

Serial 67
Rights of the Terminally Ill
Mr Perron

NORTHERN TERRITORY OF AUSTRALIA

RIGHTS OF THE TERMINALLY ILL BILL

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SCHEDULE

NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

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.

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. Short title

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

2. Interpretation

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, 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;

"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 (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;

"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 the patient is suffering from a terminal illness and, in 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

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.

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 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) 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 competent 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;
- (l) 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;
- (m) at the time of assisting the patient to end his or her life the medical practitioner has no reasonable grounds for doubting that it continues to be the patient's wish to end his or her life;
- (n) the medical practitioner himself or herself provides the assistance and/or is and remains present while the assistance is given and until 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 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 found guilty of 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 opinion of the patient's medical practitioner 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 patient's 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 or be a reportable death by reason only of having occurred during an anaesthetic.

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, a conspiracy 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 by the person who purported to sign it for assistance under this Act.

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 affects whether a person may make or rescind a request for assistance under this Act, or the giving of such 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, on request, transfer 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:
Medical Practitioner

Patient's

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;
- (c) he/she signed the request in my presence and in the presence of his/her medical practitioner;
- (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;
- (e) I am satisfied that the conditions of section 6 of the Act have or will be complied with.

Signed: Second Medical Practitioner

The Rights of the Terminally Ill Bill was passed by the Northern Territory's Legislative Assembly on 25 May 1995.

The Clerk of the Legislative Assembly has advised that this original Bill was extensively amended during the Committee stage when more than 50 amendments were introduced.

The amendments, as agreed, are included in the *Rights for the Terminally Ill Act 1995*. The Act is yet to be enacted and the

commencement date of the Act has not been set. *Last updated:*
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