

House of Assembly—No 88

As laid on the table and read a first time, 10 March 2011

South Australia

**Criminal Law Consolidation (Medical Defences—
End of Life Arrangements) Amendment Bill 2011**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Amendment provisions

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

- 3 Insertion of section 13B
 - 13B Criminal liability in relation to end of life arrangements
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Act 2011*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

3—Insertion of section 13B

10 After section 13A insert:

13B—Criminal liability in relation to end of life arrangements

- 15 (1) It is a defence to a charge of an offence against this Division arising out of the death or intended death of a person if the death resulted, or was intended to result, from the administration of drugs to the person by the defendant and the defendant proves, on the balance of probabilities, that—
 - 20 (a) the defendant was, at the time of the conduct to which the charge relates, a treating practitioner of the person; and
 - (b) the defendant believed on reasonable grounds that the person was an adult person of sound mind who was suffering from an illness, injury or other medical condition that irreversibly impaired the person's quality of life so that life had become intolerable to that person (the *qualifying illness*); and
 - 25 (c) the conduct to which the charge relates occurred at the express request of the person; and

- (d) the conduct to which the charge relates was, in all the circumstances, a reasonable response to the suffering of the person.
- 5 (2) It is a defence to a charge of aiding, abetting or counselling the suicide or attempted suicide of a person if the defendant proves, on the balance of probabilities, that—
- (a) the defendant was, at the time of the conduct to which the charge relates, a treating practitioner of the person; and
- 10 (b) the defendant believed on reasonable grounds that the person was an adult person of sound mind who was suffering from an illness, injury or other medical condition that irreversibly impaired the person's quality of life so that life had become intolerable to that person (the *qualifying illness*); and
- 15 (c) the conduct to which the charge relates occurred at the request (whether express or implied) of the person; and
- (d) the conduct to which the charge relates was, in all the circumstances, a reasonable response to the suffering of the person.
- 20 (3) It is a defence to a charge of an offence (however particularised) involving the provision, or intended provision, of support or assistance to a medical practitioner in relation to the death or intended death of a person if—
- 25 (a) the medical practitioner has been acquitted under this section in relation to the death or intended death of the person; or
- (b) the defendant proves, on the balance of probabilities, that—
- 30 (i) the conduct to which the charge relates was done in good faith and in the ordinary course of the defendant's employment; and
- (ii) the conduct of the medical practitioner in relation to the death or intended death of the person was, in all the circumstances, a reasonable response to the suffering of the person.
- 35 (4) To avoid doubt, a court may acquit a defendant under subsection (3) even if the medical practitioner has been convicted of an offence arising out of the death or intended death of the person.
- 40 (5) In determining whether particular conduct was a reasonable response to the suffering of a person with a qualifying illness, a court must have regard to the fact that the Parliament intends that conduct bringing about the end of a person's life is a reasonable response to such suffering in exceptional circumstances, including where palliative care measures have not relieved the person's suffering to a level acceptable to the person.

- (6) If a court acquits a person under this section—
- (a) the person incurs no civil liability (including liability arising under disciplinary proceedings or similar proceedings) for the conduct to which the charge related, provided that the conduct was done in good faith and without negligence; and
 - (b) the court may make such ancillary orders as the court thinks fit.

- (7) In this section—
employment, in relation to a person, includes—

- (a) a contract for services or an agency arrangement; and
- (b) unpaid employment;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

treating practitioner, of a person, means a medical practitioner—

- (a) who is currently treating the person for his or her qualifying illness; or
- (b) who is currently responsible (whether solely or otherwise) for the primary care of the person.