



RESEARCH NOTE

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Rights of the Terminally Ill Bill 1995

Background

On 1 February 1995, the Chief Minister of the Northern Territory announced his intention to introduce a Private Member's Bill - the Rights of the Terminally Ill Bill - into the Northern Territory Legislative Assembly.

On 22 February, the date of the Bill's introduction into the Assembly, a Select Committee on Euthanasia was established to inquire into the Bill and report back to the Assembly by 16 May 1995.

The Committee received more than 1,100 submissions, took oral evidence and conducted hearings in Darwin, in regional centres and in a number of Aboriginal communities. Its report contained a number of recommendations in relation to the Bill but no statement of support for the concept of euthanasia. On 25 May 1995, the Legislative Assembly passed the Bill after more than 50 amendments were introduced during the Committee stage. The Bill passed the Third Reading stage 15-10.

As at 8 June 1995 the Bill had not been enacted. This Research Note is based on the Bill's Third Reading Proof Print which may be subject to further editing.

The Rights of the Terminally Ill Bill sets out a statutory regime under which active voluntary euthanasia (see Research Note No.12 *Euthanasia*) may be requested and lawfully administered.

The Northern Territory is the second jurisdiction in the world to legislate on active voluntary euthanasia. Oregon, in the United States, passed an active voluntary euthanasia statute in 1994. That

statute is under constitutional challenge.

When does the legislation commence?

The legislation comes into operation on a date to be fixed by the Administrator of the Northern Territory by notice in the *Gazette*.

Who can make a request and in what circumstances?

The Bill provides that a competent adult suffering from a terminal illness may request their medical practitioner to assist in terminating their life. The request must be voluntary, sufficiently informed and made after due consideration. A request can only be acted upon if made in the appropriate form and if specified conditions are met.

The legislation will not apply to individuals who are of 'unsound mind', to persons under the age of 18 years, or to the clinically depressed.

Some definitions contained in the Bill

Assistance provided by a medical practitioner includes prescribing a substance, preparing a substance, giving a patient a substance for self-administration and administering a substance to the patient.

An 'illness' includes 'injury or degeneration of mental or physical faculties.' The illness must be terminal in order for a patient to make a request under the Bill. A 'terminal illness' is defined as an illness which 'in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the

patient, result in the death of the patient.'

A 'medical practitioner' is a person who has been entitled to practise in Australia for a continuous period of not less than five years and who is entitled to practise medicine in the Northern Territory.

Conditions

The Bill provides numerous conditions that must be satisfied before a medical practitioner can assist a person to end their life. Some of those conditions are described here. The patient must be 18 years of age and have a terminal illness which is causing severe pain or suffering. There must be no medical measure acceptable to the patient that could effect a cure.

The medical practitioner must have informed the patient about the likely course of the illness and available medical treatment, palliative care, counselling and psychiatric support. After being so informed, the patient must then have indicated a desire to end his or her life.

The medical practitioner must be also satisfied that the patient is of sound mind, is acting voluntarily and after due consideration.

There is a mandatory 'cooling off' period of seven days between a patient informing the medical practitioner of his or her wish to end his or her life and the patient completing a certificate of request. The certificate must be signed by the patient in the presence of the patient's medical practitioner and another medical practitioner. The two medical practitioners must also sign the requisite declarations and have discussed the case.

There is a second 'cooling off' period after a certificate of request is signed. The effect of the second 'cooling off' period is that a request cannot be acted upon for at least 48 hours after the certificate is completed.

A second, independent medical opinion must be obtained from a medical practitioner who holds a diploma of psychological medicine or its equivalent, has examined the patient and who confirms the diagnosis and prognosis of the first medical practitioner, and that the patient is not suffering from treatable clinical depression relating to the illness.

Rescinding a request

A request for assistance may be rescinded at any time and in any way and the rescission must be noted on the patient's medical file. In addition the certificate of request must be destroyed.

Interpreters

Where a medical practitioner does not speak the same first language as the patient, that medical practitioner cannot assist the patient to end his or her life unless an accredited interpreter is present at the time the request is made. The interpreter must also be present during the signing of a certificate of request and must confirm that the patient has understood the request for assistance.

Palliative care

Concerns were expressed during the debate that euthanasia legislation would impact adversely on the development of palliative care services. The Bill provides that a medical practitioner may not assist a patient if palliative care options are reasonably available and are acceptable to the patient.

Patients who are physically unable to sign a certificate of request

If a competent, adult patient wishes to end his or her life but is physically unable to sign the certificate of request then another

adult may sign the certificate on the patient's behalf. That person cannot be one of the medical practitioners referred to earlier, or a person likely to receive a financial benefit from the patient's estate.

Penalties

It is an offence for a person to make inducements or threats to a medical practitioner or any other person in relation to a request for assistance to end life. The penalty is \$1,000.

A penalty of \$20,000 or imprisonment for four years may be imposed on a person who by deception or improper influence procures the signing or witnessing of a certificate of request. A person who is found guilty of such an offence forfeits any benefit they would otherwise obtain as a result of the patient's death.

A penalty also applies if a medical practitioner fails to comply with record keeping and reporting requirements. The penalty is \$10,000 or two years imprisonment.

Records and reporting of death

The proposed law requires medical practitioners who assist in a termination of life to comply with specified record keeping requirements. These include keeping a note of any oral request for assistance, the certificate of request, an opinion about the patient's state of mind when the request for assistance was made, the report prepared by the second medical practitioner and the substance prescribed.

Where a medical practitioner has assisted in the termination of life, the death certificate must be sent to the Coroner, with the medical record that relates to the patient's terminal illness and death.

The Coroner must report annually to the Attorney-General on the number of patients who died as a result of assistance given under the legislation and the Attorney-

General must report to the Legislative Assembly.

In addition, the Coroner may at any time report on the operation of the legislation and this report must be tabled in the Legislative Assembly by the Attorney-General.

Immunities

The Bill provides that a person is not liable to civil or criminal action or professional disciplinary action for anything done in good faith and without negligence in compliance with the legislation.

A medical practitioner who receives a request under the legislation may refuse to assist a person to end their life.

The Bill also provides that a health care provider (including a hospital, nursing home or nurse) is not under any duty to assist a medical practitioner in the termination of a patient's life.

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