

Voluntary Euthanasia Bill 2010

Explanatory Memorandum

Overview of Bill

The purpose of the *Voluntary Euthanasia Bill 2010* is to afford immunity from criminal prosecution and civil ramifications to a person who assists a suffering terminally ill patient to die, provided that person acts in accordance with the terms of the *Bill*.

The *Bill* comprises the main body of the *Bill* and the schedule to the *Bill*.

Main body

The main body of the *Bill* prescribes who may apply for the administration of euthanasia, who may administer euthanasia to that person and in what circumstances the administration of euthanasia may take place. It also sets out the reporting obligations following the death of the applicant, details the effect of a death by euthanasia on wills and insurance policies, and prescribes penalties for improper conduct not already covered by other legislation (e.g. the *Criminal Code*).

Schedule

The schedule to the *Bill* sets out the various forms that must be used by the applicant and the relevant medical practitioners when making and assessing a request for the administration of euthanasia.

Section Notes

1. Short title

Cites the short title of the Act as the Voluntary Euthanasia Act 2010.

2. Commencement

Provides that the Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used

Provides the meanings of certain terms used in the Act.

4. Purpose of Act

States the purpose of the Act; which is to afford immunity from criminal prosecution and civil ramifications to a person who assists a suffering terminally ill patient to die, provided that person acts in accordance with the terms of the Act.

5. No obligation

Makes clear that no person may be compelled to do anything under the Act that is against the wishes of that person, whether for religious reasons or otherwise.

6. Request

Section 6(1) sets out the characteristics which a person must have in order to make a request for the administration of euthanasia under the Act, and prescribes the form in which the request must be made.

Section 6(2) sets out the way in which a person who has the characteristics set out in section 6(1), but who is unable to sign a document, may make a request for the administration of euthanasia under the Act.

Section 6(3) makes clear that, in order to be valid, a request for the administration of euthanasia must be made in the form set out in Part 1 of the Schedule. This is to ensure that all requests contain the necessary information and declarations in order to comply with the Act.

Section 6(4) makes clear the date on which a request is 'made' for the purposes of the Act. This date is relevant, for example, in relation to the 14 day period which must exist between the date on which an initial request is made, and the date on which a second request is made.

Section 6(5) means that any subsequent request made by an applicant must be completed and assessed as if it was a first request, and not by reference to any request that was already made or already assessed. This means that each request must be signed and witnessed afresh, and must be assessed on the basis of circumstances existing at the time the subsequent request was made, not on the basis of circumstances which may have existed at the time when a previous request was made. Note that a subsequent request means a subsequent new request commencing the euthanasia process in this Bill, as distinct from the "second request" the subject of section 10 of the Act.

7. Witnesses to the request

Provides that an applicant's request must be witnessed in accordance with the requirements set out in the Act in order for that request to be valid for the purposes of the Act.

8. Referral of request to medical practitioner

Section 8(1) requires that a request be referred to an experienced medical practitioner who fits within the definitions set out in section 2 of the Act in order for that request to progress (see in particular the definitions of "assessing medical practitioner" and "medical practitioner"). The purpose of this referral is to seek agreement from the medical practitioner to assess the request in accordance with the Act. The section makes clear that a medical practitioner is free to refuse to assess a request. A medical practitioner who agrees to assess a request becomes the "applicant's medical practitioner" for the purposes of the Act. There is no requirement for this medical practitioner to have been the medical practitioner seen regularly by the applicant prior to making the request under the Act.

Section 8(2) requires that a medical practitioner who agrees under section 8(1) to assess a request must, before assessing that request, give to the applicant the information listed in the section.

Section 8(3) requires the applicant's medical practitioner to engage an interpreter, if necessary, so that the applicant understands the information given to him or her.

Section 8(4) requires that a medical practitioner who has special qualifications in the field of palliative care explains the palliative care options to an applicant, if the applicant's medical practitioner does not have those qualifications.

Section 8(5) makes clear that an applicant may approach other medical practitioners in order to find a medical practitioner who will agree to assess a request.

9. Procedure following agreement to assess a request

Section 9(1) makes clear that an applicant's medical practitioner may only assess an applicant's request if he or she has first given the applicant the information which he or she is required to give to the applicant under section 8(2).

Section 9(2) sets out the criteria against which an applicant's request must be assessed. Two medical practitioners; the applicant's medical practitioner (being the medical practitioner who provided the information to the applicant in accordance with section 8(2)) and a second medical practitioner (who is also an "assessing medical practitioner" under the Act), must determine whether the listed criteria apply to the applicant. These criteria, together with the criteria set out in section 6(1) which dictate whether a person may make a request for the administration of euthanasia, form the central basis for determining whether euthanasia may be administered to an applicant in accordance with the Act.

Section 9(3) sets out the circumstances in which an applicant's medical practitioner may sign the assessing medical practitioners' confirmation; thereby indicating that he or she believes euthanasia may properly be administered to the applicant in accordance with the Act. The confirmation must be in the form prescribed in Part 2 of the Schedule to the Act.

Section 9(4) sets out the circumstances in which the second assessing medical practitioner may sign the assessing medical practitioners' confirmation; thereby indicating that he or she

believes euthanasia may properly be administered to the applicant in accordance with the Act. The confirmation must be in the form prescribed in Part 2 of the Schedule to the Act.

Section 9(5) makes clear that each medical practitioner's confirmation must be made in the form set out in Part 2 of the Schedule. This is to ensure that all medical practitioners' confirmations contain the necessary information and declarations in order to comply with the Act.

Section 9(6) requires the applicant's medical practitioner to make notations to the applicant's medical file promptly, and prescribes a penalty if that medical practitioner fails to do so. The penalty is the same as that which is prescribed by the *Coroners Act 1996* in relation to similar conduct.

Section 9(7) requires the applicant's medical practitioner to engage an independent interpreter, if necessary.

10. Second request

It should be noted that this "second request" may also be described as the "final request" as it is the last assessment stage in the process. The applicant may of course subsequently revoke the process at any time however; see section 12.

Section 10(1) sets out the characteristics which a person must have in order to make a second request for the administration of euthanasia under the Act, and prescribes the form in which the second request must be made. The characteristics set out in this section are identical to those set out in section 6(1). This is to ensure that the characteristics which were required under section 6(1) to have been present at the time the initial request was made, continue to be present closer to the time of administration of euthanasia.

Section 10(2) sets out the way in which a person who meets the criteria set out in section 10(1), but who is unable to sign a document, may make a second request for the administration of euthanasia under the Act.

Section 10(3) provides that an applicant's second request must be witnessed in accordance with the requirements set out in the Act in order for that request to be valid for the purposes of the Act.

Section 10(4) sets out the characteristics which a person must have in order to act as a witness to an applicant's second request.

Section 10(5) makes clear the date on which a second request is 'made' for the purposes of the Act. This date is relevant, for example, in relation to the 14 day period which must exist between the date on which an initial request is made, and the date on which a second request is made.

Section 10(6) makes clear that a second request must be made in the form set out in Part 3 of the Schedule. This is to ensure that all second requests contain the necessary information and declarations in order to comply with the Act.

11. Administration of euthanasia

Section 11(1) sets out the circumstances which must exist before an applicant's medical practitioner may administer euthanasia to an applicant. This section requires that all paperwork be completed; which means that the requirements of sections 6, 7, 8, 9 and 10 must necessarily have all been met and completed. The section also ensures that the applicant has the characteristics required under section 10(1), that no person stands to receive any benefit from acting in accordance with the Act, and that the "cooling off" period, of at least 14 days between the time of the initial request and the second request, has been observed. Note also that euthanasia must be administered by the giving of a "recognised drug" (defined in section 2 and requiring regulations should this Bill become law).

Section 11(2) obliges an applicant's medical practitioner to use reasonable endeavours to ensure that the wishes of the applicant set out in his or her second request, regarding the place and time of administration of euthanasia, and the people to be present, are carried out.

Section 11(3) obliges the applicant's medical practitioner to remain with the applicant until death has ensued.

Section 11(4) obliges the applicant's medical practitioner to ensure that an observing medical practitioner performs the tasks set out in the section prior to the administration of euthanasia to an applicant, and remains present until death of the applicant has ensued. This medical practitioner is a third person who has not been involved in the process prior to this stage, but who now performs an additional check on documentation and the method of administration of euthanasia.

Section 11(5) ensures that the observing medical practitioner signs the observing medical practitioner's confirmation promptly. It also requires that the observing medical practitioner's confirmation be made in the form set out in Part 4 of the Schedule. This is to ensure that all observing medical practitioner's confirmations contain the necessary information and declarations in order to comply with the Act.

Section 11(6) makes clear that the Act permits only the applicant's medical practitioner to administer euthanasia to the applicant. Administration by any other person is unlawful.

12. Revocation of request

Section 12(1) makes clear than an applicant can revoke his or her request at any time and in any manner.

Section 12(2) functions to immediately void a request upon the revocation of that request and prevents the applicant's medical practitioner from taking any further action in relation to the request.

Section 12(3) obliges an applicant's medical practitioner to take all reasonable steps to ascertain if a request has been revoked if he or she suspects that the request may have been revoked. The medical practitioner must not take further action in relation to the request until he or she has determined the status of the request.

Section 12(4) requires an applicant's medical practitioner to promptly note the applicant's medical file following revocation of a request and imposes a penalty for failing to do so. The penalty is equal to the highest monetary fine prescribed by the *Coroners Act 1996*.

Section 12(5) makes clear that if a request is revoked, a new request can be made at a later stage. Note that under section 6(5), a subsequent request must be treated as a new request.

13. Cessation of sound mind

Makes clear that euthanasia must not be administered to a person who is not of sound mind. If an applicant ceases to be of sound mind, the request lapses and the applicant's medical practitioner must immediately note the applicant's medical file. The penalty prescribed for failure to immediately note the file is equal to the highest monetary fine prescribed by the *Coroners Act 1996*.

14. Reporting

Section 14(1) makes clear that a death which occurs in accordance with the Act is not a "reportable death" for the purposes of section 3 of the *Coroners Act 1996*. Note however the accountability mechanisms in the balance of this section.

Section 44 of the *Births Deaths and Marriages Registration Act 1998* requires action from the person who was responsible for the care of a deceased person immediately prior to that person's death. Section 14(2) makes clear that the person responsible for an applicant's medical care immediately before the applicant's death is the applicant's medical practitioner.

Section 14(3) prescribes the information which the applicant's medical practitioner must provide to the Coroner within 4 working days of the applicant's death. The penalty prescribed for failure to provide the necessary information is the same as that which is prescribed by the *Coroners Act 1996* in relation to similar conduct.

Section 14(4) specifies what should be noted on the death certificate of an applicant following the death of that applicant though euthanasia administered in accordance with the Act.

Section 14(5) obliges the Coroner to report to the Minister annually regarding certain information, including regarding some, but not all, of the information provided to the Coroner by the applicant's medical practitioner under section 14(3). Note that the name of the

applicant, for example, is not reported to the Minister. The Minister must then table the report in Parliament.

Section 14(6) allows the Coroner to make additional reports to the Minister, which the Minister must then promptly table.

Subsections 43(1) or 43(2a) of the *Guardianship and Administration Act 1990* allow a guardianship order to be made if certain conditions are fulfilled. Section 14(7) makes clear that the making of a request does not, of itself, fulfil any of those conditions.

15. Immunity from criminal or civil liability

Section 15(1) affords immunity from criminal and civil liability, and other negative conduct, to any person who does something required or permitted under the Act so long as what that person did was done in accordance with the Act.

Section 15(2) affords immunity from criminal and civil liability to any person who does not do anything that is required or permitted under the Act, but who provides mere incidental practical or emotional support to the applicant. Among other things, this provision clarifies that the applicant's closest relatives or friends may comfort him or her in their final moments without incurring legal liability.

16. Certain persons not to benefit from an applicant's death

Makes clear that a person who does anything required or permitted under the Act will not receive any benefit that they would otherwise have received because of the applicant's death. This is to ensure that no person who stands to benefit under an applicant's will can take a formal part in the proceedings under the Act and still benefit under that will. This section does not apply however to a donee of a power of attorney who acts only as an authorised signatory for the purposes of the Act.

17. Contracts and insurance

Section 17(1) provides that the making or revocation of a request does not of itself affect any will or other agreement.

Section 17(2) provides that the making or revocation of a request does not of itself affect any policy of insurance. This includes life insurance policies which insure the life of the applicant.

Section 17(3) makes clear that an insurer cannot refuse to make payments in accordance with the terms of an insurance policy on the grounds that the applicant died through the administration of euthanasia in accordance with the Act.

Section 17(4) makes clear that a death through euthanasia will not be considered to be a death by suicide for the purposes of an insurance policy.

18. Improper conduct

Section 18(1) makes clear that any person who seeks, receives, offers or gives a bribe to a person to induce that person to do something under the Act is guilty of a crime and is liable to imprisonment for 7 years. The penalty prescribed is the same as that which is prescribed by the *Criminal Code* (WA) in relation to bribing a public officer.

Section 18(2) makes clear that any person who makes misleading statements in relation to something done under the Act is guilty of a crime and is liable to imprisonment for 7 years. The penalty prescribed is the same as that which is prescribed by the *Criminal Code* (WA) in relation to offences of a similar nature.

19. General

Permits the Governor to make regulations as required.