

Medical Services (Dying with Dignity) Bill 2017

A Bill for an Act relating to the provision of medical services to assist terminally ill people to die with dignity, and for related purposes.

NotKhrushchevsGhost MP & MrUnited12

Written by Senator Mtmdog

Explanatory memorandum:

This bill puts in place the means for those with terminal illnesses to be assisted by medical practitioners to die with dignity. The qualifications for this are rigorously tested, the involvement of multiple medical practitioners provide the greatest level of counselling relevant to provision of services. The bill provides legal protection for those who do provide dying with dignity means.

Second Reading Speech:

Dying is part of life why do we do everything we can to keep people alive when they don't want to be here any longer and they have no quality of life. Passage of this bill would prevent unnecessary suffering for terminally ill patients who wish to take control over the manner and timing of their death. For terminally ill patients, the option to control the manner and timing of one's death provides comfort and reassurance. "Sanctity of Life" arguments may be relevant to those with strong religious beliefs, but they should not be inflicted on others. End of life choices are already available in four American states and other European legislatures. In spite of scaremongering by opponents, there is no evidence of abuse. If we have made peace with death, we should be allowed to go and be assisted if we cannot do it ourselves. Community support now sits at around 80%. Regardless of their own personal or religious views it is incumbent on our parliamentary representatives to listen to what the average Australian wants in relation to Voluntary Euthanasia legislation".

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The AustraliaSim Parliament enacts the following

Part 1—Preliminary

1 Short title

This Act may be cited as the *Medical Services (Dying with Dignity) Act 2017*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Objects of this Act

The objects of this Act are:

- (a) to recognise the right of a mentally competent adult who is suffering intolerably from a terminal illness to request a medical practitioner to provide medical services that allows the person to end his or her life peacefully, humanely and with dignity; and
- (b) to grant a medical practitioner who provides such services immunity from liability in civil, criminal and disciplinary proceedings.

4 Definitions

In this Act:

Australian resident means an individual who resides in Australia and who is an Australian citizen (within the meaning of the *Australian Citizenship Act 2007*).

benefit includes any advantage and is not limited to property.

Certificate of Request means a document in or to the effect of the form in Schedule 1 that has been completed, signed and witnessed in accordance with this Act.

dying with dignity medical service: see section 5.

illness includes disease, injury and degeneration of mental or physical faculties.

medical practitioner means a person who:

- (a) is registered or licensed as a medical practitioner under a law of a State or Territory; and

- (b) has been entitled to practise as a medical practitioner in Australia for a continuous period of not less than 5 years.

Secretary means the Secretary of the Department.

terminal illness, in relation to a person, means an illness which, in reasonable medical judgement will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the person, result in the death of the person.

5 Meaning of *dying with dignity medical service*

- (1) A *dying with dignity medical service* means a medical service provided by a medical practitioner to a person to enable the person to end his or her life in a humane manner.
- (2) Without limiting subsection (1), such services include:
- (a) the giving of information to the person; and
 - (b) the prescribing of a substance to the person; and
 - (c) the preparation of a substance for the person; and
 - (d) the giving of a substance to the person for self-administration; and
 - (e) the administration of a substance to the person at the person's request.

6 Constitutional basis for this Act

This Act relies on:

- (a) the Commonwealth's legislative powers under paragraph 51(xxiiiA) of the Constitution; and
- (b) any implied legislative powers of the Commonwealth.

7 Additional operation of this Act

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act has, by force of this subsection, the effect it would have if its operation were, by
- express provision, confined to a medical practitioner employed by a constitutional corporation.
- (3) This Act has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place wholly or partly in a Territory.
- (4) In this section:

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

8 Act binds the Crown

This Act binds the Crown in each of its capacities.

9 Extension to external Territories

This Act extends to every external Territory.

Part 2—Dying with dignity medical services

10 Request to receive dying with dignity medical services

A person who, in the course of a terminal illness, is experiencing pain, suffering, distress or indignity to an extent unacceptable to the person, may request a medical practitioner to provide dying with dignity medical services to the person for the purpose of ending his or her life.

11 Provision of dying with dignity medical services

- (1) This section applies if a person has made a request under section 10 to a medical practitioner.
- (2) The medical practitioner may:
 - (a) refuse to provide dying with dignity medical services to the person for any reason and at any time; or
 - (b) if satisfied that all of the conditions set out in section 12 are met—provide dying with dignity medical services to the person.

12 Pre-conditions to providing dying with dignity medical services

- (1) The conditions are:
 - (a) the person is at least 18 years of age; and
 - (b) the person is an Australian resident; and
 - (c) the medical practitioner (the *first medical practitioner*) is satisfied, on reasonable grounds, that:
 - (i) the person is suffering from a terminal illness; and
 - (ii) in reasonable medical judgement, there is no medical measure acceptable to the person that can reasonably be undertaken in the hope of effecting a cure; and
 - (iii) any medical treatment reasonably available to the person is limited to the relief of pain, suffering, distress or indignity with the object of allowing the person to die a comfortable death; and
 - (d) another medical practitioner (the *second medical practitioner*) who holds qualifications or experience in the treatment of the terminal illness from which the person is suffering has examined the person and has confirmed:
 - (i) the first medical practitioner's opinion as to the existence and seriousness of the illness; and
 - (ii) that the person is likely to die as a result of the illness; and
 - (iii) the first medical practitioner's prognosis; and 12
 - (e) a further medical practitioner (the *third medical practitioner*) who is a qualified psychiatrist has examined the person and has confirmed that the person is not suffering from a treatable clinical depression in respect of the illness; and
 - (f) the second and third medical practitioners are not a relative or employee of, or a member of the same medical practice as, the first medical practitioner or of other; and

- (g) the illness is causing the person severe pain, suffering, distress or indignity; and
 - (h) the first medical practitioner has informed the person of:
 - (i) the nature of the illness and its likely course; and
 - (ii) the medical treatment, including palliative care, counselling, psychiatric services and extraordinary measures for keeping the person alive that may be available to the person; and
 - (i) after being informed of the matters in paragraph (h), the person has indicated to the first medical practitioner that the person has decided to end his or her life; and
 - (j) the first medical practitioner is satisfied that the person has considered the possible implications of the person's decision on his or her family; and
 - (k) the first medical practitioner is satisfied, on reasonable grounds, that the person is of sound mind and that the person's decision to end his or her life has been made freely, voluntarily and after due consideration; and
 - (l) at least 7 days after the person makes the indication referred to in paragraph (i) the person, or another person acting on his or her behalf in accordance with section 14, has signed the relevant part of the Certificate of Request; and
 - (m) the Certificate of Request has been signed in the presence of the person and the first medical practitioner by another medical practitioner who:
 - (i) has discussed the case with the first medical practitioner and the person; and
 - (ii) is satisfied, on reasonable grounds, that the Certificate of Request is in order; and
 - (iii) is satisfied that the person is of sound mind; and
 - (iv) is satisfied that the person's decision to end his or her life has been made freely, voluntarily and after due consideration; and
 - (v) is satisfied that the conditions in paragraph (a) to (l) have been complied with; and
 - (n) if, in accordance with subsection 13(2), an interpreter is required to be present at the signing of the Certificate of Request, the Certificate has been signed by the interpreter confirming the person's understanding of the request for the provision of dying with dignity medical services; and
 - (o) at least 48 hours have elapsed since the person signed the Certificate of Request; and
 - (p) at no time before providing dying with dignity medical services to the person has the person given to the first medical practitioner an indication that it is no longer the person's wish to end his or her life; and
 - (q) the first medical practitioner himself or herself provides the dying with dignity medical services to the person and remains present until the death of the person.
- (2) If the first medical practitioner has no special qualifications in the field of palliative care, a further condition is that the information to be provided to the person on the availability of palliative care options in accordance with subparagraph (1)(h)(ii) must be given

by another medical practitioner who has such special qualifications in the field.

- (3) The medical practitioner referred to in paragraph (1)(m) and subsection (2) may be the same medical practitioner referred to in paragraph (1)(d) or (1)(e).

13 Additional requirements

- (1) In providing dying with dignity medical services under this Act, a medical practitioner:
 - (a) must be guided by appropriate medical standards and such guidelines (if any) as are prescribed; and
 - (b) must consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances.
- (2) A medical practitioner must not provide dying with dignity services under this Act if the medical practitioner, or any other medical practitioner referred to in section 12 who is required to communicate with the person, does not share the same first language as the person 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 person, an interpreter who holds a prescribed professional qualification for interpreters in the first language of the person.
- (3) A medical practitioner must not provide dying with dignity services under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in paragraph 12(1)(d), there are palliative care options reasonably available to the person to alleviate the person's pain or suffering to a level acceptable to the person.
- (4) If a person:
 - (a) requests a medical practitioner to provide dying with dignity medical services to the person; and
 - (b) subsequently receives palliative care that brings about the remission of the person's pain or suffering; the medical practitioner must not provide dying with dignity medical services to the person unless the person indicates to the medical practitioner the person's wish to proceed with the request.

14 Rules if a person is unable to sign Certificate of Request

- (1) If a person who has requested a medical practitioner to provide dying with dignity medical services is physically unable to sign the Certificate of Request, a person who is not one of the following may, at the person's request and in the presence of the persons mentioned in subsection (2), sign the Certificate on behalf of the person:
 - (a) a person who is under 18 years of age;
 - (b) the medical practitioners referred to in paragraphs 12(1)(d) or (e);
 - (c) a person who is likely to receive a benefit either directly or indirectly as a result of the death of the person.
- (2) The persons mentioned in this subsection are:
 - (a) the medical practitioner referred to in paragraph 12(1)(d); and
 - (b) the medical practitioner referred to in paragraph 12(1)(e); and
 - (c) if an interpreter has been used in accordance with subsection 13(2)—the interpreter.

- (3) A person who signs a Certificate of Request on behalf of another person (the *requester*) forfeits any benefit the person would otherwise obtain, either directly or indirectly, as a result of the death of the requester.

15 Right to rescind request

- (1) A person who makes a request under section 10 may rescind the request at any time and in any manner.
- (2) If a person rescinds a request and the person has signed a Certificate of Request (or another person has signed it on his or her behalf), the medical practitioner to whom the request was made must destroy the Certificate of Request.

Part 3—Administrative arrangements

16 Claim for payment for the provision of dying with dignity

medical services

- (1) A medical practitioner may make a claim to the Secretary for payment for the provision of dying with dignity medical services if such services have been provided in accordance with this Act.
- (2) A claim for payment must:
 - (a) be made in the prescribed form; and
 - (b) be accompanied by such other information or documents (if any) as are prescribed; and
 - (c) be lodged in the prescribed manner.

17 Determination of claim and payment of amount

- (1) Upon receiving a claim under section 16, the Secretary must make a decision granting or refusing the claim within 14 days after the day on which the claim is received.
- (2) If the claim is granted, the Secretary must pay to the medical practitioner an amount calculated by reference to the fees for dying with dignity medical services prescribed by the regulations.
- (3) The regulations may prescribe different fees for different dying with dignity medical services. This subsection does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) If the claim is refused, the Secretary must give the medical practitioner a notice stating that the claim has been refused and setting out the reasons for the refusal.

18 Commonwealth payment is full payment

If a medical practitioner agrees to provide dying with dignity medical services to a person, the medical practitioner is taken to have agreed that the Commonwealth will pay for the

services in accordance with this Part in full satisfaction of any amount that would otherwise be owed by the person to the medical practitioner.

19 Medical practitioner to keep records

A medical practitioner who provides dying with dignity medical services to a person under this Act that results in the death of the person must keep the following records:

- (a) a note of any oral request of the person for such services;
- (b) the Certificate of Request;
- (c) a record of his or her opinion as to the person's state of mind at the time the person signed the Certificate of Request;
- (d) certification that, in his or her opinion, the person's decision to end his or her life was made freely, voluntarily and after due consideration;
- (e) the reports of the medical practitioners referred to in paragraphs 12(1)(d) and (e);
- (f) certification as to the independence of the medical practitioners referred to in paragraphs 12(1)(d) and (e);
- (g) certification that all of the requirements of this Act have been met;
- (h) any other prescribed records.

Note: It is an offence to fail to comply with this section: see section 23.

20 Certification as to death

A medical practitioner who provides dying with dignity medical services under this Act that results in the death of a person is to be taken, for the purposes of the law of the State or Territory in which the death occurs, to have been responsible for the person's medical care immediately before death.

Note: This means that the medical practitioner is required to give notice of the person's death to the body in the State or Territory that is responsible for registering deaths.

Part 4—Offences

21 Intending to influence a medical practitioner in relation to dying with dignity medical services

- (1) A person commits an offence if:
- (a) the person gives or promises any benefit (other than a payment of the kind covered by section 17) to a medical practitioner; and
 - (b) the person does so with the intention of influencing the medical practitioner to provide, or not provide, a dying with dignity medical service.

Penalty: Imprisonment for 5 years.

- (2) A person commits an offence if:
- (a) the person causes, or threatens to cause, any disadvantage to a medical practitioner; and
 - (b) the person does so with the intention of influencing the medical practitioner to provide, or not provide, a dying with dignity medical service.

Penalty: Imprisonment for 5 years.

22 Improper conduct

A person commits an offence if the person, by deception or undue influence, procures the signing or witnessing of a Certificate of Request.

Penalty: Imprisonment for 5 years.

23 Failure to keep records

A medical practitioner commits an offence if:

- (a) the medical practitioner is subject to a requirement under section 19; and
- (b) the medical practitioner fails to comply with the requirement.

Penalty: Imprisonment for 2 years.

Part 5—Other matters

24 Immunity from civil, criminal and disciplinary actions

No civil, criminal or disciplinary action lies, and proceedings must not be brought, against a person in relation to an act done, or omitted to be done, if the act is done, or omitted to be done, by the person:

- (a) in good faith; and
- (b) for the purposes of this Act; and
- (c) in accordance with this Act.

25 Certain acts and omissions are not offences

An act done, or omitted to be done, does not constitute an offence against a law of the Commonwealth, a State or a Territory if the act is done, or omitted to be done:

- (a) in good faith; and
- (b) for the purposes of this Act; and
- (c) in accordance with this Act.

26 Appropriation

- (1) Payments under this Act are payable out of money appropriated by the Parliament for the purpose.
- (2) Despite anything else in this Act, this Act does not create an entitlement to payment under this Act unless and until the Consolidated Revenue Fund has been appropriated for the purpose of this Act.

27 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Request for dying with dignity medical services

Note: See the definition of *Certificate of Request* in section 4.

I, _____ have been advised by my medical practitioner that I am suffering from an illness which will ultimately result in my death and this has been confirmed by a second medical practitioner.

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.

I understand that I have the right to rescind this request at any time.

Signed: _____

Dated: _____

Declaration of witness (medical practitioner)

I declare that:

- (a) the person signing this request is personally known to me; and
- (b) he/she is a patient under my care; and
- (c) he/she signed the request in my presence and in the presence of the second witness to this request; and
- (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.

Signed: _____

Declaration of second witness (medical practitioner)

I declare that:

- (a) the person signing this request is known to me; and
- (b) I have discussed his/her case with him/her and his/her medical practitioner; and
- (c) he/she signed the request in my presence and in the presence of his/her medical practitioner; and
- (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
- (e) I am satisfied that the conditions in section ^12 of the *Medical Services (Dying with Dignity) Act 2014* have been or will be complied with.

Signed: _____

Declaration of interpreter (if applicable)

I declare that:

- (a) the person signing this request or on whose behalf it is signed is known to me; and

- (b) I am an interpreter qualified to interpret in the first language of the person; and
- (c) I have interpreted for the person in connection with the
completion and signing of this Certificate of Request; and
- (d) in my opinion, the person understands the meaning and
nature of this Certificate of Request.

Signed: _____