

[Advance (2)]

South Australia

[Prepared by the Parliamentary Counsel on the instructions of the Hon. S.M. Kanck, M.L.C.]

DIGNITY IN DYING BILL 2002

A BILL FOR

An Act to provide for the administration of medical procedures to assist the death of patients who are hopelessly ill, and who have expressed a desire for the procedures subject to appropriate safeguards.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Objects
4. Definitions
5. Who may request voluntary euthanasia
6. Kinds of request
7. Information to be given before formal request is made
8. Form of request for voluntary euthanasia
9. Procedures to be observed in the making and witnessing of requests
10. Appointment of trustees
11. Revocation of request
12. Register of requests for voluntary euthanasia
13. Registrar's powers of inquiry
14. Administration of voluntary euthanasia
15. Person may decline to administer or assist the administration of voluntary euthanasia
16. Protection from liability
17. Restriction on publication
18. Report to coroner
19. Cause of death
20. Insurance
21. Offences
22. Dignity in Dying Act Monitoring Committee
23. Annual report to Parliament
24. Regulations

SCHEDULE 1

Current Request for Voluntary Euthanasia

SCHEDULE 2

Advance Request for Voluntary Euthanasia

SCHEDULE 3

Certificate of Confirmation

SCHEDULE 4

Report to State Coroner

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Dignity in Dying Act 2002*.

Commencement

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

Objects

3. The objects of this Act are—

- (a) to give competent adults the right to make informed choices about the time and manner of their death should they become hopelessly ill;
- (b) to ensure that hopelessly ill 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;
- (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.

Definitions

4. In this Act—

"**adult**" means of or above the age of 18 years;

"**advance request**"—see section 6(1);

"**current request**"—see section 6(1);

"**hopelessly ill**"—a person is hopelessly ill if the person has an injury or illness—

- (a) that will result, or has resulted, in serious mental impairment or permanent deprivation of consciousness; or
- (b) that seriously and irreversibly impairs the person's quality of life so that life has become intolerable to that person and there is no realistic chance of clinical improvement;

"**medical practitioner**" means a person registered as a medical practitioner under the *Medical Practitioners Act 1983*;

"**palliative care specialist**" means a medical practitioner who is registered on the specialist register under the *Medical Practitioners Act 1983* and whose principal area of practice is the provision of palliative care;

"Registrar"—*see* section 12(2);

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

Who may request voluntary euthanasia

5 5. An adult person who is of sound mind may make a formal request for voluntary euthanasia.

Kinds of request

6. (1) A formal request for voluntary euthanasia must be of one of the following kinds—

(a) a request (a "**current request**") by a hopelessly ill person that is intended to be effective without further deterioration of the person's condition; or

10 (b) a request (an "**advance request**") by a person who is not hopelessly ill that is intended to take effect when the person who makes the request becomes hopelessly ill or after the person becomes hopelessly ill and the person's condition deteriorates to a point described in the request.

(2) A formal request for voluntary euthanasia overrides an earlier formal request and, in particular, a current request for voluntary euthanasia overrides an earlier advance request.

Information to be given before formal request is made

7. (1) If a person proposes to make a current request or an advance request for voluntary euthanasia, a medical practitioner must, before the formal request is made, ensure that the person is fully informed—

20 (a) if the person is hopelessly ill or suffering from an illness that may develop into a hopeless illness—

(i) of the diagnosis and prognosis of the person's illness; and

(ii) of the forms of treatment that may be available and their respective risks, side effects and likely outcomes; and

25 (iii) of the extent to which the effects of the illness could be mitigated by appropriate palliative care; and

(b) if the proposed request is a current request—of the proposed voluntary euthanasia procedure, risks associated with the procedure and feasible alternatives to the procedure (including the possibility of providing appropriate palliative care until death ensues without administration of voluntary euthanasia); and

30 (c) if the proposed request is an advance request—of feasible voluntary euthanasia procedures and the risks associated with each of them.

(2) If a medical practitioner providing a person with information in accordance with subsection (1)(a)(iii) 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 would be mitigated by appropriate palliative care before giving the person this information.

Form of request for voluntary euthanasia

8. (1) A formal request for voluntary euthanasia must be made in writing—

- (a) in the case of a current request—in the form prescribed by Schedule 1; or
- (b) in the case of an advance request—in the form prescribed by Schedule 2.

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

- (a) must be completed by the witnesses 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.

10 (3) If practicable, a request for voluntary euthanasia that has been made orally must be recorded on videotape.

Procedures to be observed in the making and witnessing of requests

15 9. (1) A formal request for voluntary euthanasia must be made in the presence of a medical practitioner and two adult witnesses.

(2) The medical practitioner and both of the witnesses 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) The medical practitioner must also certify—

- (a) that the medical practitioner gave the person requesting voluntary euthanasia the information required under this Act¹ before the formal request was made; and
- (b) in the case of a current request—that the medical practitioner, after examining the person for symptoms of depression—
 - (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.

¹ See section 7.

Appointment of trustees

35 10. (1) A person who makes an advance request for voluntary euthanasia may, in the instrument of request, appoint one or more persons to be trustees of the request.

(2) A person is only eligible for appointment as a trustee of a request for voluntary euthanasia if the person is an adult.

(3) The functions of a trustee of the request are—

(a) to satisfy herself or himself that the preconditions for administration of voluntary euthanasia have been satisfied; and

(b) to make any necessary arrangements to ensure, as far as practicable, that voluntary euthanasia is administered in accordance with the wishes of the person who requested it.

(4) If a person appoints two or more persons as trustees of a request for voluntary euthanasia, the instrument of request must indicate the order of appointment and, in that case, if the person designated first in order of appointment is unavailable, the person designated second in order of appointment is to act as trustee of the request, if the first and the second are not available, the person designated third in order of appointment is to act as trustee of the request, and so on, but the instrument of request may not provide for two or more persons to act jointly as trustees of the request.

Revocation of request

11. (1) A person may revoke a request for voluntary euthanasia 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 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.

Register of requests for voluntary euthanasia

12. (1) The Minister must maintain a register of requests for voluntary euthanasia (the "**Register**").

(2) The Register will be administered by a suitable person (the "**Registrar**") assigned to administer the Register by the Minister.

(3) If a person who has made a formal request for voluntary euthanasia applies to the Registrar for registration of the request, the Registrar must, on receipt of a copy of the request, 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 hopelessly ill patient—

(a) inform the medical practitioner whether a request by the patient for voluntary euthanasia is registered in the Register; and

- (b) inform the medical practitioner whether any revocation of the patient's request for voluntary euthanasia is registered in the Register; and
- (c) 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) No fee may be charged in respect of a duty of the Registrar under this section.
- (7) The regulations may prescribe conditions for access to the Register.

Registrar's powers of inquiry

13. (1) The Registrar may conduct an inquiry to determine whether information recorded, or proposed to be recorded, in the Register is reliable.

(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.

(3) A person who fails, without reasonable excuse, to comply with a notice under subsection (2) is guilty of an offence.

Maximum penalty: \$1 250.

Administration of voluntary euthanasia

14. (1) A medical practitioner may administer voluntary euthanasia to a patient if—

- (a) the patient is hopelessly ill; and
- (b) the patient has made a request for voluntary euthanasia under this Act and there is no reason to believe that the request has been revoked; and
- (c) the patient has not expressed a desire to postpone the administration of voluntary euthanasia; and
- (d) the medical practitioner, after examining the patient—
- (i) has no reason to suppose that the patient is suffering from treatable clinical depression; or
- (ii) if the patient does exhibit symptoms of depression—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
- (e) if the patient is mentally incompetent but has appointed a trustee of the request for voluntary euthanasia, the trustee is satisfied that the preconditions for administration of voluntary euthanasia have been satisfied; and
- (f) 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 3 (the "**certificate of confirmation**") certifying—

(i) that the patient is hopelessly ill; and

(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 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

(g) at least 48 hours have elapsed since the time of the examination referred to in paragraph (f).

(2) A medical practitioner may only administer voluntary euthanasia as follows—

(a) by administering drugs in appropriate concentrations to end life painlessly and humanely; or

(b) by prescribing drugs for self administration by a patient to allow the patient to die painlessly and humanely; or

(c) by withholding or withdrawing medical treatment in circumstances that will result in a painless and humane end to life.

(3) In administering voluntary euthanasia, a medical practitioner must give effect, as far as practicable, to—

(a) the expressed wishes of the patient; or

(b) if the patient is mentally incompetent, but has appointed a trustee of the request who is available to be consulted—the expressed wishes of the trustee (so far as they are consistent with the patient’s expressed wishes).

Person may decline to administer or assist the administration of voluntary euthanasia

15. (1) A medical practitioner may decline to carry out a request for the administration of voluntary euthanasia on any grounds.

(2) However, if a patient who has requested voluntary euthanasia is hopelessly ill and the medical practitioner who has the care of the patient declines to administer voluntary euthanasia, the medical practitioner must inform the patient or the trustee of the patient’s request that another medical practitioner may be prepared to consider the request.

(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 other forms 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.

Protection from liability

16. A medical practitioner who administers voluntary euthanasia in accordance with this Act, or a person who assists a medical practitioner to administer voluntary euthanasia in accordance with this Act, incurs no civil or criminal liability by doing so.

Restriction on publication

17. 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 under this Act, unless—

(a) the person consents to the publication; or

(b) the person has been charged with an offence in relation to the administration or alleged administration of voluntary euthanasia.

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

Report to coroner

18. (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.

(2) The report—

(a) must be in the form prescribed by Schedule 4; and

(b) must be accompanied by—

(i) the request for voluntary euthanasia or, if the request is registered under this Act, a copy of the request; and

(ii) the certificate of confirmation given by another medical practitioner¹.

¹. See section 14(1)(f).

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

Cause of death

19. (1) Death resulting from the administration of voluntary euthanasia in accordance with this Act is not suicide or homicide.

(2) If voluntary euthanasia is administered in accordance with this Act, death is taken to have been caused by the patient's illness.

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 in accordance with this Act.

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

Maximum penalty: \$10 000.

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

Offences

10 **21.** (1) A person who makes a false or misleading representation in a formal 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 formal request for voluntary euthanasia is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

15 (3) A person convicted or found guilty of an offence against this section forfeits any interest that the person might otherwise have had in the estate of the person who has made the request for voluntary euthanasia.

Dignity in Dying Act Monitoring Committee

20 **22.** (1) The Minister must establish a committee to be called the *Dignity in Dying Act Monitoring Committee* (the "**Committee**").

(2) The Committee will consist of no more than eight members appointed by the Minister of whom—

(a) one must be a person nominated by the South Australian Branch of the Australian Medical Association Inc.; and

25 (b) one must be a person nominated by The Law Society of South Australia; and

(c) one must be a person nominated by the Palliative Care Council of South Australia Inc.; and

(d) one must be a person nominated by the South Australian Voluntary Euthanasia Society Inc.; and

30 (e) one must be a person nominated by the South Australian Council of Churches Inc..

(3) The functions of the Committee are—

(a) to monitor and keep under constant review the operation and administration of this Act; and

35 (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

(c) to make recommendations to the Minister regarding possible—

(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.

5 (4) The Minister must provide the Committee with a copy of each report received from the Coroner under section 18(3).

(5) A member of the Committee holds office on such conditions and for such term as the Minister determines.

10 (6) A member of the Committee is entitled to such allowances and expenses as the Minister may determine.

(7) Subject to directions of the Minister, the Committee may conduct its business in such manner as it thinks fit.

Annual report to Parliament

15 **23.** 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.

Regulations

24. The Governor may make regulations for the purposes of this Act.

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.

5 2. I believe that I am presently hopelessly 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 7 of the *Dignity in Dying Act 2002*¹.

5. I give the following directions about the timing, place and method of voluntary euthanasia:

10 [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:

15 **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

20 (c) the person who made the request did not appear to be acting under duress.

.....
(signature)

.....
(signature)

25 **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

30 (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 7 of the *Dignity in Dying Act 2002*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 7 of the *Dignity in Dying Act 2002* provides as follows:

Information to be given before formal request is made

7.(1) If a person proposes to make a current request or an advance request for voluntary euthanasia, a medical practitioner must, before the formal request is made, ensure that the person is fully informed—

(a) if the person is hopelessly ill or suffering from an illness that may develop into a hopeless illness—

(i) of the diagnosis and prognosis of the person’s illness; and

(ii) of the forms of treatment that may be available and their respective risks, side effects and likely outcomes; and

(iii) of the extent to which the effects of the illness could be mitigated by appropriate palliative care; and

(b) if the proposed request is a current request—of the proposed voluntary euthanasia procedure, risks associated with the procedure and feasible alternatives to the procedure (including the possibility of providing appropriate palliative care until death ensues without administration of voluntary euthanasia); and

(c) if the proposed request is an advance request—of feasible voluntary euthanasia procedures and the risks associated with each of them.

(2) If a medical practitioner providing a person with information in accordance with subsection (1)(a)(iii) is not a palliative care specialist, the medical practitioner must, if reasonably practicable, consult a palliative care specialist in relation to the person’s illness before giving the person this information.

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

Advance 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.

5 2. This is an advance request which I make in anticipation of becoming at some future time hopelessly ill and incompetent to make the request and I ask that the request be carried out, in that event, in accordance with the directions given below.

3. I am not acting under duress.

4. I appoint [here set out name and address of trustee or trustees] as trustees of this request¹.

10 5. I have received the information required under section 7 of the *Dignity in Dying Act 2002*².

6. I give the following directions about the timing, place and method of voluntary euthanasia:

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

15
(signature³)

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
- 20 (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)

25
(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—

- 30 (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
35 required under section 7 of the *Dignity in Dying Act 2002*²; and
- (e) after examining the person making the above request—

Dignity in Dying Bill 2002

- 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)

Certificate of trustee of the request¹

I *[here set out the name and address of the trustee]* certify that—

- (a) I am willing to undertake the responsibilities of a trustee of the above request for voluntary euthanasia under the *Dignity in Dying Act 2002*; and
- (b) I will act in that capacity in accordance with the desires of the person who makes the request (so far as they are known to me) and, subject to that, in what I genuinely believe to be that person’s best interests.

.....
(signature)

Notes

¹ The appointment of a trustee (or trustees) of the request is optional (and if a trustee is not to be appointed the provisions for appointment should be struck from the form). If two or more trustees are appointed the order of appointment must be indicated by placing the numbers 1, 2, 3.... beside each name. This indicates that if the first is not available, the second is to act as trustee of the request, if the first and second are not available, the third is to act, and so on. It should be noted that the instrument of request cannot provide for two or more persons to act jointly as trustees of the request. (See section 10(4) of the *Dignity in Dying Act 2002*.)

² Section 7 of the *Dignity in Dying Act 2002* provides as follows:

Information to be given before formal request is made

7.(1) If a person proposes to make a current request or an advance request for voluntary euthanasia, a medical practitioner must, before the formal request is made, ensure that the person is fully informed—

- (a) if the person is hopelessly ill or suffering from an illness that may develop into a hopeless illness—
 - (i) of the diagnosis and prognosis of the person’s illness; and
 - (ii) of the forms of treatment that may be available and their respective risks, side effects and likely outcomes; and
 - (iii) of the extent to which the effects of the illness could be mitigated by appropriate palliative care; and

- (b) if the proposed request is a current request—of the proposed voluntary euthanasia procedure, risks associated with the procedure and feasible alternatives to the procedure (including the possibility of providing appropriate palliative care until death ensues without administration of voluntary euthanasia); and
- 5 (c) if the proposed request is an advance request—of feasible voluntary euthanasia procedures and the risks associated with each of them.
- (2) If a medical practitioner providing a person with information in accordance with subsection (1)(a)(iii) is not a palliative care specialist, the medical practitioner must, if reasonably practicable, consult a palliative care specialist in relation to the person's illness before giving the person this information.
- 10 ³. If the person making the request is unable to sign the request, the request must, instead of the signature, bear an endorsement to the effect that it has been completed by the two adult witnesses in accordance with the person's expressed wishes.

SCHEDULE 4

Report to State Coroner¹

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 hopelessly ill for the following reasons:

[here set out reasons for believing the patient to be hopelessly 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 *Dignity in Dying Act 2002*, a copy of the request; and

(b) the certificate of confirmation given by another medical practitioner under section 14(1)(f) of the *Dignity in Dying Act 2002*.