



LEGISLATIVE CHARTER

Tasmanians Want Change

Survey research shows that 80% of Australians believe that terminally ill individuals should have a right to seek and obtain assistance to end their life with dignity¹ This right does not exist in Tasmania. Current legislation does not express as it should the will of the people.

Dying With Dignity Tasmania (DwDTas) has clear, simple and safe aims for updated Tasmanian legislation to recognise the right of terminally and incurably ill people with profound suffering to choose to die with dignity. This document describes DwDTas's Legislative Charter in support of these aims.

Its purpose is to spell out what legislative results DwDTas aims for. Overall, the aim is to influence the legislative process and achieve practical and positive Parliamentary enactments to allow terminally and incurably ill persons subject to profound suffering to end their life by choice, legally, and with dignity.

A central tenet of DwDTas is to promote choice.

Current Situation

Under existing law it is not an offence to commit suicide. However, it is an offence to assist a person to commit suicide. There is also potentially a legal risk for others in merely being present at another person's suicide. Individuals enduring a terminal or incurable illness with profound suffering do not have access to information or methods to voluntarily end their life in a humane and dignified manner. The effects of the current law include:

- Terminally or incurably ill people may suffer physically, mentally, emotionally, existentially in a needless way. Some of them, when suffering becomes too profound, may wish to end their life at a chosen point. Current law does not support this choice. The efficacy of palliative care in these circumstances may be limited and does not allow dying with dignity and control.
- There is clear evidence that some people commit or attempt to commit suicide prematurely, essentially through fear that they will later lose the ability to die in the way they choose.

¹ Since 1978, independent surveys have consistently shown a majority (more than 65%) in favour. The latest survey shows 80% of Australians (82% of Tasmanians) support this right. See Newspoll Survey conducted February 2007, at <http://www.DwDTasas.org.au/surveys.php>

- Some terminally ill people attempt to end their life in a violent and undignified manner such as a drug overdose, car exhaust gassing, drowning, use of a firearm or knife, leaping off a tall structure or jumping in front of a train. These strategies also have the following additional consequences:
 - The person dies: relatives then have to identify the disfigured, mangled or bloated body, and suffer long-term grief and guilt.
 - The person does not die: but is left in a serious physically and/or mentally damaged vegetative state in addition to their terminal illness.
 - The community suffers through effects on bystanders, train drivers, emergency and rescue personnel as well as property damage and the costs to society of coronial investigations.
 - Loved ones who attend the planned suicide of a terminally ill person may be liable to prosecution under criminal charges. Therefore, the terminally ill person must end their life in isolation rather than with the support of family and friends.
- Any medical practitioner (or other person) who assists the terminally ill person to end their life in a humane way is liable to criminal prosecution.
- In the absence of acceptable legislation permitting assisted suicide individuals and groups have developed alternative approaches such as publishing information on how to make a "death pill" from commonly available materials. This information is now widely available on the Internet and may be misused. It is an unfortunate example of the unintended consequences of legislative failure.

DwDTas' Legislative Charter

DwDTas advocates the following charter to recognise the autonomy of patients, and to allow choice of death with dignity. These are the values that DwDTas wishes to have enacted in legislation. This charter is presented to (a) indicate clearly what DwDTas is proposing (and it is not particularly controversial), (b) what it isn't proposing, and (c) to facilitate a fast track to sponsorship, drafting of an Act or Acts, debate and voting support by politicians.

Principles

In summary, DwDTas promotes the following six legislative principles:

1. In accordance with current law, any competent adult may, at any time, document the circumstances under which they would wish to have medical support withheld or to voluntarily die in a peaceful and humane manner with medical assistance. The statement identifies one or more Enduring Guardians and is registered with the Guardianship Board. Where such a statement has been properly made and witnessed it is to be taken as prima facie evidence of the wishes of that person should they subsequently become incompetent to make or express a decision.
2. The Guardianship Board should be funded to support the introduction of procedures to encourage all registrants to re-endorse or amend their directive at intervals of not less than 3 years or to record that the person has become incompetent to make decisions and the Enduring Guardian(s) has assumed responsibility. It should also be funded to make Directives securely available to hospitals and medical practitioners on the internet in order to ensure that the person's wishes are observed in case of trauma.
3. Patients with a terminal or incurable illness that creates unrelievable, profound suffering shall have the right to choose to die with dignity in a manner acceptable to themselves and shall not be compelled to suffer beyond their wishes.
4. No individual, group or organisation shall be compelled against their will to either participate or not participate in an assisted or supported death of a sufferer.
5. It shall not be an offence to confidentially advise a sufferer or relatives/guardian regarding death with dignity, to assist or support such a death, or to be present at the time.
6. Sufficient safeguards shall be in place to prevent abuse of the process.

DwDTas does not support the following:

Assisted or supported death for individuals who are not suffering a terminal or incurable illness causing profound suffering, nor for people who are unable to properly document their choice in a state of mental competence and who have not previously done so..

Legislative Charter Objectives Versus Current Tasmanian Law

"Sufferer": A terminally or incurably ill person with profound suffering.

Sufferer's Right	Current Tasmanian Law	DwDTas Legislative Charter
Refuse medical treatment for a current condition	Yes	Yes
Refuse medical treatment for a future condition; "living will"	Partial (common law, can be challenged)	Yes (statutory)
Advance directive via Enduring Guardian	Yes	Yes
Request doctor injection to die with dignity	No	Yes
Request oral prescription to consume voluntarily to die with dignity-with safeguards	No	Yes
Continued palliation	Yes	Yes
Decision to die made by anyone other than the sufferer exclusively	No	No(a)
Freely available "peaceful pill"	No	No

(a) Where a person who is not capable of making or expressing a decision has a long-standing statement of his or her wishes, the Enduring Guardian may represent these wishes to the attending professionals as prima facie evidence of his/her wishes

Charter

Sufferer: an individual who has a terminal or incurable illness that creates profound suffering which cannot be relieved or treated in a manner acceptable to the Sufferer.

Medical Assistance: Doctor-supplied medication that, with continued palliation, hastens the Sufferer's death. The Sufferer must voluntarily self-administer the medication.

1. Current Enduring Guardianship legislation should be expanded to allow people who are currently mentally competent to prepare and subsequently maintain a properly witnessed Enduring Guardianship and Living Will statement (also known as an Advance Directive) which documents their wishes in case of terminal illness or trauma and identifies one or more Enduring Guardians. Advance Directives are to be protected by Statute and must be followed. The Directive may include a statement of the circumstances in which they wish to:

- refuse any and all medical procedures (including artificial feeding and hydration) in order to die (with palliative care still being offered during this process.) This is currently a legally available option
- voluntarily die in a peaceful and humane manner with Medical Assistance. This is **not** a currently legally available option, but it is legal to express the wish to access it if and when it becomes legally available

Alternatively, it may include a statement opposing assistance with dying under any and all circumstances.

Such a statement will provide prima facie evidence of the wishes of the person should he or she subsequently become mentally or physically incompetent.

2. Where no valid statement of wishes exists, written statements are required from two doctors and/or psychiatrists that the Sufferer is of current mental competence. Such assessment shall take reasonable steps to ensure that the Sufferer has not been coerced or placed under duress by other persons to reach their decision.

3. Written statements are required by at least two relevant doctors that the Sufferer does in fact suffer a terminal or incurable illness.

4. The doctors and any other persons present at the Sufferer's death, whether assisting or not, shall not be subject to legal or disciplinary prosecution.

5. Any medically-assisted death shall be in the sufferer's home or secured quarters where uninvited, unauthorised parties cannot inadvertently enter and become aware of the procedure in progress.

6. Should a Sufferer subsequently lose mental competence, their Advance Directive(s) cannot be challenged, cancelled or altered. However, a clear statement by the sufferer that he or she does not wish to proceed with any action or withdrawal of support that would lead to death will be taken as a conclusive direction not to proceed.

7 Any doctor or other health care professional who does not wish to participate in a medically assisted or supported death should not be required or compelled to participate or be present.

8. Any non-Government-owned medical facility if it so chooses may refuse to permit assisted or supported deaths to occur at its facilities.

9. It shall be a criminal offence to forge documents or create false evidence that leads to or could lead to or covers a past act of voluntary or supported death that is not otherwise lawful under this legislation. A doctor who has assisted or supported a Sufferer's death in good faith under such circumstances shall be immune from prosecution.

Specific Exclusions

DwDTas' legislative charter specifically does **not** include or support the following:

- Assisting the death of a person in the absence of a terminal or incurable illness.
- Assisting the death of a Sufferer who is not mentally competent and has no Advance Directive. This includes babies, infants and young children, as well as any adult who has lost mental competence and has no Advanced Directive that specifies their wishes.
- Assisting the death of "inconvenient" persons in any way or under any circumstances. An assisted or supported death must always be the current and legally documented choice of the Sufferer alone, or the prior legally documented choice of the Sufferer alone at a time when mentally competent.
- Allowing a person with a genetically-identified terminal illness to end their life prior to any symptoms causing actual suffering. The intention of the legislation is to avoid only actual suffering due to the illness and to allow such individuals to choose a medically assisted or supported death.
- Requiring or forcing any health care professional or private health care facility to participate in, support or allow assisted or supported deaths where this is against their own wishes.