

THE NORTHERN TERRITORY OF AUSTRALIA

Copy No.

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CABINET DECISION

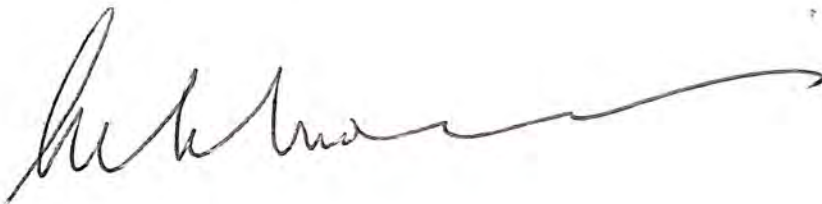
No.....5688.....

Submission No.: 4908

Title: NATURAL DEATH BILL

Cabinet approved -

- (a) the introduction of the Natural Death Bill at the August Sittings of the Legislative Assembly; and
- (b) the Second Reading Speech, Explanatory Memorandum and Committee Notes to the Bill.



A. G. MORRIS
Secretary to Cabinet.

9 August 1988

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THE NORTHERN TERRITORY OF AUSTRALIA

Copy No: 1

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SUBMISSION No: 4907

FOR CABINET

Title:	<u>NATURAL DEATH BILL</u>
Minister	Attorney-General
Purpose:	To <u>table</u> draft legislation to provide for, and give legal effect to, directions against artificial prolongation of the dying process.
Relation to existing policy:	
Timing / legislative priority:	Attorney-General requires the Bill to be tabled in the August Sittings of the Legislative Assembly.
Announcement of decision, tabling, etc:	At Cabinet's discretion.
Action required before announcement:	Advice to medical and theological professions.
Staffing implications, numbers and costs, etc:	Nil
Total cost:	Nil

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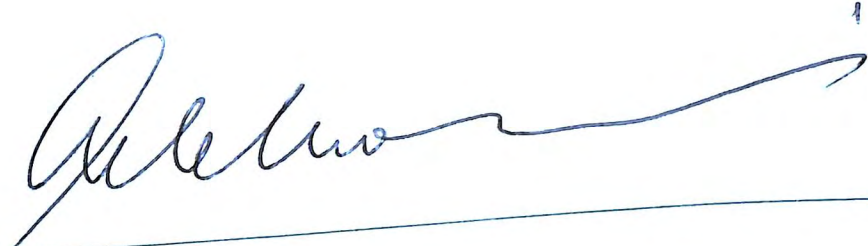
Department/Authority.....CO-ORDINATION COMMITTEE.....

COMMENT ON CABINET SUBMISSION No.

TITLE:NATURAL DEATH BILL.....

COMMENTS:

The Committee considers that tabling of the Draft Bill is appropriate given the nature and sensitivity of the issue.



SIGNED: A.G. MORRIS

DESIGNATION: Chairman

DATE: 8 August 1988

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Department/~~Authority~~..... OF THE CHIEF MINISTER.....

COMMENT ON CABINET SUBMISSION No.

TITLE: NATURAL DEATH BILL.....

COMMENTS:

The Submission would indicate that there has been no consultation with relevant community and professional groups, interested in the draft Bill.

Given the sensitive nature of the Bill and the lack of community consultation, it would seem a wise course of action to table the draft Bill in the August sittings and seek public comment on its contents, as is suggested in the Submission.

It is understood that this is no longer proposed as a Private Member's Bill and therefore the Submission will need to be amended accordingly.

Margaret P. Lyons

SIGNED: MARGARET P LYONS

DESIGNATION: DEPUTY SECRETARY

DATE: 29/7/88

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Department/Authority....DEPARTMENT..OF..TREASURY.....

COMMENT ON CABINET SUBMISSION No.

TITLE:NATURAL..DEATH..BILL.....

COMMENTS:

There appear to be no financial or economic implications arising from the submission.



SIGNED: N R CONN

DESIGNATION: UNDER TREASURER

DATE: 29 JULY 1988

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Department/Authority DEPARTMENT OF HEALTH AND COMMUNITY SERVICES

COMMENT ON CABINET SUBMISSION No.

TITLE: NATURAL DEATH BILL
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COMMENTS:

This Submission is not supported. The need for such legislation for the Northern Territory has not been adequately demonstrated, although there has been a small lobby group for some years.

The medical profession has not been consulted and the terms used in the Draft Bill, such as a "terminal illness" are too imprecise to be satisfactory.

Given current developments in medical science a terminal illness is only one which is proved to be so after the event.

No details are given of the Church leaders who have been consulted, nor would a cursory examination of the Draft Bill by such leaders be considered adequate.

This bill appears to be closely modelled on the South Australian Natural Death Act and it is not obvious where the differences between the South Australian law and the Northern Territory law in relation to murder have been taken into account.

SIGNED: 

DESIGNATION: SECRETARY

DATE: 29/07/88

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Department/Authority NORTHERN TERRITORY POLICE FORCE

COMMENT ON CABINET SUBMISSION No.

TITLE: NATURAL DEATH BILL

COMMENTS:

Police support the Submission in principle.

However, should not clause 6(1) - Certain Aspects of Causation of Death - stipulate that the provision applies only where a person suffering from a terminal illness has given a direction under clause 4 of the Bill.

In relation to clause 5(3) - Act not to Affect Other Rights - the provision should be made wide enough to excuse a medical practitioner from committing an offence provided by section 155 of the Criminal Code Act, viz:

"Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of a crime and is liable to imprisonment for 7 years."

SIGNED:

W.L. Goedegebuure

DESIGNATION:

W.L. GOEDEGEBUURE
ACTING COMMISSIONER OF POLICE 29/7/88

DATE:

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RECOMMENDATION

1. It is recommended that Cabinet approve the draft Natural Death Bill for tabling at the August Sittings of the Legislative Assembly.

BACKGROUND

2. The Bill is to be tabled by the Attorney-General.
3. The purpose of the Bill is to provide for and give legal effect to directions against artificial prolongation of the natural dying process.
4. The Bill closely follows South Australian legislation passed in 1983. It is similar to recently introduced Victorian legislation. The Bill, if enacted, will bring the N.T. into line with those States.
5. South Australian officers advise that there has been very little controversy surrounding the Bill. Officers from the Victorian Attorney-General's Department have indicated that that State's Medical Treatment Act has met with considerable controversy.

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CONSIDERATION OF THE ISSUES

6. Church leaders have been shown the draft Bill and are generally in favour of it because it allows death to occur naturally and specifically does not authorize any acts which accelerate or cause death.

7. The issue is acknowledged to be controversial, and it is possible the proposed legislation may not have the full support of the medical profession. This is so especially in the case of clause 4(3) which compels a medical practitioner to act in accordance with the patient's direction except where there are reasonable grounds to believe that the person -
 - (a) has revoked, or intended to revoke, the direction;
or
 - (b) was not, at the time of making the direction, capable of understanding the nature and consequences of the direction.

It is expected that some doctors will strongly oppose this particular clause of the legislation as it imposes a duty on them in an area where their professional ethics may be jeopardised.

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8. It is possible there will be opposition from "Right to Life" and similar groups, but this opposition should be able to be successfully countered by the agreement and positive response from church leaders and the final clause of the Bill which does not allow any act which causes or accelerates death.

OPTIONS

9. Cabinet might -

- (a) approve the Bill for tabling at the August Sittings of the Legislative Assembly;
- (b) not approve the Bill for tabling at the August Sittings of the Legislative Assembly.

PUBLIC IMPACT OF THE RECOMMENDATIONS

10. In view of the different Victorian and South Australian experiences, the public impact cannot be easily assessed. The general support of church leaders does perhaps indicate that there may be general public support for the legislation.

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FINANCIAL CONSIDERATIONS

11. Nil.

COMMONWEALTH, STATE, AND LOCAL GOVERNMENT RELATIONS

12. Nil.

CO-ORDINATION AND CONSULTATION

13. Copies of this Submission in draft form were sent to the Co-ordination Committee, the Department of the Chief Minister, the Department of Health and Community Services, Northern Territory Treasury and the Northern Territory Police.

TIMING

14. For tabling in the August Sittings of the Legislative Assembly.

ATTACHMENTS

15. A draft Bill, Speech for Tabling, Explanatory Memorandum and Committee Notes are attached.

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- 5 -

DATE:

Daryl Manzie $\frac{11}{8}$
DARYL W. MANZIE

WIP.88.M.1044A

CONFIDENTIAL

Serial 113
Natural Death
Mr Manzie

NOT FINALLY SETTLED. $\frac{2}{8}$

to provide for, and give legal effect to, directions against artificial prolongation of the dying process

1. SHORT TITLE

This Act may be cited as the *Natural Death Act 1988*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

In this Act, unless the contrary intention appears -

"extraordinary measures" means medical or surgical measures that prolong life, or are intended to prolong life, by supplanting or maintaining the operation of bodily functions that are temporarily or permanently incapable of independent operation;

"recovery", in relation to a terminal illness, includes a remission of symptoms or effects of the illness;

"terminal illness" means such an illness, injury or degeneration of mental or physical faculties -

(a) that death would, if extraordinary measures were not undertaken, be imminent; and

(b) from which there is no reasonable prospect of a temporary or permanent recovery, even if extraordinary measures were undertaken.

Natural Death

4. POWER TO MAKE DIRECTION

(1) A person of sound mind who has attained the age of 18 years, and who desires not to be subjected to extraordinary measures in the event of his or her suffering from a terminal illness, may make a direction in the prescribed form.

(2) A direction under subsection (1) is of no effect unless witnessed by 2 witnesses who have attained the age of 18 years, neither of whom is the medical practitioner responsible for the treatment of the person.

(3) Subject to subsection (2), where a person who is suffering from a terminal illness has made a direction under this section and the medical practitioner responsible for the treatment of the person has notice of that direction, it shall be the duty of that medical practitioner to act in accordance with the direction unless there is reasonable ground to believe that the person -

- (a) has revoked, or intended to revoke, the direction; or
- (b) was not, at the time of making the direction, capable of understanding the nature and consequences of the direction.

(4) This section does not derogate from any duty of a medical practitioner to inform a patient who is conscious and capable of exercising a rational judgment of all the various forms of treatment that may be available to the patients' particular case so that the patient may make an informed judgment as to whether a particular form of treatment should, or should not, be undertaken.

(5) The Administrator may, by regulation, prescribe a form for the purposes of subsection (1).

5. ACT NOT TO AFFECT OTHER RIGHTS

(1) This Act does not affect the right of a person to refuse medical or surgical treatment.

(2) This Act (other than section 6) does not affect the legal consequences (if any) of taking, or refraining from taking -

- (a) therapeutic measures (not being extraordinary measures) in the case of a patient who is suffering from a terminal illness, whether or not the patient made a direction under this Act; or
- (b) extraordinary measures in the case of a patient who has not made a direction under this Act.

Natural Death

(3) A medical practitioner incurs no liability for a decision made by him or her in good faith and without negligence as to whether a patient -

- (a) is, or is not, suffering from a terminal illness;
- (b) revoked, or intended to revoke, a direction under this Act; or
- (c) was, or was not, at the time of making a direction under this Act, capable of understanding the nature and consequences of the direction.

6. CERTAIN ASPECTS OF CAUSATION OF DEATH

(1) For the purposes of the law of the Territory, the non-application of extraordinary measures to, or the withdrawal of extraordinary measures from, a person suffering from a terminal illness does not constitute a cause of death where the non-application or withdrawal was as a result of and in accordance with a direction made under section 4(1) by the person.

(2) This section does not relieve a medical practitioner from the consequences of a negligent decision as to whether or not a patient is suffering from a terminal illness.

7. SAVINGS

(1) Nothing in this Act prevents the artificial maintenance of the circulation or respiration of a dead person -

- (a) for the purpose of maintaining bodily organs in a condition suitable for transplantation; or
- (b) where the dead person was a pregnant woman - for the purpose of preserving the life of the foetus.

(2) Nothing in this Act authorizes an act that causes or accelerates death as distinct from an act that permits the dying process to take its natural course.

ATTACHMENT "B"

Serial
Natural Death

Mr. Manzie

SECOND READING SPEECH

MR. SPEAKER, I MOVE THAT THE BILL BE NOW READ A SECOND TIME.

THE NATURAL DEATH BILL IS IN SIMILAR TERMS TO THE NATURAL DEATH ACT 1983 (S.A.) AND PERMITS A PERSON OF 18 YEARS OR OVER TO MAKE A "DIRECTION" THAT THAT PERSON NOT BE GIVEN EXTRAORDINARY LIFE-PROLONGING MEASURES IF THAT PERSON IS SUFFERING FROM A TERMINAL ILLNESS.

THE BILL PROVIDES FOR, AND GIVES LEGAL EFFECT TO DIRECTIONS AGAINST THE ARTIFICIAL PROLONGATION OF THE NATURAL DYING PROCESS. THIS THEREFORE ENSURES THAT A TERMINALLY ILL PATIENT WILL BE ABLE, IF THAT PERSON CHOOSES, TO ISSUE A DIRECTION THAT EXTRAORDINARY MEASURES ARE NOT TO BE TAKEN WHEN DEATH IS INEVITABLE AND IMMINENT. A POINT OFTEN ARISES IN THE TREATMENT OF THE TERMINALLY ILL WHERE THE EMOTIONAL COST AND SUFFERING ASSOCIATED WITH EXTRAORDINARY MEDICAL MEASURES DESIGNED TO SUSTAIN LIFE ARE WORSE THAN ALLOWING THE PATIENT TO DIE PEACEFULLY AND NATURALLY.

THE PROPOSITION IS STRAIGHTFORWARD. TERMINALLY ILL ADULTS HAVE (WITH SOME MINOR EXCEPTIONS) THE ABSOLUTE RIGHT TO REFUSE MEDICAL TREATMENT, AND NO DOCTOR IS PERMITTED TO TREAT A PATIENT AGAINST THAT PATIENT'S KNOWN WISHES. WHILE A PATIENT IS CONSCIOUS AND

AWARE OF HIS OR HER RIGHTS, AND ABLE TO SIGNIFY HIS OR HER CONSENT, OR OTHERWISE, TO TREATMENT, NO PROBLEM SHOULD ARISE.

IF A PATIENT IS UNCONSCIOUS OR HEAVILY SEDATED AND THEREFORE UNABLE TO EXERCISE HIS OR HER RIGHT TO REFUSE OR CONSENT TO TREATMENT, THEN THE TREATMENT AT THAT STAGE OF A TERMINAL ILLNESS IS ENTIRELY AT THE DISCRETION OF THE DOCTOR. THE PATIENT MAY NOT HAVE WANTED THE TREATMENT GIVEN BY THE DOCTOR, BUT, BECAUSE OF THE CONDITION THE PATIENT IS IN, HE OR SHE IS UNABLE TO EXERCISE HIS OR HER RIGHT TO HAVE THAT TREATMENT WITHHELD.

THIS BILL, IF PASSED, WOULD PROVIDE A FRAMEWORK THAT WOULD ENSURE THAT ANY PERSON WHO SO DESIRED WOULD HAVE HIS OR HER WISHES AND RIGHTS RESPECTED IN THE CIRCUMSTANCES I HAVE OUTLINED.

ALTHOUGH THIS WOULD BE THE MOST IMPORTANT FUNCTION OF THE BILL, IT WOULD ALSO HAVE THE EFFECT OF RELIEVING THE DOCTOR AND RELATIVES OF TERMINALLY ILL PATIENTS OF THE RESPONSIBILITY OF DECIDING WHAT EXTRAORDINARY MEASURES OF TREATMENT SHOULD OR SHOULD NOT BE APPLIED.

THIS IS A SENSITIVE ISSUE, AND I THINK IT IS IMPORTANT TO SPELL OUT CLEARLY WHAT THE BILL DOES NOT DO. THE BILL SPECIFICALLY RESTRICTS ITSELF TO ADULTS, SO THE PROBLEMS RELATING TO TERMINALLY ILL CHILDREN DO NOT COME WITHIN THE BILL. A PERSON WHO HAS NEVER BEEN OF SOUND MIND DOES NOT COME WITHIN THE SCOPE OF THE BILL. THE DEFINITIONS IN CLAUSE 3 OF THE BILL CLEARLY STATE THAT DEATH HAS TO BE "IMMINENT" AND THERE BE NO REASONABLE PROSPECT OF PERMANENT OR EVEN TEMPORARY RECOVERY, EVEN IF EXTRAORDINARY

MEASURES OF TREATMENT WERE UNDERTAKEN. THUS, A PERSON WHO COULD REASONABLY BE EXPECTED TO GO INTO THE "REMISSION" STAGE OF AN ILLNESS WOULD NOT COME WITHIN THE AMBIT OF THE BILL.

THE BILL ALSO DOES NOT AUTHORIZE ANY ACT THAT CAUSES OR ACCELERATES DEATH - AS DISTINCT FROM AN ACT THAT PERMITS THE DYING PROCESS TO TAKE ITS NATURAL COURSE. NOT ONLY DOES IT NOT AUTHORIZE SUCH ACTS, BUT IT SPECIFICALLY STATES IT DOES NOT AUTHORIZE SUCH ACTS IN CLAUSE 7(2). WHILST IT MAY BE SOMEWHAT UNUSUAL FOR A BILL TO STATE WHAT IT DOES NOT PERMIT, THIS CLAUSE HAS BEEN CONSCIOUSLY INSERTED TO AVOID ANY MISUNDERSTANDING BY LAY PEOPLE READING THE BILL.

THUS THE BILL ANSWERS SOME IMPORTANT MEDICAL/LEGAL QUESTIONS. IT DOES NOT DISTURB THE PRESENT DOCTOR-PATIENT RELATIONSHIP UNLESS THE PATIENT WANTS IT DISTURBED. IF IT IS DISTURBED, IT IS DISTURBED IN FAVOUR OF THE PATIENT BY ALLOWING THE PATIENT TO ASSERT HIS OR HER RIGHTS TO MAKE HIS OR HER OWN DECISIONS REGARDING WHAT WOULD BE INEFFECTIVE MEDICAL TREATMENT IN CASES OF TERMINAL ILLNESS. THIS BILL DOES NOT DISADVANTAGE ANYONE BECAUSE NO ONE'S RIGHTS ARE ADVERSELY AFFECTED. BECAUSE OF SAFEGUARDS INCORPORATED WITHIN THE BILL, IT CANNOT BE MISUSED AND IN FACT STRENGTHENS THE PATIENT'S RIGHTS.

THE BILL ALLOWS PEOPLE WHO ARE ABOUT TO DIE A SAY IN THEIR DYING PROCESS - NOT IF THEY ARE GOING TO DIE, NOT WHEN THEY ARE GOING TO DIE, BUT HOW - THUS LENDING THEM A FINAL DIGNITY. I BELIEVE THAT IS A RIGHT WE SHOULD ACKNOWLEDGE. BY TABLING THIS BILL, WHICH

DEALS WITH SUCH A SENSITIVE ISSUE, I AM ALLOWING IT TO BE CON-
SIDERED IN THE PROPER FORUM AND AM INVITING COMMENT FROM BOTH
SIDES OF THIS HOUSE AND THE PUBLIC GENERALLY.

I COMMEND THE BILL AS TABLED TO HONOURABLE MEMBERS FOR CON-
SIDERATION.

ATTACHMENT "C"

Serial
Natural Death

Mr. Manzie

EXPLANATORY MEMORANDUM

The purpose of the Natural Death Bill is to provide for, and give legal effect to, directions against artificial prolongation of the dying process and to permit the dying process to take its natural course.

The Bill only applies to adults who are terminally ill, who must be of sound mind and have no reasonable prospect of any temporary or permanent recovery. It also only allows directions to be given against "extraordinary" measures of treatment, and specifically does not authorize an act causing or accelerating death.

ATTACHMENT "D"

Serial
Natural Death

Mr. Manzie

COMMITTEE NOTES

Clause 1. SHORT TITLE

Clause 2. COMMENCEMENT

Clause 3. DEFINITIONS

In this Act, unless the contrary intention appears -

"extraordinary measures" means medical or surgical measures that prolong life, or are intended to prolong life, by supplanting or maintaining the operation of bodily functions that are temporarily or permanently incapable of independent operation;

"recovery", in relation to a terminal illness, includes a remission of symptoms or effects of the illness;

"terminal illness" means such an illness, injury or degeneration of mental or physical faculties -

- (a) that death would, if extraordinary measures were not undertaken, be imminent; and
- (b) from which there is no reasonable prospect of a temporary or permanent recovery, even if extraordinary measures were undertaken.

- Clause 4.
- (1) This clause deals with the power of a person of 18 years or over who is of sound mind to make a direction that he not be subjected to extraordinary life-prolonging measures in the event of him suffering from a terminal illness.
 - (2) This clause requires two witnesses to the direction provided for by clause 4(1).
 - (3) This clause compels a medical practitioner to act according to the direction unless he has reasonable ground to believe that the person giving the direction -
 - (a) has revoked or intends to revoke the direction; or

(b) was not, at the time of making the direction, capable of understanding the nature and consequences of the direction.

(4) This clause confirms the duty of the medical practitioner to inform a patient of all the various forms of treatment available to the patient for his particular condition so the patient can make an informed judgment as to whether treatment should or should not be undertaken.

(5) This clause allows the Administrator to prescribe by regulation the form by which a direction under sub-clause (1) should take.

Clause 5.

(1) This clause provides that the Act does not affect a person's right to refuse medical or surgical treatment.

(2) This clause provides that the Act (other than section 6) does not affect the legal consequences of taking or refraining from taking certain types of treatment, e.g. -

(a) therapeutic measures where the patient is suffering from a terminal illness;

(b) extraordinary measures (as defined in clause 3) where a patient has not made a direction under the Act.

(3) This clause provides that a medical practitioner, acting in good faith and without negligence, is not liable for any decision made as to whether the patient -

(a) is terminally ill;

(b) actually has revoked or intended to revoke his earlier direction on withholding extraordinary life-prolonging measures;

(c) was, when he made the direction, capable of understanding the nature and consequences of the direction.

Clause 6.

(1) This clause specifies that the withholding or withdrawal of extraordinary measures from a person suffering from a terminal illness does not constitute a "cause of death".

(2) This clause maintains the liability of a medical practitioner if he makes a negligent decision regarding the terminal nature of a person's illness.

Clause 7.

- (1) This clause provides that nothing in the Act prevents the artificial maintenance of the circulation or respiration of a dead person in certain circumstances, for instance -
 - (a) in situations where the organs may be used for transplantation;
 - (b) for the preservation of the life of a foetus where the dead person was pregnant.
- (2) This clause specifically precludes any act causing or hastening death and distinguishes those acts from an act which permits death to take its natural course.

PRESS RELEASE

The Natural Death Bill is being tabled at the forthcoming sittings of the Legislative Assembly. The Natural Death Bill provides for, and gives legal effect to directions against the artificial prolongation of the natural dying process, ensuring that a terminally ill patient will be able, if that person chooses, to issue a direction that extraordinary measures are not to be taken when death is inevitable and imminent.

The proposition is straightforward. Terminally ill adults have (with some minor exceptions) the absolute right to refuse medical treatment, and no doctor is permitted to treat a patient against that patient's known wishes. While a patient is conscious and aware of his or her rights, and able to signify his or her consent, or otherwise, to treatment, no problem should arise.

If a patient is unconscious or heavily sedated and therefore unable to exercise his or her right to refuse or consent to treatment, then the treatment at that stage of a terminal illness is entirely at the discretion of the doctor. The patient may not have wanted the treatment given by the doctor, but, because of the condition the patient is in, he or she is unable to exercise his or her right to have that treatment withheld.

This Bill, if passed, would provide a framework that would ensure that any person who so desired would have his or her wishes and rights respected.

The Bill specifically restricts itself to adults who are of sound mind. The Bill clearly defines that death has to be "imminent" and there be no reasonable prospect of permanent or even temporary recovery, even if extraordinary measures of treatment were undertaken.

The Bill also does not authorize any act that causes or accelerates death - as distinct from an act that permits the dying process to take its natural course.

The Bill allows people who are about to die a say in their dying process - not if they are going to die, not when they are going to die, but how - thus lending them a final dignity. It is a right we should acknowledge. The Bill is being tabled in the upcoming sittings of the Assembly and comment is invited from the public.