

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Voluntary and Natural Death Bill 1993

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SCHEDULE
FORMS

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

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

- 5 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*.
- 10 (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.

5 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;

10 “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;
- 15 (b) registered under the *Nurses Act 1988*; or
- (c) registered under the *Physiotherapists Registration Act 1977*;

“medical practitioner” means a person—

- 20 (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—

- 25 (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—

- 30 (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;

5 “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
- 10 (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

15

Division 1—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
- 20 (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;
- 25 (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
30 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
- 5 (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
 - 10 (b) entitled to any portion of the estate of that person under a will or 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
15 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.

- 20 (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.

- 25 (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.

- 30 9. (1) Before complying with a direction in respect of a person who is terminally ill but is still competent to make a rational judgment, 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.

- 35 (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 or withdrawn or to have a drug for the purpose of inducing death administered or provided.

5

Penalty: \$5,000.

Independent advice to be obtained

- 10 **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 to withhold or withdraw extraordinary measures or to induce death.

Penalty: \$5,000.

- 15 **(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

- 20 **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

- 25 **12.** Where a medical practitioner is unwilling to comply with a 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

- 30 **13. (1)** A medical practitioner shall, before complying with a 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.

- 35 **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
- 5 (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.

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

Division 2—Powers of Attorney

Granting powers of attorney

- 15 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
- 20 (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.
- 25 (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;
- 30 (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

- 5 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

- 10 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

- 15 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—

- 20 (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
 25 (d) 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 well-being;
 the grantor would request—
 30 (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—

- 5 (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

- 10 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.

- 15 Penalty: \$5,000.

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

- 20 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—
 - 25 (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

- 30 **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

- 5 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

- 10 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—
 - 15 (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 enduring power of attorney in force under the *Powers of Attorney Act 1956*—the attorney; and
 - 20 (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;
- 25 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

- 30 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 under the *Guardianship and Management of Property Act 1991* after the direction was made or the power of attorney was created; and
- 5 (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 created;

is to be taken to be revoked.

- 10 (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.

- 15 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.

- 20 (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

- 25 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;

- 30 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
- 35 (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

5 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.

10 (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
- 15 (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—

- 20 (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.
- 25

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—

- 30 (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
- 35 (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—

- 5 (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

10 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