

TASMANIA

DYING WITH DIGNITY BILL 2009

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Schedule 1 - Certificate of request forms

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DYING WITH DIGNITY BILL 2009

(Brought in by Nicholas James McKim MP)

A BILL FOR

An Act to confirm the right of a person enduring a terminal illness with profound suffering to request assistance from a medically qualified person to voluntarily end his or her life in a humane and dignified 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 His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short Title

1. This Act may be cited as the *Dying with Dignity Act 2009*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears -
'assist', in relation to the death or proposed death of a sufferer, includes the prescribing of a substance, the preparation of a substance and the giving of a substance to the sufferer for self administration, and the administration of a substance to the sufferer.
'certificate of request' means a certificate in or to the effect of the form in Schedule 1 that has been completed, signed and witnessed in accordance with this Act.

‘health care provider’, in relation to a sufferer, includes a hospital, nursing home or other institution (including those responsible for its management) in which the sufferer 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 sufferer.

‘illness’ includes injury or degeneration of mental or physical faculties.

‘intolerable suffering’ means a profound level of pain and/or distress, that the sufferer finds intolerable.

‘medical practitioner’ means a medical practitioner who has been entitled to practice as a medical practitioner (however described) in a State or a Territory of the Commonwealth for a continuous period of not less than 5 years.

‘mentally competent’ means:

- (a) an ability of the sufferer after being given relevant information to understand the general nature of the illness or condition; and to understand the benefits and risks of, and to weigh the pros and cons of, presented medical treatment and palliative care options as well as a request for assistance to end his or her life;
- (b) a capacity of the sufferer to make a decision freely, voluntarily and after due consideration.

‘qualified psychiatrist’ means:

- (a) a person entitled under a law of a State or Territory of the Commonwealth to practise as a specialist in the medical specialty of psychiatry;
- (b) a specialist whose qualifications are recognised by the Royal Australian and New Zealand College of Psychiatrists as entitling the person to fellowship of that College; or

- (c) a person employed by the Commonwealth or a State or Territory of the Commonwealth, or an Agency or authority of the Commonwealth or a State or Territory, as a specialist or consultant in the medical specialty of psychiatry.

'sufferer', means a person who has a terminal illness and experiences intolerable suffering as a result.

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

Act to bind Crown

4. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Request for assistance to voluntarily end life

5. A sufferer who, in the course of a terminal illness, is experiencing pain, suffering and/or distress to an extent unacceptable to the sufferer, may request the sufferer's medical practitioner to assist the sufferer to end the sufferer's life.

Response of medical practitioner

6. A medical practitioner who receives a request referred to in section 5, if satisfied that the conditions of section 8 have been met, but subject to section 9 and 10, may assist the sufferer to end the sufferer's life in accordance with this Act or, for any reason and at any time, refuse to give that assistance.

Medical practitioner not to be influenced by extraneous considerations

7. (1) 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 for refusing to assist, or for the purpose of compelling or persuading

the medical practitioner to assist or refuse to assist, in the termination of a sufferer's life under this Act.

Maximum penalty: 100 penalty units.

(2) A medical practitioner to whom a reward or advantage is promised or given, as referred to in subsection (1), does not have the legal right or capacity to receive or retain the reward or accept or exercise the advantage, whether or not at the relevant time he or she was aware of the promise or the intention to give the reward or advantage.

Conditions under which medical practitioner may assist

8. (1) A medical practitioner may assist a sufferer to end his or her life only if all of the following conditions are met:

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

(b) the medical practitioner is satisfied, on reasonable grounds, that:

(i) the dying person is suffering from an illness that will, in the normal course and without the application of extraordinary measures, result in the death of the sufferer; and

(ii) in reasonable medical judgment, there is no medical measure acceptable to the sufferer that can reasonably be undertaken in the hope of effecting a cure; and

(iii) any medical treatment reasonably available to the sufferer is confined to the relief of pain, suffering and/or distress with the object of allowing the sufferer to die a peaceful death;

(c) two other persons, neither of whom is a relative or employee of, or a member of the same medical practice as, the first medical practitioner or each other:

(i) one of which is a medical practitioner who holds prescribed qualifications, or has prescribed experience, in the treatment of the terminal illness from which the person is suffering; and

(ii) the other of which is a qualified psychiatrist;

have examined the sufferer and have:

(iii) in the case of the medical practitioner referred to in subparagraph (i), confirmed:

(A) the first medical practitioner's opinion as to the existence and seriousness of the illness; and

(B) that the sufferer is likely to die as a result of the illness; and

(C) the first medical practitioner's prognosis; and

(iv) in the case of the qualified psychiatrist referred to in subparagraph (ii), confirmed that the sufferer is mentally competent;

(D) the illness is causing the sufferer severe pain or suffering;

(E) the medical practitioner has informed the sufferer of the nature of the illness and its likely course, and the medical treatment, including palliative care, counseling and psychiatric support and extraordinary measures for keeping the sufferer alive, that might be available to the sufferer;

(F) after being informed of the matters referred to in paragraph (e), the sufferer indicates to the medical practitioner that the sufferer has decided to end his or her life;

(G) the medical practitioner is satisfied that the sufferer has considered the possible implications of the sufferer's decision to his or her family;

(H) the medical practitioner is satisfied, on reasonable grounds, that the sufferer is of sound mind and that the sufferer's decision to end his or her life has been made freely, voluntarily and after due consideration;

(I) the sufferer, or a person acting on the sufferer's behalf in accordance with section 11, has, not earlier than 7 days after the sufferer has indicated to his or her medical practitioner as referred to in paragraph (f), signed that part of the certificate of request required to be completed by or on behalf of the sufferer;

(J) the medical practitioner has witnessed the sufferer's signature on the certificate of request or that of the person who signed on behalf of the sufferer, and has completed and signed the relevant declaration on the certificate;

(K) the certificate of request has been signed in the presence of the sufferer and the first medical practitioner by another medical practitioner (who may be the medical practitioner referred to in subparagraph (c)(i) or any other medical practitioner) after that medical practitioner has discussed the case with the first medical practitioner and the sufferer and is satisfied, on reasonable grounds, that the certificate is in order, that the sufferer is of sound mind and the sufferer'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) if, in accordance with subsection (4), an interpreter is required to be present at the signing of the certificate of request, the certificate of request has been signed by the interpreter confirming the sufferer's understanding of the request for assistance;

(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 or other advantage (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the sufferer;

(N) not less than 48 hours has elapsed since the signing of the completed certificate of request;

(O) at no time before assisting the sufferer to end his or her life had the sufferer given to the medical practitioner an indication that it was no longer the sufferer's wish to end his or her life;

(P) 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 sufferer.

(2) In assisting a sufferer under this Act a medical practitioner must be guided by appropriate medical standards and such guidelines, if any, as are prescribed, and must consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances.

(3) If a sufferer's medical practitioner has no special qualifications in the field of palliative care, the information to be provided to the sufferer on the availability of palliative care must be given by a medical practitioner (who may be the medical practitioner referred to in subparagraph (1)(c)(i) or any other medical practitioner) who has such special qualifications in the field of palliative care as are prescribed.

(4) A medical practitioner must not assist a sufferer under this Act if the medical practitioner or any other medical practitioner or qualified psychiatrist who is required under subsection (1) or (3) to communicate with the sufferer does not share the same first language as the sufferer, 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 sufferer, an interpreter who holds a prescribed professional qualification for interpreters in the first language of the sufferer.

Requirement to be a Tasmanian Resident

9. At the request of an adult sufferer, the treating doctor may provide assistance to that sufferer to end his or her life. However, the treating doctor may only do so if the treating doctor is satisfied on reasonable grounds that;

(1) the sufferer is domiciled or ordinarily resident in the State; or

(2) the sufferer has had his or her settled or usual residence in the State for a minimum of 12 months

Palliative Care

10. (1) A medical practitioner must not assist a sufferer under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in subparagraph 8(1)(c)(i), there are palliative care options reasonably available to the sufferer to alleviate the sufferer's pain and suffering to levels acceptable to the sufferer.

(2) If a sufferer has requested assistance under this Act and has subsequently been provided with palliative care that brings about the remission of the sufferer's pain or suffering, the medical practitioner must not, in pursuance of the sufferer's original request for assistance, assist the sufferer under this Act. If subsequently the palliative care ceases to alleviate the sufferer's pain and suffering to levels acceptable to the sufferer, the medical practitioner may continue to assist the sufferer under this Act only if the sufferer indicates in writing to the medical practitioner the sufferer's wish to proceed with the request.

Sufferer who is unable to sign certificate of request

11. (1) If a sufferer who has requested his or her medical practitioner to assist the sufferer to end the sufferer'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 a medical practitioner or qualified psychiatrist referred to in paragraph 8(1)(c), or a person who is likely to receive a financial benefit directly or indirectly as a result of the death of the sufferer, may, at the sufferer's request and in the presence of the sufferer and both the medical practitioner witnesses (and if, in accordance with subsection 8(4) an interpreter has been used, also in the presence of the interpreter), sign the certificate on behalf of the sufferer.

(2) A person who signs a certificate of request on behalf of a sufferer forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the sufferer.

Right to rescind request

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

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

Improper conduct

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

Maximum penalty: 200 penalty units or imprisonment for 4 years.

- (2) A person found guilty of an offence against subsection (1) forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the sufferer, whether or not the death results from assistance given under this Act.

Medical Records to be kept

14. A medical practitioner who, under this Act, assists a sufferer to end the sufferer's life must file and, subject to this Act, keep the following as part of the medical record of the sufferer:

- (1) a note of any oral request of the sufferer for such assistance;

- (2) the certificate of request;

- (3) a record of the opinion of the sufferer's medical practitioner as to the sufferer's state of mind at the time of signing the certificate of request and certification of the medical practitioner's opinion that the sufferer's decision to end his or her life was made freely, voluntarily and after due consideration;

- (4) the reports of the medical practitioner and qualified psychiatrist referred to in paragraph 8(1)(c);

(5) a note by the sufferer's medical practitioner:

(a) certifying the independence of the medical practitioner and qualified psychiatrist referred to in paragraph 8(1)(c) and the residential and period of practice qualifications of the sufferer's medical practitioner; and

(b) indicating that all requirements under this Act have been met; and

(c) indicating the steps taken to carry out the request for assistance; and

(d) including a notation of the substance prescribed;

and such other information, if any, as is prescribed.

Maximum penalty: 100 penalty units or imprisonment for 2 years.

Certification of Death

15. (1) A medical practitioner who, under this Act, assists a sufferer to end the sufferer's life must be taken, for the purposes of any legal requirements concerning preparation of the death certificate, to have been responsible for the sufferer's medical care immediately before death.

(2) A death as the result of assistance given under this Act must not, for that reason only, be taken to be unexpected, unnatural or violent, or of having occurred during an anaesthetic, for the purposes of any coronial inquiry.

Medical record to be sent to Coroner

16. (1) As soon as practicable after the death of a sufferer as the result of assistance given under this Act, the medical practitioner who gave the assistance must report the death to a Coroner by sending to the Coroner a copy of the death certificate and so much of the medical record of the sufferer (including that required by section 14 to be kept) as relates to the terminal illness and death of the sufferer.

(2) As soon as practicable after the end of each financial year the Coroner must advise the Attorney-General of the number of sufferers 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, must report the number to both Houses of the Parliament.

Coroner may report on operation of Act

17. Coroner may, at any time and in his or her absolute discretion, report to the Attorney-General on the operation, or any matter affecting the operation, of this Act and the Attorney-General must, within 3 sitting days of the Parliament after receiving the report, table a copy of the report in both Houses of the Parliament.

Construction of Act

18. 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 all legislative enactments.

Certificate of request is evidence

19. A document purporting to be a certificate of request 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, or on whose behalf it is purported to have been signed, for assistance under this Act.

Effect on construction of wills, contracts and statutes

20. (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, must not be conditioned or

affected by the making or rescinding of a request for assistance under this Act or the giving of that assistance.

Insurance or annuity policies

21. The sale, procurement or issuing of any life, health or accident insurance or annuity policy or the rate charged for such a policy must 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.

Immunities

22. (1) A person must not be subject to civil or criminal action or professional disciplinary action for anything done in good faith and without negligence in compliance with this Act, including being present when a sufferer takes a substance prescribed for or supplied to the sufferer as the result of the request for assistance under this Act to end the sufferer's life.

(2) A professional organisation or association or health care provider must 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 and without negligence, 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 sufferer for assistance under this Act, or giving of such assistance in good faith by a medical practitioner in compliance with this Act, does not constitute neglect for any purpose of law.

(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 sufferer 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 sufferer under this Act and the sufferer transfers his or her care to another health care provider, the former health care provider must, on request, transfer a copy of the sufferer's relevant medical records to the new health care provider.

Regulations

23. The Governor may make regulations, not inconsistent with this Act, prescribing all matters:

(1) required or permitted by this Act to be prescribed; or

(2) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Act to prevail

24. In the event of any inconsistency between this Act and any other Act, including the *Criminal Code Act 1924*, commenced before or after the commencement of this Act, this Act prevails to the extent of the inconsistency unless a contrary intention is stated in the subsequent Acts.

Schedule 1 - Certificate of request forms

1. 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 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 request my medical practitioner to assist me to end my life in a humane and dignified manner.

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

Signed:

Dated:

2. 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 mentally competent, of sound mind 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;
- (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 of sound mind 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 7 of the Act have been or will be complied with.

Signed: Second Medical Practitioner

3. Declaration of Interpreter where under section 8(4) an interpreter is required to be present

I declare that -

- (a) the person signing this request or on whose behalf it is signed is known to me;
- (b) I am an interpreter qualified to interpret in the first language of the patient as required by section 7(4);
- (c) I have interpreted for the patient in connection with the completion and signing of this certificate;
- (d) in my opinion, the patient understands the meaning and nature of this certificate.

Signed: Qualified Interpreter.