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Commonwealth of Australia

THE SENATE

EXPOSURE DRAFT

Medical Services (Dying with Dignity) Exposure Draft Bill 2014

No. , 2014

(Senator Richard Di Natale)

**A Bill for an Act relating to the provision of
medical services to assist terminally ill people to die
with dignity, and for related purposes**

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**Schedule 1—Request for dying with dignity medical
services**

1

ii *Medical Services (Dying with Dignity) Bill 2012 No. , 2012*

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1 **A Bill for an Act relating to the provision of**
2 **medical services to assist terminally ill people to die**
3 **with dignity, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 [^]1 **Short title**

8 This Act may be cited as the *Medical Services (Dying with*
9 *Dignity) Act 2014*.

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Medical Services (Dying with Dignity) Bill 2012 No. , 2012 1

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Section ^2

1 **^2 Commencement**

2 This Act commences on the day this Act receives the Royal
3 Assent.

4 **^3 Objects of this Act**

5 The objects of this Act are:

- 6 (a) to recognise the right of a mentally competent adult who is
7 suffering intolerably from a terminal illness to request a
8 medical practitioner to provide medical services that allows
9 the person to end his or her life peacefully, humanely and
10 with dignity; and
11 (b) to grant a medical practitioner who provides such services
12 immunity from liability in civil, criminal and disciplinary
13 proceedings.

14 **^4 Definitions**

15 In this Act:

16 ***Australian resident*** means an individual who resides in Australia
17 and who is an Australian citizen (within the meaning of the
18 *Australian Citizenship Act 2007*).

19 ***benefit*** includes any advantage and is not limited to property.

20 ***Certificate of Request*** means a document in or to the effect of the
21 form in Schedule 1 that has been completed, signed and witnessed
22 in accordance with this Act.

23 ***dying with dignity medical service***: see section ^5.

24 ***illness*** includes disease, injury and degeneration of mental or
25 physical faculties.

26 ***medical practitioner*** means a person who:

- 27 (a) is registered or licensed as a medical practitioner under a law
28 of a State or Territory; and

1 (b) has been entitled to practise as a medical practitioner in
2 Australia for a continuous period of not less than 5 years.

3 **Secretary** means the Secretary of the Department.

4 **terminal illness**, in relation to a person, means an illness which, in
5 reasonable medical judgement will, in the normal course, without
6 the application of extraordinary measures or of treatment
7 unacceptable to the person, result in the death of the person.

8 **^5 Meaning of *dying with dignity medical service***

9 (1) A ***dying with dignity medical service*** means a medical service
10 provided by a medical practitioner to a person to enable the person
11 to end his or her life in a humane manner.

12 (2) Without limiting subsection (1), such services include:

13 (a) the giving of information to the person; and

14 (b) the prescribing of a substance to the person; and

15 (c) the preparation of a substance for the person; and

16 (d) the giving of a substance to the person for
17 self-administration; and

18 (e) the administration of a substance to the person at the person's
19 request.

20 **^6 Constitutional basis for this Act**

21 This Act relies on:

22 (a) the Commonwealth's legislative powers under paragraph
23 51(xxiiiA) of the Constitution; and

24 (b) any implied legislative powers of the Commonwealth.

25 **^7 Additional operation of this Act**

26 (1) Without prejudice to its effect apart from this section, this Act also
27 has effect as provided by this section.

Part 1 Preliminary

Section ^8

1 (2) This Act has, by force of this subsection, the effect it would have if
2 its operation were, by express provision, confined to a medical
3 practitioner employed by a constitutional corporation.

4 (3) This Act has, by force of this subsection, the effect it would have if
5 its operation were, by express provision, confined to a person
6 engaging in conduct to the extent to which the conduct takes place
7 wholly or partly in a Territory.

8 (4) In this section:

9 *constitutional corporation* means a corporation to which
10 paragraph 51(xx) of the Constitution applies.

11 **^8 Act binds the Crown**

12 This Act binds the Crown in each of its capacities.

13 **^9 Extension to external Territories**

14 This Act extends to every external Territory.
15

Part 2—Dying with dignity medical services**^10 Request to receive dying with dignity medical services**

A person who, in the course of a terminal illness, is experiencing pain, suffering, distress or indignity to an extent unacceptable to the person, may request a medical practitioner to provide dying with dignity medical services to the person for the purpose of ending his or her life.

^11 Provision of dying with dignity medical services

- (1) This section applies if a person has made a request under section ^10 to a medical practitioner.
- (2) The medical practitioner may:
 - (a) refuse to provide dying with dignity medical services to the person for any reason and at any time; or
 - (b) if satisfied that all of the conditions set out in section ^12 are met—provide dying with dignity medical services to the person.

^12 Pre-conditions to providing dying with dignity medical services

- (1) The conditions are:
 - (a) the person is at least 18 years of age; and
 - (b) the person is an Australian resident; and
 - (c) the medical practitioner (the *first medical practitioner*) is satisfied, on reasonable grounds, that:
 - (i) the person is suffering from a terminal illness; and
 - (ii) in reasonable medical judgement, there is no medical measure acceptable to the person that can reasonably be undertaken in the hope of effecting a cure; and
 - (iii) any medical treatment reasonably available to the person is limited to the relief of pain, suffering, distress

Section ^12

- 1 or indignity with the object of allowing the person to die
2 a comfortable death; and
- 3 (d) another medical practitioner (the *second medical*
4 *practitioner*) who holds qualifications or experience in the
5 treatment of the terminal illness from which the person is
6 suffering has examined the person and has confirmed:
- 7 (i) the first medical practitioner's opinion as to the
8 existence and seriousness of the illness; and
9 (ii) that the person is likely to die as a result of the illness;
10 and
11 (iii) the first medical practitioner's prognosis; and
- 12 (e) a further medical practitioner (the *third medical practitioner*)
13 who is a qualified psychiatrist has examined the person and
14 has confirmed that the person is not suffering from a treatable
15 clinical depression in respect of the illness; and
- 16 (f) the second and third medical practitioners are not a relative
17 or employee of, or a member of the same medical practice as,
18 the first medical practitioner or of each other; and
- 19 (g) the illness is causing the person severe pain, suffering,
20 distress or indignity; and
- 21 (h) the first medical practitioner has informed the person of:
22 (i) the nature of the illness and its likely course; and
23 (ii) the medical treatment, including palliative care,
24 counselling, psychiatric services and extraordinary
25 measures for keeping the person alive that may be
26 available to the person; and
- 27 (i) after being informed of the matters in paragraph (h), the
28 person has indicated to the first medical practitioner that the
29 person has decided to end his or her life; and
- 30 (j) the first medical practitioner is satisfied that the person has
31 considered the possible implications of the person's decision
32 on his or her family; and
- 33 (k) the first medical practitioner is satisfied, on reasonable
34 grounds, that the person is of sound mind and that the
35 person's decision to end his or her life has been made freely,
36 voluntarily and after due consideration; and

Section ^12

-
- 1 (l) at least 7 days after the person makes the indication referred
2 to in paragraph (i), the person, or another person acting on his
3 or her behalf in accordance with section ^14, has signed the
4 relevant part of the Certificate of Request; and
- 5 (m) the Certificate of Request has been signed in the presence of
6 the person and the first medical practitioner by another
7 medical practitioner who:
- 8 (i) has discussed the case with the first medical practitioner
9 and the person; and
- 10 (ii) is satisfied, on reasonable grounds, that the Certificate
11 of Request is in order; and
- 12 (iii) is satisfied that the person is of sound mind; and
- 13 (iv) is satisfied that the person's decision to end his or her
14 life has been made freely, voluntarily and after due
15 consideration; and
- 16 (v) is satisfied that the conditions in paragraph (a) to (l)
17 have been complied with; and
- 18 (n) if, in accordance with subsection ^13(2), an interpreter is
19 required to be present at the signing of the Certificate of
20 Request, the Certificate has been signed by the interpreter
21 confirming the person's understanding of the request for the
22 provision of dying with dignity medical services; and
- 23 (o) at least 48 hours have elapsed since the person signed the
24 Certificate of Request; and
- 25 (p) at no time before providing dying with dignity medical
26 services to the person has the person given to the first
27 medical practitioner an indication that it is no longer the
28 person's wish to end his or her life; and
- 29 (q) the first medical practitioner himself or herself provides the
30 dying with dignity medical services to the person and
31 remains present until the death of the person.
- 32 (2) If the first medical practitioner has no special qualifications in the
33 field of palliative care, a further condition is that the information to
34 be provided to the person on the availability of palliative care
35 options in accordance with subparagraph (1)(h)(ii) must be given
-

Section ^13

1 by another medical practitioner who has such special qualifications
2 in the field.

3 (3) The medical practitioner referred to in paragraph (1)(m) and
4 subsection (2) may be the same medical practitioner referred to in
5 paragraph (1)(d) or (1)(e).

6 **^13 Additional requirements**

7 (1) In providing dying with dignity medical services under this Act, a
8 medical practitioner:

9 (a) must be guided by appropriate medical standards and such
10 guidelines (if any) as are prescribed; and

11 (b) must consider the appropriate pharmaceutical information
12 about any substance reasonably available for use in the
13 circumstances.

14 (2) A medical practitioner must not provide dying with dignity
15 services under this Act if the medical practitioner, or any other
16 medical practitioner referred to in section ^12 who is required to
17 communicate with the person, does not share the same first
18 language as the person unless there is present at the time of that
19 communication and at the time the Certificate of Request is signed
20 by or on behalf of the person, an interpreter who holds a prescribed
21 professional qualification for interpreters in the first language of
22 the person.

23 (3) A medical practitioner must not provide dying with dignity
24 services under this Act if, in his or her opinion and after
25 considering the advice of the medical practitioner referred to in
26 paragraph ^12(1)(d), there are palliative care options reasonably
27 available to the person to alleviate the person's pain or suffering to
28 a level acceptable to the person.

29 (4) If a person:

30 (a) requests a medical practitioner to provide dying with dignity
31 medical services to the person; and

32 (b) subsequently receives palliative care that brings about the
33 remission of the person's pain or suffering;

Section ^14

1 the medical practitioner must not provide dying with dignity
2 medical services to the person unless the person indicates to the
3 medical practitioner the person's wish to proceed with the request.

^14 Rules if a person is unable to sign Certificate of Request

4
5 (1) If a person who has requested a medical practitioner to provide
6 dying with dignity medical services is physically unable to sign the
7 Certificate of Request, a person who is not one of the following
8 may, at the person's request and in the presence of the persons
9 mentioned in subsection (2), sign the Certificate on behalf of the
10 person:

11 (a) a person who is under 18 years of age;

12 (b) the medical practitioners referred to in paragraphs ^12(1)(d)
13 or (e);

14 (c) a person who is likely to receive a benefit either directly or
15 indirectly as a result of the death of the person.

16 (2) The persons mentioned in this subsection are:

17 (a) the medical practitioner referred to in paragraph ^12(1)(d);
18 and

19 (b) the medical practitioner referred to in paragraph ^12(1)(e);
20 and

21 (c) if an interpreter has been used in accordance with subsection
22 ^13(2)—the interpreter.

23 (3) A person who signs a Certificate of Request on behalf of another
24 person (the *requester*) forfeits any benefit the person would
25 otherwise obtain, either directly or indirectly, as a result of the
26 death of the requester.

^15 Right to rescind request

27
28 (1) A person who makes a request under section ^10 may rescind the
29 request at any time and in any manner.

Section ^16

- 1 (2) If a person rescinds a request and the person has signed a
2 Certificate of Request (or another person has signed it on his or her
3 behalf), the medical practitioner to whom the request was made
4 must destroy the Certificate of Request.

5 **Part 3—Administrative arrangements**
6

7 **^16 Claim for payment for the provision of dying with dignity**
8 **medical services**

- 9 (1) A medical practitioner may make a claim to the Secretary for
10 payment for the provision of dying with dignity medical services if
11 such services have been provided in accordance with this Act.
- 12 (2) A claim for payment must:
13 (a) be made in the prescribed form; and
14 (b) be accompanied by such other information or documents (if
15 any) as are prescribed; and
16 (c) be lodged in the prescribed manner.

17 **^17 Determination of claim and payment of amount**

- 18 (1) Upon receiving a claim under section ^16, the Secretary must make
19 a decision granting or refusing the claim within 14 days after the
20 day on which the claim is received.
- 21 (2) If the claim is granted, the Secretary must pay to the medical
22 practitioner an amount calculated by r eference to the fees for
23 dying with dignity medical services prescribed by the regulations.
- 24 (3) The regulations may prescribe different fees for different dying
25 with dignity medical services. This subsection does not limit
26 subsection 33(3) of the *Acts Interpretation Act 1901*.
- 27 (4) If the claim is refused, the Secretary must give the medical
28 practitioner a notice stating that the claim has been refused and
29 setting out the reasons for the refusal.

1 ^18 Commonwealth payment is full payment

2 If a medical practitioner agrees to provide dying with dignity
3 medical services to a person, the medical practitioner is taken to
4 have agreed that the Commonwealth will pay for the services in
5 accordance with this Part in full satisfaction of any amount that
6 would otherwise be owed by the person to the medical practitioner.

7 ^19 Medical practitioner to keep records

8 A medical practitioner who provides dying with dignity medical
9 services to a person under this Act that results in the death of the
10 person must keep the following records:

- 11 (a) a note of any oral request of the person for such services;
- 12 (b) the Certificate of Request;
- 13 (c) a record of his or her opinion as to the person's state of mind
14 at the time the person signed the Certificate of Request;
- 15 (d) certification that, in his or her opinion, the person's decision
16 to end his or her life was made freely, voluntarily and after
17 due consideration;
- 18 (e) the reports of the medical practitioners referred to in
19 paragraphs ^12(1)(d) and (e);
- 20 (f) certification as to the independence of the medical
21 practitioners referred to in paragraphs ^12(1)(d) and (e);
- 22 (g) certification that all of the requirements of this Act have been
23 met;
- 24 (h) any other prescribed records.

25 Note: It is an offence to fail to comply with this section: see section ^23.

26 ^20 Certification as to death

27 A medical practitioner who provides dying with dignity medical
28 services under this Act that results in the death of a person is to be
29 taken, for the purposes of the law of the State or Territory in which
30 the death occurs, to have been responsible for the person's medical
31 care immediately before death.

Part 4 Offences

Section ^21

1 Note: This means that the medical practitioner is required to give notice of
2 the person's death to the body in the State or Territory that is
3 responsible for registering deaths.

4 **Part 4—Offences**

5

6 **^21 Intending to influence a medical practitioner in relation to** 7 **dying with dignity medical services**

- 8 (1) A person commits an offence if:
9 (a) the person gives or promises any benefit (other than a
10 payment of the kind covered by section ^17) to a medical
11 practitioner; and
12 (b) the person does so with the intention of influencing the
13 medical practitioner to provide, or not provide, a dying with
14 dignity medical service.

15 Penalty: Imprisonment for 5 years.

- 16 (2) A person commits an offence if:
17 (a) the person causes, or threatens to cause, any disadvantage to
18 a medical practitioner; and
19 (b) the person does so with the intention of influencing the
20 medical practitioner to provide, or not provide, a dying with
21 dignity medical service.

22 Penalty: Imprisonment for 5 years.

23 **^22 Improper conduct**

24 A person commits an offence if the person, by deception or undue
25 influence, procures the signing or witnessing of a Certificate of
26 Request.

27 Penalty: Imprisonment for 5 years.

1 **^23 Failure to keep records**

2 A medical practitioner commits an offence if:

3 (a) the medical practitioner is subject to a requirement under
4 section ^19; and

5 (b) the medical practitioner fails to comply with the requirement.

6 Penalty: Imprisonment for 2 years.

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Part 5—Other matters

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^24 Immunity from civil, criminal and disciplinary actions

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No civil, criminal or disciplinary action lies, and proceedings must not be brought, against a person in relation to an act done, or omitted to be done, if the act is done, or omitted to be done, by the person:

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- (a) in good faith; and
- (b) for the purposes of this Act; and
- (c) in accordance with this Act.

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^25 Certain acts and omissions are not offences

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An act done, or omitted to be done, does not constitute an offence against a law of the Commonwealth, a State or a Territory if the act is done, or omitted to be done:

- (a) in good faith; and
- (b) for the purposes of this Act; and
- (c) in accordance with this Act.

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^26 Appropriation

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- (1) Payments under this Act are payable out of money appropriated by the Parliament for the purpose.
- (2) Despite anything else in this Act, this Act does not create an entitlement to payment under this Act unless and until the Consolidated Revenue Fund has been appropriated for the purpose of this Act.

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^27 Regulations

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The Governor-General may make regulations prescribing matters:
(a) required or permitted by this Act to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

1 **Schedule 1—Request for dying with dignity**
2 **medical services**

3 Note: See the definition of *Certificate of Request* in section ^4.
4

5 I, _____ have been advised by my
6 medical practitioner that I am suffering from an illness which will
7 ultimately result in my death and this has been confirmed by a
8 second medical practitioner.

9 I have been fully informed of the nature of my illness and its likely
10 course and the medical treatment, including palliative care,
11 counselling and psychiatric support and extraordinary measures
12 that may keep me alive, that is available to me and I am satisfied
13 that there is no medical treatment reasonably available that is
14 acceptable to me in my circumstances.

15 I understand that I have the right to rescind this request at any time.

16 Signed: _____

17 Dated: _____

18
19 **Declaration of witness (medical practitioner)**

20 I declare that:

- 21 (a) the person signing this request is personally known to me;
22 and
23 (b) he/she is a patient under my care; and
24 (c) he/she signed the request in my presence and in the presence
25 of the second witness to this request; and
26 (d) I am satisfied that he/she is of sound mind and that his/her
27 decision to end his/her life has been made freely, voluntarily
28 and after due consideration.

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Section ^27

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Signed: _____

Declaration of second witness (medical practitioner)

I declare that:

- (a) the person signing this request is known to me; and
- (b) I have discussed his/her case with him/her and his/her medical practitioner; and
- (c) he/she signed the request in my presence and in the presence of his/her medical practitioner; and
- (d) I am satisfied that he/she is of sound mind and that his/her decision to end his/her life has been made freely, voluntarily and after due consideration; and
- (e) I am satisfied that the conditions in section ^12 of the *Medical Services (Dying with Dignity) Act 2014* have been or will be complied with.

Signed: _____

Declaration of interpreter (if applicable)

I declare that:

- (a) the person signing this request or on whose behalf it is signed is known to me; and
- (b) I am an interpreter qualified to interpret in the first language of the person; and
- (c) I have interpreted for the person in connection with the completion and signing of this Certificate of Request; and
- (d) in my opinion, the person understands the meaning and nature of this Certificate of Request.

Signed: _____