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

The Parliament of Australia enacts:

## 5 Part 1—Preliminary

7 **^1 Short title** 

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

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1	^2 Commencement
2	This Act commences on the day this Act receives the Royal Assent.
4	^3 Objects of this Act
5	The objects of this Act are:
6 7	(a) to recognise the right of a mentally competent adult who is suffering intolerably from a terminal illness to request a
8 9 10	medical practitioner to provide medical services that allows the person to end his or her life peacefully, humanely and with dignity; and
12	(b) to grant a medical practitioner who provides such services immunity from liability in civil, criminal and disciplinary proceedings.
14	^4 Definitions
15	In this Act:
16 17 18	Australian resident means an individual who resides in Australia and who is an Australian citizen (within the meaning of the 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 22	form in Schedule 1 that has been completed, signed and witnessed in accordance with this Act.
23	dying with dignity medical service: see section ^5.
24 25	<i>illness</i> includes disease, injury and degeneration of mental or physical faculties.
26	medical practitioner means a person who:
27 28	<ul><li>(a) is registered or licensed as a medical practitioner under a law of a State or Territory; and</li></ul>

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1 2	(b) has been entitled to practise as a medical practitioner in 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.

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1 2 3	(2) This Act has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a medical practitioner employed by a constitutional corporation.
4 5 6 7	(3) This Act has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place wholly or partly in a Territory.
8	(4) In this section:
9 10	<i>constitutional corporation</i> means a corporation to which 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 15	This Act extends to every external Territory.

Part :	2—Dying with dignity medical services
^10 R	equest 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
^11 Pı	ending his or her life.  rovision 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 Pı	re-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
	(11) any measure readment reasonably available to the

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1 2	or indignity with the object of allowing the person to die a comfortable death; and
3 (d)	another medical practitioner (the <i>second medical</i>
4	<i>practitioner</i> ) 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 10	(ii) that the person is likely to die as a result of the illness; and
11	(iii) the first medical practitioner's prognosis; and
12 (e)	a further medical practitioner (the <i>third medical practitioner</i> )
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

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	Section ^12
(1)	at least 7 days after the person makes the indication referred to in paragraph (i), the person, or another person acting on his or her behalf in accordance with section ^14, has signed the relevant part of the Certificate of Request; and
(m)	the Certificate of Request has been signed in the presence of the person and the first medical practitioner by another medical practitioner who:  (i) has discussed the case with the first medical practitioner
	and the person; and
	(ii) is satisfied, on reasonable grounds, that the Certificate of Request is in order; and
	(iii) is satisfied that the person is of sound mind; and
	<ul><li>(iv) is satisfied that the person's decision to end his or her life has been made freely, voluntarily and after due consideration; and</li></ul>
	(v) is satisfied that the conditions in paragraph (a) to (l) have been complied with; and
(n)	if, in accordance with subsection ^13(2), an interpreter is required to be present at the signing of the Certificate of Request, the Certificate has been signed by the interpreter confirming the person's understanding of the request for the provision of dying with dignity medical services; and
(0)	at least 48 hours have elapsed since the person signed the Certificate of Request; and
(p)	at no time before providing dying with dignity medical services to the person has the person given to the first medical practitioner an indication that it is no longer the person's wish to end his or her life; and
(q)	the first medical practitioner himself or herself provides the dying with dignity medical services to the person and remains present until the death of the person.
(2) If the	e first medical practitioner has no special qualifications in the

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field of palliative care, a further condition is that the information to

options in accordance with subparagraph (1)(h)(ii) must be given

be provided to the person on the availability of palliative care

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Section ^13	3
	by another medical practitioner who has such special qualifications in the field.
(3)	The medical practitioner referred to in paragraph (1)(m) and subsection (2) may be the same medical practitioner referred to in paragraph (1)(d) or (1)(e).
^13 Addit	tional requirements
(1)	In providing dying with dignity medical services under this Act, a medical practitioner:
	(a) must be guided by appropriate medical standards and such guidelines (if any) as are prescribed; and
	(b) must consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances.
(2)	A medical practitioner must not provide dying with dignity services under this Act if the medical practitioner, or any other
	medical practitioner referred to in section ^12 who is required to communicate with the person, does not share the same first
	language as the person unless there is present at the time of that communication and at the time the Certificate of Request is signed
	by or on behalf of the person, an interpreter who holds a prescribed professional qualification for interpreters in the first language of the person.
(3)	A medical practitioner must not provide dying with dignity
	services under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in
	paragraph ^12(1)(d), there are palliative care options reasonably available to the person to alleviate the person's pain or suffering to a level acceptable to the person.
(4)	If a person:
	(a) requests a medical practitioner to provide dying with dignity medical services to the person; and
	(b) subsequently receives palliative care that brings about the

	Section ^14
	the medical practitioner must not provide dying with dignity medical services to the person unless the person indicates to the medical practitioner the person's wish to proceed with the request.
^14 I	Rules if a person is unable to sign Certificate of Request
	(1) If a person who has requested a medical practitioner to provide
	dying with dignity medical services is physically unable to sign the
	Certificate of Request, a person who is not one of the following may, at the person's request and in the presence of the persons
	mentioned in subsection (2), sign the Certificate on behalf of the
	person:
	(a) a person who is under 18 years of age;
	(b) the medical practitioners referred to in paragraphs ^12(1)(d)
	or (e);
	(c) a person who is likely to receive a benefit either directly or indirectly as a result of the death of the person.
	(2) The persons mentioned in this subsection are:
	(a) the medical practitioner referred to in paragraph ^12(1)(d); and
	(b) the medical practitioner referred to in paragraph ^12(1)(e); and
	(c) if an interpreter has been used in accordance with subsection ^13(2)—the interpreter.
	(3) A person who signs a Certificate of Request on behalf of another
	person (the <i>requester</i> ) forfeits any benefit the person would
	otherwise obtain, either directly or indirectly, as a result of the
	death of the requester.
^15 I	Right to rescind request
	(1) A person who makes a request under section ^10 may rescind the
	request at any time and in any manner.

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1 2 3 4	(2) If a person rescinds a request and the person has signed a Certificate of Request (or another person has signed it on his or her behalf), the medical practitioner to whom the request was made must destroy the Certificate of Request.
5	Part 3—Administrative arrangements
7 8	^16 Claim for payment for the provision of dying with dignity medical services
9 10 11	(1) A medical practitioner may make a claim to the Secretary for payment for the provision of dying with dignity medical services if such services have been provided in accordance with this Act.
12 13 14 15	<ul> <li>(2) A claim for payment must:</li> <li>(a) be made in the prescribed form; and</li> <li>(b) be accompanied by such other information or documents (if any) as are prescribed; and</li> <li>(c) be lodged in the prescribed manner.</li> </ul>
17	^17 Determination of claim and payment of amount
18 19 20	(1) Upon receiving a claim under section ^16, the Secretary must make a decision granting or refusing the claim within 14 days after the day on which the claim is received.
21 22 23	(2) If the claim is granted, the Secretary must pay to the medical practitioner an amount calculated by r eference to the fees for dying with dignity medical services prescribed by the regulations.
24 25 26	(3) The regulations may prescribe different fees for different dying with dignity medical services. This subsection does not limit subsection 33(3) of the <i>Acts Interpretation Act 1901</i> .
27 28 29	(4) If the claim is refused, the Secretary must give the medical practitioner a notice stating that the claim has been refused and setting out the reasons for the refusal.

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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
0		person must keep the following records:
1		(a) a note of any oral request of the person for such services;
2		(b) the Certificate of Request;
13		(c) a record of his or her opinion as to the person's state of mind
4		at the time the person signed the Certificate of Request;
15		(d) certification that, in his or her opinion, the person's decision
6		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
9		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.

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1 2 3	2 the person's death to the body	ractitioner is required to give notice of in the State or Territory that is ths.
4 5		
6 7	1 ' '41 1' '4 1' 1	
8	8 (1) A person commits an offence if:	
9 10 11	payment of the kind covered	any benefit (other than a by section ^17) to a medical
12	A1	ntention of influencing the
13 14		de, or not provide, a dying with
15	Penalty: Imprisonment for 5 year	s.
16	6 (2) A person commits an offence if:	
17	( ) I	ns to cause, any disadvantage to
18	1	
19	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	C
20 21		de, or not provide, a dying with
22	Penalty: Imprisonment for 5 years	s.
23	^22 Improper conduct	
24	4 A person commits an offence if th	e person, by deception or undue
25		
26	_	
27	Penalty: Imprisonment for 5 years	S.

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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.
7	

14

Pa	rt 5—Other matters
^24	I Immunity from civil, criminal and disciplinary actions
	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:
	(a) in good faith; and
	(b) for the purposes of this Act; and
	(c) in accordance with this Act.
^25	5 Certain acts and omissions are not offences
	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.
^26	6 Appropriation
	(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.
^27	Regulations
	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.

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# Schedule 1—Request for dying with dignity medical services

3 4	Note:	See the definition of <i>Certificate of Request</i> in section ^4.
5		I, have been advised by my medical practitioner that I am suffering from an illness which will
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	l:
17	Dated:	
18		
19	Declar	ration 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 1 2 3 **Declaration of second witness (medical practitioner)** 4 I declare that: 5 (a) the person signing this request is known to me; and 6 (b) I have discussed his/her case with him/her and his/her 7 medical practitioner; and 8 (c) he/she signed the request in my presence and in the presence 9 of his/her medical practitioner; and 10 (d) I am satisfied that he/she is of sound mind and that his/her 11 decision to end his/her life has been made freely, voluntarily 12 and after due consideration; and 13 (e) I am satisfied that the conditions in section ^12 of the 14 Medical Services (Dying with Dignity) Act 2014 have been or 15 will be complied with. 16 17 Signed: 18 19 **Declaration of interpreter (if applicable)** 20 I declare that: 21 (a) the person signing this request or on whose behalf it is signed 22 is known to me; and 23 (b) I am an interpreter qualified to interpret in the first language 24 of the person; and 25 (c) I have interpreted for the person in connection with the 26 completion and signing of this Certificate of Request; and 27 (d) in my opinion, the person understands the meaning and 28 nature of this Certificate of Request. 29 Signed: 30 31

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