



New South Wales

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.



New South Wales

Rights of the Terminally Ill Bill 2001

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New South Wales

Rights of the Terminally Ill Bill 2001

No. , 2001

A Bill for

An Act to establish and confirm the right of a person who is terminally ill to request assistance from a medically qualified person to voluntarily terminate his or her life in a humane manner; to allow for such assistance to be given in certain circumstances without legal impediment to the person rendering the assistance; to provide procedural protection against the possibility of abuse of the rights recognised by this Act; and for related purposes.

Clause 1 Rights of the Terminally Ill Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Rights of the Terminally Ill Act 2001*. 4

2 Commencement 5

This Act commences 3 months after the date of assent, unless sooner commenced by proclamation. 6
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3 Definitions 8

In this Act: 9

assist, in relation to the death or proposed death of a patient, includes the prescribing of a substance, the preparation of a substance and the giving of a substance to the patient for self-administration, and the administration of a substance to the patient. 10
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certificate of request means a certificate in or to the effect of the form in Schedule 1 that has been completed, signed and witnessed in accordance with this Act. 14
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health care provider, in relation to a patient, includes a hospital, nursing home or other institution (including those responsible for its management) in which the patient is located for care or attention and any nurse or other person whose duties include or directly or indirectly relate to the care or medical treatment of the patient. 17
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illness includes injury or degeneration of mental or physical faculties. 22

medical practitioner means a medical practitioner resident, and entitled to practice as a medical practitioner, in the State. 23
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qualified psychiatrist means: 25

(a) a person entitled under a law of a State or Territory of the Commonwealth to practise as a specialist in the medical specialty of psychiatry, 26
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(b) a specialist whose qualifications are recognised by the Royal Australian and New Zealand College of Psychiatrists as entitling the person to fellowship of that College, or 29
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- (c) a person employed by the Commonwealth or a State or Territory of the Commonwealth, or an agency or authority of the Commonwealth or a State or Territory, as a specialist or consultant in the medical specialty of psychiatry. 1
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- terminal illness*, in relation to a patient, means an illness which in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient. 5
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| Part 2 Request for and giving of assistance | 1 |
| 4 Request for assistance to voluntarily terminate life | 2 |
| A patient who, in the course of a terminal illness, is experiencing pain, suffering or distress to an extent unacceptable to the patient may request the patient's medical practitioner to assist the patient to terminate the patient's life. | 3 4 5 6 |
| 5 Response of medical practitioner | 7 |
| A medical practitioner who receives a request referred to in section 4, if satisfied that the conditions of section 7 have been met, but subject to section 8, may assist the patient to terminate the patient's life in accordance with this Act or, for any reason and at any time, refuse to give that assistance. | 8 9 10 11 12 |
| 6 Response of medical practitioner etc not to be influenced by extraneous considerations | 13 14 |
| (1) A person must not give or promise any reward or advantage (other than a reasonable payment for medical services), or by any means cause or threaten to cause any disadvantage, to a medical practitioner or other person for assisting or refusing to assist, or for the purpose of compelling or persuading the medical practitioner or other person to assist or refuse to assist, in the termination of a patient's life under this Act. | 15 16 17 18 19 20 21 |
| Maximum penalty: 100 penalty units. | 22 |
| (2) A person to whom a reward or advantage is promised or given, as referred to in subsection (1), does not have the legal right or capacity to receive or retain the reward or accept or exercise the advantage, whether or not, at the relevant time, he or she was aware of the promise or the intention to give the reward or advantage. | 23 24 25 26 27 |
| 7 Conditions under which medical practitioner may assist | 28 |
| (1) A medical practitioner may assist a patient to end his or her life only if all of the following conditions are met: | 29 30 |

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| (a) | the patient has attained the age of 18 years, | 1 |
| (b) | the medical practitioner is satisfied, on reasonable grounds, that: | 2 |
| (i) | the patient is suffering from an illness that will, in the normal course and without the application of extraordinary measures, result in the death of the patient, | 3 4 5 6 |
| (ii) | in reasonable medical judgment, there is no medical measure acceptable to the patient that can reasonably be undertaken in the hope of effecting a cure, | 7 8 9 |
| (iii) | any medical treatment reasonably available to the patient is confined to the relief of pain, suffering and distress (or any one or more of them) with the object of allowing the patient to die a comfortable death, | 10 11 12 13 |
| (c) | two other persons, neither of whom is a relative or employee of, or a member of the same medical practice as, the first medical practitioner or each other: | 14 15 16 |
| (i) | one of whom is a medical practitioner who holds prescribed qualifications, or has prescribed experience, in the treatment of the terminal illness from which the patient is suffering, and | 17 18 19 20 |
| (ii) | the other who is a qualified psychiatrist, | 21 |
| | have examined the patient, | 22 |
| (d) | the medical practitioner referred to in paragraph (c) (i) has confirmed: | 23 24 |
| (i) | the first medical practitioner's opinion as to the existence and seriousness of the illness, and | 25 26 |
| (ii) | that the patient is likely to die as a result of the illness, and | 27 28 |
| (iii) | the first medical practitioner's prognosis, | 29 |
| (e) | the qualified psychiatrist referred to in paragraph (c) (ii) has confirmed that the patient is not suffering from a treatable clinical depression in respect of the illness, | 30 31 32 |
| (f) | the illness is causing the patient severe pain or suffering, | 33 |
| (g) | the medical practitioner has informed the patient of the nature of the illness and its likely course, and the medical treatment, including palliative care, counselling and psychiatric support and extraordinary measures for keeping the patient alive, that might be available to the patient, | 34 35 36 37 38 |
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- (h) after being informed as referred to in paragraph (g), the patient indicates to the medical practitioner that the patient has decided to end his or her life, 1
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- (i) the medical practitioner is satisfied that the patient has considered the possible implications of the patient's decision to his or her spouse or family or both, 4
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- (j) the medical practitioner is satisfied, on reasonable grounds, that the patient is of sound mind and that the patient's decision to end his or her life has been made freely, voluntarily and after due consideration, 7
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- (k) the patient, or a person acting on the patient's behalf in accordance with section 9, has, not earlier than 7 days after the patient has indicated to his or her medical practitioner as referred to in paragraph (h), signed that part of the certificate of request required to be completed by or on behalf of the patient, 11
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- (l) the medical practitioner has witnessed the patient's signature on the certificate of request or that of the person who signed on behalf of the patient, and has completed and signed the relevant declaration on the certificate, 16
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- (m) the certificate of request has been signed in the presence of the patient and the first medical practitioner by another medical practitioner (who may be the medical practitioner referred to in paragraph (c) (i) or any other medical practitioner) after that medical practitioner has discussed the case with the first medical practitioner and the patient and is satisfied, on reasonable grounds, that the certificate is in order, that the patient is of sound mind and the patient's decision to end his or her life has been made freely, voluntarily and after due consideration, and that the above conditions have been complied with, 20
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- (n) where, in accordance with subsection (4), an interpreter is required to be present at the signing of the certificate of request, the certificate of request has been signed by the interpreter confirming the patient's understanding of the request for assistance, 31
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- (o) the medical practitioner has no reason to believe that he or she, the countersigning medical practitioner or a close relative or associate of either of them, will gain a financial or other advantage (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the patient, 1
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- (p) not less than 48 hours has elapsed since the signing of the completed certificate of request, 7
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- (q) at no time before assisting the patient to end his or her life had the patient given to the medical practitioner an indication that it was no longer the patient's wish to end his or her life, 9
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- (r) the medical practitioner: 12
(i) provides the assistance himself or herself, or 13
(ii) is present while the assistance is given, 14
and remains with the patient until the death of the patient. 15
- (2) In assisting a patient under this Act a medical practitioner is to be guided by appropriate medical standards and such guidelines, if any, as are prescribed, and must consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances. 16
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- (3) Where a patient's medical practitioner has no special qualifications in the field of palliative care, the information to be provided to the patient on the availability of palliative care must be given by a medical practitioner (who may be the medical practitioner referred to in subsection (1) (c) (i) or any other medical practitioner) who has such special qualifications in the field of palliative care as are prescribed. 21
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- (4) A medical practitioner must not assist a patient under this Act where the medical practitioner or any other medical practitioner or qualified psychiatrist who is required under subsection (1) or (3) to communicate with the patient does not share the same first language as the patient, unless there is present at the time of that communication and at the time the certificate of request is signed by or on behalf of the patient, an interpreter who holds a prescribed professional qualification for interpreters in the first language of the patient. 27
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| 8 Palliative care | 1 |
| (1) A medical practitioner must not assist a patient under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in section 7 (1) (c) (i), 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. | 2 3 4 5 6 |
| (2) Where a patient has requested assistance under this Act and has subsequently been provided with palliative care that brings about the remission of the patient's pain or suffering, the medical practitioner must not, in pursuance of the patient's original request for assistance, assist the patient under this Act. If subsequently the palliative care ceases to alleviate the patient's pain and suffering to levels acceptable to the patient, the medical practitioner may continue to assist the patient under this Act only if the patient indicates to the medical practitioner the patient's wish to proceed in pursuance of the request. | 7 8 9 10 11 12 13 14 15 |
| 9 Patient who is unable to sign certificate of request | 16 |
| (1) If a patient who has requested his or her medical practitioner to assist the patient to end the patient's life is physically unable to sign the certificate of request, any person who has attained the age of 18 years, other than: | 17 18 19 20 |
| (a) the medical practitioner, or | 21 |
| (b) a medical practitioner or qualified psychiatrist referred to in section 7 (1) (c), or | 22 23 |
| (c) a person who is likely to receive a financial benefit directly or indirectly as a result of the death of the patient, | 24 25 |
| may, at the patient's request and in the presence of the patient and both the medical practitioner witnesses (and where, in accordance with section 7 (4), an interpreter has been used, also in the presence of the interpreter), sign the certificate on behalf of the patient. | 26 27 28 29 |
| (2) A person who signs a certificate of request on behalf of a patient forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the patient. | 30 31 32 |
| 10 Right to rescind request | 33 |
| (1) Despite anything in this Act, a patient may rescind a request for assistance under this Act at any time and in any manner. | 34 35 |

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| (2) Where a patient rescinds a request, the patient's medical practitioner must, as soon as practicable, destroy the certificate of request and note that fact on the patient's medical record. | 1 2 3 |
| 11 Improper conduct | 4 |
| (1) A person must not, by deception or improper influence, procure the signing or witnessing of a certificate of request. Maximum penalty: 200 penalty units or imprisonment for 4 years. | 5 6 7 |
| (2) A person found guilty of an offence against subsection (1) forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the patient, whether or not the death results from assistance given under this Act. | 8 9 10 11 |

Part 3 Records and reporting of death 1

12 Medical records to be kept 2

A medical practitioner who, under this Act, assists a patient to terminate the patient's life must file and, subject to this Act, keep the following as part of the medical record of the patient: 3
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- (a) a note of any oral request of the patient for such assistance, 6
- (b) the certificate of request, 7
- (c) a record of the opinion of the patient's medical practitioner as to the patient's state of mind at the time of signing the certificate of request and certification of the medical practitioner's opinion that the patient's decision to end his or her life was made freely, voluntarily and after due consideration, 8
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- (d) the reports of the medical practitioner and qualified psychiatrist referred to in section 7 (1) (c), 14
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- (e) a note by the patient's medical practitioner: 16
 - (i) certifying as to the independence of the medical practitioner and qualified psychiatrist referred to in section 7 (1) (c) and the residential and period of practice qualifications of the patient's medical practitioner, and 17
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 - (ii) indicating that all requirements under this Act have been met, and 22
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 - (iii) indicating the steps taken to carry out the request for assistance, and 24
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 - (iv) including a notation of the substance prescribed by the medical practitioner, 26
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and such other information, if any, as is prescribed. 28

Maximum penalty: 100 penalty units or imprisonment for 2 years. 29

13 Certification as to death 30

- (1) A medical practitioner who, under this Act, assists a patient to end the patient's life is to be taken, for the purposes of section 39 of the *Births, Deaths and Marriages Registration Act 1995*, to have been responsible for the patient's medical care immediately before death. 31
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- (2) A death as the result of assistance given under this Act is not, for that reason only, to be taken for the purposes of the application of Parts 2A and 3 of the *Coroners Act 1980* to be violent or unnatural, or be a death having occurred during, or as a result of, an anaesthetic. 1
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- 14 Medical record to be sent to coroner** 5
- (1) As soon as practicable after the death of a patient as the result of assistance given under this Act, the medical practitioner who gave the assistance must send to the State Coroner a copy of the notice given to the Registrar under section 39 of the *Births, Deaths and Marriages Registration Act 1995* and a copy of so much of the medical record of the patient (including that required by section 12 to be kept) as relates to the terminal illness and death of the patient. 6
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- (2) As soon as practicable after the end of 30 June each year the State Coroner must advise the Attorney General of the number of patients who died as a result of assistance given under this Act during the year ending on that 30 June. The Attorney General must cause a report of that number to be tabled in each House of Parliament. 13
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- 15 Coroner may report on operation of Act** 18
- The State Coroner may, at any time and in his or her absolute discretion, report to the Attorney General on the operation, or any matter affecting the operation, of this Act and the Attorney General must cause a copy of the report to be tabled in each House of Parliament within 3 sitting days of each House. 19
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Part 4 Miscellaneous

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16 Construction of Act

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- (1) Despite any provision of the *Crimes Act 1900* or any other Act or law, an action taken in accordance with this Act by a medical practitioner or by a health care provider on the instructions of a medical practitioner does not constitute an offence against the *Crimes Act 1900* or any other Act or law, or an attempt to commit such an offence, a conspiracy to commit such an offence, or an offence of aiding, abetting, counselling or procuring the commission of such an offence. 3
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- (2) Assistance given in accordance with this Act by a medical practitioner or by a health care provider on the instructions of a medical practitioner is taken to be medical treatment for the purposes of the law. 10
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17 Certificate of request is evidence

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A document purporting to be a certificate of request is, in any proceedings before a court, admissible in evidence and is prima facie evidence of the request by the person who purported to sign it, or on whose behalf it purports to have been signed, for assistance under this Act. 15
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18 Effect on construction of wills, contracts and statutes

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- (1) Any will, contract or other agreement, whether or not in writing or executed or made before or after the commencement of this Act, to the extent that it affects whether a person may make or rescind a request for assistance under this Act, or the giving of such assistance, is not valid. 21
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- (2) An obligation owing under a contract, whether made before or after the commencement of this Act, is not to be conditioned on or affected by the making or rescinding of a request for assistance under this Act or the giving of that assistance. 26
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| 19 Insurance or annuity policies | 1 |
| The sale, procurement or issuing of any life, health or accident insurance or annuity policy or the rate charged for such a policy is not to be conditioned on or affected by the making or rescinding of, or failure to make, a request for assistance under this Act or the giving of that assistance. | 2 3 4 5 6 |
| 20 Immunities | 7 |
| (1) A person is not subject to civil or criminal action or professional disciplinary action for anything done in good faith and without negligence in compliance with this Act, including being present when a patient takes a substance prescribed for or supplied to the patient as the result of assistance under this Act to end the patient's life. | 8 9 10 11 12 |
| (2) A professional organisation or association or health care provider must not subject a person to censure, discipline, suspension, loss of licence, certificate or other authority to practise, loss of privilege, loss of membership or other penalty for anything that, in good faith and without negligence, was done or refused to be done by the person and which may under this Act lawfully be done or refused to be done. | 13 14 15 16 17 18 |
| (3) A request by a patient for assistance under this Act, or giving of such assistance in good faith by a medical practitioner in compliance with this Act, does not constitute neglect for any purpose of law or alone constitute or indicate grounds for the making of orders under the <i>Guardianship Act 1987</i> . | 19 20 21 22 23 |
| (4) A health care provider is not under any duty, whether by contract, statute or other legal requirement, to participate in the provision to a patient of assistance under this Act. | 24 25 26 |
| (5) If a health care provider is unable or unwilling to carry out a direction of a medical practitioner for the purpose of the medical practitioner assisting a patient under this Act and the patient transfers his or her care to another health care provider, the former health care provider must, on request, transfer a copy of the patient's relevant medical records to the new health care provider. | 27 28 29 30 31 32 |
| 21 Regulations | 33 |
| The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. | 34 35 36 37 |

Clause 22 Rights of the Terminally Ill Bill 2001

Part 4 Miscellaneous

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| 22 Nature of proceedings for offences | 1 |
| (1) Except as provided by subsection (2), proceedings for an offence under this Act may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. | 2 3 4 |
| (2) Proceedings for an offence under section 11 of this Act are to be dealt with on indictment. | 5 6 |

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| Schedule 1 | 1 |
| (Section 7) | 2 |
| Form 1 Request for assistance to end my life in a humane and dignified manner | 3 |
| (Rights of the Terminally Ill Act 2001, section 7) | 4 |
| I, | 5 |
| have been advised by my medical practitioner that I am suffering from an illness that will ultimately result in my death and this has been confirmed by a second medical practitioner. | 6 |
| | 7 |
| | 8 |
| | 9 |
| I have been fully informed of the nature of my illness and its likely course and the medical treatment, including palliative care, counselling and psychiatric support and extraordinary measures that may keep me alive, that is available to me and I am satisfied that there is no medical treatment reasonably available that is acceptable to me in my circumstances. | 10 |
| | 11 |
| | 12 |
| | 13 |
| | 14 |
| I request my medical practitioner to assist me to terminate my life in a humane and dignified manner. | 15 |
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| I understand that I have the right to rescind this request at any time. | 17 |
| Signed: | 18 |
| Dated: | 19 |

Schedule 1

Declaration of witnesses 1

- I declare that: 2
- (a) the person signing this request is personally known to me, and 3
 - (b) he/she is a patient under my care, and 4
 - (c) he/she signed the request in my presence and in the presence of the second witness to this request, and 5
6
 - (d) I am satisfied that he/she is of sound mind and that his/her decision to end his/her life has been made freely, voluntarily and after due consideration. 7
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Signed: 9
(patient's medical practitioner) 10

- I declare that: 11
- (a) the person signing this request is known to me, and 12
 - (b) I have discussed his/her case with him/her and his/her medical practitioner, and 13
 - (c) he/she signed the request in my presence and in the presence of his/her medical practitioner, and 14
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 - (d) I am satisfied that he/she is of sound mind and that his/her decision to end his/her life has been made freely, voluntarily and after due consideration, and 16
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 - (e) I am satisfied that the conditions of section 7 of the Act have been or will be complied with. 18
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Signed: 20
(second medical practitioner) 21

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| [Where under section 7 (4) an interpreter is required to be present] | 1 |
| Declaration of interpreter | 2 |
| I declare that: | 3 |
| (a) the person signing this request or on whose behalf it is signed is known to me, and | 4 5 |
| (b) I am an interpreter qualified to interpret in the first language of the patient as required by section 7 (4), and | 6 7 |
| (c) I have interpreted for the patient in connection with the completion and signing of this certificate, and | 8 9 |
| (d) in my opinion, the patient understands the meaning and nature of this certificate. | 10 11 |
| Signed: | 12 |
| (qualified interpreter) | 13 |