

NEW SOUTH WALES

DRAFT NON-GOVERNMENT BILL

Voluntary Assisted Dying Bill 2017

Explanatory note

This Bill is co-sponsored by Mr A H Greenwich MP, the Hon T J Khan MLC, Mr Lee Evans MP, Dr Mehreen Faruqi MLC and the Hon L J Voltz MLC.

Overview of Bill

The object of this Bill is to provide a legislative framework for the rights of terminally ill persons to request and receive assistance to end their lives voluntarily. Under this framework, certain terminally ill persons may be assisted by their medical practitioners and other nominated persons to administer a substance to themselves.

The Bill provides protection for persons providing such assistance and sets up safeguards against possible abuse of the right recognised by the Bill.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 6 months after the date of assent to the proposed Act, unless sooner commenced by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Request for and provision of assistance

Division 1 Request for assistance

Clause 4 establishes the right of certain persons to request assistance from medical practitioners to end their own lives. A person (the *patient*) may make a request to a medical practitioner who is not a relative of the patient (the *primary medical practitioner*) for assistance if he or she meets certain eligibility criteria. The patient must be at least 25 years of age and ordinarily resident in New South Wales. The patient must also be suffering from a terminal illness which, in reasonable medical judgment, is likely to result in the death of the patient within 12 months, and must be experiencing severe pain, suffering or physical incapacity to an extent unacceptable to the patient.

Clause 5 allows a patient who has requested assistance to rescind that request at any time. The primary medical practitioner must then note that fact on the patient's medical record and on the formal request certificate.

Division 2 Provision of assistance

Clause 6 empowers the primary medical practitioner (in due course) to assist, or refuse to assist, the patient to end the patient's life.

Clause 7 provides that the primary medical practitioner must not give a substance to a person other than the patient for administration to the patient to end the patient's life unless the patient has nominated that other person to administer the substance to end the patient's life. The clause empowers the person nominated by the patient (in due course) to administer, or refuse to administer, the substance to the patient to end the patient's life.

Clause 8 provides for a cooling-off period of 48 hours, commencing on the completion of the request certificate, during which the primary medical practitioner must not provide assistance to a patient to end the patient's life.

Clause 9 requires the primary medical practitioner, in providing assistance under the proposed Act, to be guided by appropriate medical standards and pharmaceutical information and any guidelines prescribed by regulations made under the proposed Act.

Clause 10 provides that the primary medical practitioner must not use any substance for the purpose of the provision of assistance under the proposed Act unless the substance is declared by the regulations to be an authorised substance.

Clause 11 provides that the primary medical practitioner must not provide the assistance if he or she knows that any financial or other advantage is likely to be gained by certain persons as a result of the death of the patient.

Clause 12 makes it an offence for a person:

(a) to give or promise any financial or other advantage (other than a reasonable payment for medical services), or

(b) to cause or threaten to cause any disadvantage,

to a primary medical practitioner or other person for assisting or refusing to assist, or for the purpose of compelling or persuading the practitioner or other person to assist or refuse to assist, in ending a patient's life under the proposed Act.

The clause also makes it an offence for a person to accept any financial or other advantage (other than a reasonable payment for medical services) for assisting or refusing to assist in ending a patient's life under the proposed Act.

Clause 13 makes it an offence to procure the signing or witnessing of a request certificate by deception or improper influence.

Division 3 Requirements relating to request for assistance

Division 3 sets out the requirements that must be met before a primary medical practitioner may assist a patient to end the patient's life.

Clause 14 requires the patient to be independently examined by his or her primary medical practitioner and one other medical practitioner (the *secondary medical practitioner*) who is not closely associated with the primary medical practitioner or related to the patient. The secondary medical practitioner must be a specialist in relation to the diagnosis or treatment of the relevant terminal illness.

Clause 15 requires the primary medical practitioner to provide to the patient certain information relating to the patient's terminal illness and available treatment. The patient must, after receiving the information, indicate that the patient's decision to request assistance to end his or her life still stands.

Clause 16 requires the patient to be examined by an independent psychiatrist or psychologist. The psychiatrist or psychologist must provide to the primary and secondary medical practitioners a report containing the results of the examination and an opinion indicating that the patient is of sound mind, that the patient's decision-making capacity has not been adversely affected by his or her state of mind and that the patient's decision to request the assistance has been made freely, voluntarily and after due consideration.

Clause 17 requires the primary medical practitioner to form an opinion about the patient's terminal illness and prognosis, and requires the secondary medical practitioner to confirm the opinion.

Clause 18 requires a formal certificate to be completed confirming the patient's request for assistance at least 7 days after the initial request is made. An audio-visual record (an *audio-visual request*) may be made instead of the request certificate if the patient is physically unable to sign the certificate or is unable to communicate with reasonable fluency in English.

Clause 19 requires an interpreter to be present at the time of any communication between the patient and certain other persons for the purposes of the Division, and during the signing of the request certificate or making of the audio-visual request, if the patient and other person are unable to communicate with each other with reasonable fluency in any language.

Division 4 Review of requests for assistance

Clause 21 enables a close relative of a patient to apply to the Supreme Court for an order that a request certificate is not an effective request certificate for the purposes of the proposed Act. The Court may make an order if satisfied that the patient was not suffering from a terminal illness, was not at least 25 years old or ordinarily resident in New South Wales, was not of sound mind (or his or her decision-making capacity was adversely affected by his or her state of mind) or did not make the decision to request the assistance freely, voluntarily and after due consideration. The Supreme Court may make such other orders (including interim orders pending the determination of the application) as it considers necessary to prevent action being taken in reliance on the request certificate. **Clause 20** makes provision with respect to the parties to an application.

Clause 22 provides that if an order is made under the Division in respect of a request certificate, the certificate is not to be treated as a request certificate for the purposes of the proposed Act. However, the order does not prevent the making of a further request or the provision of assistance to the patient after the requirements of the Act have been met with respect to the further request.

Clause 23 provides that the Division does not limit the jurisdiction of the Supreme Court.

Part 3 Effect of Act on other rights and obligations

Clause 24 provides that a health care provider or other person is not under any duty to participate in the provision of assistance under the proposed Act. Any health care provider who is unable or unwilling to participate must, if requested to do so by the patient, transfer the patient's medical records to another health care provider.

Clause 25 protects certain persons from criminal and civil liability for participating, or refusing to participate, in the provision of assistance under the proposed Act. However, the use of force to prevent the making of a request, or the provision of assistance, under the proposed Act is not authorised by this clause or by section 574B of the *Crimes Act 1900* (which otherwise provides

for the lawful use of force for the prevention of suicide). The clause authorises the destruction of unused substances, but no other dealing with such substances.

Clause 26 provides that a will, contract or other agreement is not valid to the extent that it would affect whether a person may make or rescind a request for assistance under the proposed Act or provide or refuse to provide that assistance. This clause also provides that a provision of a contract or other agreement is void to the extent that it purports to exclude or limit liability of a party to the contract in the event of a person making or rescinding a request for, or receiving or providing, assistance under the proposed Act.

Part 4 Records and reporting of death

Clause 27 sets out the information that a primary medical practitioner providing assistance under the proposed Act must keep as part of the patient's medical record.

Clause 28 extends the application of provisions of the *Coroners Act 2009* (including, in particular, provisions relating to the reporting of deaths and the conferral of jurisdiction to hold inquests) to deaths resulting from assistance provided under the proposed Act.

Clause 29 facilitates the recording and notification of a death resulting from assistance provided under the proposed Act.

Part 5 Miscellaneous

Clause 30 provides that a request certificate, or an audio-visual request, for assistance under the proposed Act is admissible and prima facie evidence before a court of the request for that assistance.

Clause 31 allows the Governor to make regulations for the purposes of the proposed Act.

Clause 32 confers jurisdiction on the Local Court for offences against the proposed Act (other than offences against section 12 or 13).

Clause 33 provides for a review of the proposed Act by the Minister after the period of 5 years from the commencement of the proposed Act.

Schedule 1 Form

Schedule 1 sets out the form of request certificate to be used in relation to a request for assistance under the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2 makes consequential amendments to other Acts. The Schedule includes an amendment to the *Coroners Act 2009* to require the State Coroner to report to the Attorney General in relation to deaths resulting from the provision of assistance under the proposed Act. An amendment is also made to the *Criminal Procedure Act 1986* to provide for an otherwise indictable offence against proposed section 12 or 13 to be dealt with summarily unless the prosecutor elects otherwise. The Schedule also includes an amendment to ensure that guardians appointed under the *Guardianship Act 1987* may not exercise any function of making or rescinding a request for assistance under the proposed Act.

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DRAFT NON-GOVERNMENT BILL

Voluntary Assisted Dying Bill 2017

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public consultation draft

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Voluntary Assisted Dying Bill 2017

No , 2017

A Bill for

An Act to establish the right of persons who are terminally ill to request assistance from medically qualified persons to voluntarily end their own lives; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Voluntary Assisted Dying Act 2017*.

2 Commencement

This Act commences 6 months after the date of assent to this Act, unless sooner commenced by proclamation.

3 Definitions

(1) In this Act:

assist or **assistance**, in relation to the death or proposed death of a patient, includes:

- (a) the prescribing and preparation of a substance for the patient, and the giving of a substance to the patient, for self-administration, and
- (b) if the patient is physically incapable of self-administering the substance:
 - (i) the administration of the substance to the patient, and
 - (ii) the prescribing and preparation of the substance for the patient, and the giving of the substance to any other person for administration to the patient.

audio-visual request—see section 18.

close relative of a person means:

- (a) a parent, guardian or child of the person, or
- (b) a brother, sister, half-brother, half-sister, stepbrother or stepsister of the person, or
- (c) an existing spouse or de facto partner of the person.

decision-making capacity, in relation to a patient requesting assistance under this Act, means the capacity of the patient to:

- (a) understand the facts relevant to the patient's illness and condition, and
- (b) understand the medical treatment and other options available to the patient, and
- (c) assess the consequences of the patient's decisions and understand the impact of those consequences on the patient, and
- (d) communicate the patient's decisions (whether by speaking, sign language or any other means).

guardian has the same meaning as in the *Guardianship Act 1987*.

health care provider, in relation to a patient, includes:

- (a) a hospital, nursing home or other institution (including those responsible for its management) in which the patient is located for care or attention, and
- (b) any nurse or other person whose duties include, or directly or indirectly relate to, the care or medical treatment of the patient.

illness includes injury or degeneration of mental or physical faculties.

independent qualified psychiatrist, in relation to a patient, means a qualified psychiatrist who is not:

- (a) a close relative or an employee of, or a member of the same medical practice as, the patient's primary medical practitioner or secondary medical practitioner, or
- (b) a close relative of the patient.

independent qualified psychologist, in relation to a patient, means a psychologist who is not:

- (a) a close relative or an employee of, or a member of the same medical practice as, the patient's primary medical practitioner or secondary medical practitioner, or
- (b) a close relative of the patient.

nominee—see section 7.

patient—see section 4.

primary medical practitioner—see section 4.

qualified psychiatrist means a person who is registered under the Health Practitioner Regulation National Law in the specialty of psychiatry in the medical profession.

request certificate—see section 18.

request for assistance means a request made by a patient to a medical practitioner for assistance to end the patient's life.

secondary medical practitioner—see section 14.

terminal illness, in relation to a patient, means an illness which will, in reasonable medical judgment, result in the death of the patient within 12 months.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

Part 2 Request for and provision of assistance

Division 1 Request for assistance

4 Request for assistance to voluntarily end life

A person (the *patient*) may request a medical practitioner who is not a close relative of the patient (the *primary medical practitioner*) for assistance to end the patient's life if:

- (a) the patient is at least 25 years of age and ordinarily resident in New South Wales, and
- (b) the patient is suffering from a terminal illness, and
- (c) the primary medical practitioner has informed the patient that, in the medical practitioner's opinion, the patient is suffering from a terminal illness, and
- (d) in the course of the terminal illness, the patient is experiencing severe pain, suffering or physical incapacity to an extent unacceptable to the patient.

5 Right to rescind request

- (1) Despite anything in this Act, a patient may rescind a request for assistance at any time and in any manner.
- (2) If a patient rescinds a request for assistance after signing a request certificate under section 18, the primary medical practitioner must, as soon as practicable after the request is rescinded, note on the patient's medical record, and on each page of the request certificate, the fact that the request has been rescinded.

Division 2 Provision of assistance

6 Right to provide or refuse assistance

- (1) A primary medical practitioner may, if satisfied that a patient who has made a request for assistance to the primary medical practitioner is eligible to make the request, and that all of the requirements of Division 3 have been met in relation to the request:

- (a) assist the patient to end the patient's life, or
- (b) for any reason and at any time, refuse to provide that assistance.

Note. Section 25 provides for the protection from liability of persons participating in (or refusing to participate in) the provision of assistance under this Act. The assistance must be provided in accordance with the requirements of this Act (including the requirements of this Division).

- (2) For the avoidance of doubt, Division 3 does not impose on any person a duty to comply with any requirement of that Division, except to the extent that compliance is required for the purposes of authorising the primary medical practitioner to provide assistance under subsection (1).

7 Nomination of person to administer substance

- (1) A primary medical practitioner must not provide assistance to a patient under this Act by giving a substance to any person other than the patient for administration to the patient unless:
 - (a) the patient has, before completing the request certificate required by section 18, nominated that other person (the *nominee*) to administer the substance to the patient to end the patient's life, and
 - (b) the nominee is at least 18 years of age.

- (2) A nomination under subsection (1) must:
 - (a) be in the form of a written statement signed by the patient or, if the patient is physically unable to sign the statement, in the form of an audio-visual record, and
 - (b) indicate that the nominee has agreed to administer the substance to the patient to end the patient's life.
- (3) After a substance is given to a nominee by the primary medical practitioner for administration to the patient, the nominee may:
 - (a) administer the substance to the patient, or
 - (b) for any reason and at any time, refuse to administer the substance to the patient.

8 Cooling-off period

A primary medical practitioner must not provide assistance to a patient under this Act unless at least 48 hours has elapsed since the request certificate was completed in accordance with section 18.

9 Standards for provision of assistance

In providing assistance to a patient under this Act, a primary medical practitioner is to be guided by appropriate medical standards and such guidelines, if any, as are prescribed by the regulations, and must consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances.

10 Authorised substances

- (1) In providing assistance to a patient under this Act, a primary medical practitioner must not prescribe or prepare for, or administer to, the patient, or give to the patient or the patient's nominee, any substance that is not an authorised substance.
- (2) In this section:
authorised substance means a substance that is declared by the regulations to be an authorised substance for the purposes of this section or that belongs to a class of substances so declared.

11 Financial and other advantages

A primary medical practitioner must not provide assistance to a patient under this Act if he or she knows that, as a result of the death of the patient, a financial or other advantage (other than a reasonable payment for medical services) is likely to be gained by:

- (a) the primary medical practitioner, or
- (b) the secondary medical practitioner, or
- (c) the independent qualified psychiatrist or independent qualified psychologist who has conducted an examination of the patient under section 16, or
- (d) any interpreter required under section 19 to be present at the signing of the request certificate, or
- (e) a close relative or associate of any person referred to in paragraphs (a)–(d).

12 Conduct influencing provision of assistance

- (1) A person must not give or promise any financial or other advantage (other than a reasonable payment for medical services), or by any means cause or threaten to cause any disadvantage, to a primary medical practitioner or other person for assisting or refusing to assist, or for the purpose of compelling or persuading the primary medical

practitioner or other person to assist or refuse to assist, in ending the patient's life under this Act.

Maximum penalty: imprisonment for 4 years.

- (2) A primary medical practitioner or other person must not accept any financial or other advantage (other than a reasonable payment for medical services) for assisting or refusing to assist in ending the patient's life under this Act.

Maximum penalty: imprisonment for 4 years.

13 Improper conduct relating to request certificate

A person must not, by deception or improper influence, procure the signing or witnessing of a request certificate for the purposes of this Act.

Maximum penalty: imprisonment for 4 years.

Division 3 Requirements relating to request for assistance

14 Examination by medical practitioners

- (1) A patient who has made a request for assistance must be examined by the primary medical practitioner and one other medical practitioner who is eligible to conduct the examination (the *secondary medical practitioner*).
- (2) The examinations must each be conducted independently.
- (3) A secondary medical practitioner is eligible to conduct an examination of a patient under this section if:
- (a) the secondary medical practitioner is registered under the Health Practitioner Regulation National Law in a specialty in the medical profession that is relevant to the diagnosis or treatment of the terminal illness from which the patient is suffering, and
 - (b) the secondary medical practitioner and primary medical practitioner are not closely associated with each other, and
 - (c) the secondary medical practitioner is not a close relative of the patient.
- (4) For the purposes of subsection (3) (b), a medical practitioner is *closely associated* with another medical practitioner if the medical practitioner is a close relative or employee of, or a member of the same medical practice as, the other medical practitioner.

15 Information to be provided by primary medical practitioner

- (1) The primary medical practitioner must, after conducting an examination under section 14, provide the following information to the patient in writing:
- (a) information relating to the nature of the illness and its likely course,
 - (b) information relating to the medical treatment, including palliative care, counselling and psychiatric support and measures for keeping the patient alive, that might be available to the patient.
- (2) If the patient is unable to read the written information, the primary medical practitioner must provide the information to the patient orally.
- (3) The patient must, after receiving the information referred to in subsection (1), indicate to the primary medical practitioner that the decision to request the assistance still stands.

16 Examination by independent qualified psychiatrist or psychologist

- (1) After a patient is examined by the primary medical practitioner and secondary medical practitioner under section 14, the patient must be examined by an independent qualified psychiatrist or an independent qualified psychologist.
- (2) The independent qualified psychiatrist or independent qualified psychologist who examines the patient must provide to the primary medical practitioner and secondary medical practitioner a written report that contains the results of the examination and indicates that, in the opinion of the psychiatrist or psychologist:
 - (a) the patient is of sound mind, and
 - (b) the decision-making capacity of the patient is not adversely affected by his or her state of mind, and
 - (c) the patient's decision to request the assistance has been made freely, voluntarily and after due consideration.

17 Opinion of medical practitioners

A primary medical practitioner must not provide assistance to a patient under this Act unless:

- (a) the primary medical practitioner has, after examining the patient under section 14, formed the opinion that:
 - (i) the patient is suffering from a terminal illness, and
 - (ii) the illness is causing the patient severe pain, suffering or physical incapacity to an extent unacceptable to the patient, and
 - (iii) there is no medical measure acceptable to the patient that can reasonably be undertaken in the hope of effecting a cure, and
 - (iv) any medical treatment reasonably available to the patient is confined to the relief of pain or suffering, and
 - (v) the patient has considered the possible implications of the patient's assisted death for the spouse or de facto partner or family of the patient, and
- (b) the secondary medical practitioner has confirmed that opinion in a written statement provided to the primary medical practitioner.

18 Request certificate

- (1) A certificate in the form set out in Schedule 1 (a ***request certificate***) relating to a request for assistance must be completed in accordance with this section.
- (2) The patient must, not earlier than 7 days after making the initial request for assistance:
 - (a) sign the patient's declaration on the request certificate, or
 - (b) if the patient is physically unable to sign the request certificate, or is unable to communicate with reasonable fluency in English, make an audio-visual record (an ***audio-visual request***) of:
 - (i) the patient reading aloud the patient's declaration on the request certificate, or
 - (ii) if the patient is unable to read the declaration aloud, any other person reading the declaration aloud with the apparent agreement of the patient.
- (3) The primary medical practitioner must be present during the signing of the request certificate or making of the audio-visual request.

- (4) The primary medical practitioner must sign the primary medical practitioner's declaration on the request certificate in the presence of the patient.
- (5) The secondary medical practitioner must sign the secondary medical practitioner's declaration on the request certificate in the presence of the patient.
- (6) If the primary medical practitioner is to provide the assistance by giving a substance to a nominee for administration to the patient, the nominee must sign the nominee's declaration on the request certificate in the presence of the patient and the primary medical practitioner.
- (7) If an interpreter is required under section 19 to be present at the signing of the request certificate or making of the audio-visual request, the interpreter must sign the interpreter's declaration on the request certificate in the presence of the patient and the primary medical practitioner.
- (8) Subsections (4)–(7) apply whether or not the patient makes an audio-visual request.

19 Requirement for interpreter

- (1) If a patient and a designated person are not able to communicate with each other with reasonable fluency in any language, an interpreter who holds a professional qualification for interpreters prescribed by the regulations (if any) in a language in which the patient can communicate with reasonable fluency must be present to provide interpretive assistance to the patient:
 - (a) at the time of any communication between the patient and the designated person for the purposes of this Division, and
 - (b) at the time the patient signs the declaration on the request certificate or, if applicable, makes the audio-visual request, and
 - (c) at the time the designated person signs any declaration on the request certificate applicable to the designated person.
- (2) In this section:
designated person, in relation to a patient, means:
 - (a) the primary medical practitioner,
 - (b) the secondary medical practitioner,
 - (c) the independent qualified psychiatrist or independent qualified psychologist who conducts an examination of the patient under section 16.
present includes (except in relation to the signing by a patient or designated person of a declaration on a request certificate) present by way of an audio-visual link.

Division 4 Review of requests for assistance

20 Parties to applications

- (1) Each of the following persons is a party to an application under this Division in respect of a request certificate:
 - (a) the applicant,
 - (b) the primary medical practitioner,
 - (c) the patient.
- (2) The Supreme Court may, on its own initiative or on the application of a close relative of the patient, decide to join, as a party to any proceedings before the Court under this Division, any person who, in the opinion of the Court, should be a party to the proceedings (whether because of the person's concern for the welfare of the patient or for any other reason).

- (3) If the Court joins a person as a party to any proceedings, the Court must, as soon as practicable, notify the applicant (or cause the applicant to be notified) accordingly.

21 Close relatives may apply for order in respect of request certificate

- (1) The Supreme Court may, on the application of a close relative of a patient, make an order that a request certificate relating to the patient is not an effective request certificate for the purposes of this Act if the Court is satisfied that:
- (a) at the time of making the initial request for assistance:
 - (i) the patient was not suffering from a terminal illness, or
 - (ii) the patient was not at least 25 years of age or was not ordinarily resident in New South Wales, or
 - (b) at the time of making the initial request for assistance, signing the request certificate or undergoing the examination under section 16:
 - (i) the patient was not of sound mind, or
 - (ii) the decision-making capacity of the patient was adversely affected by his or her state of mind, or
 - (c) the patient's decision to request the assistance was not made freely, voluntarily and after due consideration.
- (2) The Supreme Court may, on the making of an order under this section (or pending the determination of an application under this section) make such orders as it considers necessary to prevent any action being taken in reliance on the request certificate.

22 Effect of order

- (1) If an order is made under this Division in respect of a request certificate, the certificate is not to be treated as a request certificate for the purposes of this Act.
- (2) An order under this Division in respect of a request certificate does not prevent:
- (a) the patient making a further request for assistance in accordance with section 4, or
 - (b) the patient or any other person completing a further request certificate in accordance with section 18, or
 - (c) any person providing assistance to the patient after the requirements of this Act have been met with respect to the further request.

23 Jurisdiction of Supreme Court

Nothing in this Division limits the jurisdiction of the Supreme Court.

Part 3 Effect of Act on other rights and obligations

24 Participation in provision of assistance discretionary

- (1) A health care provider or other person is not under any duty, whether by contract, statute or other legal requirement, to participate in the provision of assistance to a patient under this Act or to conduct any examination of the patient for the purposes of this Act.
- (2) If a health care provider is unable or unwilling to carry out a direction of a primary medical practitioner for the purpose of the primary medical practitioner assisting a patient under this Act, that health care provider must comply with any request (of the patient or a person acting on behalf of the patient) to transfer a copy of the patient's medical records to a new health care provider.

25 Protection from liability

- (1) No criminal or civil liability is incurred by a protected person, or any person acting under the direction of a protected person, for doing either of the following in good faith:
 - (a) participating in the provision of assistance under this Act,
 - (b) refusing to participate in the provision of assistance under this Act.
- (2) Subsection (1) (a) applies only if the assistance is provided in accordance with the requirements of this Act.
- (3) Nothing in this section or in section 574B of the *Crimes Act 1900* authorises a person to use force to prevent the making of a request for, or the provision of, assistance under and in accordance with this Act.
- (4) A reference in this section to participation in the provision of assistance includes, without limitation, a reference to:
 - (a) the provision of the assistance, and
 - (b) the preparation, sale, possession or supply of a substance for the purposes of the provision of the assistance, and
 - (c) the administration of a substance to a patient by a nominee as a result of the provision of the assistance, and
 - (d) being present when the assistance is provided by the primary medical practitioner, or when a substance is administered to the patient as a result of the assistance, and
 - (e) the destruction of an unused substance by, or under the supervision of, the primary medical practitioner, and the possession of the substance for that purpose, and
 - (f) doing any thing required or permitted under Division 3 of Part 2.
- (5) For the avoidance of doubt, a reference in this section to participation in the provision of assistance does not include any dealing with an unused substance (except the destruction or possession of the substance referred to in subsection (4) (e)).

Note. See the *Drug Misuse and Trafficking Act 1985*, the *Poisons and Therapeutic Goods Act 1966* and regulations under those Acts for provisions restricting or prohibiting the use, supply, possession, storage and disposal of certain substances.
- (6) In this section:

civil liability includes liability in any disciplinary proceedings.

dealing with an unused substance includes use, supply, possession, sale, storage and disposal of the substance.

protected person means:

- (a) a primary medical practitioner, or
- (b) a secondary medical practitioner, or
- (c) an independent qualified psychiatrist, or
- (d) an independent qualified psychologist, or
- (e) a health care provider, or
- (f) a nominee.

unused substance means a substance that:

- (a) has been prescribed or prepared for a patient for the purposes of the provision of assistance to the patient under this Act, and
- (b) is no longer required for that purpose either because the patient has died or has rescinded the request for assistance.

26 Effect on construction of wills and contracts

- (1) Any will, contract or other agreement, whether or not in writing or executed or made before or after the commencement of this Act, is void to the extent that it affects whether a person may make or rescind a request for assistance, or provide assistance, under this Act.
- (2) Any provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of a party to the contract in the event of a person making or rescinding a request for, or receiving or providing, assistance under this Act.

Part 4 Records and reporting of death

27 Medical records to be kept

A primary medical practitioner who provides assistance in accordance with a patient's request for assistance must file and, subject to this Act, keep the following as part of the medical record of the patient:

- (a) a note of any oral request of the patient for the assistance,
- (b) the request certificate and, if applicable, the audio-visual request relating to the patient,
- (c) the report of the independent qualified psychiatrist or independent qualified psychologist referred to in section 16 (2),
- (d) the written statement of the secondary medical practitioner referred to in section 17 (b),
- (e) any written statement or audio-visual record of the patient referred to in section 7 (2),
- (f) a note by the primary medical practitioner:
 - (i) certifying as to the independence of the patient's secondary medical practitioner and independent qualified psychiatrist or independent qualified psychologist, and
 - (ii) indicating that all requirements under this Act have been met, and
 - (iii) indicating the steps taken to carry out the request for assistance, and
 - (iv) including a notation of any substance prescribed by the primary medical practitioner for the purpose of, or in connection with, the provision of the assistance, and
 - (v) containing such other information as is prescribed by the regulations.

Maximum penalty: \$11,000.

28 Application of Coroners Act 2009

A death as the result of assistance provided under this Act is taken to be a reportable death for the purposes of the *Coroners Act 2009*.

29 Certification as to death

- (1) Despite section 38 (1) of the *Coroners Act 2009*, a medical practitioner may give a certificate as to the cause of death of a patient who dies as a result of assistance provided under and in accordance with this Act.
- (2) For the purposes of the application of section 39 of the *Births, Deaths and Marriages Registration Act 1995* to the death of a patient as the result of assistance provided under and in accordance with this Act:
 - (a) the primary medical practitioner who provides the assistance is taken to have been responsible for the patient's medical care immediately before death, and
 - (b) the cause of death of the patient:
 - (i) is taken to include the terminal illness of the patient, and
 - (ii) is taken not to include suicide or homicide.

Part 5 Miscellaneous

30 Certificate of request is evidence

A document purporting to be a request certificate or an audio-visual 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 the certificate, or make the audio-visual request, for assistance under this Act.

31 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create an offence punishable by a penalty not exceeding \$11,000.

32 Nature of proceedings for offences

- (1) Except as provided by subsection (2), proceedings for an offence under this Act may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 12 or 13 of this Act are to be dealt with on indictment.

33 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Form

(Section 18)

Form 1 Request certificate

(Voluntary Assisted Dying Act 2017, Division 3 of Part 2)

Declaration of patient

I,, declare that:

- (a) I have been informed by my primary medical practitioner that I am suffering from a terminal illness that is likely to result in my death within the next 12 months, and this has been confirmed by a secondary medical practitioner, and
- (b) I am experiencing severe pain, suffering or physical incapacity to an extent unacceptable to me, and
- (c) I have been provided information relating to the nature of my illness and its likely course and the medical treatment, including palliative care, counselling and psychiatric support and measures for keeping me alive, that might be available to me and I am satisfied that there is no medical treatment reasonably available that is acceptable to me in my circumstances, and
- (d) I have been examined by a psychiatrist or psychologist, and
- (e) I request my primary medical practitioner to assist me to end my life, and
- (f) I understand that I have the right to rescind this request at any time.

Signed:

Dated:

Declaration of primary medical practitioner

I declare that:

- (a) the person who has signed this request certificate, or made an audio-visual request under section 18 (2) (b) of the *Voluntary Assisted Dying Act 2017*, is personally known to me, and
- (b) he/she is a patient under my care, and
- (c) he/she has signed the request certificate, or made the audio-visual request, in my presence and in the presence of the secondary medical practitioner, and
- (d) I am satisfied that I will not gain any financial or other advantage (other than a reasonable payment for medical services) as a result of his/her death, and
- (e) I am satisfied that the requirements of Division 3 of Part 2 of the *Voluntary Assisted Dying Act 2017* have been or will be met.

Signed:

Name:

Address:

Qualifications:

Declaration of secondary medical practitioner

I declare that:

- (a) the person who has signed this request certificate, or made an audio-visual request under section 18 (2) (b) of the *Voluntary Assisted Dying Act 2017*, is personally known to me, and
- (b) I have discussed his/her case with him/her and his/her medical practitioner, and
- (c) I am satisfied that I will not gain any financial or other advantage (other than a reasonable payment for medical services) as a result of his/her death, and
- (d) I am satisfied that the requirements of Division 3 of Part 2 of the *Voluntary Assisted Dying Act 2017* have been or will be met.

Signed:

Name:

Address:

Qualifications:

public consultation draft

Voluntary Assisted Dying Bill 2017 [NSW]
Schedule 1 Form

Declaration of nominee

[Where under section 7 of the Voluntary Assisted Dying Act 2017 a nominee has been requested to administer a substance]

I declare that:

- (a) the person who has signed this request certificate, or made an audio-visual request under section 18 (2) (b) of the *Voluntary Assisted Dying Act 2017*, is personally known to me, and
- (b) he/she has requested me, and I have agreed, to administer a substance to him/her to assist him/her to end his/her life.

Signed:

Name:

Address:

Declaration of interpreter

[Where under section 19 of the Voluntary Assisted Dying Act 2017 an interpreter is required to be present]

I declare that:

- (a) I am an interpreter qualified as required by section 19 of the *Voluntary Assisted Dying Act 2017*, and
- (b) the person who has signed this request certificate, or made an audio-visual request under section 18 (2) (b) of the *Voluntary Assisted Dying Act 2017*, is personally known to me, and
- (c) I have interpreted for him/her in connection with the completion and signing of this certificate, or the making of the audio-visual request, and
- (d) I am satisfied that I will not gain any financial or other advantage (other than a reasonable payment for interpreting services) as a result of his/her death, and
- (e) in my opinion, he/she understands the meaning and nature of this certificate.

Signed:

Name:

Schedule 2 Amendment of other Acts

2.1 Coroners Act 2009 No 41

Section 37A

Insert after section 37:

37A State Coroner to report on assisted death under Voluntary Assisted Dying Act 2017

- (1) The State Coroner is to make a written report to the Minister containing a summary of the details of the deaths that:
 - (a) the State Coroner has been informed about under section 35, and
 - (b) appear to the State Coroner to involve the death of a person as a result of the provision of assistance under the *Voluntary Assisted Dying Act 2017*.
- (2) A report under subsection (1) is to be made for the period of 12 months commencing on 1 January of each year. A report is to be made within 4 months after the end of the period to which it relates.
- (3) The Minister may cause a summary of the report (not including any personal information within the meaning of the *Health Records and Information Privacy Act 2002*) to be published in any manner the Minister considers appropriate.

2.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert after clause 26 in Part 13 of Table 2:

27 Voluntary Assisted Dying Act 2017

An offence under section 12 or 13 of the *Voluntary Assisted Dying Act 2017*.

2.3 Guardianship Act 1987 No 257

Section 3CA

Insert after section 3C:

3CA Relationship with Voluntary Assisted Dying Act 2017

A guardianship order or instrument appointing an enduring guardian has no effect to the extent that it provides for the exercise of the function of making or rescinding a request for assistance under the *Voluntary Assisted Dying Act 2017*.