

South Australia

Voluntary Euthanasia Bill 2008

A BILL FOR

An Act to provide for the administration of medical procedures to assist the death of a limited number of patients who are in the terminal phase of a terminal illness, who are suffering unbearable pain and who have expressed a desire for the procedures subject to appropriate safeguards; and for other purposes.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Voluntary Euthanasia Act 2008*.

2—Commencement

5 This Act will come into operation 6 months after the date of assent or on an earlier date fixed by proclamation.

3—Objects

The objects of this Act are—

- 10
- (a) to give a limited number of competent adults who are in the terminal phase of a terminal illness and who are suffering unbearable pain the right to make informed choices about the time and manner of their death;
 - (b) to ensure that people who have voluntarily requested euthanasia can obtain appropriate and humane medical assistance to hasten death;

- (c) to ensure that people who may want to request euthanasia are given adequate information before making their request (including information about palliative care) and are not subject to duress or other undue pressure to make a request;
- 5 (d) to ensure that the administration of euthanasia is subject to other appropriate safeguards and supervision;
- (e) to recognise the right of medical practitioners and other persons to refuse to participate in the administration of euthanasia.

4—Interpretation

- 10 (1) In this Act—

adult means of or above the age of 18 years;

certificate of confirmation—see section 11(1)(e);

medical practitioner has the same meaning as in the *Medical Practice Act 2004*;

15 *palliative care specialist* means a medical practitioner who is registered on the specialist register under the *Medical Practice Act 2004* and whose principal area of practice is the provision of palliative care;

Registrar—see section 9(2);

terminal illness has the same meaning as in the *Consent to Medical Treatment and Palliative Care Act 1995*;

20 *terminal phase* of a terminal illness has the same meaning as in the *Consent to Medical Treatment and Palliative Care Act 1995*;

voluntary euthanasia means the administration of medical procedures, in accordance with this Act, to assist the death of a terminally ill person.

- 25 (2) Despite any other Act or law, a person is only *terminally ill* for the purposes of this Act if—

- (a) the person is in the terminal phase of a terminal illness; and
- (b) the illness is causing the person to suffer pain which the person finds unbearable and which cannot be alleviated to a degree the person finds acceptable by pain relief methods offered to the person.

- 30 (3) For the purposes of this Act a reference to a request for voluntary euthanasia will be taken to mean a request for voluntary euthanasia made in accordance with this Act.

5—Request for administration of voluntary euthanasia

- (1) An adult person of sound mind who is terminally ill may make a request for voluntary euthanasia.
- 35 (2) However, before such a request is made, and subject to subsection (3), 2 medical practitioners acting independently must fully inform the person of—
- (a) the diagnosis of the person's illness; and
- (b) the prognosis of the person's illness; and
- 40 (c) the forms of treatment that may be available to the patient and the respective risks, side effects and likely outcomes of such treatments; and

- (d) the extent to which the effects of the illness could be mitigated by appropriate palliative care; and
- (e) the proposed voluntary euthanasia procedure, risks associated with the procedure and feasible alternatives to the procedure.

5 (3) If a medical practitioner providing a person with information in accordance with subsection (2)(d) is not a palliative care specialist, the medical practitioner must, if reasonably practicable, consult a palliative care specialist about the person's illness and the extent to which its effects may be mitigated by appropriate palliative care before giving the person this information.

10 **6—Procedures to be observed in the making and witnessing of requests**

(1) A request for voluntary euthanasia must be made in the presence of the following witnesses (who must be assembled together at the time the request is made):

- (a) the medical practitioners referred to in section 5(2);
- (b) 2 other adult witnesses (not being persons related to the person making the request).

(2) Each witness must certify that the person who made the request—

- (a) appeared to be of sound mind; and
- (b) appeared to understand the nature and implications of the request; and
- (c) did not appear to be acting under duress.

(3) Each witness who is a medical practitioner must also certify—

- (a) that he or she complied with the requirements under section 5; and
- (b) that he or she, having examined the person who made the request for symptoms of depression immediately before the request—
 - (i) has no reason to suppose that the person is suffering from treatable clinical depression; or
 - (ii) if the person does exhibit symptoms of depression—is of the opinion that treatment for depression, or further treatment for depression, is unlikely to influence the person's decision to request voluntary euthanasia.

30 **7—Form of request for voluntary euthanasia**

(1) A request for voluntary euthanasia must be made in writing in the form prescribed by Schedule 1.

(2) However, if the person making the request is unable to write, the person may make the request orally in which case the form—

- (a) must be completed by either or both of the witnesses present in accordance with section 6(1) on behalf of the person in accordance with the person's expressed wishes; and
- (b) must, instead of the person's signature, bear an endorsement signed by each witness to the effect that the form has been completed by the witnesses in accordance with the person's expressed wishes.

- (3) If practicable, a request for voluntary euthanasia that has been made orally must be recorded on videotape.
- (4) The Registrar must be notified in writing of the making of the request, and a copy of the completed form must be attached to such notification.

5 **8—Revocation of request**

- (1) A person who has made a request for voluntary euthanasia may revoke the request at any time.
- (2) A written, oral, or other indication of withdrawal of consent to voluntary euthanasia is sufficient to revoke the request even though the person may not be mentally
10 competent when the indication is given.
- (3) A person who, knowing of the revocation of a request for voluntary euthanasia, deliberately or recklessly fails to communicate that knowledge to the Registrar is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

15 **9—Register of requests for voluntary euthanasia**

- (1) The Minister must maintain a register of all requests for voluntary euthanasia (the *Register*).
- (2) The Minister must assign a suitable person (the *Registrar*) to administer the Register.
- (3) If the Registrar is satisfied that a person has made a request for voluntary euthanasia,
20 the Registrar must register the request in the Register.
- (4) If the Registrar is satisfied that a request for voluntary euthanasia has been revoked, the Registrar must register the revocation in the Register.
- (5) The Registrar must, at the request of a medical practitioner who is attending a terminally ill patient—
 - 25 (a) inform the medical practitioner—
 - (i) as to whether a request by the patient for voluntary euthanasia is registered in the Register; and
 - (ii) if such a request is registered—
 - 30 (A) as to whether a revocation of the request is registered in the Register; or
 - (B) as to whether the Registrar has been notified of a revocation, or purported revocation, of the request but has not yet registered the revocation in the Register; and
 - (iii) of any other information held by the Registrar that may be relevant to
35 the administration of voluntary euthanasia to the patient; and
 - (b) if a request by the patient for voluntary euthanasia is registered in the Register and no revocation of that request is registered in the Register—give the medical practitioner a copy of the registered request.
- (6) The Registrar must, at the request of the Commissioner of Police, provide the
40 Commissioner with any information held by the Registrar that may be relevant to a specified request for voluntary euthanasia.

- (7) No fee may be charged in respect of a duty of the Registrar under this section.
- (8) The regulations may prescribe conditions for access to the Register.

10—Registrar's powers of inquiry

- 5 (1) The Registrar may conduct an inquiry to determine whether information recorded, or proposed to be recorded, in the Register is correct.
- (2) The Registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this section, require the person to answer specified questions or to provide other information within a time and in a way specified in the notice.
- 10 (3) If a person is required under subsection (2) to answer specified questions or to provide other information to the Registrar, the Registrar may require that the answers or information be verified by statutory declaration and, in that event, the person will not be taken to have answered the questions or provided the information as required unless it has been verified in accordance with the requirements of the Registrar.
- 15 (4) A person who fails, without reasonable excuse, to comply with a notice under subsection (2) is guilty of an offence.
Maximum penalty: \$5 000.

11—Administration of voluntary euthanasia

- 20 (1) A medical practitioner may administer voluntary euthanasia to a patient if—
 - (a) a request by the patient for voluntary euthanasia is registered in the Register; and
 - (b) the medical practitioner has made a request for information to the Registrar under section 9; and
 - 25 (c) there is no revocation of the request registered in the Register, and there is no reason to believe that there has been a revocation, or purported revocation, of the request that has not been registered in the Register; and
 - (d) the patient has not expressed a desire to postpone the administration of voluntary euthanasia; and
 - 30 (e) since the time of the patient's request for voluntary euthanasia, another medical practitioner who is not involved in the day to day treatment or care of the patient has personally examined the patient and has given a certificate in the form prescribed by Schedule 2 (the *certificate of confirmation*) certifying—
 - (i) that the patient is terminally ill; and
 - 35 (ii) that—
 - (A) there is no reason to suppose that the patient is suffering from treatable clinical depression; or
 - (B) if the patient does exhibit symptoms of depression—the medical practitioner is of the opinion that treatment for depression, or further treatment for depression, is unlikely to influence the patient's decision to request voluntary euthanasia; and
- 40

- (f) at least 48 hours have elapsed since the time of the examination referred to in paragraph (e).
- (2) A medical practitioner may only administer voluntary euthanasia by 1 or more of the following methods:
- 5 (a) by administering drugs in appropriate concentrations to end life;
- (b) by prescribing drugs for self-administration by a patient to allow the patient to end his or her life;
- (c) by withholding or withdrawing medical treatment in circumstances that will result in an end to life.
- 10 (3) In administering voluntary euthanasia, a medical practitioner must give effect, as far as practicable, to the expressed wishes of the patient.
- (4) A method of administering voluntary euthanasia referred to in subsection (2) must, as far as practicable, result in an end to life that is humane and painless.

15 **12—Person may decline to administer or assist the administration of voluntary euthanasia**

- (1) A medical practitioner may decline to carry out a request for the administration of voluntary euthanasia on any grounds.
- (2) However, if a medical practitioner who has the care of the patient declines to administer voluntary euthanasia, the medical practitioner must inform the person that another medical practitioner may be prepared to consider the request.
- 20 (3) A person may decline to assist a medical practitioner to administer voluntary euthanasia on any grounds without prejudice to the person's employment or any other form of adverse discrimination.
- (4) The administering authority of a hospital, hospice, nursing home or other institution for the care of the sick or infirm may refuse to permit voluntary euthanasia within the institution but, if it does so, must take reasonable steps to ensure that the refusal is brought to the attention of patients entering the institution.
- 25

13—Protection from liability

30 A medical practitioner who administers voluntary euthanasia, or a person who assists in the administration of voluntary euthanasia, incurs no civil or criminal liability by doing so.

14—Restriction on publication

35 A person must not publish by newspaper, radio, television or in any other way, a report tending to identify a person as being involved in the administration of voluntary euthanasia, unless—

- (a) the person consents to the publication; or
- (b) the person has been charged with an offence in relation to the administration or purported administration of voluntary euthanasia.

Maximum penalty: \$5 000 or imprisonment for 1 year.

15—Report to coroner

- (1) A medical practitioner who administers voluntary euthanasia must make a report to the State Coroner within 48 hours after doing so.

Maximum penalty: \$5 000.

- 5 (2) The report—

(a) must be in the form prescribed by Schedule 3; and

(b) must be accompanied by—

(i) the request for voluntary euthanasia; and

(ii) the certificate of confirmation.

- 10 (3) The State Coroner must forward to the Minister copies of the reports made under this section and the accompanying materials.

16—Cause of death

- 15 (1) For the purposes of this or any other Act or law, or for any other purpose, the death of a person resulting from voluntary euthanasia will be taken to have been caused by the patient's illness.

- (2) For the purposes of any other Act or law, or for any other purpose, the death of a person resulting from voluntary euthanasia is not suicide or homicide.

17—Insurance

- 20 (1) An insurer is not entitled to refuse to make a payment that is payable under a life insurance policy on death of the insured on the ground that the death resulted from the administration of voluntary euthanasia.

- (2) A person is not obliged to disclose a request for voluntary euthanasia to an insurer, and an insurer must not ask a person to disclose whether the person has made a request for voluntary euthanasia.

25 Maximum penalty: \$10 000.

- (3) This section applies despite an agreement between a person and an insurer to the contrary.

18—Offences

- 30 (1) A person who makes a false or misleading representation in a request for voluntary euthanasia or other document under this Act, knowing it to be false or misleading, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who, by dishonesty or undue influence, induces another to make a request for voluntary euthanasia is guilty of an offence.

35 Maximum penalty: Imprisonment for 10 years.

- (3) A person who makes a false or misleading statement to the Registrar in relation to a revocation, or purported revocation, of a request for voluntary euthanasia, knowing it to be false or misleading, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (4) A person convicted or found guilty of an offence against subsection (1) or (2) forfeits any interest that the person might otherwise have had in the estate of the person who has made the request for voluntary euthanasia.

19—Voluntary Euthanasia Monitoring Committee

- 5 (1) The Minister must establish a committee to be called the *Voluntary Euthanasia Monitoring Committee* (the *Committee*).
- (2) The Committee will consist of no more than 8 members appointed by the Minister of whom—
- 10 (a) 1 must be a person nominated by the South Australian Branch of the Australian Medical Association Inc; and
- (b) 1 must be a person nominated by The Law Society of South Australia; and
- (c) 1 must be a person nominated by the Palliative Care Council of South Australia Inc; and
- 15 (d) 1 must be a person nominated by the South Australian Voluntary Euthanasia Society Inc; and
- (e) 1 must be a person nominated by the South Australian Council of Churches Inc; and
- (f) 1 must be a person nominated by Disability Services SA.
- (3) The functions of the Committee are—
- 20 (a) to monitor and keep under constant review the operation and administration of this Act; and
- (b) to report to the Minister, on the Committee's own initiative or at the request of the Minister, on any matter relating to the operation or administration of this Act; and
- 25 (c) to make recommendations to the Minister regarding—
- (i) amendments to this Act; or
- (ii) improvements to the administration of this Act,
- which, in the opinion of the Committee, would further the objects of this Act.
- (4) The Minister must provide the Committee with a copy of each report received from the Coroner under section 15(3).
- (5) A member of the Committee holds office on such conditions and for such term as the Minister determines.
- (6) A member of the Committee is entitled to such allowances and expenses as the Minister may determine.
- 35 (7) Subject to directions of the Minister, the Committee may conduct its business in such manner as it thinks fit.

20—Annual report to Parliament

- 40 On or before 30 September in each year, the Minister must make a report to Parliament on the administration and operation of this Act during the year that ended on the preceding 30 June.

21—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1) the regulations may—
 - (a) create offences punishable by a fine not exceeding \$10 000;
 - (b) make provisions facilitating proof of the commission of offences against the regulations.

5

Schedule 1—Current request for voluntary euthanasia

- 1 I [*here set out full name and residential address of the person making the request*] make a request for voluntary euthanasia.
- 2 I believe that I am presently terminally ill and intend the request to be carried out in accordance with the directions given below.
- 3 I am not acting under duress.
- 4 I have received the information required under section 5 of the *Voluntary Euthanasia Act 2006*¹.
- 5 I give the following directions about the timing, place and method of voluntary euthanasia:

[Here set out directions. If any of these matters are to be left to the discretion of a medical practitioner, there should be a statement to that effect.]

.....
(signature²)

.....
(date)

Witnesses' certificate

We [*here set out the names and addresses of the two adult witnesses to the request*] certify that—

- (a) the above request for voluntary euthanasia was made in our presence; and
- (b) the person who made the request appeared to be of sound mind and appeared to understand the nature and implications of the request; and
- (c) the person who made the request did not appear to be acting under duress.

.....
(signature)

.....
(signature)

Medical practitioner's certificate

I [*here set out the name and address of the medical practitioner in whose presence the request is made*] certify that—

- (a) the above request for voluntary euthanasia was made in my presence; and
- (b) the person who made the request appeared to be of sound mind and appeared to understand the nature and implications of the request; and
- (c) the person who made the request did not appear to be acting under duress; and
- (d) before the above request was made I provided the person making the request with the information required under section 5 of the *Voluntary Euthanasia Act 2006*¹; and

(e) after examining the person making the above request—

*I have no reason to suppose that the person is suffering from treatable clinical depression

or*

*I have found that the person does exhibit symptoms of depression but I am of the opinion that treatment for depression, or further treatment for depression, is unlikely to influence the person's decision to request voluntary euthanasia.

[*Medical practitioner must delete the statement that is inapplicable]

.....
(signature)

Notes

¹ Section 5(2) of the Voluntary Euthanasia Act 2006 provides as follows:

5 Request for administration of voluntary euthanasia

...

(2) However, before such a request is made, and subject to subsection (3), a medical practitioner must fully inform the person of—

- (a) the prognosis of the person's illness; and
- (b) the extent to which the effects of the illness could be mitigated by appropriate palliative care; and
- (c) the proposed voluntary euthanasia procedure, risks associated with the procedure and feasible alternatives to the procedure.

² If the person making the request is unable to sign the request, the request must, instead of the signature, bear an endorsement signed by the two adult witnesses to the effect that the form has been completed by the witnesses in accordance with the person's expressed wishes.

Schedule 2—Certificate of confirmation

I *[here set out full name and address of the medical practitioner who gives the certificate of confirmation]* certify as follows:

- 1 I personally examined *[here set out full name and residential address of the patient]* at *[here set out place of examination]* at *[here set out time of examination]* ON *[here set out date of examination]*.
- 2 I am not involved in the day to day treatment or care of the patient.
- 3 I find the patient to be suffering from the following illness:
[here set out description of the patient's illness]
- 4 In my opinion the patient is terminally ill for the following reasons:
[here set out reasons for believing the patient to be terminally ill]
- 5 After examining the patient—
*I have no reason to suppose that the patient is suffering from treatable clinical depression
or*
*I find that the patient did exhibit symptoms of depression but I am of the opinion that treatment for depression, or further treatment for depression, is unlikely to influence the patient's decision to request voluntary euthanasia.
*[*delete the statement that is inapplicable]*

.....
(signature)

.....
(date)

Schedule 3—Report to State Coroner

I *[here set out full name and address of the medical practitioner who administered voluntary euthanasia]* administered voluntary euthanasia to *[here set out full name and residential address of the patient]* at *[here set out place of administration]* on *[here set out date of administration]*.

- 1 The patient had been in my care for *[here set out the period]*.
- 2 The nature of the patient's illness was as follows:
[here set out description of the patient's illness]
- 3 In my opinion the patient was terminally ill for the following reasons:
[here set out reasons for believing the patient to be terminally ill]
- 4 After examining the patient—
*I had no reason to suppose that the patient was suffering from treatable clinical depression
or
*I found that the patient did exhibit symptoms of depression but I am of the opinion that treatment for depression, or further treatment for depression, was unlikely to influence the patient's decision to request voluntary euthanasia.
*[*delete the statement that is inapplicable]*
- 5 Voluntary euthanasia was administered as described below:
[here set out time, place and method of administration]
- 6 The death ensued as follows:
[here state time, place and manner of death]

.....
(signature)

.....
(date)

Notes

- ¹ This report must be accompanied by—
- (a) the request for voluntary euthanasia or, if the request is registered under the Voluntary Euthanasia Act 2006, a copy of the request; and
 - (b) the certificate of confirmation given by another medical practitioner under section 14(1)(f) of the Voluntary Euthanasia Act 2006.