

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY

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SELECT COMMITTEE

ON

EUTHANASIA

REPORT

Voluntary and

Natural Death

Bill 1993

March 1994



Select Committee on Euthanasia

**Membership:**

Mr M Moore (Chairman)

Mrs K Carnell

Mr D Lamont

*Secretary:*

Mr R Owens



## RESOLUTION OF APPOINTMENT:

That:

- (1) a Select Committee on Euthanasia be appointed to inquire into and report on the Voluntary and Natural Death Bill 1993;
- (2) the Committee shall consist of Mr Moore, Mrs Carnell and a Member appointed by the Labor Party;
- (3) the Committee shall report by 17 March 1994;
- (4) on the Committee presenting its report to the Assembly resumption of debate on the question "That this Bill be agreed to in principle" be set down for an order of the day for the next sitting;
- (5) the foregoing provisions of this resolution so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.<sup>(1)</sup>

την του δημου φωνην δια τι φοβουνται;  
(why do they fear the voice of the people?)

Demosthenes 4th cent BC (attrib)

## PREFACE

The topic of euthanasia raises some very vexed questions about compassion and personal freedom. Division on this issue has stirred up some significant emotional and intellectual responses. The debate has continued for over two years as to where we should draw the line on the practice of euthanasia. In this report the Committee has determined that its position will be supportive of palliative care and passive euthanasia, but that active euthanasia still needs further debate.

The Labor Party, following a Caucus meeting, announced that it was not yet ready to implement its policy on active euthanasia and that the community needs more time to debate the matter. Although the Liberal Party have been advocates of referenda to assess community opinion on controversial issues, they have announced that they will not support a referendum on active euthanasia.

Whilst a referendum is clearly the best way to continue the debate and the most equitable method to assess community opinion it is clear that Labor and Liberal have combined to defeat that proposition. The issue is still on the table, however, and will remain so unless Labor changes its policy prior to the next election.

The temporary delay of this issue reflects that for some people compassion extends only as far as their dogma; beyond which the dogma often becomes more important than the compassion. Such groups, which were given substantial time in the Committee's hearings, have been particularly influential in both the Parliamentary Labor and Liberal Parties. This dogmatic voice, however loud and strident, does not reflect the general community view: if it did this group would have welcomed a referendum instead of seeking assurances from Labor that active euthanasia was off the agenda and lobbying Liberal members against their own policy of taking such issues to a referendum.

On the issue of active euthanasia both major parties have forsaken their own policy positions. In both cases the decision has been made because of perceived electoral concerns rather than a commitment to the greater good. On the question of passive euthanasia, however, the Committee is able to present a Bill as an Appendix to this report which will meet the vast majority of what I set out to achieve in tabling the *Voluntary and Natural Death Bill*.

I thank my colleagues on this Committee for their open and frank discussion of the difficult issues; as I also thank the secretary, Mr Ron Owens, for his tireless work.

I am pleased to have completed this report and stage 1 of the debate; I now look forward to its continuation.



(Michael Moore)  
Chairman  
14 March 1994

*(This Preface has been prepared by the Chair and does not necessarily reflect the views of the Committee)*





## TABLE OF CONTENTS

	<i>Page</i>
Membership:.....	ii
Resolution Of Appointment: .....	iii
Preface.....	v
 1. INTRODUCTION.....	 1
Conduct of inquiry.....	1
Submissions .....	1
Public hearings .....	1
Interstate visits .....	2
Melbourne.....	2
Adelaide.....	2
Conference .....	3
 2. PALLIATIVE CARE AND PAIN MANAGEMENT .....	 4
Introduction.....	4
Palliative care and hospice facilities.....	4
Pain management.....	5
Recommendation 1 .....	5
 3. VOLUNTARY AND NATURAL DEATH BILL 1993.....	 6
Legal advice .....	6
Submissions.....	6
Private and professional support .....	6
Conclusion.....	6
Recommendation 2.....	6
 4. Medical Treatment Bill 1994.....	 8
Introduction .....	8
Common law rights.....	8
Concerns.....	8
Statute law protection .....	8
Draft Bill .....	8
Recommendation 3.....	9
 ADDITIONAL COMMENTS - David Lamont MLA .....	 10A

## APPENDICES

### APPENDIX A

Voluntary and Natural Death Bill 1993.....	11
--	----

### APPENDIX B

Submissions received.....	25
---------------------------	----

### APPENDIX C

List of witnesses .....	28
-------------------------	----

### APPENDIX D

Medical Treatment Bill 1994 .....	29
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## 1. INTRODUCTION

### Establishment of committee

1.1 The Assembly appointed a Select Committee on Euthanasia on 16 June 1993 <sup>(1)</sup>, to inquire into the Voluntary and Natural Death Bill 1993, and to report by 17 March 1994.

1.2 Mrs Carnell and Mr Moore were appointed to the committee pursuant to paragraph (2) of its resolution of appointment and Mr Lamont was appointed to the committee pursuant to a separate resolution of the Assembly <sup>(2)</sup>.

1.3 The Voluntary and Natural Death Bill 1993 was referred to the Committee by the Assembly on 16 June 1993 <sup>(3)</sup>. A copy of the Bill is at Appendix A.

1.3 On 24 February 1994 the Assembly passed a resolution enabling the Committee to present its report to the Speaker should it complete its inquiries at a time when the Assembly is not meeting. The resolution also authorised the Speaker to make arrangements for the printing and distribution of the report <sup>(4)</sup>.

### Conduct of inquiry

#### *Submissions*

1.4 An advertisement was placed in *The Canberra Times* of 3 July 1993 calling for submissions; with a cut off date for the receipt of submission of 6 August 1993. At its meeting of 2 September 1993 the Committee resolved:

That -

- (a) the time for the lodgement of submission on the Voluntary and Natural Death Bill 1993 be extended to 31 December 1993; and
- (b) the Chairman make a public announcement concerning the extended time for the lodgement of submissions.

1.5 A press release was issued by the chairman on 5 September 1993 announcing the extend time for the receipt of submissions.

1.6 The Committee received a total of 214 submissions; two of which were received in confidence. For a list of the submissions received *see* Appendix B.

#### *Public hearings*

1.7 The Committee conducted 3 days of public hearings over the period of 2 - 4 February 1994, at which 44 witnesses appeared before the Committee. Witnesses appearing before the Committee included representatives of the AIDS Action Council and People Living With

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<sup>1</sup> MoP (1992-93-94), No 66, p 369

<sup>2</sup> MoP (1992-93-94), No 67, p 380

<sup>3</sup> MoP (1993-93-94), No 66, p 369

<sup>4</sup> MoP (1992-93-94), No 94, p 534

AIDS; the ACT Chapter of the NSW Voluntary Euthanasia Society; the ACT Nurses Board; the Australian Nurses Federation; the ACT Branch of the Australian Medical Association; the University of Canberra; and numerous church and church affiliated groups. The Committee also heard evidence from one witness *in camera*. For a list of the witnesses who appeared before the Committee see Appendix C.

### *Interstate visits*

1.8 Over the period 29 November to 1 December 1993 the Committee visited Melbourne and Adelaide and held discussions with state government officials, palliative care specialists State Voluntary Euthanasia Societies. The Committee also visited a number of Hospices.

### Melbourne

1.9 Whilst in Melbourne the Committee visited the Caritas Christi Hospice in Kew and held discussions with its Chief Executive Officer, Mr R Walford; the Director of Nursing, Ms B Hamilton and several members of the staff. The Committee also met with Mrs K Clark, a solicitor who had lodged a submission with the Committee.

1.10 On the afternoon of 29 November 1993 the Committee held discussions with the following state government officials from the Victorian Department of Health:

Dr C Brook;

Dr R Simpson; and

Ms F Kerr.

The discussions with these officials was concerned mainly with the operation of the Victorian Medical Treatment Act 1988.

1.11 The Committee wishes to place on record its appreciation to the Victorian Government for allowing it access to state government officials and for the frankness and openness of the officials who spoke with it.

1.12 During the evening of 29 November 1993 the Committee was able to hold fruitful discussions with Dr R Symes and Ms K Koetsier of the Victorian Voluntary Euthanasia Society; and on 30 November 1993 the Committee visited the Bioethics Centre, Monash University, and met with its Director, Dr H Kuhse.

### Adelaide

1.13 On 30 November and 1 December 1993 the Committee visited Adelaide.

1.14 In the evening of 30 November 1993 the Committee was able to meet and hold informal discussions with three prominent South Australian palliative care specialists:

Dr Michael Ashby, Royal Adelaide Hospital;

Professor I Maddocks, Professor of Palliative Care, Flinders University; and

Dr Roger Hunt, Repatriation General Hospital.

1.15 With the permission of the chair of the former South Australian Select Committee on the Law and Practice relating to Death and Dying, the committee was able to meet and hold discussion with the secretary of that select committee.

1.16 Following the meeting at Parliament House, Adelaide, the committee visited the hospice at Calvary Hospital, North Adelaide. Discussions were held with the Director of Nursing and the Chief Executive Officer of the Hospital. The Committee was also privileged to attend a care team meeting where the care plans for each of the patients at the hospice were discussed.

1.17 The Committee wishes to place on record the gracious assistance given it by Dr Michael Ashby, Director of Palliative Care at the Calvary Hospital Hospice.

1.18 The Committee finalised its visit to Adelaide by meeting with a number of representatives of the South Australian Voluntary Euthanasia Society.

### Conference

1.18 Over the period 20 - 23 September 1993 the secretary to the Committee attended the First National Conference on Death, Dying and Euthanasia, held at the Australian Institute of Ethics, University of Queensland.

## 2. PALLIATIVE CARE AND PAIN MANAGEMENT

### Introduction

2.1 Although the committee was charged solely with inquiring into and reporting on the Voluntary and Natural Death Bill 1993, it nonetheless considered it important to address, in some measure, both (a) the provision of adequate palliative care and hospice facilities and (b) the provision of specialist pain management services in the Territory.

### Palliative care and hospice facilities

2.2 It is important for the Committee to state at the outset that, in its opinion, the palliative care services which are provided to the community in this Territory are of the highest standard; and that what the Committee has to say in this part of its report is not to be regarded in any way as critical of those services. The Committee's concern is that there are some palliative care needs in the community which the current services are not designed to meet. It is the Committee's contention that additional palliative care services should be provided to meet these other needs.

2.3 Currently in the ACT, for the terminally ill patient in need of palliative care, there are only two different modes of care/treatment available:

- (a) in an intensive acute care/cure setting in hospital; or
- (b) in a home based care setting.

2.4 Evidence given before the Committee suggests that in many cases the acute care setting of a hospital, with its predominantly curative emphasis, is an inappropriate setting for the care of the terminally ill patient, particularly where that patient is in the terminal phase of their illness.

2.5 Further evidence given before the committee also suggests that for some patients home based palliative care is not an option either. This applies to patients who might live alone and are thus without the companionship of a full time carer; to patients who are elderly with an elderly spouse or partner who is thus not able to provide the necessary full time care; or to patients who might require more constant care than that which can be provided by the community nursing service or their full time carer.

2.6 The Committee also notes that there are no proper or adequate facilities available in the Territory which provide respite care such that full time family based carers can be given some respite from, what can only be described as, the onerous, though lovingly undertaken, task of caring for a dying family member.

2.7 It was with pleasure then that the Committee noted, during the course of its inquiries, the announcement made by the Minister for Health of a firm commitment to the provision of hospice and respite care in the Territory, and that matters had been set in train to establish those facilities at the site of the former Royal Canberra Hospital on Acton Peninsula.

## **Pain management**

2.8 The Committee heard evidence from a number of witnesses expressing their concern that there is not available in the Territory a pain management specialist. As a consequence there are a number of patients in the Territory, particularly cancer patients, whose chronic or acute pain is not subject to optimum pain management. In saying this the Committee is not being critical of the level or competence of pain management provided by the Territory's highly regarded oncologists. Its concern, and the concern of oncologists who spoke with the Committee, is rather that, due to the non-availability of a pain management specialist, oncologists working in the Territory do not have immediate or local on-call access to the best specialist advice in dealing with their patients' chronic or acute pain levels.

2.9 The Committee is convinced that there is a need for the appointment of a pain management specialist to the public hospital service of the Territory. It is also the Committee's considered opinion that the appointment of such a specialist should coincide with the establishment of the hospice and respite care facilities on the Acton Peninsula.

### *Recommendation 1*

2.10 The Committee recommends:

**That a suitably qualified pain management specialist be appointed to the public hospital services of the Territory.**

### 3. VOLUNTARY AND NATURAL DEATH BILL 1993

#### **Legal advice**

3.1 The Committee recognises the ground breaking nature of the legislative provisions in the Voluntary and Natural Death Bill and is, therefore, grateful for the legal advice it received both from the Law Society of the ACT and from senior legal representatives of the Attorney-General's Department on the provisions of the legislation.

#### **Submissions**

3.2 Although the Committee received more than 200 submissions, over a third of them did not address the provisions of the Bill; rather they simply expressed a view, predominantly from a religious perspective, in opposition to the intentional and non-consensual killing of patients - which is how they defined, either explicitly or implicitly, euthanasia.

3.3 Further the Committee is conscious of the very strong representation of views, from a number of influential sectors in the community, opposing the 'voluntary death' provisions of the Bill. The Committee accepts, therefore, that, at this stage of the debate, it would appear to be politically inopportune to proceed with those provisions of the Bill which empower a private citizen, in the terminal phase of a terminal illness, to make a reasoned choice concerning the ending of their life and to seek medical assistance to that end.

#### **Private and professional support**

3.4 In reaching this conclusion the Committee acknowledges that there appears to be an ever increasing community support for voluntary euthanasia, which has been identified for over 20 years in such reputable opinion polls as that of the Morgan organisation; and that there is also substantial evidence of an increasing number of medical practitioners who will acknowledge that they have assisted patients with terminal illness to end their own lives.

3.5 In particular the Committee would mention the 1988 Victorian survey of medical practitioners by Singer and Kuhse; the 1990 South Australian survey reported at the 1991 South Australian Conference on Hospice Care; and the 1993 NSW survey recently published by Prof P Baume of Sydney University: all of which support the contention in paragraph 3.4 concerning medically assisted euthanasia. It is of interest to note the fact that the 1990 South Australian survey supported the findings of the 1988 Victorian survey and the findings of Professor Baume's 1993 survey, which sought to replicate the 1988 survey of Singer and Kuhse, confirmed the findings of both the 1988 and the 1990 surveys.

#### **Conclusion**

3.6 Nonetheless the Committee has reached the conclusion that the Voluntary and Natural Death Bill 1993 should not be proceeded with at this stage.

#### *Recommendation 2*

3.7 The Committee recommends:



**That -**

- (a) the Voluntary and Natural Death Bill 1993 not be proceeded with; and**
- (b) the order of the day for the resumption of the debate on the question that 'the Bill be agreed to in principle' be discharged from the *Notice Paper*.**

#### 4. MEDICAL TREATMENT BILL 1994

##### **Introduction**

4.1 Although there was a great deal of opposition to the 'voluntary death' provisions of the Voluntary and Natural Death Bill 1993 there was total support from witnesses appearing before the Committee for the right of a patient to die with dignity and for the right of a patient to request either the withdrawal or the withholding of medical treatment.

##### **Common law rights**

4.2 Many witnesses pointed to a common law right against medical trespass as sufficient warrant for a patient refusing medical treatment. Legal evidence given before the Committee supported the contention of the existence of such a right at common law.

##### **Concerns**

4.3 A number of medical practitioners in evidence before the Committee, however, expressed some concern that the common law right against medical trespass might not be sufficient protection at law against a civil suit of negligence brought by a relative of a deceased patient.

4.4 Similar concerns have been voiced in a number of jurisdictions in Australia and the response of legislatures in a number of States has been to clarify the position by statute law. The foremost example being the Victorian Medical Treatment Act 1988.

##### **Statute law protection**

4.5 It is apparent to the Committee that there is some uncertainty as to the protection available to health professional should they act in good faith on a patient's common law right to request the withholding or withdrawal of medical treatment. The Committee is of the view, therefore, that statute law provision, similar to that enacted in Victoria, should be made in the Territory to both ensure the right of patients to refuse medical treatment and to ensure the legal protection of health professionals where they act in good faith on the request of a patient to withdraw or withhold medical treatment.

4.6 The Committee also thought it important to establish a legal right of patients to receive maximum relief from pain and suffering.

##### **Draft Bill**

4.7 At the Committee's request the Committee's secretariat prepare a draft medical treatment bill providing for:

- the making of written or oral directions for the withdrawing or withholding of medical treatment, either specifically or in general;
- the granting of powers of attorney to consent to the withholding or withdrawing of medical treatment;
- the protection of health professionals relying on a written or oral direction; and

- the right of a patient to receive maximum relief from pain and suffering.

4.8 A copy of the draft bill was then circulated, in confidence, to the following for their considered opinion:

- The President of the ACT Branch of the AMA;
- The Chair of the ACT Nurses Board;
- The Head of the School of Nursing, University of Canberra; and
- The Anglican and Catholic Bishops of Canberra and Goulburn.

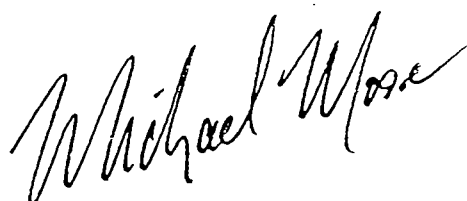
4.9 In general there was major support for the provision of the Bill; although each of the opinions sought raised particular matters of concern - none of which, in the opinion of the Committee, impinged on the integrity of the Bill itself. The matters of concern were considered by the Committee and, where appropriate, were incorporated into the Bill. A copy of the redraft bill is at Appendix D.

4.10 Given the support for the Bill, as expressed by the major stake holders who were asked for comment, the Committee is of the opinion that a Medical Treatment Bill, in the form set out in Appendix D, should be introduced into the Assembly.

### *Recommendation 3*

4.11 The Committee recommends:

**That the chair of the Select Committee on Euthanasia be given leave to bring in a Bill for an Act to make provision with respect to the withholding or withdrawing of medical treatment and for related purposes, in the form set out in Appendix D to this report.**



(Michael Moore)  
Chair  
14 March 1994



# ADDITIONAL COMMENTS - DAVID LAMONT, MLA

επειχθηναι μεν νυν παν πρηγμα τικτει σφαλματα

"Haste in every business brings failure"  
(Herodotus 5th century B.C.)

It is extremely disappointing that for someone who is forever accusing the major political parties of rorting the political process, Mr. Moore has shown himself in finalising this report to be someone quite happy to hijack the committee process for his political purposes.

When I received the final of this report for my endorsement, I was astonished to see what Mr. Moore had written in his Preface to the Report. I will deal with the substance of what Mr. Moore has to say in that Preface below but first what also needs to be brought to the attention of the readers of this report is the extent to which Mr. Moore has been willing to abuse his position as Chairman of the Euthanasia Committee.

The Report which the Committee has prepared is the Report of the Select Committee on Euthanasia - it is not Mr. Moore's report. It is, therefore, not only gratuitous but quite reprehensible that he should impose upon this report a Preface (and an epigraph) which contains his views and not those of the Committee as a whole. If Mr. Moore wishes to place on record his dissent from the majority of the Committee he is perfectly entitled to submit a dissenting report which would be appended to the report. This is the right he shares with every other member of the Committee but he has no other special rights as Chairman.

As Mr. Moore believes he has a right to author a Preface with which I disagree, I see no alternative but to assume that right as well. However, as I have been denied the option of having my comments included, like Mr. Moore's, at the beginning of the Report so add them now as "Additional Comments" for insertion.

Of all the distortions in Mr. Moore's preface, some cannot be allowed to pass without comment. First, Mr. Moore's contention that the Labor Party has forsaken its policy on euthanasia and that it has done so because of "perceived electoral concerns rather than a commitment to the greater good" is typically misleading in terms of both the statements which I have made about what I believe should occur in the continuing euthanasia debate and simply wrong as far as ALP policy is concerned.

That policy does not commit the Labor party to act in advance of public sentiment on the issue but to work towards a position where the community does accept active euthanasia. My feeling from the public hearings was that a great deal of genuine concern and fear exists in the community about active euthanasia and that, in accord with ALP policy, much work needs to be done before we could responsibly introduce such a policy.

Of course, Mr. Moore just dismisses these concerns and fears as the irrational dogma of a small minority. With such Olympian objectivity, it is little wonder that Mr. Moore seems unconcerned that a referendum on the issue - even if it did answer the question in the affirmative - could not be undertaken at this time without doing great harm to the very people who so readily expressed their views to the Committee. I had always supposed that a part of governing responsibly included protecting the interests of minorities but apparently Mr. Moore is not strong on this view.

There is every reason to proceed with due caution in this debate - the consequences in the event of failure are simply too great both in terms of the effects on the community as a social entity and the grave dangers to actual life which could result from application of an ill considered law.

DAVID LAMONT, MLA

APPENDIX A

1993

LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN Capital TERRITORY

(As presented)

(Mr Moore)

**Voluntary and Natural Death Bill 1993**

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II - VOLUNTARY DEATH

Division I - Directions

4. Making of directions
5. Written directions - requirements
6. Oral directions - requirements
7. Witnesses
8. Revocation of direction
9. Medical practitioner to inform competent person of alternatives etc.
10. Independent advice to be obtained
11. Practitioner not to proceed if in doubt
12. Medical practitioner may assign case
13. Time and manner of death
14. Capable person shall assist in own death

Division 2 - Powers of Attorney

15. Granting powers of attorney
16. Circumstances in which power of attorney may be exercised
17. Power of Attorney - Revocation
18. Conditions on exercise of power
19. Attorney may request practitioner to induce death
20. Medical Practitioner to insure attorney's decision is informed etc.

### PART III - NATURAL DEATH

21. Withdrawing or withholding of extraordinary measures
22. Availability of defence
23. Medical practitioner to ensure

### PART IV - GENERAL PROVISIONS

24. Effect of direction or power of attorney on other instruments
25. Direction obtained by fraud etc.
26. Copies or notification of directions
27. Rights unaffected by this Act
28. Medical practitioner not liable for certain decisions
29. Protection of medical practitioner relying on decision
30. Artificial maintenance of body for other purposes
31. Regulations

### SCHEDULE

### FORMS



1993  
THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

Voluntary and Natural Death Bill 1993

A BILL  
FOR

**An Act to make provision with respect to the withholding or withdrawing of medical treatment from, and the administration or provision of drugs to induce the death of, persons who are terminally ill**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**PART I - PRELIMINARY**

**Short title**

1. This Act may be cited as the *Voluntary and Natural Death Act 1993*.

**Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.  
(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.  
(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

**Interpretation**

3. In this Act, unless the contrary intention appears -  
"direction" means a written or oral direction made in accordance with Division 1 of Part II;  
"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;  
"health professional" means a person -  
(a) who is a medical practitioner,  
(b) registered under the *Nurses Act 1988*; or

- (c) registered under the *Physiotherapists Registration Act 1977*;
- "medical practitioner" means a person -
- (a) who is registered as a medical practitioner under the *Medical Practitioners Act 1930*, or
  - (b) who is deemed to be registered as a medical practitioner under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;
- "medical treatment" means -
- (a) the carrying out of an operation;
  - (b) the administration of a drug; or
  - (c) the carrying out of any other medical procedure; but does not include palliative care;
- "palliative care" includes -
- (a) the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort; and
  - (b) the reasonable provision of food and water,
- "power of attorney" means an instrument made in accordance with Division 2 of Part II;
- "superintendent", in relation to a hospital, hospice or nursing home, means a person who is responsible for the day-to-day running of the hospital, hospice or nursing home;
- "terminal illness" means any illness, injury or degeneration of mental or physical faculties such that -
- (a) death would, if extraordinary measures were not undertaken be imminent; or
  - (b) there is an absence of thought or perception;
- from which there is no reasonable prospect of a temporary or permanent recovery, even if extraordinary measures were undertaken.

## PART II - VOLUNTARY DEATH

### *Division I - Directions*

#### **Making of directions**

4. A person who is of sound mind and has attained the age of 18 years may make a direction that in the event he or she suffers a terminal illness -
- (a) extraordinary measures shall not be applied to him or her, or
  - (b) a drug for the purpose of inducing his or her death shall be administered or provided to him or her.

#### **Written directions - requirements**

5. Subject to this Act, a written direction is not valid unless -
- (a) it is in accordance with Form 1 in the Schedule;
  - (b) it is signed by the maker of the direction or by another person in the presence of and at the direction of the person making the direction;
  - (c) the signature is witnessed by 2 persons; and

- (d) the witnesses each sign the direction in the presence of each other and the person making the direction.

#### **Oral directions - requirements**

- 6. Subject to this Act, an oral direction is not valid unless -
  - (a) it is made on 3 different days within a period of 6 days;
  - (b) subject to section 7, it is witnessed on each of those occasions by the same 2 health professionals (1 of whom shall be a medical practitioner) present at the same time; and
  - (c) the first occasion occurs not more than 2 weeks before the person is informed that he or she has been diagnosed as suffering from a terminal illness.

#### **Witnesses**

- 7. A witness to a direction shall not be -
  - (a) a relative of the person making the direction; or
  - (b) entitled to any portion of the estate of that person under a will a codicil existing at the time the direction was made, or on an intestacy.

#### **Revocation of direction**

8. (1) Where a person who has made a direction clearly expresses or indicates in any way to another person that he or she -

- (a) has a doubt or reservation about making the direction; or
- (b) wishes to revoke the direction; the direction is to be taken to be revoked.

(2) Where a doubt or reservation about, or a wish to revoke, a direction is expressed or indicated to a person in a hospital, hospice or nursing home, that person shall forthwith inform the superintendent of that expression or indication.

Penalty: \$5,000.

(3) Where a person makes a direction, any previous direction made by the person is to be taken to be revoked.

#### **Medical practitioner to inform competent person of alternatives etc.**

9. (1) Before complying with a direction in respect of a person who is terminally ill but is still competent to make a rational judgement, the medical practitioner shall inform the person about -

- (a) the nature of his or her illness;
- (b) any alternative forms of treatment that may be available; and
- (c) the consequences of remaining untreated.

(2) A medical practitioner shall not give effect to the direction unless the person appeared -

- (a) to understand the information given under subsection (1); and
- (b) to weigh the various options and,

as a result of this consideration to affirm the decision to have extraordinary measures withheld, withdrawn or to have a drug for the purpose of inducing death administered or provided.

Penalty: \$5,000

**Independent advice to be obtained**

10. (1) A medical practitioner shall not comply with a direction unless he or she has consulted another medical practitioner who has not treated the person concerned, and has obtained that other practitioner's agreement withhold or withdraw extraordinary measures or to induce death.

Penalty: \$5,000.

(2) A medical practitioner may, if requested to do so by a patient consult more than 1 other medical practitioner in order to obtain agreement under subsection (1).

**Practitioner not to proceed if in doubt**

11. A medical practitioner shall not withhold or withdraw extraordinary measures from, or administer or provide a drug to induce death to, a person in accordance with a direction unless satisfied that -

- (a) the direction complies with this Act; and
- (b) the person has not revoked the direction or in any way changed his or her decision since making the direction.

Penalty: \$10,000 or imprisonment for 2 years, or both.

**Medical practitioner may assign case**

12. Where a medical practitioner is unwilling to comply with; direction, he or-she may assign the care of the person concerned to a medical practitioner who is willing to comply with the direction.

**Time and manner of death**

13. (1) A medical practitioner shall, before complying with; direction, and if the person concerned is competent to make a rational judgment, consult the person about the time and manner of death.

(2) The medical practitioner shall ensure that the time and manner of death do not cause avoidable distress to others.

Penalty: \$1,000.

**Capable person shall assist in own death**

14. (1) A person who -

- (a) suffers from a terminal illness;
- (b) has made a direction of the kind referred to in paragraph 4 (b) and has not revoked that direction; and
- (c) is capable of administering or assisting to administer a drug to induce death to himself or herself,

shall administer or assist in administering that drug to himself or herself.

(2) A medical practitioner shall be present to supervise the administration of a drug under subsection (1) and shall remain with the person until his or her death.

Penalty for contravention of subsection (2): \$5,000.

## Division 2 - Powers of Attorney

### Granting powers of attorney

15. (1) A person who is of sound mind and has attained the age of 18 years (in this Division called the "grantor") may, by instrument in accordance with Form 2 in the Schedule, confer on another person (in this Division called the "grantee") the power to consent, subject to the instrument, on behalf of the grantor to -

(a) the withholding or withdrawing of extraordinary measures from the grantor, or  
(b) the administration or provision of a drug to induce the death of the grantor,  
in the event that the grantor is -

(c) suffering from a terminal illness; and  
(d) there is an absence of thought or perception in the grantor.

(2) An instrument under subsection (1) is not valid unless -

(a) the grantee has attained the age of 18 years;  
(b) it is signed by the grantor or by another person in the presence of and at the direction of the grantor,  
(c) that signature is witnessed by 2 persons, neither of whom is the grantee, or a relative of the grantee or the grantor, and  
(d) the grantee signs the instrument to indicate acceptance.

(3) A power of attorney created in accordance with this section does not lapse by reason only of the incapacity of the grantor.

### Circumstances in which power may be exercised

16. A grantee is not entitled to exercise a power conferred on him or her under the power of attorney unless the grantor is declared by a medical practitioner to be terminally ill such that there is an absence of thought or perception.

### Power of attorney - revocation

17. Despite any rule of law to the contrary, a power of attorney is not revoked upon the appointment of a guardian under the Guardianship and Management of Property Act 1991 in respect of the grantor, but is revoked in any other way in which a power of attorney under the Powers of Attorney Act 1956 may be revoked.

### Conditions on exercise of power

18. (1) Subject to subsection (2), a grantee shall not request -

a) the withholding or withdrawal of extraordinary measures from the grantor, or  
(b) the administration or provision of a drug to induce the death of the grantor,  
unless -

(c) the grantee has consulted a medical practitioner about -  
(i) the nature of the grantor's illness;  
(ii) any alternative forms of treatment that may be available to the grantor,  
and  
(iii) the consequences to the grantor of remaining untreated; and  
(d) the grantee believes on reasonable grounds that if the grantor -  
(i) were capable of making a rational judgement; and  
(ii) were to give serious consideration to his or her own health and well-

being,

the grantor would request -

- (iii) the withholding or withdrawal of extraordinary measures from himself or herself; or
- (iv) the administration or provision of a drug to induce his or her own death;

as the case may be.

(2) Where the grantee is -

- (a) aware the grantor has made a direction; and
- (b) not aware that the direction has been revoked;

the grantee shall request - -

- (c) the withholding or withdrawing of extraordinary measures from the grantor, or
- (d) the administration or provision of drugs to induce the death of the grantor, in accordance with the direction.

#### **Attorney may request practitioner to induce death**

19. Subject to section 20, a medical practitioner shall, at the request of a grantee

- (a) withhold or withdraw extraordinary measures from the grantor, or
- (b) administer or supervise the administration of a drug to induce the grantor's death and remain with the grantor until his or her death.

Penalty: \$5,000.

#### **Medical practitioner to ensure attorney's decision is informed etc.**

20. A medical practitioner shall not comply with the request of a grantee to withhold or withdraw extraordinary measures from, or to administer or provide a drug for the purpose of inducing the death of, the grantor unless satisfied that -

- (a) the power of attorney under which the grantee's request is made complies with this Act; and
- (b) if applicable, the grantee
  - (i) understands the information given under subsection 18 (1); and
  - (ii) has weighed the various options and, as a result, affirms his or her request.

### **PART III-NATURAL DEATH**

#### **Withdrawing or withholding extraordinary measures**

21. Subject to this Part, a medical practitioner may withhold or withdraw medical treatment from a person who is suffering from a terminal illness such that there is an absence of thought or perception in the person.

#### **Availability of defence**

22. A medical practitioner who is charged with an offence in connection with the death of a person is not entitled to rely on section 21 as a defence if the medical practitioner was aware, at the time the offence is alleged to have been committed, that the person had made a direction or created a power of attorney and that direction or power of attorney had not been revoked

**Medical practitioner to ensure**

23. A medical practitioner shall not withhold or withdraw treatment under section 21 unless the medical practitioner -

- (a) is satisfied that the person has not Made a direction or created a power of attorney, or any such direction or power of attorney has been revoked; and
  - (b) has consulted -
    - (i) another medical practitioner who has not treated the person;
    - (ii) if the person has not attained the age of 18 years - the parents or guardian of the person;
    - (iii) if the person has granted a power to consent to medical treatment on the person's behalf to an attorney under an enduing power of attorney in force under the *Powers of Attorney Act 1956* - the attorney, and
    - (iv) if a guardian has been appointed for the person pursuant to an order in force under the *Guardianship and Management of Property Act 1991* - the guardian;
- about withholding or withdrawing treatment, and the persons consulted have agreed to the treatment being withheld or withdrawn.

**PART IV - GENERAL PROVISIONS****Effect of direction or power of attorney on other instruments**

24. (1) Where -

- (a) a person has made a direction or created a power of attorney; and
- (b) a medical practitioner declares that the person is terminally ill such that there is an absence of thought or perception in the person;

then

- (c) any power of a guardian to consent to medical treatment, where that guardian was appointed for the person son under the *Guardianship and Management of Property Act 1991* after the direction was made or the power of attorney was created; and
- (d) any power of attorney to consent to medical treatment under an enduring power of attorney created by the person under the *Powers of Attorney Act 1956* before or after the direction was made or the power of attorney was created;

is to be taken to be revoked.

(2) A person for whom a guardian is appointed under the *Guardianship and Management of Property Act 1991* is deemed not to have the capacity to make a direction or create a power of attorney.

**Direction obtained by fraud etc.**

25. (1) A person who, by any deception, fraud, mis-statement or undue influence, procures or obtains a direction or power of attorney, whether directly or indirectly, from another person is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years, or both.

(2) Any direction or power of attorney so procured or obtained shall be void.

(3) This section is in addition to any other penalty in respect of the deception, fraud, mis-statement or undue influence under any other law in force in the Territory.

#### **Copies or notification of decisions**

26. (1) A medical practitioner or other person who becomes aware that a patient in a hospital, hospice or nursing home -

- (a) has made a direction or created a power of attorney; or
  - (b) having made the direction or created the power of attorney, has revoked it;
- shall notify the superintendent of that fact and the circumstances in which the direction or power of attorney was made, created or revoked.

(2) A superintendent who is notified under subsection (1) shall take reasonable steps to ensure that -

- (a) a copy of the direction, power of attorney or revocation; or
  - (b) if it is not possible to obtain a copy of the direction, power of attorney or revocation - a notation of the direction, power of attorney or revocation;
- is placed with the patient's file.

Penalty: \$1,000.

#### **Rights unaffected by this Act**

27. (1) This Act does not affect the right of any person to refuse medical treatment.

(2) This Act does not affect the duty or obligation of a medical practitioner or other person to provide palliative care or the right of a person to receive palliative care.

(3) A direction, request or decision to withhold or withdraw extraordinary measures or other medical treatment under this Act does not affect the duty or obligation of a medical practitioner or other person to provide -

- (a) advice or information to a person, the person's attorney or guardian or, where the person is a child, the person's parents; or
- (b) medical treatment, other than the medical treatment to which the direction, request or decision applies.

#### **Medical practitioner not liable for certain decisions**

28. A medical practitioner incurs no liability for a decision made by him or her in good faith and without negligence as to whether a person -

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

#### **Protection of medical practitioners relying on decision**

29. A medical practitioner or a person acting under the direction of a medical practitioner who, in good faith and in reliance on a decision that he or she believes on reasonable grounds complies with this Act, withholds or withdraws extraordinary measures or other medical treatment from, or administers or provides a drug to induce the death of, a person is not -



(a) guilty of unsatisfactory professional conduct under the *Medical Practitioners Act 1930*,

(b) guilty of an offence against any law in force in the Territory; or

(c) liable in any civil proceedings;

in connection with the withholding or withdrawal of those measures or other treatment or the administration or provision of that drug.

### **Artificial maintenance of body for other purposes**

**30.** 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 person was a pregnant woman - for the purpose of preserving the life of the foetus.

### **Regulations**

**31.** The Executive may make regulations, not inconsistent with this Act, prescribing matters -

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## SCHEDULE

## FORM 1

Section 5

WRITTEN DIRECTION UNDER THE *VOLUNTARY AND NATURAL*  
*DEATH ACT 1993*

1. I (name) of (address) DIRECT that if I become terminally ill -
  - (a) extraordinary measures shall be withheld or withdrawn from me; or
  - (b) drugs to induce my death shall be administered to me.

*If you do not want extraordinary measures withheld or withdrawn cross out option (a).*  
*If you do not want drugs to induce death administered cross out option (b).*

2. I REVOKE all other directions previously made by me under the *Voluntary and Natural Death Act 1993*.
3. I CERTIFY that this direction is made voluntarily and without inducement or compulsion
4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

.....  
 Signature of person making the  
 direction (or of another person  
 signing in the presence of and by  
 the direction of the maker of the  
 direction)

DATED:

.....  
 Signature of witness [not related  
 to the person making the  
 direction]

DATED

.....  
 Signature of witness [not related  
 to the person making the  
 direction]

SCHEDULE - continued

FORM 2

Section 15

POWER OF ATTORNEY UNDER THE VOLUNTARY AND NATURAL  
DEATH ACT 1993

1. I, (name of grantor) of (address) APPOINT (name of grantee) of (address) to be my attorney for the purposes of the *Voluntary and Natural Death Act 1993*.

2. I AUTHORISE my Attorney, if I become terminally ill such that I am no longer capable of thought or perception to request-

(a) the withholding or withdrawal of extraordinary measures from me; or

(b) the administration or provision of drugs to induce my death;

if he or she believes on reasonable grounds that, if I were capable of making a rational judgment and were to give serious consideration to my health and well-being, I would make that request.

*If you do not want extraordinary measures withheld or withdrawn cross out option (a).*

*If you do not want drugs to induce death administered cross out option (b).*

3. I REVOKE all other powers of attorney previously created by me under the *Voluntary and Natural Death Act 1993*.

DATED:

.....  
Signature of person giving the  
power (or of another person  
signing in the presence of and by  
the direction of the person giving  
the power)

DATED:

.....  
Signature of witness [not related  
to the person creating the power,  
or his or her attorney]

DATED:

.....  
Signature of witness [not related  
to the person creating the power,  
or his or her attorney]

## SCHEDULE - continued

## ACCEPTANCE BY GRANTEE

I have read this power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the *Voluntary and Natural Death Act 1993*.

DATED

.....  
Signature of grantee

APPENDIX B

Submissions received

ACT Law Society	Clarke Ms L
ACT Women's Consultative Council	Cleary Mr C
Ahlin Ms M	Cobcroft Mr R
AIDS Action Council of the ACT	Cobham Mr G T
Ainsworth Rev H C	Colbert Mr J B
Allender Mr & Mrs	Coleman Mr P
Andersen Ms E	Coleman Mr R
Ariston Mrs R B	Cottrell Mr P
Attorney-General's Dept	Cough Ms A
Baker Miss L	Craft Dr P
Baker Ms A	Craig Ms J
Balnaves Ms J, Chairperson, Catholic Social Justice Commission	Dakin Dr R
Barber Ms M	Daley, Mr J D
Baume Prof P, School of Community Medicine, Uni of NSW	Davie Mr & Mrs A & I
Baxter Ms R	Davis Mr D M
Bell, Ms C	Dempsey Mrs G
Bell Mrs K	Derkley Ms G
Bennett Ms U	Derkley Rev J
Benson Ms M	Donohoo Mr T
Berry Mr W, Minister for Health	Donohue Mrs J M
Blackman Ms L	Dulk Mr R den
Blayden Ms/Ms P	Dulk Mr T den
Blowers Ms L J	Duncan Mrs A H
Boorman Ms P	Dunnet Mr P
Booth Mrs M	Dunnet Mrs C
Bosker Mrs W A	Edgerely Ms J
Bosman Mr/Ms M C	Elmslie Mr/Ms D
Brazil Mr P, Chairman, Calvary Hospital	Elphick Ms/Mr R G
ACT Incorp	England Ms J
Brown Mr R H	Eshuis Mrs J
Browne Dr M	Fee Mrs M
Browning Rt Rev G, Anglican Bishop, Canberra & Goulburn	Field Ms K
Buckpitt Mr J R	Finnegan Mr & Mrs
Burt Mr M	Fitzpatrick Mrs P M
Butcher Mr K D	Fleming Dr J I
Byrne Mr M	Fonseka Ms J
Cameron-Stephen Dr I D	Francis Mr D, Knights of the Southern Cross
Casey-Smith Mr/Ms P D, President, Call to Australia Party	Frith Mr E F
Casey-Smith Mr/Ms R J	Frogley Pastor P
Clark Mr B	Gadsby Mr/Ms R S
Clark Mrs K S M	Garrard Mr & Mrs E & J
	Gear Rev S, Principal, Teen Challenge Ministry
	Ghyson Ms/Mr G
	Golden Mrs A

- Grant Mr K  
 Grant Mrs S  
 Greenwell Mr J (*In confidence*)  
 Grieve Mr J  
 Grigg Mr L  
 Grivell Ms H  
 Guinery Ms/Mr S  
 Halm Ms/Mr M J  
 Hamilton Mrs S  
 Hattingh Ms D  
 Heathwood Mr & Mrs C & S  
 Hedgecoe Ms B  
 Hipkiss Ms R  
 Hohnen Mr P  
 Howe Mrs S J  
 Howes Mr G J  
 Hunt Dr R  
 Hurt Mr R C M  
 Hurwitz Dr M, President, ACT Branch,  
     AMA  
 Jaeschke Ms M J  
 James Mr & Mrs T & M  
 James Ms & Mr J L & A  
 James Ms J, Assoc Prof, School of Nursing,  
     UofC  
 Jamieson Mrs R  
 Joannecht Mr & Mrs S & G  
 Johnson Ms L C  
 Kaine Mrs C  
 Kane Mr/Ms, St Patrick's Parish Pastoral  
     Council  
 Kaufmann Mr P  
 Kennedy Mr E  
 Kobier Ms M  
 Kubowicz Mrs N  
 L'arche Genesaret Community  
 Lamus Ms H  
 Larkin Dr P  
 Lawson Dr S  
 Layton Ms M  
 Legge-Wilkinson Ms B  
 Lind Ms/Mr P  
 Llewelyn Mr/Ms C  
 Lloyd Mr/Ms G  
 Marr Dr R  
 Marshall Ms D  
 Marshall Ms/Mr D G  
 Martin Ms G  
 May Mr & Mrs M & M  
 McCarthy Dr J J  
 McCullagh Dr P  
 Miller Ms L  
 Mills Mrs M  
 Mills Ms/Mr G D  
 Morejon Ms P  
 Moreson Mr A  
 Morrison Ms C, President, Australian  
     Family Association, ACT Branch  
 Muir Mr & Mrs B & I  
 Mullen Rev M K  
 Munger Mr & Mrs G H & W  
 Murphy Mr R  
 Naugh Mr/Ms D  
 Noruga Ms N  
 O'Brien Mrs A  
 O'Donovan Mr B J  
 O'Donovan Ms M M, President, ACT Right  
     to Life Assoc  
 O'Leary Ms E  
 Ogilvie Mrs D  
 Orton Ms T  
 Patterson Fr B C  
 Pead Ms I M  
 Perez Mr J  
 Pollard Dr B  
 Pollard Dr B  
 Pollnitz Dr R, Chairman, Care for Life Inc  
 Power Bishop P, Committe For the Family  
     and For Life  
 Pridham Mr J D  
 Purcell Mr & Mrs  
 Reeson Rev R, Secretary, ACT Churches  
     Council  
 Regan Mrs T  
 Rendell Ms/Mr A J  
 Robb Miss K  
 Rodda Mr & Mrs C & D  
 Rodda Mrs A  
 Rodgers Mr/Ms A  
 Ross Mr D  
 Russell-Brown Mr & Mrs  
 Russo Mr G  
 Rutnam Dr V R  
 Ryan Ms G  
 Schaaps Mr J J, Registrar, Nurses Board of  
     the ACT  
 Schaffer Mrs M  
 Schmidt Ms J R, Secretary, Lutherans for  
     Life  
 Scholtens Lady M

Searle Mrs J  
See Mr R  
See Mrs J  
Sinfield Mrs L  
Slater Mr D B  
Smith Mr G  
Smith Ms C  
Smith Rev L J  
Sorenson Mr N J  
Spence Ms T  
Stabback Mrs P  
Stabback Ms/Mr D J  
Stanhope Ms R M  
Stapleton Mrs S  
Stuart Mr B  
Stuparich Mr N  
Szostak Ms B  
Taylor Mr G W, Convenor, Canberra Branch,  
Voluntary Euthanasia Society of NSW

Taylor Mr G W  
Tighe Ms M, Chairman, Right to Life  
Australia  
Tower Mr R  
Townsend Ms M  
Usback Mr & Mrs  
Wallace Ms M (*In confidence*)  
Warfe Mr D  
Warnken Mr R  
Wearden Mr P  
Westgarth Mr N  
Wijnen Mrs C  
Wilkinson Mrs E M  
Wilkinson Ms & Mr K & B  
Wilson Ms N  
Wishart Mr D  
Wishart Mrs B  
Young Christian Workers

## APPENDIX C

## List of witnesses

ACT Aids Action Council - Duckett, M Gillett, M Talbot, W	Calvary Hospital Havey, M Keaney, J Morrison, A Woods, J
ACT Law Society Clynes, R Proctor, B	Catholic Social Justice Commission Balnaves, J McCullagh, P
ACT Nurses Board Trick, S	Craig, J
ACT Right to Life Stuparich, J Woolf, K	Department of Health Batho, S Houston, J Mead, C Pembrey, R
Anglican Church of Australia Browning, G	Howes, G
Attorney-General's Department Quinton, P Sorbello, L	Hurt, R
Australian Family Association, ACT Branch Cobham, G Morrison, C	Knights of the Southern Cross Cassidy, M Fleming, J Francis, D
Australian Medical Association, ACT Branch Craft, P	O'Donovan, B
Australian Nursing Federation, ACT Branch Duff, C	Rutnam, V
Bishops' Committee for the Family and for Life Power, P Neville, W	School of Nursng, University of Canberra James, J MacKinley, E
Canberra Churches Council Cullen, V Murray, S	Teen Challenge Craig, T
	Voluntary Euthanasia Society of NSW - ACT Chapter Kaufmann, P Taylor, G
	Warnken, R



## APPENDIX D

## Medical Treatment Bill 1994

## DRAFT

(Prepared by Parliamentary Counsel's Office)

## Medical Treatment Bill 1994

## TABLE OF PROVISIONS

## Section

## PART I—PRELIMINARY

1.	Short title .....	1
2.	Commencement .....	1
3.	Interpretation .....	2
4.	Objectives of the Act .....	2
5.	Other legal rights not affected .....	3

## PART II—REFUSAL OF TREATMENT

*Division 1—Directions*

6.	Making of direction .....	3
7.	Written directions—requirements .....	3
8.	Oral directions—requirements .....	4
9.	Revocation of direction .....	4
10.	Competent person to be informed of alternatives etc. ....	4
11.	Health professional not to proceed if in doubt .....	5

*Select Committee on Euthanasia - Report*

ii

*Medical Treatment No. , 1994*

**TABLE OF PROVISIONS—continued**

Section

*Division 2—Powers of Attorney*

12.	Granting powers of attorney.....	5
13.	Circumstances in which power may be exercised.....	5
14.	Power of attorney—revocation .....	5
15.	Conditions on exercise of power.....	6
16.	Health professional to ensure attorney's decision is informed etc.....	6

**PART III—GENERAL PROVISIONS**

17.	Effect of direction or power of attorney on other instruments.....	7
18.	Direction obtained by fraud etc. ....	7
19.	Copies or notification of decisions.....	7
20.	Health professional not liable for certain decisions .....	8
21.	Protection of health professionals relying on decision .....	8
22.	Adequate pain relief.....	8
23.	Regulations.....	9

**SCHEDULE  
FORMS**

# DRAFT

(Prepared by Parliamentary Counsel's Office)

## Medical Treatment Bill 1994

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### A BILL

#### FOR

An Act to make provision with respect to the  
withholding or withdrawal of medical treatment  
and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as  
follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Medical Treatment Act 1994*.

#### Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

### Interpretation

3. In this Act, unless the contrary intention appears—

“direction” means a written or oral direction made in accordance with Division 1 of Part I;

“health professional” means—

(a) a medical practitioner—

(i) registered under the *Medical Practitioners Act 1930*; or

(ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth; or

(b) a nurse—

(i) registered under the *Nurses Act 1988*; or

(ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“medical treatment” means—

(a) the carrying out of an operation;

(b) the administration of a drug; or

(c) the carrying out of any other medical procedure;

“palliative care” includes—

(a) the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort; and

(b) the reasonable provision of food and water;

“power of attorney” means a power of attorney granted in accordance with Division 2 of Part II;

“superintendent”, in relation to a hospital, hospice or nursing home, means a person who is responsible for the day-to-day running of the hospital, hospice or nursing home.

### Objectives of the Act

4. The objectives of this Act are—

- (a) to protect the right of patients to refuse unwanted medical treatment; and
- (b) to ensure the right of patients to receive maximum relief from pain and suffering.

**Other legal rights not affected**

5. (1) This Act does not affect any right of a person under any other law of the Territory to refuse medical treatment.

(2) This Act does not apply to palliative care and does not affect any right, power or duty that a health professional or any other person has in relation to palliative care.

(3) The refusal or withdrawal of medical treatment under this Act does not limit any duty of a health professional or other person—

- (a) to advise and inform the patient or the patient's agent or guardian; or
- (b) to provide medical treatment other than the medical treatment that has been refused or withdrawn.

**PART II—REFUSAL OF TREATMENT**

*Division 1—Directions*

**Making of direction**

6. A person who is of sound mind and has attained the age of 18 years may make a written or oral direction—

- (a) to refuse; or
- (b) for the withdrawal of;  
medical treatment;
- (c) generally; or
- (d) of a particular kind.

**Written directions—requirements**

7. Subject to this Act, a written direction is not valid unless—

- (a) it is in accordance with Form 1 in the Schedule;
- (b) it is signed by the maker of the direction or by another person in the presence of and at the direction of the person making the direction;
- (c) the signature is witnessed by 2 persons; and

- (d) the witnesses each sign the direction in the presence of each other and the person making the direction.

#### **Oral directions—requirements**

8. Subject to sections 5 and 10, an oral direction is not valid unless it is witnessed by 2 health professionals (1 of whom shall be a medical practitioner) present at the same time.

#### **Revocation of direction**

9. (1) A written or oral direction—

- (a) to refuse; or
- (b) for the withdrawal of;

medical treatment may be revoked by the person who gave the direction clearly expressing to a health professional or another person a decision to revoke the direction.

(2) For the purposes of subsection (1), a person may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

#### **Competent person to be informed of alternatives etc.**

10. (1) Before complying with a direction in respect of a person who is still competent to make a rational judgment, the health professional shall take all reasonable steps to ensure that the person has been informed about—

- (a) the nature of his or her illness;
- (b) any alternative forms of treatment that may be available; and
- (c) the consequences of remaining untreated.

(2) A health professional shall not give effect to the direction unless the person appeared—

- (a) to understand the information provided under subsection (1); and
- (b) to weigh the various options and, as a result of this consideration, to affirm the decision—
  - (i) to refuse medical treatment; or
  - (ii) to have medical treatment withdrawn.

**Health professional not to proceed if in doubt**

11. A health professional shall not withhold or withdraw medical treatment from a person in accordance with a direction unless satisfied that—

- (a) the direction complies with this Act; and
- (b) the person has not revoked the direction or in any way changed his or her decision since making the direction.

***Division 2—Powers of Attorney***

**Granting powers of attorney**

12. (1) A person who is of sound mind and has attained the age of 18 years (in this Division called the “grantor”) may, by instrument in accordance with Form 2 in the Schedule, confer on another person (in this Division called the “grantee”) the power to consent, subject to the instrument, on behalf of the grantor to the withholding or withdrawal of medical treatment in the event that the grantor becomes incompetent.

(2) An instrument under subsection (1) is not valid unless—

- (a) the grantee has attained the age of 18 years;
- (b) it is signed by the grantor or by another person in the presence of and at the direction of the grantor;
- (c) that signature is witnessed by 2 persons, neither of whom is the grantee, or a relative of the grantee; and
- (d) the grantee signs the instrument to indicate acceptance.

(3) A power of attorney granted in accordance with this section does not lapse by reason only of the incapacity of the grantor.

**Circumstances in which power may be exercised**

13. A grantee is not entitled to exercise a power conferred on him or her under the power of attorney granted pursuant to section 12 unless the grantor is declared by a medical practitioner to be incompetent.

**Power of attorney—revocation**

14. Despite any rule of law to the contrary, a power of attorney is not revoked upon the appointment of a guardian under the *Guardianship and Management of Property Act 1991* in respect of the grantor, but is revoked in any other way in which a power of attorney under the *Powers of Attorney Act 1956* may be revoked.

**Conditions on exercise of power**

15. (1) Subject to subsection (2), a grantee shall not request the withholding or withdrawal of medical treatment from the grantor unless—

- (a) the grantee has consulted a medical practitioner about—
  - (i) the nature of the grantor's illness;
  - (ii) any alternative forms of treatment that may be available to the grantor; and
  - (iii) the consequences to the grantor of remaining untreated; and

(b) the grantee believes on reasonable grounds that if the grantor—

- (i) were capable of making a rational judgment; and
- (ii) were to give serious consideration to his or her own health and wellbeing;

the grantor would request the withholding or withdrawal of medical treatment from himself or herself.

(2) Where the grantee is—

- (a) aware the grantor has made a direction; and
- (b) not aware that the direction has been revoked;

the grantee may request the withholding or withdrawal of medical treatment from the grantor in accordance with the direction.

**Health professional to ensure attorney's decision is informed etc.**

16. A health professional shall not comply with the request of a grantee to withhold or withdraw medical treatment from the grantor unless satisfied that—

- (a) the power of attorney under which the grantee's request is made complies with this Act; and
- (b) the grantee—
  - (i) understands the information given under subsection 15 (1); and
  - (ii) has weighed the various options and, as a result, affirms his or her request.



### PART III—GENERAL PROVISIONS

#### Effect of direction or power of attorney on other instruments

17. (1) Where—

- (a) a person has made a direction or granted a power of attorney; and
- (b) a medical practitioner declares that the person has become incompetent;

then—

- (c) any power of a guardian to consent to medical treatment, where that guardian was appointed for the person under the *Guardianship and Management of Property Act 1991* after the direction was made or the power of attorney was granted; and
- (d) any power of an attorney to consent to medical treatment under an enduring power of attorney created by the person under the *Powers of Attorney Act 1956* before or after the direction was made or the power of attorney was granted under this Act;

shall be taken to be revoked.

(2) A person for whom a guardian is appointed under the *Guardianship and Management of Property Act 1991* is deemed not to have the capacity to make a direction or grant a power of attorney.

#### Direction obtained by fraud etc.

18. (1) A person who, by any deception, fraud, mis-statement or undue influence, procures or obtains a direction or power of attorney, whether directly or indirectly, from another person is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years, or both.

(2) Any direction or power of attorney so procured or obtained shall be void.

(3) This section is in addition to any other penalty in respect of the deception, fraud, mis-statement or undue influence under any other law in force in the Territory.

#### Copies or notification of decisions

19. (1) A health professional or other person who becomes aware that a patient in a hospital, hospice or nursing home—

- (a) has made a direction or granted a power of attorney; or

- (b) having made the direction or granted the power of attorney, has revoked it;

shall notify the superintendent of that fact and the circumstances in which the direction or power of attorney was made, granted or revoked.

(2) A superintendent who is notified under subsection (1) shall take reasonable steps to ensure that—

- (a) a copy of the direction, power of attorney or revocation; or
- (b) if it is not possible to obtain a copy of the direction, power of attorney or revocation—a notation of the direction, power of attorney or revocation;

is placed with the patient's file.

#### Health professional not liable for certain decisions

20. A health professional incurs no liability for a decision made by him or her in good faith and without negligence as to whether a person—

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

#### Protection of health professionals relying on decision

21. A health professional or a person acting under the direction of a health professional who, in good faith and in reliance on a decision that he or she believes on reasonable grounds complies with this Act, withholds or withdraws medical treatment from a person is not—

- (a) guilty of unsatisfactory professional conduct under any law of the Territory;
- (b) guilty of an offence against any law of the Territory; or
- (c) liable in any civil proceedings;

in connection with the withholding or withdrawal of medical treatment.

#### Adequate pain relief

22. (1) Notwithstanding the provisions of any other law of the Territory, a patient under the care of a health professional has a right to receive maximum relief from pain and suffering.

(2) In providing relief from pain and suffering to a patient, a health professional shall pay due regard to the patient's account of his or her level of pain and suffering.

## Regulations

23. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## SCHEDULE

### FORM 1

Section 7

#### WRITTEN DIRECTION UNDER THE MEDICAL TREATMENT ACT 1994

1. I, (name) of (address) DIRECT that—

- \*(a) medical treatment generally be withheld or withdrawn; or
- \*(b) medical treatment, being (specify particular kind of medical treatment), be withheld or withdrawn.

2. I REVOKE all other directions previously made by me under the *Medical Treatment Act 1994*.

3. I CERTIFY that this direction is made voluntarily and without inducement or compulsion.

4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

.....  
Signature of person making the  
direction (or of another person  
signing in the presence of and by  
the direction of the maker of the  
direction)

DATED:

.....  
Signature of witness

DATED:

.....  
Signature of witness

\*Delete whichever is not applicable

## SCHEDULE—continued

## FORM 2

Section 12

POWER OF ATTORNEY UNDER  
THE MEDICAL TREATMENT ACT 1994

1. I, (*name of grantor*) of (*address*) APPOINT (*name of grantee*) of (*address*) to be my attorney for the purposes of the *Medical Treatment Act 1994*.

2. I AUTHORISE my attorney, if I become incompetent, to request that—

\* (a) medical treatment generally be withheld or withdrawn; or

\* (b) medical treatment, being (*specify particular kind of medical treatment*), be withheld or withdrawn;

if he or she believes on reasonable grounds that, if I were capable of making a rational judgment and were to give serious consideration to my health and wellbeing, I would make that request.

3. I REVOKE all other powers of attorney previously granted by me under the *Medical Treatment Act 1994*.

4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

.....  
Signature of person giving the power (or of another person signing in the presence of and by the direction of the person giving the power)

DATED:

.....  
Signature of witness (*not related to the grantee*)

DATED:

.....  
Signature of witness (*not related to the grantee*)

## ACCEPTANCE BY GRANTEE

I have read this power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the *Medical Treatment Act 1994*.

DATED:

.....  
Signature of grantee

\*Delete whichever is not applicable