

Death with Dignity Bill

Member's Bill

Explanatory note

The purpose of this bill is to allow persons who are terminally and/or incurably ill the opportunity of requesting assistance from a medically qualified person to end their lives in a humane and dignified way and to provide for that to occur after medical confirmation, a psychiatric assessment, counselling, and personal reflection.

Clause by clause analysis

Clause 1 is the title.

Clause 2 provides for the Death with Dignity Act to come into force after the declaration of the results of a referendum conducted on the question of whether the bill should become law.

Clause 3 sets out the purpose of the bill.

Clause 4 defines the terms used in the bill.

Clause 5 provides for a person who is terminally and/or incurably ill to request the assistance of a medical practitioner to end the person's life.

Clause 6 allows a medical practitioner to consent or refuse to assist the person making the request.

Clause 7 provides for it to be an offence to influence unduly a person seeking assistance to end his or her life, or a medical practitioner who has been requested to assist that person.

Clause 8 requires a medical practitioner or any other person assisting a patient to disclose any moral, ethical, religious, or ideological objection to providing assistance.

Clause 9 sets out the responsibilities of a medical practitioner who has received a request for assistance to end the life of a terminally and/or incurably ill person including:

- confirming the diagnosis
- informing the person of the risks of any medication
- informing the person of alternative treatments
- ensuring that the person's request has been made voluntarily and that the person is aware that he or she may rescind the request at any time
- referring the person to a consulting medical practitioner for confirmation of the person's condition and treatment.

Clause 10 sets out the responsibilities of the consulting medical practitioner to whom a person is referred under clause 9, including:

- confirming or disagreeing with the diagnosis of the medical practitioner who referred the person
- informing the person of alternative care or treatment
- verifying that the person's request is voluntary.

Clause 11 requires a medical practitioner to refer a person requesting to end his or her life to a psychiatrist for examination and a determination of whether the person is suffering from a mental disorder or depression. The clause also provides for a request to be void if the psychiatrist determines that the person is suffering from a mental disorder or depression.

Clause 12 requires a medical practitioner to refer a person requesting to end his or her life to a counsellor for counselling on the implications of the request.

Clause 13 requires a medical practitioner to notify the next of kin of a person requesting to end his or her life of that request. Failure to notify does not render the request invalid.

Clause 14 provides for a time to be set for a request to end a person's life to be carried out, but not less than 48 hours after the requirements of the Act have been fulfilled and the medical practitioner has informed the person of that fact. The person may rescind the request at any time.

Clause 15 relates to forwarding information to the Coroner.

Clause 16 provides for the request of a person wishing to end his or her life not to be over-riden by any will, agreement, or contract.

Clause 17 provides that the request of a person wishing to end his or her life or the administering of medication to carry out such a request under the proposed Act does not alter or affect the terms of an insurance policy.

Peter Brown

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Death with Dignity Act **2003**.

2 Commencement

(1) Except as provided in **subsection (2)**, this Act comes into force after—

(a) the Chief Electoral Officer has declared the final result of the national referendum to be held at the nearest general election which asks the question:
Should the Death with Dignity Bill become law?; and

(b) a majority of those voting in the referendum answers
“Yes” to the question.

(2) **Subsection (1)** comes into force on the day after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to allow terminally and/or incurably ill persons the opportunity of requesting assistance from a medically qualified person to voluntarily end their life in a humane and dignified way; and
- (b) to provide the circumstances so that occur after medical confirmation, a psychiatric assessment, counselling, and personal reflection.

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4 Interpretation

In this Act, unless the context otherwise requires,—

adult means a person of or over the age of 18 years

advance directive means a written and witnessed declaration in the form set out in **Schedule 2** from a person that outlines the medical or surgical procedures that person wishes to be followed should that person become incompetent to make, or incapable of communicating, a treatment decision; and that is witnessed by a medical practitioner and 2 other persons who have no pecuniary interest in the estate of the patient or person making the declaration

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assist, in relation to the death or proposed death of a patient, includes the prescribing of a substance, the preparation of a substance to the patient for self administration, and the administration of a substance to the patient

attending medical practitioner means the duly registered medical practitioner who has primary responsibility for the care of the patient and treatment of the patient's medical condition

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certificate of request means the certificate outlined, or to the effect of the certificate outlined, in **Schedule 1** that has been completed, signed, and witnessed in accordance with this Act

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consulting medical practitioner means the duly registered medical practitioner who is qualified or experienced to make a professional diagnosis and prognosis regarding the patient's medical condition and terminal and/or incurable illness

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counsellor means a person who has trained as a counsellor for over 12 months and is registered as a trained counsellor

incapable means that, in the opinion of the High Court, a patient lacks the ability to make and communicate personal

and health care decisions to both the patient’s attending medical practitioner and persons familiar with the patient’s manner of communicating

incurably ill means a medical condition which is generally accepted by the medical profession as seriously impairing the person’s quality of life and unlikely to be capable of cure, either at the present time or in the reasonable future 5

informed decision means a decision by a patient or; if that patient is judged as incapable, his or her representative, to request assistance to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending medical practitioner of— 10

- (a) the patient’s medical diagnosis; and
- (b) the patient’s medical prognosis; and 15
- (c) the potential risks associated with taking the medication to be prescribed; and
- (d) the probable result of taking the medication prescribed; and
- (e) the feasible alternatives including, but not limited to, 20
comfort care, hospice care, and available pain control

patient means a person who is under the care of a medical practitioner

psychiatrist means a medical practitioner granted vocational registration in psychological medicine or psychiatry under regulations made under section 21 of the Medical Practitioners Act 1995 25

terminal illness means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgement, result in the death of a patient. 30

5 Request for assistance to voluntarily terminate life

- (1) A patient who, in the course of either a terminal and/or incurable illness, is experiencing pain, suffering, or distress to an extent unacceptable to the patient, may request the patient’s attending medical practitioner to assist the patient in ending that patient’s life. 35
- (2) A person who has made an advance directive and has duly appointed another person to represent his or her interests

should he or she be rendered incapable may have those conditions of the advance directive rendered as a request under **subsection (1)**.

- (3) Any request under **subsections (1) and (2)** must be made in writing in the manner prescribed in **Schedule 1 or Schedule 2** by either the patient or his or her duly appointed representative. 5
- (4) The written request under **subsection (3)** must be signed and dated by the patient and witnessed by at least 2 individuals who, in the presence of the patient, must attest that to the best of their knowledge and belief the patient is capable, acting voluntarily and is not under any undue pressure or influence to make and sign the request. 10
- (5) A witness referred to in **subsection (4)** must not—
 - (a) be a relative of the patient by blood, marriage, or adoption; or 15
 - (b) have a pecuniary interest in the will or estate of the patient; or
 - (c) be an owner, operator, or employee of the health care facility where the patient is receiving medical treatment or residential care; or 20
 - (d) be either the attending or consulting medical practitioner.

6 Response of attending medical practitioner

- (1) The attending medical practitioner who receives a request under **section 5** may assist the patient to end his or her life in accordance with this Act or, for any reason and at any time, may refuse to give that assistance. 25
- (2) A patient may, at any time, discharge the services of his or her attending medical practitioner and appoint another medical practitioner to fulfil that responsibility. 30

7 Undue pressure or influence

- (1) No person other than those specifically and personally authorised by the patient or the attending or consulting medical practitioners or the appointed psychiatrist or the appointed counsellor may discuss the patient's request with any other individual not immediately associated with the patient. 35
- (2) Any person who, at any time, seeks to place undue pressure or influence upon a patient or an attending medical practitioner,

consulting medical practitioner, psychiatrist, or counsellor, relating to the request of a patient or his or her duly appointed representative to end the patient’s life under this Act commits an offence.

- (3) Every person who commits an offence against **subsection (2)** is liable on conviction on indictment to imprisonment for a term not exceeding 5 years and to a fine not exceeding \$250,000. 5

8 Ethical or professional objection

- (1) Any medical practitioner, psychiatrist, or counsellor who is requested to assist a patient under **section 5** must disclose any moral, ethical, religious, or ideological objection to the patient’s proposed actions to the patient or his or her representative prior to becoming involved with a patient’s request. 10
- (2) Any medical practitioner, psychiatrist, or counsellor who is requested to assist a patient under **section 5** may refuse to do so. 15

9 Attending medical practitioner’s responsibilities

The attending medical practitioner must, after receiving a written request from the patient and his or her representative under **section 6**, be responsible for—

- (a) making an initial determination of whether the patient has a terminal and/or incurable illness: 20
- (b) determining if the request has been made voluntarily and in accordance with this Act:
- (c) informing the patient or his or her representative of— 25
 - (i) the medical practitioner’s medical diagnosis:
 - (ii) the medical practitioners prognosis:
 - (iii) the potential risks associated with the medication to be prescribed if the patient’s wishes are to be carried out:
 - (iv) the probable result of any medication prescribed: 30
 - (v) the feasible alternatives, including, but not limited to, comfort care, hospice care, and available pain control:
- (d) referring the patient to a consulting medical practitioner for medical confirmation of the diagnosis, prognosis, and alternative treatments in **subsection (3)**: 35
- (e) requesting that the patient notify next-of-kin:
- (f) referring the patient to a psychiatrist for an assessment of the patient’s mental condition:

- (g) referring the patient to a counsellor:
- (h) informing the patient that he or she has the opportunity to rescind his or her request for assistance at any time and in any manner during or at the end of the mandatory 48 hours reflection period: 5
- (i) verify, immediately prior to writing the prescription or administering the medication allowed under this Act, that the patient is making a voluntary and informed decision:
- (j) ensure that all appropriate steps are carried out in accordance with this Act prior to writing the prescription or administering the medication that will assist the patient to end his or her life in a humane and dignified manner. 10
- 10 Consulting medical practitioner's responsibilities**
- (1) Upon request from an attending medical practitioner who has received a request from a patient to die with dignity under **sections 5 and 9**, a consulting medical practitioner has the following responsibilities: 15
- (a) to examine the patient and consult the patient's medical records; and 20
- (b) to confirm, in writing, the diagnosis and prognosis of the attending medical practitioner that the patient is suffering from a terminal and/or incurable illness; and
- (c) to verify that the patient has made a voluntary request and is capable of so doing; and 25
- (d) to inform the patient of alternative care, including available pain control if appropriate, and available hospice care.
- (2) If, at any stage an examination under **subsection (1)**, the consulting practitioner's findings disagree with those of the attending medical practitioner, then the consulting medical practitioner must report those findings in writing to both the patient and the attending medical practitioner within 24 hours of examining the patient or his or her medical records. 30
- (3) If the consulting medical practitioner makes a finding **subsection (2)**, then the request for assistance is void. 35
- 11 Psychiatric assessment**
- (1) On the satisfactory completion of the requirements of **sections 9 and 10**, the attending medical practitioner must refer the

patient to a psychiatrist for the purpose of assessing the patient's mental state.

- (2) A written report attesting to the patient's mental state must be made available to the attending medical practitioner within 48 hours of the psychiatrist's assessment and report on whether the patient is suffering from any mental disorder within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or clinical depression that would cause impaired judgment. 5
- (3) If the assessment of the psychiatrist is that the patient is suffering from a mental disorder or clinical depression, and that his or her mental state impaired his or her ability to make a proper judgment, then the attending practitioner will inform the patient that the patient's request under **section 5** is void. 10

12 Counselling 15

- (1) On receipt of a written request from the patient requiring assistance to die with dignity under the qualifications of this Act, the attending physician must refer the patient to a counsellor.
- (2) The counsellor must discuss the decision of the patient to make a request under **section 5** and counsel the patient as to the implications of the patient's decision. 20

13 Family notification

- (1) The attending physician must request the patient to notify the patient's next-of-kin of the patient's request for assistance. 25
- (2) The refusal or inability of a patient to notify his or her next-of-kin does not render the patient's request as void.

14 Reflection period

- (1) After all relevant sections of this Act have been complied with, the attending medical practitioner must inform the patient that the patient's request to die in a humane and dignified manner may be carried out. 30
- (2) The attending physician and the patient must fix a duly nominated day for the administering of medication that will allow the patient to die with dignity at not less than 48 hours after that agreement. 35

- (3) If, at anytime during those 48 hours or afterwards, the patient wishes to rescind his or her request then the patient may do so in any manner, either orally or in writing.
- (4) Any decision of a patient to rescind the request must be carried out immediately, and the patient's attending physician must destroy the certificate of request and note that fact on the patient's medical record. 5
- 15 Medical records to be sent to Coroner**
- (1) As soon as is practicable after the death of a patient as a result of assistance provided under this Act, the attending medical practitioner who gave the assistance must report the death to the Coroner in the district in which the death occurred and provide a certificate of death and the patient's medical records as they relate to the terminal or incurable illness of the patient and the death of that patient. 10 15
- (2) At the conclusion of each financial year, the Coroner must advise the Attorney-General of the number of patients who have died as a result of assistance given under this Act and the Attorney-General must report these facts to the House of Representatives. 20
- 16 Effects on construction of wills, contracts, and statutes**
- (1) No provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or cancel a request for medical assistance to end his or her life under the provisions of this Act, is valid. 25
- (2) No obligation owing under any currently existing contract is conditioned or affected by the making or rescinding of a request for a person or the person's duty appointed representative for medical assistance to end his or her life under the provisions of this Act. 30
- 17 Insurance policies**
- (1) The sale, procurement, or issuing of any life, health, or accident insurance or annuity policy is not be affected by a person making a request under the provisions of this Act. 35
- (2) The administering of medication, either by a person or by an attending medical practitioner under the provisions of this

Act, does not have any effect upon any life, health, accident,
or insurance policy or annuity.

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**Schedule 1
Request for medical assistance to die in a humane
and dignified manner**

I..... have been advised by my attending medical practitioner that I am suffering from a terminal and/or incurable illness and that illness has been diagnosed as 5

I have been fully informed of the nature of my illness and its likely course and the medical treatment that is available to me including available pain control and hospice care.

I agree to undertake the necessary counselling as prescribed in the Death with Dignity Act 2000 to assess my mental health in making this request. 10

I request my attending medical practitioner to assist me in ending my life in as comfortable, humane, and dignified manner as possible.

I also verify that I am making this request at my own free will and without any pressure or influence being placed upon me to do so by relatives, friends, or any other person or persons. 15

I understand that I may cancel this request at any time and in any way that I consider appropriate.

Signature:

Date:

Witnessed by:

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.....

Attending Physician

.....

First Witness

.....

Second Witness



Schedule 2
Advance directive

s 4

Full Name:

Residential Address:

..... 5

It is my express wish that if I should develop—

- (a) senile, severe, degenerative brain disease (due to Alzheimer’s disease, arterial disease, AIDS or any other agency); or
(b) serious brain damage from accidental or other injury or illness; or
(c) advanced terminal malignant disease that renders any intelligible or understandable communication with others void; or
(d) severely incapacitating and progressive degenerative disease of the nerves or muscles—

and I have become mentally incompetent to express my opinion about my condition to medical staff, family, or other persons, and if 2 independent medical practitioners conclude that, to the best of current medical knowledge, my condition is irreversible, then: 15

I would wish that this advance directive be taken as a request under section 5 of the Death with Dignity Act 2000 and I appoint [Full Name] of [Full Address] to be my representative for the purpose of drawing this request to the attention of my attending medical practitioner. 20

The object of this advance directive is to minimise any suffering distress, or anguish which I may create or suffer during an incurable illness, and to spare my medical advisors, relatives, and friends from the burden of making difficult decisions on my behalf. 25

(Signed)

(Date)

Witness 1 30

Full Name:

Address:

Occupation:

Witness 2

Full Name: 35

Address;

Occupation:

NB: Neither of the above witnesses may have any pecuniary interest in the estate of the person making this advance directive.

Duly Nominated Representative:

I, [Full Name] of
[Full Address] have consented to be the representative of
[Name of person making this advance directive] and will endeavour to carry
out their wishes as expressed in this advance directive.

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(Signature):

(Date):

Witness 1:

Witness 2: