

Rights of the Terminally Ill Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide a legislative framework for the rights of terminally ill persons to request and receive assistance to terminate their lives voluntarily. Under this framework, a terminally ill person may be assisted by a medical practitioner to administer a substance to himself or herself. If the terminally ill person is physically unable to administer the substance, the person can nominate a person to do this. The Bill provides protection for persons providing such assistance and sets up safeguards against possible abuse of the right recognised by the Bill.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 3 months after the date of assent, unless sooner commenced by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Request for and giving of assistance

Clause 4 enables a patient with a terminal illness who is experiencing pain, suffering or distress to an unacceptable extent to request that patient's medical practitioner to assist the patient to terminate the patient's life.

Clause 5 empowers the medical practitioner (in due course) to assist the patient to terminate his or her life, or to refuse to give assistance.

Clause 6 makes it an offence for a person:

- (a) to give or promise any reward or advantage, or
- (b) to cause or threaten to cause any disadvantage, to a medical practitioner or other person:
- (c) for assisting in terminating a life, or
- (d) for refusing to assist in terminating a life, or
- (e) for the purpose of compelling or persuading the medical practitioner or other person to assist or refuse to assist in terminating a life.

This clause also prevents the gift or promise of any such reward or advantage from being legally enforced or retained.

Clause 7 sets out the conditions that must be satisfied before a medical practitioner may provide assistance under the proposed Act.

Clause 8 provides that a medical practitioner must not give assistance under the proposed Act if there are palliative care options reasonably available to the patient to alleviate the patient's pain, suffering and distress to levels acceptable to the patient.

Clause 9 deals with the situation where the patient requesting assistance under the proposed Act is physically unable to sign certificates. In this case the patient may nominate a person to sign in his or her place.

Clause 10 allows a patient who sought assistance to rescind his or her request at any time. The medical practitioner must then destroy the patient's certificate of request and note the fact on the patient's medical record.

Clause 11 makes it an offence to procure the signing or witnessing of a certificate of request by deception or improper influence. A person who commits this offence forfeits any financial

benefit that might follow from the death of the patient concerned.

Part 3 Records and reporting of death

Clause 12 sets out the information that a medical practitioner giving assistance under the proposed Act must keep as part of the patient's medical record.

Clause 13 facilitates the recording and notification of a death resulting from assistance given under the proposed Act.

Clause 14 requires a medical practitioner who gives assistance under the proposed Act to send to the State Coroner a copy of the death notification required under the *Births, Deaths and Marriages Registration Act 1995* and so much of the patient's medical record as relates to the terminal illness and death of the patient.

Clause 15 enables the State Coroner to report to the Attorney General on the operation, or any matter concerning the operation, of the proposed Act. The Attorney General must cause a copy of the report to be tabled in each House of Parliament.

Part 4 Miscellaneous

Clause 16 provides that action taken by a medical practitioner or other health care provider in accordance with the proposed Act does not constitute an offence, or an attempt or conspiracy to commit an offence, or the aiding, abetting, counselling or procuring the commission of an offence, against the *Crimes Act 1900* or any other Act or law.

Clause 17 provides that a certificate of request for assistance under the proposed Act is admissible and prima facie evidence before a court of the request contained in the certificate.

Clause 18 provides that a will, contract or other arrangement is not valid to the extent that it would affect whether a person may make or rescind a request for assistance under the proposed Act or give or refuse to give that assistance. This clause also provides that contractual obligations are not affected by the making or rescinding of a request for assistance under the proposed Act.

Clause 19 provides that insurance contracts are not affected by the making or rescinding of a request for, or the giving of, assistance under the proposed Act.

Clause 20 confers immunity from civil or criminal action and professional disciplinary action for anything done in good faith and without negligence in compliance with the proposed Act.

Clause 21 allows the Governor to make regulations for the purposes of the proposed Act.

Clause 22 confers jurisdiction on Local Courts for offences against the proposed Act.

Schedule

Schedule 1 sets out the form of certificate to be used in relation to a request for assistance under the proposed Act.