



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON END OF LIFE CHOICES IN THE ACT

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Submission Cover Sheet

End of Life Choices in the ACT

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1. My name is Timothy Morton. I am a 31-year-old solicitor from Scullin. I have lived in the ACT since moving here to study at the Australian National University in 2005.
2. I come from a medical family and have been exposed to medical issues my entire life. Despite this strong influence, I bucked family traditions and completed a Bachelor of Laws and a Bachelor of Science. I graduated with both degrees in 2010. I completed my Graduate Diploma of Legal Practice in 2011 and was admitted to practice in late 2011. I completed a Master of Laws (Wills & Estates) in 2015.
3. Since my admission I have practiced solely in succession law and elder law. I have met with people at all ages and stages of life. I have met the first-year university student and the elderly person making their final wishes clear.
4. I specialise in succession law and elder law. These areas of law cover Wills, enduring powers of attorney, guardianship and financial management, elder abuse, and estate administration. There are great opportunities for law reform across this area of law in the Australian Capital Territory.
5. I am employed as an Associate Director at [REDACTED] I have been fortunate to serve on the Elder Law and Succession Committee of the ACT Law Society since 2012. However, I stress that I am making this submission in my private capacity out of immense personal interest in this topic and an equally significant professional interest in this area of law.
6. In my experience, the overwhelming majority of the clients I have met with will go on to instruct me to prepare Wills and Enduring Powers of Attorney (**EPOA**) for them. Every client I have spoken to has been particularly interested to talk about what kinds of decisions their attorneys can make when their life is nearing its natural end.
7. When preparing an EPOA for a client, clients are able to give directions to their attorney. This gives them the opportunity to ensure that their attorney will use their powers in accordance with the wishes of the principal (the person making the EPOA).
8. I find that, following some discussion, clients will almost uniformly instruct me to incorporate a direction to their attorneys to limit their consent to medical treatment to keeping them free from pain but to otherwise refuse medical treatment in the following circumstances:
 - 8.1. if they have a physical illness from which there is no likelihood of recovery and the illness is so serious that their life is nearing its end;
 - 8.2. they are permanently unconscious and there is no likelihood that they will regain consciousness, or
 - 8.3. they are permanently and seriously cognitively impaired, there is no likelihood of improvement, and they would need medical treatment to keep them alive.
9. When the direction applies, the effect of these kinds of directions will likely be to hasten the principal's death. These kinds of directions are entirely legal and are binding on the attorney and the treating medical professionals.

10. I, on a personal level, agree with those people who express that view. I have included such a direction in my own EPOA.
11. My discussions with fellow practitioners indicates that the above direction is not at all uncommon and variations are commonly offered to clients during their estate planning. Some document management software used by law firms offer a variation of this direction in their own precedents.
12. I emphasise this because I want to stress that the legal system and the legal community currently supports clients to end their lives slowly and painfully. In my view, people should be able to bring their inevitable death forward in order to minimise their suffering.
13. My clients raise with me that about whether they would want their attorneys to be able to consent to voluntary assisted dying, if it were available at the time. A significant proportion of clients express the strong view to me that they would want their attorney to be able consent, on their behalf, to voluntary assisted dying in the right circumstances.
14. I am aware of one recent case where a middle-aged man with full capacity refused treatment for a medical condition that required certain treatment for his life to continue. The treatment was onerous, painful, and regular. He eventually decided to refuse treatment. His death following that refusal was as inevitable as it was painful. This pain was felt by the man, his wife, and his young children. Unfortunately, he persevered for much longer than anyone expected so his pain was longer than anyone had anticipated. However, he was perfectly within his rights to do so. In my view, given appropriate safeguards this man should have had the right to control how painful the process of death is for him, if he wanted to.
15. My grandfather Dr ██████████ was diagnosed with pancreatic cancer in September 2011 and died at home in March 2012. Da (as he was known to us) was an obstetrician and the first on the ██████████ of New South Wales. He apparently said that if he had to pick one type of cancer not to get it would be pancreatic cancer. Unfortunately, that's what he got.
16. Da's mind stayed with him almost the whole way as he approached his death. Yet he was able to approach it with the same dignity and stoicism that characterised much of his life. He endured great pain as he died and his death was certain. He did not have the option to end his life on his terms – he just had to wait.
17. I believe that the right to access any voluntary assisted dying scheme should be available to anyone who is suffering from a terminal disease. This should include dementia and other cognitive diseases that permanently impair capacity. In this context I note that I have seen dementia listed as a cause of death on many death certificates.
18. I do not believe that because a person loses capacity that they should have to endure any more suffering than a person who does not lose capacity. To do so would be inconsistent with the ACT's support of fundamental human rights and the objective of moving to a supported decision-making framework than a substituted decision-making framework in relation to EPOAs and guardianship and financial management. Specifically, if a person with impaired capacity would make a the

decision to access voluntary assisted dying but for their incapacity, then they should be supported in making the decision.

19. The only question that leaves is simply one of safeguards which could be put in place while the person has capacity, as they already do for EPOAs. For example, if a person wished to authorise their attorneys to consent to voluntary assisted dying, then:
 - 19.1. Such authorisation may be only in certain defined forms prescribed by the Legislative Assembly,
 - 19.2. it could be up to the person who wishes to direct signed off by additional professionals; or
 - 19.3. it could be one or both of the above combined with a requirement to seek the approval of the ACT Civil and Administrative Tribunal.
20. In the case of an adult, I do not believe that the same approach should be generally permitted in the absence of an EPOA or an express direction by the principal. For this reason, I do not believe that guardians appointed under the *Guardianship and Management of Property Act 1991* should be permitted to give their consent to voluntary assisted dying.
21. However, I believe the scheme should be available to children either through their parents (when the child is unable to express their own views on the matter) or through the court (if they can express their views but are not old enough to give fully-informed medical consent). Any such process should require that their quality of life be unacceptably poor to the satisfaction of the ACT Civil and Administrative Tribunal and/or the ACT Supreme Court.
22. The court can apply objective considerations where the child has no ability to express their own views and subjective considerations where the child can or has expressed their own views. See, for example, in the context of statutory Wills *Re Fenwick; Re Charles* [2009] NSWSC 530. I do not expect that such a provision would be regularly utilised, but if it helps to avoid unnecessary suffering at least once then it will be worthwhile.
23. I believe that where a death of an ACT resident is, in the opinion of a treating medical practitioner and an independent medical practitioner with relevant experience, likely to occur within 24 months then the patient should be able to start to access the process. However, final permission and access to the drugs should be only be given 6 months after that, following further psychological evaluation, treatment, and counselling.
24. There should be no requirement to feel physical pain. Any attempt to do so is tantamount to requiring clients and patients to suffer.
25. If a person loses capacity having started the process then the process should be able to continue via the attorney under an EPOA or the health attorney appointed under ACT law. This is different to [20] above as in this case the person has already expressed a wish to access voluntary assisted dying and that decision ought to be given weight.

26. I emphasise again that the effect of many of the perfectly legal directions that clients and patients (including people under the age of 18 or their parents) already make is to shorten the lives of those clients or patients who refuse treatment. On a personal level, I agree with them. I do not want to have to suffer unnecessarily for a death that is anxiously anticipated.
27. I strongly disagree with any submission to the effect that we will just be legalising the murder of vulnerable Canberrans. We should help patients to minimise their suffering in a safe, controlled environment. Voluntary Assisted Dying should not be a first choice – it certainly would not be mine – but it should be an option for a death that will happen down the line, but not before a bunch of suffering has been endured.
28. We are already giving patients and clients a say in when they die – we just require them to suffer before they do.
29. I thank the committee for considering my submission.