

Explanatory Memorandum

Crimes (Assisted Suicide) Bill 1997

(Michael Moore)

SUMMARY

This Bill aims to amend the penalties for the crime of assisting suicide, so as to provide lighter penalties for assistance in specified circumstances.

The actual offence of assisting suicide would remain the same. Assisting suicide would remain an offence in all circumstances.

This Bill should be read in the context of the current offence of assisted suicide in subsection 17(1) of the *Crimes Act 1900*, which is in the following terms:

Suicide - aiding, etc

17. (1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

The effect of this Bill would be to provide that in specified circumstances, the offence in section 17 of the *Crimes Act* would not apply, but in its place an equivalent offence under the *Crimes (Assisted Suicide) Act 1997* would be committed, and penalised according to the terms of the new *Act*.

If for any reason the terms of this *Act* would not apply to a particular case, the basic *Crimes Act* offence would still apply.

Also relevant to this area of the law is the offence of inciting or counselling another person to commit suicide in subsection 17(2) of the *Crimes Act*:

(2) Where:

- (a)** a person incites or counsels another person to commit suicide; and
- (b)** the other person commits, or attempts to commit, suicide as a consequence of that incitement or counselling;

the first-named person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

This offence would be unaffected by this Bill.

DETAIL OF CLAUSES

Clauses 1 and 2 - Short Title; Commencement

These clauses are standard

Clause 3 - Interpretation

This clause defines the various persons who are mentioned in this Bill - "health professional", "medical practitioner", "nurse", and "prescribed person"

Also defined is the word "request", which is used in a specific sense in this Bill

Clause 4 - Assisting Suicide - health professionals and other persons

This clause provides for the offence of assisting suicide where the person who commits suicide is a 'prescribed person'.

A 'prescribed person' is defined in Section 3 as a person who is over 18 years of age, of sound mind, in the terminal phase of a terminal illness, and suffering intolerable pain or distress.

The penalties for an offence under this Section would be as follows:

- where the deceased made no request for assistance 6 years imprisonment.
- where the deceased made a request for assistance, and the offender is *not* a health professional: 4 years imprisonment.
- where the deceased made a request for assistance, and the offender is a health professional: 2 years imprisonment.

Clause 5 - Assisting Suicide - medical practitioner

This clause provides for a special offence of assisted suicide, under very narrowly specified circumstances.

The facts and circumstances of this offence would be as follows:

- the offender is a medical practitioner;
- the deceased was a prescribed person, who requested assistance to commit suicide;
- the offender and a second medical practitioner confirmed in writing the medical condition of the deceased;
- the offence was not committed until three days after the deceased requested assistance, and
- the offender supervised the commission of the suicide.

The penalties for an offence under this Section would be as follows:

- if the medical practitioner assists in the administration of a lethal substance to the deceased: 6 months imprisonment.
- if the deceased administered a lethal substance to himself without assistance: 3 months imprisonment

Clause 6 - Offence Notices

This clause provides for an alternative penalty process for offences committed against section 5 (but not section 4) of this Act.

The process is an infringement notice system, of a similar kind to other infringement notice systems in ACT legislation.

Payment of the penalty specified would result in no further proceedings being taken in relation to the offence.

The penalties payable would be as follows:

- if the medical practitioner assists in the administration of a lethal substance to the deceased:..... \$300.
- if the deceased administered a lethal substance to themself without assistance: \$50.

Clause 7 - Protection of medical practitioners, etc.

This clause aims to ensure that medical practitioners (and their assistants) who assist a suicide, whilst guilty of an offence and punishable under this *Act*, are not subjected to any other criminal, civil or professional disciplinary proceedings or penalties.

This protection supports the integrity of the legal position intended by the Bill.

Clause 8 - Advantage, compulsion or inducement

This clause provides that where the circumstances in which an offender assisted in a person's suicide were tainted by the offender having knowledge of any financial advantage available to him or herself or an associate, or knowledge that the deceased had been subjected to any compulsion or inducement to commit suicide, the maximum penalties revert to the full 10 years imprisonment.

This ensures that the full sanction of the current law applies to such cases.

Clause 9 - *Crimes Act* - Application

To avoid the application of overlapping offences, this clause provides that where the circumstances of an offence of assisted suicide would be covered by this *Act*, the offences provided in the *Crimes Act* do not apply.