



New South Wales

Voluntary Assisted Dying Bill 2017

Explanatory note

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

This Bill is co-sponsored by the Hon T J Khan MLC, Dr Mehreen Faruqi MLC and the Hon L J Voltz MLC.

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 end their lives voluntarily. Under this framework, certain terminally ill persons may be assisted by their medical practitioners and other qualified health practitioners to administer a substance to themselves.

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 6 months after the date of assent to the proposed Act, unless sooner commenced by proclamation.

Part 2 Interpretation and key concepts

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

Clause 4 defines *terminal illness* to mean an illness that will, in reasonable medical judgment, result in the death of the person suffering from the illness within the next 12 months.

Clause 5 defines when a medical practitioner *assists* or *provides assistance* to end a patient's life for the purposes of the proposed Act. Assistance is provided when the practitioner does any of the following for the purpose of, or in connection with, ending the patient's life:

- (a) prescribes and prepares an authorised substance for a patient,
- (b) gives an authorised substance to the patient for self-administration,
- (c) if the patient is physically incapable of self-administering a lethal dose of an authorised substance—administers the substance to the patient or gives the substance to a medical practitioner or nurse who has certain qualifications.

Clause 6 defines *authorised substance* to mean a substance that is declared by the regulations to be an authorised substance for the purposes of the proposed Act.

Clause 7 defines *decision-making capacity* in relation to a patient's request for assistance as having the capacity to:

- (a) understand the facts relevant to the patient's illness and condition, and
- (b) understand the medical treatment and other options available to the patient, and
- (c) assess the consequences of the patient's decision to request the assistance and understand the impact of those consequences on the patient, and
- (d) communicate the patient's decisions (whether by speaking, sign language or any other means).

Clause 8 defines when a person is *closely associated* with another person for the purposes of the proposed Act. A person is closely associated with another person if the person is a close relative or employee of the other person or if both persons are medical practitioners who are members of the same medical practice.

Part 3 Request for and provision of assistance

Division 1 Request for assistance

Clause 9 establishes the right of an eligible person to request assistance from a medical practitioner to end the person's life. A person is eligible to make a request for assistance if:

- (a) the person is at least 25 years of age, and
- (b) the person is an Australian citizen, or a permanent resident of Australia, and is ordinarily resident in New South Wales, and
- (c) the person is suffering from a terminal illness, and
- (d) the medical practitioner (referred to in the proposed Act as the *primary medical practitioner*) has informed the person that, in the medical practitioner's opinion, the person is suffering from a terminal illness, and
- (e) as a consequence of the terminal illness, the person has been experiencing severe pain, suffering or physical incapacity to an extent unacceptable to the person.

The primary medical practitioner must not be a close relative of the person who makes the request. A person who makes a request for assistance is referred to in the proposed Act as the *patient*.

Clause 10 makes it clear that a patient who has requested assistance may rescind that request at any time. If a health care provider becomes aware that the patient has rescinded a request, the health care provider must immediately notify the primary medical practitioner of the rescission. If a request is rescinded, the primary medical practitioner must note that fact on the patient's medical record and on each page of the formal request certificate.

Division 2 Provision of assistance

Clause 11 provides that the primary medical practitioner may assist the patient to end the patient's life if the practitioner is satisfied that the requirements of the proposed Act relating to the request for assistance have been met.

Clause 12 provides for a cooling-off period of 48 hours, commencing on the completion of the request certificate, during which the primary medical practitioner must not provide assistance to a patient to end the patient's life.

Clause 13 requires the primary medical practitioner, in providing assistance under the proposed Act, to be guided by appropriate medical standards and pharmaceutical information about the relevant authorised substance and any guidelines prescribed by regulations made under the proposed Act.

Clause 14 provides that the primary medical practitioner must not provide the assistance if he or she knows that any financial or other advantage is likely to be gained by certain persons participating in the provision of assistance, or their associates, as a result of the death of the patient.

Clause 15 makes it an offence for a person to engage in conduct that influences the provision of assistance under the proposed Act. Such conduct involves giving or promising any financial advantage (other than a reasonable payment for medical services), or causing or threatening to cause any disadvantage, to any person participating in the provision of the assistance.

The clause also makes it an offence for a person to accept any financial or other advantage (other than a reasonable payment for medical services) for assisting or refusing to assist in the provision of assistance under the proposed Act.

Clause 16 makes it an offence to cause a person, by deception or improper influence, to make a request for assistance.

Part 4 Preconditions to provision of assistance

Part 4 sets out the requirements that must be met before a primary medical practitioner may assist a patient to end the patient's life.

Clause 17 requires the patient to be independently examined by his or her primary medical practitioner and one other medical practitioner (the *secondary medical practitioner*). The secondary medical practitioner must be a specialist in relation to the diagnosis or treatment of the relevant terminal illness and must not be closely associated with the primary medical practitioner or a close relative of the patient.

Clause 18 requires the primary medical practitioner to form an opinion about the patient's terminal illness and prognosis, and requires the secondary medical practitioner to confirm the opinion.

Clause 19 requires the primary medical practitioner to provide to the patient certain information relating to the patient's terminal illness, available treatment, consequences of the administration of the authorised substance and the right to rescind the request for assistance. The patient must, after receiving the information, indicate that the patient's decision to request assistance to end his or her life still stands.

Clause 20 requires the patient to be examined and assessed by an independent psychiatrist or psychologist. The psychiatrist or psychologist must provide to the primary and secondary medical practitioners a report of the assessment. The primary medical practitioner must not provide assistance to the patient under the proposed Act unless the qualified psychiatrist or qualified psychologist makes an assessment that the patient has decision-making capacity in relation to the request for assistance and that the patient's decision to request the assistance has been made freely, voluntarily and after due consideration.

Clause 21 requires the primary medical practitioner to provide to the secondary medical practitioner and qualified psychiatrist or qualified psychologist any previous reports and opinions

relating to the patient that were given to the primary medical practitioner by other secondary medical practitioners or qualified psychiatrists or qualified psychologists.

Clause 22 requires a formal certificate to be completed confirming the patient's request for assistance at least 7 days after the initial request is made. An audio-visual record (an *audio-visual request*) may be made instead of the request certificate if the patient is physically unable to sign the certificate or is unable to communicate with reasonable fluency in English.

Clause 23 requires an interpreter to be present at the time of any communication between the patient and certain other participants for the purposes of the Part, and during the signing of the request certificate or making of the audio-visual request, if the patient and other person are unable to communicate with each other with reasonable fluency in any language.

Part 5 Supreme Court review of requests

Clause 24 enables a close relative of a patient to apply to the Supreme Court for an order that a request certificate is not an effective request certificate for the purposes of the proposed Act. The Court may make an order if satisfied that the patient was not suffering from a terminal illness, was not at least 25 years old, was neither an Australian citizen nor a permanent Australian resident or was not ordinarily resident in New South Wales, that he or she did not have decision-making capacity in relation to the request or that he or she did not make the decision to request the assistance freely, voluntarily and after due consideration. The Supreme Court may make such other orders (including interim orders pending the determination of the application) as it considers necessary to prevent action being taken in reliance on the request certificate.

Clause 25 makes provision with respect to the parties to an application for an order.

Clause 26 provides that if an order is made under the Part in respect of a request certificate, the certificate is not to be treated as a request certificate for the purposes of the proposed Act. However, the order does not prevent the making of a further request or the provision of assistance to the patient after the requirements of the proposed Act have been met with respect to the further request.

Clause 27 provides that the Part does not limit the jurisdiction of the Supreme Court.

Part 6 Effect of Act on other rights and obligations

Clause 28 provides that a health care facility operator, health care provider or other person is not under any duty to participate in the provision of assistance under the proposed Act. Any health care facility operator or health care provider who is unable or unwilling to participate must, if requested to do so by the patient, transfer the patient's medical records to another health care provider.

Clause 29 protects certain persons from criminal and civil liability for participating, or refusing to participate, in the provision of assistance under the proposed Act. A death resulting from the lawful provision of assistance under the proposed Act is not to be regarded as suicide for the purposes of a provision of the *Crimes Act 1900* that relates to aiding and abetting a suicide. The use of force to prevent the making of a request, or the provision of assistance, under the proposed Act is not authorised by this clause or by section 574B of the *Crimes Act 1900* (which otherwise provides for the lawful use of force for the prevention of suicide). The clause authorises the destruction of unused authorised substances, but no other dealing with such substances.

Clause 30 provides that a will, contract or other agreement 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 provide or refuse to provide that assistance. This clause also provides that a provision of a contract or other agreement is void to the extent that it purports to exclude or limit liability of a party to the contract in the event of a person making or rescinding a request for, or receiving or lawfully providing, assistance under the proposed Act.

Part 7 Records and reporting of death

Clause 31 sets out the records that a primary medical practitioner providing assistance under the proposed Act must make and keep as part of the patient's medical record.

Clause 32 extends the application of provisions of the *Coroners Act 2009* (including, in particular, provisions relating to the reporting of deaths and the conferral of jurisdiction to hold inquests) to deaths resulting from assistance provided under the proposed Act.

Clause 33 facilitates the recording and notification of a death resulting from assistance provided under the proposed Act.

Clause 34 requires a primary medical practitioner who provides assistance under the proposed Act to send to the Voluntary Assisted Death Review Board established under Part 8 (the **Review Board**) a copy of the death notification required under the *Births, Deaths and Marriages Registration Act 1995* and any part of the patient's medical record that relates to the terminal illness and death of the patient.

Part 8 Voluntary Assisted Death Review Board

Clause 35 provides for the establishment and composition of the Review Board.

Clause 36 provides for the functions of the Review Board, including the review of deaths that occur as a result of assistance provided under the proposed Act, reporting to Parliament on matters relating to the exercise of the functions of the Board, communicating breaches of the proposed Act to appropriate authorities and promoting research into the operation of the Act.

Clause 37 provides for the employment and use of the services of staff and consultants to assist the Review Board in exercising its functions.

Clause 38 requires the Review Board to review each death of a patient that occurs as a result of assistance provided under the proposed Act. In conducting the review, the Review Board is to have regard to the notice of death, and medical records, provided by the primary medical practitioner in relation to the patient.

Clause 39 allows the Review Board to require a person to provide information or documents for the purpose of conducting a review. It is an offence to fail to comply with such a requirement or to provide false or misleading information in response to such a requirement.

Clause 40 provides for the referral to appropriate authorities of matters relating to breaches of the proposed Act.

Clause 41 provides for the reporting by the Board on matters relating to the Board's functions to each House of Parliament and to the Minister. **Clause 42** provides for the reporting procedure.

Clause 43 makes it an offence (with certain exceptions) to disclose to any person any information obtained in connection with the administration or execution of the proposed Act or any other Act conferring or imposing functions on the Review Board.

Part 9 Miscellaneous

Clause 44 provides that a request certificate, or an audio-visual request, for assistance under the proposed Act is admissible and prima facie evidence before a court of the request for that assistance.

Clause 45 allows the Governor to make regulations for the purposes of the proposed Act.

Clause 46 confers jurisdiction on the Local Court for offences against the proposed Act (other than offences against section 15 or 16).

Clause 47 provides for a review of the proposed Act by the Minister after the period of 5 years from the commencement of the proposed Act.

Schedule 1 Form

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

Schedule 2 Constitution and procedure of Review Board

Schedule 2 contains provisions relating to the members and procedure of the Review Board.

Schedule 3 Amendment of other Acts

Schedule 3 makes consequential amendments to other Acts. The Schedule includes an amendment to the *Coroners Act 2009* to require the State Coroner to report to the Attorney General in relation to deaths resulting from the provision of assistance under the proposed Act. An amendment is also made to the *Criminal Procedure Act 1986* to provide for an otherwise indictable offence against proposed section 15 or 16 to be dealt with summarily unless the prosecutor elects otherwise. The Schedule also includes an amendment to ensure that guardians appointed under the *Guardianship Act 1987* may not exercise any function of making or rescinding a request for assistance under the proposed Act.