 times; 1.4 per cent of AEA).²⁰⁰
5. Other objections such as a person ought not to be entitled to receive EAS because of the risk of poor prognostication or misdiagnosis,²⁰¹ the individual having been subject to undue influence or duress,²⁰² the individual seeking to 'disencumber' society (that is, stop being a burden to society),²⁰³ the individual may lose valuable personal growth

197 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3617 (Stephen Hatton).

198 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5911–12 (Leo McLeay), 5917–19 (Lindsay Tanner); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 430–2 (Kate Carnell); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4860–1 (Gabrielle Harrison), 4899 (Marie Ficarra); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3622 (Stephen Hatton), 3624–7 (Sydney Stirling), 3720–2 (Richard Lim); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1587 (Giuseppe Scalzi); South Australia, *Parliamentary Debates*, House of Assembly, 2 March 2005, 1824 (Giuseppe Scalzi); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7043 (Michael Mischin).

199 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2111–13 (Julian McGruan); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1891–3 (Hedley Chapman); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1752 (Christopher Ellison); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 434–8 (Trevor Kaine); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4880 (Paul Gibson), 4884 (John Aquilina), 4906 (Ralph Clough); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); South Australia, *Parliamentary Debates*, House of Assembly, 8 June 1995, 2629 (Steve Condous).

200 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3673 (Shane Stone).

201 Commonwealth, *Parliamentary Debates*, Senate, 28 October 2010, 1097–8 (Ursula Stephens); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4899 (Marie Ficarra); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1712 (Ronald Brokenshire); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3782 (Robert Brokenshire).

202 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 440 (Harold Hird); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2245–50 (Paul Osborne), 2254–5 (Tony De Domenico), 2271–2 (Harold Hird); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile), 329 (Amanda Fazio).

203 Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3481–3 (Andrew Bartlett); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1726–7 (John Woodley), 1730–1 (Charles Kemp); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3675 (Shane Stone); South Australia, *Parliamentary Debates*, Legislative Council, 14 October 2009, 3562–3 (Dennis Hood); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2074 (Nicholas Xenophon); South Australia, *Parliamentary Debates*, Legislative Council, 18 March 1998, 548

opportunities during the dying process²⁰⁴ or that it prematurely terminates the dying process which may provide ennobling benefits to the individual.²⁰⁵

(ii) 'Pluralistic' Argument

The 'pluralistic' argument (raised 109 times; 5.5 per cent of PEA) holds that, within a multicultural and diverse secular democracy, there are diverse ideological frameworks to which individuals subscribe which may differ in respect of the moral permissibility of EAS. Consequently, the prohibition against EAS operates to impose particular religious or social beliefs on persons who may not subscribe to a similar value system.²⁰⁶ Proponents of the 'pluralistic' argument claim that legalising EAS gives people optimal autonomy, enabling them to exercise their own conscience and beliefs, and does not impose EAS on those persons whose belief system precludes its practice.²⁰⁷ For example, Margaret Hickey²⁰⁸ has argued 'the essence of the legislation lies in its voluntary nature, it offers choice to those seeking to access it. Those who find it repugnant or against their beliefs have but to ignore it'.²⁰⁹

(Carmel Zollo); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1991 (Michael Atkinson).

204 See the 'loss of association' and 'suffering is ennobling' arguments discussed above.

205 South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3791 (Mark Parnell); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7054 (Lynn McLaren).

206 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2299–302 (Wayne Berry), 2302–8 (Michael Moore); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 23 August 1995, 1313, 1317 (Michael Moore); New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 933 (Ian Cohen); New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135 (Ian Cohen); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4900 (Ernest Page); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3654 (Lorraine Braham); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 2499–502 (Marshall Perron); South Australia, *Parliamentary Debates*, Legislative Council, 26 November 2008, 941 (Sandra Kanck); South Australia, *Parliamentary Debates*, House of Assembly, 16 February 2005, 1652 (Bob Such); South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1415 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 24 July 2001, 2030 (Terance Roberts); South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1037 (Sandra Kanck); South Australia, *Parliamentary Debates*, Legislative Council, 6 November 1996, 342 (Anne Levy).

207 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4900 (Ernest Page); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3654 (Lorraine Braham); South Australia, *Parliamentary Debates*, Legislative Council, 6 November 1996, 346 (Sandra Kanck).

208 ALP member of the Northern Territory Legislative Assembly 1990–2001.

209 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3705 (Margaret Hickey).

The primary replies to this argument are:

1. In relation to EAS, it is impossible to separate the interests of the individual from the interests of society (raised 34 times; 1.4 per cent of AEA).²¹⁰
2. EAS will generate a 'slippery slope' (raised 160 times; 6.4 per cent of AEA) and the right to die may become an obligation to die (raised 89 times; 3.5 per cent of AEA), which indirectly imposes the belief system on those persons opposed to EAS.²¹¹
3. EAS will generate substantial social risks which may result in the involuntary reception of EAS (raised 192 times; 7.6 per cent of AEA).²¹²
4. The secular value system of Australian society supports the sanctity of life, and therefore EAS is contrary to the social values underpinning the community, not individuals.²¹³
5. EAS is fundamentally inconsistent with the Judaeo-Christian values underpinning Australia's Western democracy (raised 10 times; 0.4 per cent of AEA).²¹⁴

(iii) 'Right to Die' Argument

The 'right to die' ('RTD') argument is a more specific version of the 'autonomy' argument (raised 58 times; 2.9 per cent of PEA). It claims that people within society should have a right to determine the time, means and circumstances of their death.²¹⁵

²¹⁰ Ibid 3617–18 (Stephen Hatton).

²¹¹ Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4899 (Marie Ficarra).

²¹² See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 440 (Harold Hird); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2245–50 (Paul Osborne), 2254–5 (Tony De Domenico), 2271–2 (Harold Hird); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile), 329 (Amanda Fazio).

²¹³ See, eg, Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2111–13 (Julian McGauran); Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1905–7 (Paul Calvert); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz); Commonwealth, *Parliamentary Debates*, Senate, 21 June 1995, 1560 (Brian Harradine); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3823 (Gordon Moyes); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 282 (Fred Nile); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4865 (Malcolm Kerr); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3632–3 (Denis Burke), 3684 (Peter Adamson); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3772 (Stephen Wade); South Australia, *Parliamentary Debates*, Legislative Council, 20 October 1999, 143 (Caroline Schaefer); South Australia, *Parliamentary Debates*, Legislative Council, 2 July 1997, 1638 (Caroline Schaefer).

²¹⁴ Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2076–8 (Nick Sherry); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 443 (Greg Humphries).

²¹⁵ New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4876 (Patrick Rogan).

The primary replies to this argument are:

1. There is already an obligation for others to allow the individual to die if they are competent and other legal requirements are met. This right prohibits interventions to prevent such people from exercising their right to refuse treatment, for example, although it would not necessarily mandate active intervention to deliberately cause death. The RTD, by contrast, would require the latter, but this is killing rather than letting someone die. What EAS really requires is a right to be killed, which imposes a correlative duty to kill (raised 10 times; 0.4 per cent of AEA).²¹⁶
2. The RTD does not exist (raised 4 times; 0.2 per cent of AEA). That is, there is no RTD, in the sense contemplated by PEA activists, in the Australian legal framework.²¹⁷
3. The SOL (raised 35 times; 1.39 per cent of AEA) and RFL (raised 97 times; 3.9 per cent of AEA) arguments which propose that life is 'sacred' and inviolable.²¹⁸

(iv) *'Compassionate EAS' Argument*

This argument maintains that EAS is a compassionate and humane response to the suffering experienced by terminally ill persons (raised 119 times; six per cent of PEA).²¹⁹ This is reinforced by the analogy that if a person permitted a pet to continue living in the state that many terminally ill patients suffer, they would be socially condemned or even prosecuted (raised 22 times; 1.1 per cent of PEA).²²⁰ The primary reply to this argument is that EAS is not a compassionate response to another's suffering (raised 19 times; 0.8 per cent of AEA). A truly compassionate society would increase investment in advanced palliative care and curative therapies, rather than engage in killing the person.²²¹

(v) *'Existing Measures Are Inhumane' Argument*

This argument holds that a patient's right to request the withdrawal of treatment or ANH, or to refuse treatment, is inhumane because it causes the patient to suffer a prolonged and painful death, where the same result may be achieved without the suffering through the active administration of lethal agents

216 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1899–902 (Jacinta Collins); Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6763–5 (Mark Vaile). Note that this argument does apply to PAS and not just VAE; Mark Vaile quotes from an article that discusses 'assisted suicide' to support his claims. A right to be killed would thus include a right (and correlative duty) to kill oneself on this concern.

217 New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 284 (Helen Sham-Ho).

218 The SOL and RFL arguments are discussed in Parts V(A)(1)(a)(i) and V(A)(1)(b)(i) respectively.

219 New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 311–12 (Alan Corbett).

220 South Australia, *Parliamentary Debates*, Legislative Council, 2 May 2001, 1407 (Carolyn Pickles).

221 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4857 (Peter Collins); Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2010, 6912 (Mia Davies).

(raised 55 times; 2.8 per cent of PEA).²²² On the few occasions that this argument has been rebutted, it is on the grounds that:

1. killing is not a compassionate, effective or dignified response to suffering (raised 19 times; 0.8 per cent of AEA);²²³
2. administering lethal substances does not necessarily cause an instant or painless death (raised 10 times; 0.4 per cent AEA);²²⁴
3. analgesics may be administered to mitigate the suffering produced through the withdrawal of treatment;²²⁵ or
4. the doctrine of double effect enables the unintentional termination of a person's life through high dosages of analgesics²²⁶ or the possibility of terminal sedation.²²⁷

(vi) 'Legal Hypocrisy' Argument

The 'legal hypocrisy' argument is that the current law giving the right to refuse treatment, the legal doctrine of double effect and the power for medical practitioners to administer terminal sedation is founded on hypocrisy (raised 49 times; 2.5 per cent of PEA). The argument is advanced on the following bases.

a. *Right to Refuse Treatment*

It is hypocritical to give patients the right to terminate their life in a prolonged and agonising manner, and yet deny them the right to terminate their life through the active administration of a lethal substance in a more efficient, dignified and comfortable manner.²²⁸

b. *Terminal Sedation*

The law enables medical practitioners to induce a state of 'pharmacological oblivion' whereby the patient is rendered comatose through the administration of opioids or analgesics.²²⁹ Treatment and ANH are thereby withdrawn, permitting the patient to die in an unconscious state. If terminal sedation is permitted, then it

222 South Australia, *Parliamentary Debates*, House of Assembly, 22 November 2007, 1836 (Isobel Redmond).

223 New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3822 (Gordon Moyes); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3626 (Sydney Stirling); Western Australia, *Parliamentary Debates*, Legislative Council, 11 September 2003, 11 035 (Ed Dermer).

224 Tasmania, *Parliamentary Debates*, House of Assembly, 16 October 2013, 103 (Jacquie Petrusma); Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2008, 3194 (Jan Kronberg).

225 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 November 1996, 6901–3 (Joel Fitzgibbon).

226 South Australia, *Parliamentary Debates*, Legislative Council, 9 July 1997, 1779 (Paul Holloway).

227 South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1995, 2871 (Julie Greig).

228 See, eg, South Australia, *Parliamentary Debates*, House of Assembly, 22 November 2007, 1836 (Isobel Redmond).

229 New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135 (Ian Cohen).

is hypocritical not to permit a patient to request VAE which is not relevantly different from it.²³⁰

c. *Doctrine of Double Effect*

The doctrine of double effect permits a medical practitioner to administer progressively higher dosages of analgesics intending to relieve pain where the medical practitioner foresees that a secondary effect may be the hastening of the patient's death.²³¹ Some pro-VAE politicians regard the doctrine of double effect as hypocritical because if medical practitioners A and B both administer the same dosage of analgesic which causes death, A will be seen as being an effective palliative care practitioner where A foresees, but does not intend, death, while B may be prosecuted for murder if B intends death as the means of relieving the patient's pain.²³² This is seen as a doctor-centric approach because the patient is not always involved in the decision to administer the sedatives (even though this may cause their death sooner than might otherwise be the case).²³³ If one rejects the moral relevance of the distinction between intention and foresight, this practice is regarded as no different from involuntary or non-voluntary euthanasia.²³⁴ It has also been stated that even if there is a valid distinction between intention and foresight, it lends itself to a secretive and clandestine practice of euthanasia which does not permit honest and transparent doctor–patient dialogue, and which may thus undermine the relationship of trust between medical practitioners and patients.²³⁵

The various aspects of the 'legal hypocrisy' argument are generally criticised on the following grounds:

1. Terminal sedation and the withdrawal of treatment may be distinguished from VAE on the basis that the former practices do not cause the death of the patient (raised 18 times; 0.7 per cent of AEA).²³⁶
2. Terminal sedation, the withdrawal of treatment and the administration of lethal dosages under the doctrine of double effect are distinguishable from VAE on the basis that, in the context of the former practices, the medical practitioner does not intend to cause death (raised 60 times; 2.4

230 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2085 (Bruce Childs).

231 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3719 (Richard Lim).

232 South Australia, *Parliamentary Debates*, Legislative Council, 14 March 2001, 1037 (Sandra Kanck).

233 Commonwealth, *Parliamentary Debates*, Senate, 19 March 1997, 1867–9 (Susan Mackay).

234 New South Wales, *Parliamentary Debates*, Legislative Council, 23 May 2013, 20 761–3 (Mick Vietch); Western Australia, *Parliamentary Debates*, 22 September 2010, Legislative Council, 7080–1 (Adele Farina).

235 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1710–11 (Cheryl Kernot); South Australia, *Parliamentary Debates*, Legislative Council, 12 April 2000, 895 (Sandra Kanck).

236 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 495–8 (Bill Stefaniak).

per cent of AEA), a distinction which retains moral importance as reflected by the law.²³⁷

(vii) *'Public Support' Argument*

The 'public support' argument relies on polling results indicating that nearly 80 per cent of Australians support EAS.²³⁸ The argument is that a democratically elected Parliament should act with due consideration of the constituency (raised 145 times; 7.3 per cent of PEA).

The primary replies to this argument are:

1. Polling results are frequently skewed according to the content and form of the question²³⁹ or are affected by the fact that many Australians do not adequately understand the concept of 'euthanasia' or its potential social implications (raised 58 times; 2.3 per cent of AEA).²⁴⁰ This is contentious because it assumes that members of the community are unaware of the meaning of 'euthanasia'.²⁴¹
2. Polling results do not typically translate to support in formal referenda or voting processes.²⁴²
3. The Parliament should impose value judgements which consider the long-term best interests of society (despite what the public itself might think on the issue) (raised six times; 0.2 per cent of AEA).²⁴³
4. Parliamentary decision-making should not be driven by popularity (raised 26 times; one per cent of AEA).²⁴⁴
5. The majority of the public or a member's constituents oppose EAS (raised 10 times; 0.4 per cent of AEA).²⁴⁵

237 New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4872 (Stephen O'Doherty); South Australia, *Parliamentary Debates*, Legislative Council, 28 March 2001, 1155 (Carmel Zollo).

238 South Australia, *Parliamentary Debates*, House of Assembly, 15 March 2001, 1094 (Bob Such). The figure has actually more recently been between 78 and 86 per cent: see above n 4.

239 South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1718–19 (Anne Bressington).

240 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6737 (Janice Crosio); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1707 (David Ridgway), 1726 (Bernard Finnigan).

241 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1722 (Rosemary Crowley); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7067 (Helen Morton).

242 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3688 (Peter Adamson); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans).

243 Commonwealth, *Parliamentary Debates*, House of Representatives, 21 November 1996, 7326–7 (Barry Jones); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1702–3 (Carmel Zollo).

244 South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1702–3 (Carmel Zollo); South Australia, *Parliamentary Debates*, Legislative Council, 28 October 2009, 3764 (Bernard Finnigan); South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1411 (Robert Lucas).

245 New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2013, 20 304 (Marie Ficarra); South Australia, *Parliamentary Debates*, House of Assembly, 14 April 2016, 5209 (Adrian Pederick),

(viii) 'International Comity' Argument

The 'international comity' argument states that EAS is becoming increasingly codified in foreign jurisdictions (raised 6 times; 0.3 per cent of PEA) and that the practice is becoming more accepted internationally (raised 12 times; 0.5 per cent of PEA).²⁴⁶ This argument is often rebutted on the basis that in such countries statistical evidence indicates that they are sliding down the 'slippery slope'.²⁴⁷

2 Consequentialist Perspectives

(a) 'Regulatory Safeguards' Argument

The claim in this argument is that implementing EAS will protect patients (raised 80 times; 4.1 per cent of PEA) and physicians (raised 50 times; 2.5 per cent of PEA). It is argued that patients will be protected because providing a legal facility for EAS will make existing euthanasia practices transparent and provide extensive safeguards for EAS.²⁴⁸ This will also reduce the risk of physician-initiated euthanasia, duress and undue influence.²⁴⁹ Additionally, compassionate medical practitioners who accede to the requests of patients to terminate their life will be protected from criminal prosecution.²⁵⁰ By providing a regulatory framework within which euthanasia operates, increased scrutiny, transparency and accountability for existing practices (raised 57 times; 2.9 per cent of PEA) can be ensured.²⁵¹

The primary replies to this argument are that legalising EAS may:

1. lead to the slippery slope (raised 160 times; 6.4 per cent of AEA),²⁵²

5214 (Vincent Tarzia); South Australia, *Parliamentary Debates*, House of Assembly, 21 March 2013, 4914–15 (Steven Griffiths).

246 South Australia, *Parliamentary Debates*, Legislative Council, 20 November 2002, 1416 (Sandra Kanck).

247 South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1588 (John Meier).

248 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1710–11 (Cheryl Kernot); Western Australia, *Parliamentary Debates*, Legislative Council, 22 September 2010, 7085 (Robin Chapple).

249 Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1996, 6750–1 (Graeme Campbell); Tasmania, *Parliamentary Debates*, House of Assembly, 17 October 2013, 110–14 (Nick McKim); Tasmania, *Parliamentary Debates*, House of Assembly, 16 October 2013, 57–67 (Nick McKim).

250 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1732–3 (Andrew Murray); New South Wales, *Parliamentary Debates*, Legislative Council, 29 November 2001, 19 135 (Ian Cohen).

251 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5921–2 (Anthony Albanese).

252 Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1741–4 (Eric Abetz); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5911–12 (Leo McLeay), 5917–19 (Lindsay Tanner); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 430–2 (Kate Carnell); New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 1996, 4860–1 (Gabrielle Harrison), 4899 (Marie Ficarra); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3622 (Stephen Hatton), 3625 (Sydney Stirling), 3721–2 (Richard Lim); South Australia, *Parliamentary Debates*, House of Assembly, 2 March 2005, 1824 (Giuseppe Scalzi); South Australia, *Parliamentary Debates*, Legislative Council, 29 May 2002, 252 (Andrew Evans); South Australia, *Parliamentary Debates*, House of Assembly, 17 May 2001, 1587

2. convert the right to die into a moral duty to die due to subtle and overt social pressures (raised 89 times; 3.5 per cent of AEA);²⁵³ or
3. produce a range of social risks exposing vulnerable persons to the risk of involuntary euthanasia (raised 192 times; 7.6 per cent of AEA).²⁵⁴

(b) *'Removes Pressure from Medical Practitioners' Argument*

This argument claims that compassionate medical practitioners are currently subject to pressure by patients to terminate their lives when they are suffering unbearable and persistent pain, yet the medical practitioners are unable to accede to the request due to the legal prohibition on VAE.²⁵⁵ This argument is infrequently relied on (raised 12 times; 0.6 per cent of PEA). There have been no direct objections raised by politicians.

(c) *'Prevalence' Argument*

The 'prevalence' argument holds that euthanasia is already frequently practised in Australia and should be regulated by establishing a legal framework permitting VAE (raised 105 times; 5.3 per cent of PEA).²⁵⁶ It partly overlaps with the regulatory argument just presented above. The primary replies to this argument are (1) that it is like saying that, since some people will obtain high powered automatic guns whether we regulate or not, we might as well allow them to do so, and regulate the guns rather than ban them. But a prohibition clearly still will protect people from abuse and save lives (0.1 per cent of AEA);²⁵⁷ and (2) if medical practitioners are currently willing to breach a blanket prohibition against euthanasia, they will equally be willing to breach the safeguards contained within VAE legislation (raised 43 times; 1.7 per cent of AEA).²⁵⁸

(Giuseppe Scalzi); Western Australia, *Parliamentary Debates*, 22 September 2010, Legislative Council, 7043 (Michael Mischin).

- 253 Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3481–3 (Andrew Bartlett); Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1730–1 (Charles Kemp); Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3675 (Shane Stone); South Australia, *Parliamentary Debates*, Legislative Council, 14 October 2009, 3562–3 (Dennis Hood); South Australia, *Parliamentary Debates*, Legislative Council, 25 July 2001, 2074 (Nicholas Xenophon); South Australia, *Parliamentary Debates*, Legislative Council, 18 March 1998, 548 (Carmel Zollo); South Australia, *Parliamentary Debates*, House of Assembly, 16 March 1995, 1991 (Michael Atkinson).
- 254 See, eg, Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 November 1995, 2245–50 (Paul Osborne), 2254–5 (Tony De Domenico), 2271–2 (Harold Hird); Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 26 February 1997, 440 (Harold Hird); New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 2003, 3825 (Gordon Moyes); New South Wales, *Parliamentary Debates*, Legislative Council, 13 March 2002, 283 (Fred Nile), 329 (Amanda Fazio).
- 255 South Australia, *Parliamentary Debates*, Legislative Council, 4 July 2001, 1850 (Robert Sneath).
- 256 South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1711 (Tammy Franks).
- 257 Commonwealth, *Parliamentary Debates*, Senate, 12 December 1996, 7358–9 (John Herron); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5905–6 (Kevin Andrews).
- 258 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 3720–1 (Richard Lim).

3 Legalistic Perspectives

(a) 'Separation of Church and State' Argument

This argument proposes that the prohibition against EAS provides an example of the state administering theologically based laws, which violates the separation of church and state (raised nine times; 0.5 per cent of PEA).²⁵⁹ An objection to this argument is that many opponents of EAS are not motivated by religion.²⁶⁰ Lindsay Tanner²⁶¹ has also rejected this argument on the basis that whether a church takes a particular position on a matter is irrelevant when determining whether it should be prohibited or permitted by law.²⁶²

VI CONCLUSION

The passing of the *Voluntary Assisted Dying Act 2017* (Vic) is likely to lead to renewed efforts to change the law in other Australian states. This means that EAS will be the subject of ongoing political debate in parliaments around the country. As noted earlier, it is neither academics nor lobbyists who will determine whether the law on this topic changes, but rather politicians. Yet to date there has been insufficient scrutiny of the political debates about this issue and the associated arguments that have been advanced for often staunchly-defended political positions. This article addresses that gap. It comprehensively charts those debates by outlining the wide range of arguments that politicians have used to make the case for and against reform. By providing an evidence base about how politicians debate this vexed issue, we assist scholars, activists, lobbyists, politicians and the wider community to engage more deeply in Australia's EAS debate and thereby facilitate the scrutiny and critical review to which our law-makers' discussions should be subject. Annexure A provides an outline of politicians' arguments for and against EAS.

There is not scope in this paper to critically analyse the quality of the arguments nor the evidence upon which they are based. But we will make one comment in conclusion. Many of the arguments advanced by politicians on both sides of this debate are highly contentious. Consider, for example, the 'religious SOL' argument, or the secular 'suffering is ennobling' argument. These arguments represent personal beliefs that not everybody in our community shares. We will call arguments about EAS, based on personal beliefs of this kind, Personal Matters. These Personal Matters represent beliefs about which people can reasonably disagree. While some people might think that these Personal Matters provide decisive reasons against EAS, others will not believe this. We

259 Commonwealth, *Parliamentary Debates*, Senate, 18 March 1997, 1717–19 (Amanda Vanstone).

260 Commonwealth, *Parliamentary Debates*, Senate, 26 June 2008, 3481–3 (Andrew Bartlett); Commonwealth, *Parliamentary Debates*, Senate, 20 March 1997, 2091–4 (Michael Forshaw); South Australia, *Parliamentary Debates*, Legislative Council, 24 November 2010, 1727 (Bernard Finnigan).

261 ALP member of the Commonwealth House of Representatives, 1993–2010.

262 Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5917–18 (Lindsay Tanner).

should ask: may parliament allow these Personal Matters to serve as cogent grounds for not legalising EAS? Bear in mind that legislation will apply to all people in the relevant community, and not just those people who hold these particular views. Although such Personal Matters should be represented in parliamentary debates to reflect the *variety* of views held by the wider community, we do not believe that such Personal Matters should form the basis for rejecting legislative change. It is better for people to be free to make up their own minds, in their own case, about whether these Personal Matters are decisive grounds for them not to avail themselves of EAS. We suggest that parliaments should remain neutral about Personal Matters. These Personal Matters are not legitimate grounds against legalising EAS, for in keeping EAS unlawful *on those* grounds, the parliament would be taking a substantive position – a personal view of its own – about which people can rationally disagree, and this arguably oversteps the legitimate role of the parliament.²⁶³

It might be thought that the same point must hold conversely: that parliament equally takes a substantive position, and hence a personal view of its own, if EAS is decriminalised or made lawful. But this does not automatically follow, for two reasons. First, there is an asymmetry between keeping EAS unlawful on the ground of a Personal Matter, and making EAS lawful on such a ground. In keeping EAS unlawful on a Personal Matter ground, the state is imposing that ground on everyone, even though people may reasonably disagree with that ground. By contrast, in making EAS lawful on a Personal Matter ground – for instance on the basis that suffering is *not* ennobling – the state does not thereby equally impose a Personal Matter on everyone, because in this case (unlike in the former case) people have the right to make up their own minds about what to do in their own case. They are still free, for example, to reject euthanasia as an option for themselves on the ground that suffering is ennobling. The state would only be imposing a Personal Matter on everyone if it made EAS *mandatory* for everyone, not if it merely *permitted* it. In short, criminalising conduct removes a right to engage in conduct, thereby forcing everyone to refrain from engaging in it and giving no one the right to engage in it, whereas decriminalising conduct or making it lawful does not correlatively force everyone to engage in it; people still have the option of not engaging in the conduct. Greater justification is therefore required in the former case than in the latter.

The second reason parliament does not necessarily take a substantive position of its own if it makes EAS lawful is that it may not make EAS lawful (or keep it unlawful) on a Personal Matter ground at all. Instead, it may adopt a different basis for legislating (or refraining from legislating), to do with matters of public concern, which we will here call Public Matters. These matters may equally be contentious, but their public nature means that parliament has a legitimate

263 The state can legitimately take such a position, though, to reflect the views of the majority in the community. But note that this is not the same as endorsing a position on the basis of a Personal Matter, since the majority views are more likely to be based on a host of Personal Matters, and not any particular one, and we are arguing here about the role of Personal Matters in the parliamentary debates. Further, as noted above, empirical evidence suggests that the majority are in favour of decriminalising EAS, so on this basis the only defensible position for parliament to take would be legalisation.

interest in considering them and trying to resolve them. Consider, for example, the arguments presented in Part V about whether, in legalising EAS, vulnerable people can be adequately protected (the ‘slippery slope’ and ‘social risk’ arguments). Parliament has a legitimate interest in protecting vulnerable people, and so concerns about the adequacy of safeguards and about possible slippery slopes are legitimate concerns for the state to entertain. These concerns are Public Matters. Parliament’s role is to balance the competing claims of those who wish to avail themselves of EAS, and of other people who could be adversely affected if the law is changed to enable the first group to avail themselves of EAS.²⁶⁴ But note that, importantly, these Public Matters are questions that are resolvable, in principle, by good empirical research. They are different in kind from the claims about which people are free to arrive at their own personal views.²⁶⁵ It is therefore these empirical matters that should ultimately drive the debate in future parliamentary considerations of EAS. While politicians are doubtless free to express their own views about what we are here calling the Personal Matters, efforts must be made to ensure that the Public Matters are at the forefront of the debate about EAS and that the views taken about these Public Matters are informed by the latest peer-reviewed research.

We do not deny that some issues of contention will remain concerning these Public Matters and this research, particularly where statistics presented by the research may in some cases be open to differing interpretations.²⁶⁶ But it would represent enormous progress in these debates if these are the matters on which

264 See *Re Application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland Pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)* [2018] UKSC 27, [116] (Lord Mance).

265 In the case of some of the arguments, it might not always be clear to which of these two broad categories of argument a particular argument belongs. In the case of the ‘message’ argument, for instance, the claim that legalising EAS could ‘send the wrong message’ might be interpreted as a Personal Matter ground against legalisation in which the proponent of the argument against legalisation of EAS emphasises the value of human life and believes that a law allowing EAS, by its very existence, devalues human life. On the other hand, it might be interpreted as a Public Matter ground against legalisation, expressing instead the view that legalisation might have an impact on the vulnerable or elderly, making them feel that their lives are not worth living. This argument is open to empirical confirmation or disconfirmation and evokes the responsibility of parliament to balance potentially competing interests. The possibility that some arguments might fall within both categories in this way does not undermine our fundamental point that, in considering these arguments, parliaments should only entertain the issues that are genuine matters of public concern, the Public Matter arguments.

266 Elsewhere, some of the authors have argued that there is no evidence of the ‘slippery slope’ concern being a genuine concern. at least in the case of PAS, but this is not the place for us to discuss this issue: see Lindy Willmott, Andrew McGee and Ben White, ‘Four Reasons Victorian MPs Say “No” to Assisted Dying, and Why They’re Misleading’, *The Conversation* (online), 14 November 2017 <<https://theconversation.com/four-reasons-victorian-mps-say-no-to-assisted-dying-and-why-theyre-misleading-87168>>; Ben White, Andrew McGee and Lindy Willmott, ‘As Victorian MPs Debate Assisted Dying, It Is Vital They Examine the Evidence, Not Just the Rhetoric’, *The Conversation* (online), 20 September 2017 <<https://theconversation.com/as-victorian-mps-debate-assisted-dying-it-is-vital-they-examine-the-evidence-not-just-the-rhetoric-84195>>; Andrew McGee, ‘In Places Where It’s Legal, How Many People Are Ending Their Lives Using Euthanasia?’, *The Conversation* (online), 3 March 2017 <<https://theconversation.com/in-places-where-its-legal-how-many-people-are-ending-their-lives-using-euthanasia-73755>>.

parliaments focused most of their attention, leaving the Personal Matters behind and not advancing them to justify laws that will bind everyone. Indeed, since it is these Public Matters that should be at the forefront of the debate, we believe that a conscience vote is not the optimal way in which parliaments should decide whether to legalise EAS. A conscience vote implies that, contrary to what we have claimed here, whether EAS should be legalised is a Personal Matter, and that it is the Personal Matters that should drive the debate. But for the reasons we have outlined, this is not correct. Instead, it is a matter of conscience for each and every one of us whether to avail oneself of EAS – a position that, subject to the Public Matters concern, requires EAS to be made lawful so that we are all given the right to decide for ourselves, according to our own consciences. The debate about whether to legalise EAS in the first place, by contrast, should be driven by Public Matters and, for this reason, leadership is required in constructing party political positions in order to take the issue forward. With empirical studies showing the public in favour of legalising EAS, political parties have the mandate to do this. That said, we recognise that the trend of holding a conscience vote on the issue is likely to continue – in which case, we believe that members of parliament should attempt to ensure that Public Matters are the matters which drive the parliamentary debates.

ANNEXURE A

A Arguments against EAS

1 *Non-consequentialist*

(a) *Theistic*

1. 'Religious SOL' argument
2. 'Suffering serves a higher purpose' argument
3. 'EAS contravenes Australia's Judaeo-Christian social values' argument

(b) *Secular*

1. 'Secular RFL' argument
2. 'Suffering is ennobling' argument
3. 'Social cornerstone' argument
4. 'Indigenous interests' argument
5. 'Equality' argument
6. 'Privacy' argument
7. 'Message' argument
8. 'Medical compulsion' argument
9. 'Discrimination' argument
10. 'Maturity' argument

2 Consequentialist

(a) Secular

1. 'Slippery slope' argument
2. 'Duty to die' / 'Perverse altruism' arguments
3. 'Social risk' argument
4. 'Hippocratic Oath' argument
5. 'Existing practices are sufficient' argument
6. 'Marginalisation of palliative care' argument
7. 'Loss of association' argument
8. 'Limitations of medicine' argument

(b) Legalistic

1. 'Definitional' argument
2. 'Right to life' argument

B Arguments for EAS

1 Non-consequentialist

(a) Theistic

No arguments raised

(b) Secular

1. 'Pluralistic' argument
2. 'Autonomy' argument
3. 'Right to die' argument
4. 'Compassionate EAS' argument
5. 'Existing measures are inhumane' argument
6. 'Legal hypocrisy' argument
 - (i) Right to refuse treatment
 - (ii) Terminal sedation
 - (iii) Doctrine of double effect
7. 'Public support' argument
8. 'International comity' argument

2 Consequentialist

1. 'Regulatory safeguards' argument
2. 'Removes pressure from medical practitioners' argument
3. 'Prevalence' argument

3 Legalistic

1. 'Separation of church and state' argument