

DRAFT BILL RELEASED 1ST FEBRUARY 1975

NORTHERN TERRITORY OF AUSTRALIA

RIGHTS OF THE TERMINALLY ILL BILL

TABLE OF PROVISIONS

Clause

PART 1 - PRELIMINARY

1. Short title
2. Interpretation

PART 2 - REQUEST FOR AND GIVING OF ASSISTANCE

3. Request for assistance to voluntarily terminate life
4. Response of medical practitioner
5. Response of medical practitioner, &c. not to be influenced by extraneous considerations
6. Conditions under which medical practitioner may assist
7. Patient who is unable to sign certificate of request
8. Right to rescind request
9. Improper conduct

PART 3 - RECORDS AND REPORTING OF DEATH

10. Medical records to be kept
11. Certification as to death
12. Copy certificate of request to be sent to Coroner

PART 4 - MISCELLANEOUS

13. Construction of Act
14. Certificate of request is evidence
15. Effect on construction of wills, contracts and statutes
16. Insurance or annuity policies
17. Immunities

SCHEDULE

to confirm the right of a terminally ill person 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.

PART 1 - PRELIMINARY

1. Short title

This Act may be cited as the *Rights of the Terminally Ill Act 1995*.

2. Interpretation

(1) In this Act, unless the contrary intention appears -

"assist", in relation to the death or proposed death of a patient, includes the prescribing of a substance for the patient to administer to himself or herself, the preparation of the substance for administration and, if the patient is not physically or emotionally capable of administering it, also the administration of the substance, and "assistance" has a corresponding meaning;

"certificate of request" means a certificate in or to the effect of the form in the Schedule that has been completed, signed and witnessed in accordance with this Act;

"health care provider", in relation to a patient, includes a hospital, nursing home or other institution in which the patient is located for care or attention and any nurse or other person whose duties include the care of the patient;

"medical practitioner" means a medical practitioner resident in, and entitled under the *Medical Act* to practise medicine in, the Territory.

PART 2 - REQUEST FOR AND GIVING OF ASSISTANCE

3. Request for assistance to voluntarily terminate life

A patient of a medical practitioner who has been informed by the medical practitioner that he or she is suffering from a terminal illness and, within reasonable medical judgment, is likely to die within 12 months as a result of the illness, may request the medical practitioner to assist the patient to terminate the patient's life.

4. Response of medical practitioner

(1) A medical practitioner who receives a request referred to in section 3, if satisfied that the conditions of section 6 have been met, may assist the patient to terminate the patient's life in accordance with this Act or, for any reason, refuse to give that assistance.

(2) A medical practitioner who refuses to give the assistance sought under section 3 shall advise the patient that other medical practitioners may be willing to give the assistance sought.

5. Response of medical practitioner, &c. not to be influenced by extraneous considerations

—A person shall 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 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.

Penalty: \$10,000.

6. Conditions under which medical practitioner may assist

A medical practitioner may assist a patient to end his or her life only if all of the following conditions are met:

(a) the patient has attained the age of 18 years;

- (b) the medical practitioner is satisfied, on reasonable grounds, that the patient is suffering from a terminal illness and is likely to die within 12 months as a result of the illness;
- (c) a second medical practitioner has examined the patient and has confirmed the first medical practitioner's opinion as to the existence and seriousness of the illness and that the patient is likely to die within 12 months as a result of the illness;
- (d) the illness is causing the patient severe pain or suffering or distress;
- (e) the medical practitioner has informed the patient of the nature of the illness and its likely course, and the medical treatment, including palliative care, that might be available to the patient;
- (f) there is no medical treatment reasonably available and acceptable to the patient that will relieve the patient's severe pain or suffering or distress;
- (g) after being informed as referred to in paragraph (e), the patient indicates to the medical practitioner that the patient has decided to end his or her life;
- (h) the medical practitioner is satisfied, on reasonable grounds, that the patient is competent and that the patient's decision to end his or her life has been made freely, voluntarily and after due consideration;
- (i) the patient, or a person acting on the patient's behalf in accordance with section 7, has signed a completed certificate of request asking the medical practitioner to assist the patient to end the patient's life;
- (j) 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;
- (k) the certificate of request has been signed by another medical practitioner (who may be the medical practitioner referred to in paragraph (c) or any other medical practitioner) after the 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 competent and the patient's decision to end his or her life has been made freely, voluntarily and after due consideration, and that these conditions have been complied with;

- (l) immediately before assisting the patient to end his or her life the medical practitioner is satisfied, on reasonable grounds, that the patient is competent and continues to want to end his or her life having been given an opportunity by the medical practitioner to withdraw the request for assistance and again confirmed to the medical practitioner the patient's decision to end the patient's life;
- (m) 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 advantage (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the patient.

7. Patient who is unable to sign certificate of request

If a patient who has orally requested his or her medical practitioner to assist the patient to end the patient's life is physically or emotionally unable to sign the certificate of request, any person who has attained the age of 18 years, other than the medical practitioner or the medical practitioner referred to in section 6(c), may, at the patient's request and in the presence of the patient and both the medical practitioner witnesses, sign the certificate on behalf of the patient.

8. Right to rescind request

(1) Notwithstanding anything in this Act, a patient may rescind a request for assistance under this Act at any time and in any manner.

(2) Where a patient rescinds a request, the patient's medical practitioner shall, as soon as practicable, destroy the certificate of request and note that fact on the patient's medical record.

9. Improper conduct

(1) A person shall not, by deception or improper influence, procure the signing or witnessing of a certificate of request.

Penalty: \$20,000 or imprisonment for 4 years.

(2) A person who commits an offence against subsection (1) forfeits any financial benefit the person would otherwise obtain, directly or indirectly, from the death of the patient, whether or not the death results from assistance given under this Act.

PART 3 - RECORDS AND REPORTING OF DEATH**10. Medical records to be kept**

The following shall be documented and filed in and become part of the medical record of a patient who has been assisted under this Act:

- (a) a note of the oral request of the patient for such assistance;
- (b) the certificate of request;
- (c) a record of the medical practitioner's opinion as to the patient's competence 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;
- (d) the report of the medical practitioner referred to in section 6(c);
- (e) a note by the medical practitioner indicating that all requirements under this Act have been met and indicating the steps taken to carry out the request, including a notation of the substance prescribed.

11. Certification as to death

(1) A medical practitioner who, under this Act, assists a patient to end the patient's life shall be taken to have attended the patient during the patient's last illness for the purposes of Part IV of the *Registration of Births, Deaths and Marriages Act* or any provision in substitution for that Part.

(2) A death as the result of assistance given under this Act shall not, for that reason only, be taken to be unexpected, unnatural or violent for the purposes of the definition of "reportable death" in the application of Part 4 of the *Coroner's Act*.

12. Copy certificate of request to be sent to Coroner

(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 shall send to the Coroner a copy of the death certificate under the *Registration of Births, Deaths and Marriages Act* and of the certificate of request.

(2) As soon as practicable after the end of each financial year the Coroner shall advise the Attorney-General of the number of patients who died as a result of assistance given under this Act and the Attorney-General, in such manner or report as he or she thinks appropriate, shall report the number to the Legislative Assembly.

PART 4 - MISCELLANEOUS

13. Construction of Act

(1) Notwithstanding section 26(3) of the Criminal Code, 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 Part VI of the Criminal Code or an attempt to commit such an offence, or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

(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.

14. Certificate of request is evidence

A document purporting to be a certificate of consent is, in any proceedings before a court, admissible in evidence and is prima facie evidence of the request for assistance under this Act of the person who purported to sign it.

15. Effect on construction of wills, contracts and statutes

(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 would affect whether a person may make or rescind a request for assistance under this Act, or the giving of that assistance, is not valid.

(2) An obligation owing under a contract, whether made before or after the commencement of this Act, shall not be conditioned or affected by the making or rescinding of a request for assistance under this Act or the giving of that assistance.

16. Insurance or annuity policies

The sale, procurement or issuing of any life, health or accident insurance or annuity policy or the rate charged for such a policy shall not be conditioned on or affected by the making or rescinding of a request for assistance under this Act or the giving of that assistance.

17. Immunities

(1) A person shall not be subject to civil or criminal action or professional disciplinary action for anything done in good faith 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.

(2) A professional organisation or association or health care provider shall 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, was done or refused to be done by the person and which may under this Act lawfully be done or refused to be done.

(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, shall not constitute neglect for any purpose of law or alone constitute or indicate a disability for the purposes of an application under section 8 of the *Adult Guardianship Act*.

(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 and 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 shall transfer, on request, a copy of the patient's relevant medical records to the new health care provider.

SCHEDULE

Section 6

REQUEST FOR ASSISTANCE TO END MY LIFE
IN A HUMANE AND DIGNIFIED MANNER

I, _____ have been advised by my medical practitioner that I am suffering from _____ a terminal illness which is likely to result in my death within 12 months 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, 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 request my medical practitioner to assist me to terminate my life in a humane and dignified manner.

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

Signed:

Dated:

DECLARATION OF WITNESSES

I declare that -

- (a) the person signing this request is personally known to me;
- (b) he/she is a patient under my care;
- (c) he /she signed the request in my presence and in the presence of the second witness to this request;
- (d) I am satisfied that he/she is competent and that his/her decision to end his/her life has been made freely, voluntarily and after due consideration.

Signed:

Patient's Medical Practitioner

I declare that -

- (a) the person signing this request is known to me;
- (b) I have discussed his/her case with him/her and his/her medical practitioner;
- (b) he/she signed the request in my presence and in the presence of his/her medical practitioner;
- (c) I am satisfied that he/she is competent and that his/her decision to end his/her life has been made freely, voluntarily and after due consideration;
- (c) I am satisfied that the conditions of section 6 of the Act have or will be complied with.

Signed:

Second Medical Practitioner

OF DRAFT BILL

**RIGHTS OF THE TERMINALLY ILL BILL
NOTES ON CLAUSES**

Long Title

This controls the scope of the Bill and emphasises that the Bill is both a recognition of a patient's right and a protection for those giving assistance. It is also to effect several legal consequences.

Clause 1 Short Title

The short title of the Act will be the *Rights of the Terminally Ill Act*.

Clause 2 Interpretation

This section explains key terms used in the Act. In the definition of assist and assistance is included the possibility of the doctor himself or herself administering a substance. "Health care provider" includes both the institution and care giving staff. The definition of "medical practitioner" has the effect of limiting this practitioner (and hence the power to assist) to resident doctors only and cross refers to the *Medical Act*, a Bill for which is presently before the Assembly.

Clause 3 Request for assistance to voluntarily terminate life

If you suffer from a terminal illness and are expected to die within 12 months, this clause expresses your ~~the~~ right to ask your doctor to help you end your life.

Clause 4 Response of medical practitioner

Sub-section (1) allows your doctor to agree to your request if *all* of the conditions set out in section 6 of the Act are met.

For example, your illness must be causing you severe pain or suffering or distress and a second doctor must examine you and confirm your doctor's opinion that you are expected to die from your illness within 12 months.

Sub-clause (2) gives your doctor the right to refuse your request, in which case you must be informed that you may seek assistance from another doctor.

Clause 5 Response of medical practitioner &c. not to be influenced by extraneous considerations

This section makes it an offence to try to coerce your doctor into helping you to end your life or for anyone to prevent or threaten your doctor or anyone else for doing or proposing to do anything that is authorised under the Act.

Clause 6 Conditions under which medical practitioner may assist

This section sets out all of the conditions that must be met before a doctor can agree to your request. One of the conditions (f) is that there must be no reasonably available medical treatment acceptable to you that will relieve your severe pain or suffering or distress.

You must complete a certificate asking your doctor to help you end your life, and the certificate must be signed by another doctor who has discussed your case with your doctor. You must sign the certificate in the presence of your doctor. At the time of making your request you must be of sound mind and act voluntarily.

Clause 7 Patient who is unable to sign certificate of request

This section provides that if you are unable to sign the certificate, you may request another person (but not your doctor or the second doctor who has examined you and

confirmed your doctor's opinion) to sign it on your behalf. This person must sign the request in your presence and in the presence of the other witnesses.

Clause 8 Right to rescind request

If at any time you change your mind about ending your life, the request is no longer valid and your doctor must destroy the certificate.

Clause 9 Improper conduct

This section makes it an offence to deceive or coerce anyone to sign the certificate. A person who offends against this provision cannot receive a financial benefit as the result of the death of a patient.

Clause 10 Medical records to be kept

This clause provides that your doctor must note full details concerning your request on your medical record and confirm that all requirements of the Act have been met.

Clauses 11 and 12 Certification as to death and Copy certificate of request to be sent to Coroner

These clauses provide that, following your death, a copy of your request shall be sent to the Coroner together with your death certificate, and that your death will not be treated as unusual by virtue of the fact that you sought assistance in having your life terminated. In such circumstances the Coroner will not be compelled to hold an inquest into your death but neither will the Coroner be prevented if there are other indications under the *Coroners Act* requiring it.

Clause 12 also allows for relevant statistics to be reported to the Legislative Assembly.

Clause 13 Construction of Act

This section provides that actions taken by doctors (or health care providers acting on their instructions) in accordance with the Act are regarded as medical treatment and are not offences under the Criminal Code.

Clause 14 Certificate of request of evidence

This clause provides that your signed request seeking help to terminate your life should be admitted as evidence in any court and speaks for itself as to your having sought the assistance.

Clause 15 Effect on construction of wills, contracts and statutes

Sub-clause (1) provides that any will, contract or other agreement which you may have entered into does not affect your right to seek help under this Act to terminate your life or later change your mind.

Sub-clause (2) provides that any contractual obligation which you may have will not be affected by your request.

Clause 16 Insurance or annuity policies

This clause provides that your request shall have no bearing on any life, health or accident insurance or annuity policy that you may have or obtain or on the rate charged for such a policy.

Clause 17 Immunities

This clause provides that a person acting in good faith according to this Act is immune from criminal prosecution or any form of professional disciplinary action or censure. The same applies to anyone unable or unwilling to assist in

carrying out your request. The clause also confirms the fact that an institution with a moral or philosophical objection to being involved with assistance under the Act is not obliged to participate but is obliged to facilitate the transfer of the patient's care to another health care provider if the patient wishes.