

1997

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Medical Treatment (Amendment) Bill 1997

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Long title
5. Interpretation
6. Objectives of the Act
7. Other legal rights not affected
8. Insertion—
 - 5A. Medical practitioners and nurses not required to terminate life
9. Headings
10. Insertion—
 - Division 2—Terminating life*
 - 6A. Request to terminate life
 - 6B. Preconditions for making request
 - 6C. Medical practitioner to be familiar with medical history
 - 6D. Medical practitioner to keep record of advice

Division 3—Formal requirements

Job No.: 1997/9

TABLE OF PROVISIONS—continued

Section	
11.	Written directions and requests—requirements
12.	Substitution—
7A.	Direction or request signed on behalf of a person
8.	Witnesses
8A.	Offence
	<i>Division 4—Revocation, withdrawal and cessation</i>
13.	Revocation or withdrawal
14.	Cessation
15.	Heading
16.	Direction—decision to be informed
17.	Substitution—
11A.	Request—cooling-off period
12.	Health professional not to proceed if in doubt
12A.	Capable person to assist in own death
18.	Headings
19.	Conferring a power of attorney
20.	Insertion—
13A.	Preconditions for conferring power to terminate life
13B.	Medical practitioner to be familiar with medical history
13C.	Medical practitioner to keep record of advice
	<i>Division 2—Requirements for validity</i>
13D.	Formal requirements
13E.	Power of attorney signed on behalf of grantor
13F.	Witnesses
13G.	Offence
13H.	Power not affected by incapacity of grantor
21.	Circumstances in which power may be exercised
22.	Heading
23.	Heading
24.	Conditions on exercise of power
25.	Health professional to ensure attorney's decision is informed
26.	Heading to Part III
27.	Effect on other instruments
28.	Deception, fraud or coercion to obtain direction etc.
29.	Insertion—
19A.	Bribery of medical practitioner or nurse
30.	Copies or notification of decisions
31.	Insertion—
20A.	Medical practitioner may assign case
20B.	Time and manner of death
20C.	Medical practitioner shall remain with person until death

TABLE OF PROVISIONS—continued

Section

- 20D. Death under this Act—inquest
- 20E. Copy of direction etc. to be sent to Coroner
- 20F. Reporting on operation of Act
- 20G. Protection of grantees
- 32. Health professional not liable for certain decisions
- 33. Protection of health professionals relying on decision
- 34. Repeal
- 35. Schedule

**SCHEDULE
FORMS**

1997

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(As presented)

(Mr Moore)

Medical Treatment (Amendment) Bill 1997

A BILL

FOR

An Act to amend the *Medical Treatment Act 1994*

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

Short title

5 1. This Act may be cited as the *Medical Treatment (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, being a day not earlier than 3 months after this Act is notified in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Principal Act

3. In this Act, "Principal Act" means the *Medical Treatment Act 1994*.¹

Long title

5 4. The title of the Principal Act is repealed and the following title substituted:

10 "An Act to make provision with respect to the withholding or withdrawal of medical treatment, the administration or provision of a substance to terminate the life of a person on request, and for related purposes".

Interpretation

5. Section 3 of the Principal Act is amended—

15 (a) by omitting the definitions of "direction", "health professional" and "power of attorney" and substituting the following definitions:

" 'direction' means a direction made under section 6 and in accordance with Part II;

'health professional' means—

20 (a) in relation to the withholding or withdrawal of medical treatment—a medical practitioner or a nurse; or

(b) in relation to the administration or provision of a substance to terminate life—a medical practitioner;

25 'power of attorney' means a power of attorney conferred under section 13 and in accordance with Part III;" and

(b) by inserting the following definitions:

" 'grantee', in relation to a power of attorney, means the person on whom the power is conferred;

30 'grantor', in relation to a power of attorney, means the person who confers the power;

'medical practitioner' means a medical practitioner—

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

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

‘nurse’ means a nurse—

- 5 (a) registered under the *Nurses Act 1988*; or
- (b) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

10 ‘request’ means a request made under section 6A and in accordance with Part II.”.

Objectives of the Act

6. Section 4 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “and”; and
- (b) by inserting after paragraph (a) the following paragraph:
15 “(ab) to protect the right of patients who are terminally ill to request assistance from a medical practitioner to terminate the patient’s life; and”.

Other legal rights not affected

7. Section 5 of the Principal Act is amended—

- 20 (a) by inserting in subsection (3) “, or the administration or provision of a substance to terminate the life of a patient,” after “treatment” (first occurring);
- (b) by omitting from paragraph (3) (a) “or” (last occurring);
- (c) by adding at the end of paragraph (3) (b) “or”; and
- 25 (d) by adding at the end of subsection (3) the following paragraph:
“(c) to provide a patient with medical treatment or palliative care until such time as the substance to terminate the patient’s life is administered or provided.”.

Insertion

- 30 8. After section 5 of the Principal Act the following section is inserted in Part I:

Medical practitioners and nurses not required to terminate life

“5A. Nothing in this Act shall be construed as requiring a medical practitioner or a nurse to administer or provide to a person a substance to terminate the person’s life.”.

5 Headings

9. The headings to Part II and Division 1 of Part II of the Principal Act are omitted and the following headings substituted:

“PART II—DIRECTIONS AND REQUESTS

“Division 1—Withholding or withdrawing medical treatment”.

10 Insertion

10. After section 6 of the Principal Act the following Division and heading are inserted:

“Division 2—Terminating life

Request to terminate life

15 “6A. Subject to section 6B, a person who—

- (a) is of sound mind;
- (b) has attained the age of 18 years;
- (c) is in the terminal phase of a terminal illness; and
- 20 (d) is suffering severe pain or distress caused by the illness which cannot be controlled by medical treatment or palliative care to the satisfaction of the person who is ill;

may make, or cause to be made, a written request to his or her medical practitioner to administer or provide a substance to terminate his or her life.

Preconditions for making request

25 “6B. (1) A request may only be made or be caused to be made if—

- (a) the person has requested the medical practitioner to assist him or her to terminate his or her life and, subject to section 6C, the medical practitioner has agreed to do so;
- 30 (b) a period of 72 hours has elapsed since the person was first informed that he or she is in the terminal phase of the terminal illness;
- (c) all of the conditions specified in subsection (2) have been met; and

- (d) a period of 24 hours has elapsed since all of those conditions were met.

“(2) For the purposes of paragraph (1) (c), the following conditions shall be met:

- 5 (a) the medical practitioner who has agreed to the person’s request under paragraph (1) (a) is satisfied that—
- 10 (i) the person is in the terminal phase of a terminal illness; and
- (ii) the illness is causing the person severe pain or distress which cannot be controlled by medical treatment or palliative care to the person’s satisfaction;
- 15 (b) the person has been examined by a second medical practitioner who is not a relative of, an employee of, or a member of the same medical practice as, the first-mentioned medical practitioner and, based on that examination and on consultations with the first-mentioned medical practitioner, the second medical practitioner has confirmed that the person is in the terminal phase of that terminal illness;
- 20 (c) the first-mentioned medical practitioner has informed the person that the second-mentioned medical practitioner has confirmed that the person is in the terminal phase of that terminal illness;
- (d) the first-mentioned medical practitioner has informed the person about—
- 25 (i) the nature of his or her illness and its likely course;
- (ii) any alternative forms of treatment that may be available, including palliative care;
- (iii) the consequences of those forms of treatment, including the consequences of palliative care; and
- (iv) the consequences of remaining untreated, including the consequences of not receiving palliative care;
- 30 (e) the first-mentioned medical practitioner is satisfied that the person has understood the information provided under paragraph (d);
- (f) the first-mentioned medical practitioner has asked the person whether he or she wishes to consult the second-mentioned medical practitioner or another medical practitioner and, if the person indicates that he or she wishes to do so, the person has consulted that medical practitioner;
- 35 (g) the first-mentioned medical practitioner has asked the person whether he or she wishes to consult a minister of religion or other

holder of religious office and, if the person indicates that he or she wishes to do so, the person has consulted the minister or other holder of religious office;

5 (h) the person has considered the various options and, as a result, has affirmed the decision to terminate his or her life and to request assistance to do so;

10 (j) the first-mentioned medical practitioner is satisfied that the person's decision to terminate his or her life and to request assistance to do so has been made voluntarily and without inducement or compulsion.

15 “(3) Any medical practitioner mentioned in this section shall ensure that any communication he or she has with the person for the purposes of this section, whether through an interpreter or otherwise, is in the language, mode of communication or terms that the person is most likely to understand.

Medical practitioner to be familiar with medical history

20 “6C. (1) A medical practitioner may only agree to a person's request under paragraph 6B (1) (a) if the medical practitioner is familiar with the person's recent medical history, particularly as it relates to the terminal illness, because the medical practitioner—

- 25 (a) is, and has been during the course of that illness, primarily responsible for the person's medical care; or
- (b) has been provided with a copy of the person's medical record under section 20A by the medical practitioner who has been during the course of that illness primarily responsible for the person's medical care.

“ (2) For the purposes of subsection (1), a person's medical history includes any history of—

- 30 (a) the person's state of mind, particularly in relation to the terminal illness;
- (b) previous requests the person has made under this Act for assistance to terminate his or her life; and
- (c) palliative care the person has received.

Medical practitioner to keep record of advice

35 “6D. A medical practitioner who agrees to a person's request under paragraph 6B (1) (a)—

- (a) shall keep a written record of—

- (i) the information he or she gave the person for the purposes of paragraph 6B (2) (d);
 - (ii) any other information of that kind that the medical practitioner is aware has been provided to the person by another medical practitioner, and the name of the medical practitioner who provided that information; and
 - (iii) any psychiatric, psychological or spiritual advice or counselling services that he or she has discussed with the person or that the medical practitioner is aware that the person has received; and
- (b) shall attach to the request a copy of the record that is signed by the medical practitioner and the person to whom it relates.

“Division 3—Formal requirements”.

Written directions and requests—requirements

11. Section 7 of the Principal Act is amended—

- (a) by inserting “or request” after “direction” (first occurring);
- (b) by omitting from paragraph (a) “in the Schedule” and substituting “or Form 1A in the Schedule, as the case requires”;
- (c) by inserting in paragraph (b) “or request” after “direction” (first and last occurring);
- (d) by inserting in paragraph (c) “of whom, in the case of a request, 1 shall be the medical practitioner named in the request” after “persons”; and
- (e) by inserting in paragraph (d) “or request” after “direction” (wherever occurring).

Substitution

12. Section 8 of the Principal Act is repealed and the following sections and heading are substituted:

Direction or request signed on behalf of a person

“7A. (1) Subject to this Act, a person who is entitled to make a direction or request but is physically incapable of signing the direction or request may orally request another person to sign the direction or request on his or her behalf, in his or her presence and the presence of 2 witnesses.

“(2) A person may comply with a request under subsection (1) if the person—

- (a) has attained the age of 18 years;

- (b) is not a relative of the person making the direction or request;
- (c) is not entitled to any portion of the estate of that person under a will or codicil existing at the time the direction or request is made or on an intestacy; and
- 5 (d) will not gain any financial advantage for himself or herself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of that person.

Witnesses

- 10 "8. (1) A witness to a direction or request shall—
- (a) have attained the age of 18 years;
 - (b) not be a relative of the person making the direction or request;
 - (c) not be entitled to any portion of the estate of that person under a will or codicil existing at the time the direction or request is made
 - 15 or on an intestacy; or
 - (d) not gain any financial advantage for himself or herself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of that person.
- 20 "(2) In the case of a direction that is not in writing, in addition to the requirements specified in subsection (1), the witnesses shall also be 2 health professionals (1 of whom shall be a medical practitioner) present at the same time.

Offence

- 25 "8A. A person who—
- (a) signs a written direction or request on behalf of the person making the direction or request; or
 - (b) witnesses a direction or request;
- knowing that he or she is not entitled to do so is guilty of an offence.

30 Penalty: 50 penalty units or imprisonment for 6 months, or both.

"Division 4—Revocation, withdrawal and cessation".

Revocation or withdrawal

13. Section 9 of the Principal Act is amended—
- 35 (a) by omitting from subsection (1) all the words from and including "A direction" to and including "direction" (second occurring) and

substituting "A direction or request may be revoked or withdrawn by the person who made it"; and

- (b) by omitting "the direction" (last occurring) and substituting "or withdraw it".

5 **Cessation**

14. Section 10 of the Principal Act is amended by inserting "or request" after "direction" (wherever occurring).

Heading

10 15. After section 10 of the Principal Act the following heading is inserted:

"Division 5—Giving effect to directions and requests".

Direction—decision to be informed

16. Section 11 of the Principal Act is amended—

- 15 (a) by omitting from subsection (1) "complying with" and substituting "giving effect to";
- (b) by omitting from subsection (1) "the health" and substituting "a health";
- (c) by adding at the end of paragraph (1) (a) "and its likely course";
- 20 (d) by adding at the end of paragraph (1) (b) ", including palliative care";
- (e) by inserting in paragraph (1) (c) ", including the consequences of palliative care" after "treatment";
- (f) by adding at the end of paragraph (1) (d) ", including the consequences of not receiving palliative care";
- 25 (g) by omitting from subsection (2) "shall not give effect to the direction unless" and substituting "may only give effect to a direction if"; and
- (h) by omitting from paragraph (2) (b) "weighed the various options and, as a result of this consideration" and substituting "considered the various options and, as a result".
- 30

Substitution

17. Section 12 of the Principal Act is repealed and the following sections are substituted:

Request—cooling-off period

“11A. A medical practitioner may only give effect to a request after a period of 24 hours has elapsed since the request was made or caused to be made.

5 Health professional not to proceed if in doubt

“12. A health professional may only give effect to a direction or request if the health professional—

- 10 (a) believes on reasonable grounds that the direction or request complies with this Act and that it has not been revoked or withdrawn; and
- (b) does not doubt in any way that the person wishes that effect be given to the direction or request.

Capable person to assist in own death

15 “12A. If a person who has made a request is capable of doing so, the person may administer or assist in administering to himself or herself the substance to terminate his or her life.”.

Headings

18. The heading to Division 2 of Part II of the Principal Act is omitted and the following headings are substituted:

20

“PART III—POWERS OF ATTORNEY

“Division 1—Conferring powers”.

Conferring a power of attorney

19. Section 13 of the Principal Act is amended—

25

- (a) by omitting from subsection (1) “(in this Division called the ‘grantor’)” and “(in this Division called the ‘grantee’)”;
- (b) by omitting from subsection (1) “consent” and substituting “direct”;
- (c) by omitting from subsection (1) “to the withholding or withdrawal of medical treatment” and substituting “that medical treatment be withheld or withdrawn”; and
- 30 (d) by omitting subsections (2) and (3) and substituting the following subsection:

“(2) Subject to section 13A, a person who—

- (a) is of sound mind;

- (b) has attained the age of 18 years;
- (c) is in the terminal phase of a terminal illness; and
- (d) is suffering severe pain or distress caused by the illness which cannot be controlled by medical treatment or palliative care to the satisfaction of the person who is ill;

may, by instrument in accordance with Form 3 in the Schedule, confer on another person the power to request, subject to the instrument, on behalf of the grantor the grantor's medical practitioner to administer a substance to terminate the grantor's life in the event that the grantor becomes incapacitated.”.

Insertion

20. After section 13 of the Principal Act the following section and Division are inserted:

Preconditions for conferring power to terminate life

“13A. (1) A power of attorney under subsection 13 (2) may only be conferred if—

- (a) the grantor has requested the medical practitioner to assist him or her to terminate his or her life and, subject to section 13B, the medical practitioner has agreed to do so;
- (b) a period of 72 hours has elapsed since the person was first informed that he or she is in the terminal phase of the terminal illness;
- (c) all of the conditions specified in subsection (2) have been met; and
- (d) a period of 24 hours has elapsed since all of those conditions were met.

“(2) For the purposes of paragraph (1) (c), the following conditions shall be met:

- (a) the medical practitioner who has agreed to the grantor's request under paragraph (1) (a) is satisfied that—

- (i) the grantor is in the terminal phase of a terminal illness; and
- (ii) the illness is causing the grantor severe pain or distress which cannot be controlled by medical treatment or palliative care to the grantor's satisfaction;

- (b) the grantor has been examined by a second medical practitioner who is not a relative of, an employee of, or a member of the same medical practice as, the first-mentioned medical practitioner and,

based on that examination and on consultations with the first-mentioned medical practitioner, the second-mentioned medical practitioner has confirmed that the person is in the terminal phase of that terminal illness;

- 5 (c) the first-mentioned medical practitioner has informed the grantor that the second-mentioned medical practitioner has confirmed that the grantor is in the terminal phase of that terminal illness;
- (d) the first-mentioned medical practitioner has informed the grantor about—
 - 10 (i) the nature of his or her illness and its likely course;
 - (ii) any alternative forms of treatment that may be available, including palliative care;
 - (iii) the consequences of those forms of treatment, including the consequences of palliative care; and
 - 15 (iv) the consequences of remaining untreated, including the consequences of not receiving palliative care;
- (e) the first-mentioned medical practitioner is satisfied that the grantor has understood the information provided under paragraph (d);
- 20 (f) the first-mentioned medical practitioner has asked the grantor whether he or she wishes to consult the second-mentioned medical practitioner or another medical practitioner and, if the grantor indicates that he or she wishes to do so, the grantor has consulted that medical practitioner;
- 25 (g) the first-mentioned medical practitioner has asked the grantor whether he or she wishes to consult a minister of religion or other holder of religious office and, if the grantor indicates that he or she wishes to do so, the grantor has consulted the minister or other holder of religious office;
- 30 (h) the grantor has considered the various options and, as a result, has affirmed the decision to terminate his or her life and to request assistance to do so;
- 35 (j) the first-mentioned medical practitioner is satisfied that the grantor's decision to terminate his or her life and to request assistance to do so has been made voluntarily and without inducement or compulsion.

“(3) Any medical practitioner mentioned in this section shall ensure that any communication he or she has with the grantor for the purposes of this section, whether through an interpreter or otherwise, is in the language,

mode of communication or terms that the grantor is most likely to understand.

Medical practitioner to be familiar with medical history

5 “13B. (1) A medical practitioner may only agree to a person’s request under paragraph 13A (1) (a) if the medical practitioner is familiar with the person’s recent medical history, particularly as it relates to the terminal illness, because the medical practitioner—

(a) is, and has been during the course of that illness, primarily responsible for the person’s medical care; or

10 (b) has been provided with a copy of the person’s medical record under section 20A by the medical practitioner who has been during the course of that illness primarily responsible for the person’s medical care.

15 “(2) For the purposes of subsection (1), a person’s medical history includes any history of—

(a) the person’s state of mind, particularly in relation to the terminal illness;

(b) previous requests the person has made under this Act for assistance to terminate his or her life; and

20 (c) palliative care the person has received.

Medical practitioner to keep record of advice

“13C. A medical practitioner who agrees to a person’s request under paragraph 13A (1) (a)—

(a) shall keep a written record of—

25 (i) the information he or she gave the person for the purposes of paragraph 13A (2) (d);

(ii) any other information of that kind that the medical practitioner is aware has been provided to the person by another medical practitioner, and the name of the medical practitioner who provided that information; and

30 (iii) any psychiatric, psychological or spiritual advice or counselling services that he or she has discussed with the person or that the medical practitioner is aware that the person has received; and

35 (b) shall attach to the power of attorney a copy of the record that is signed by the medical practitioner and the person to whom it relates.

"Division 2—Requirements for validity

Formal requirements

"13D. A power of attorney is not valid unless—

- (a) the grantee has attained the age of 18 years;
- 5 (b) it is signed by the grantor or by another person in the presence of and at the direction of the grantor;
- (c) the signature is witnessed by 2 persons of whom, in the case of a power of attorney under subsection 13 (2), 1 shall be the medical practitioner named in the power of attorney; and
- 10 (d) the grantee signs the instrument to indicate acceptance.

Power of attorney signed on behalf of grantor

"13E. A person may sign a power of attorney on behalf of the grantor under paragraph 13D (b) if the person—

- (a) has attained the age of 18 years;
- 15 (b) is not the grantee or a relative of the grantee;
- (c) is not entitled to any portion of the estate of the grantor under a will or codicil existing at the time the power of attorney is conferred or on an intestacy; and
- 20 (d) will not gain any financial advantage for himself or herself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the grantor.

Witnesses

"13F. A witness to a power of attorney shall—

- 25 (a) have attained the age of 18 years;
- (b) not be the grantee or a relative of the grantee;
- (c) not be entitled to any portion of the estate of the grantor under a will or codicil existing at the time the power of attorney is conferred or on an intestacy; or
- 30 (d) not gain any financial advantage for himself or herself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the grantor.

Offence

“13G. A person who—

- (a) signs a power of attorney on behalf of a grantor; or
- (b) witnesses a power of attorney;

5 knowing that he or she is not entitled to do so is guilty of an offence.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Power not affected by incapacity of grantor

“13H. A power of attorney does not lapse by reason only of the incapacity of the grantor.”.

10 Circumstances in which power may be exercised

21. Section 14 of the Principal Act is amended by omitting “the power of attorney granted pursuant to section 13” and substituting “a power of attorney”.

Heading

15 22. After section 14 of the Principal Act the following heading is inserted:

“Division 3—Revocation”.

Heading

20 23. After section 15 of the Principal Act the following heading is inserted:

“Division 4—Exercising power”.

Conditions on exercise of power

24. Section 16 of the Principal Act is amended—

25 (a) by omitting from subsection (1) all the words from and including “subsection” to and including “unless—” and substituting the following:

“subsections (2) and (3), a grantee may only—

(aa) direct the withholding or withdrawal of medical treatment from the grantor; or

30 (ab) request the grantor’s medical practitioner to administer a substance to terminate the grantor’s life;

if—”;

(b) by adding at the end of subparagraph (1) (a) (i) “and its likely course”;

(c) by omitting from subparagraph (1) (a) (ii) “grantor; and” and substituting “grantor, including palliative care”;

5 (d) by inserting after subparagraph (1) (a) (ii) the following subparagraph:

“(iia) the consequences of those forms of treatment, including the consequences of palliative care; and

10 (e) by inserting in subparagraph (1) (a) (iii) “, including the consequences of not receiving palliative care” after “untreated”;

(f) by omitting from paragraph (1) (b) “request the withholding or withdrawal of medical treatment from himself or herself” and substituting “have made that direction or request”;

15 (g) by inserting in subsection (2) “of a power of attorney under subsection 13 (1)” after “grantee” (first occurring);

(h) by omitting from subsection (2) “request the withholding or withdrawal of medical treatment” and substituting “direct that medical treatment be withheld or withdrawn”; and

(j) by adding at the end the following subsection:

20 “(3) Where the grantee of a power of attorney under subsection 13 (2) is—

(a) aware the grantor has made a request; and

(b) not aware that the request has been withdrawn;

25 the grantee may request the grantor’s medical practitioner to administer a substance to terminate the grantor’s life in accordance with the request.”.

Health professional to ensure attorney’s decision is informed

25. Section 17 of the Principal Act is amended—

30 (a) by omitting “shall not comply with the request of a grantee to withhold or withdraw medical treatment from the grantor unless” and substituting “may only give effect to the direction or request of a grantee under a power of attorney if he or she is”;

(b) by inserting in paragraph (a) “direction or” before “request”; and

- (c) by omitting subparagraph (b) (ii) and substituting the following subparagraph:

“(ii) has considered the various options and, as a result, affirms the direction or request”.

5 **Heading to Part III**

26. The heading to Part III of the Principal Act is amended by omitting “PART III” and substituting “PART IV”.

Effect on other instruments

27. Section 18 of the Principal Act is amended—

- 10 (a) by omitting from paragraph (1) (a) “or granted” and substituting “or request or conferred”;
- (b) by omitting from subsection (1) “was made or the power of attorney was granted” and substituting “or request was made or the power of attorney was conferred”;
- 15 (c) by inserting in subsection (1) “, request” after “direction” (last occurring);
- (d) by omitting from subsection (2) “or grant” and substituting “or request or confer”;
- 20 (e) by omitting from subsection (3) “made or power of attorney granted” and “revoked” and substituting “or request made or power of attorney conferred” and “revoked or withdrawn”, respectively; and
- (f) by omitting from subsection (4) “or grants” and substituting “or request or confers”.

25 **Deception, fraud or coercion to obtain direction etc.**

28. Section 19 of the Principal Act is amended by inserting in subsections (1) and (2) “, request” after “direction”.

Insertion

30 29. After section 19 of the Principal Act the following section is inserted:

Bribery of medical practitioner or nurse

“19A. (1) A person shall not—

- 35 (a) give, confer or procure, or promise or offer to give, confer or procure, any property or benefit of any kind (other than a reasonable payment for medical services) to, on or for, any person on any agreement or understanding that a medical

practitioner, nurse or any other person will assist or refuse to assist, or has assisted or refused to assist, in the administration or provision of a substance to a person to terminate the person's life under this Act;

- 5 (b) induce a medical practitioner, nurse or any other person to assist or refuse to assist in the administration or provision of a substance to a person to terminate the person's life under this Act; or
- 10 (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind (other than a reasonable payment for medical services), whether for the person or for another person, on any agreement or understanding that a medical practitioner, nurse or any other person will assist or refuse to assist, or has assisted or refused to assist, in the administration or provision of a substance to a person to terminate the person's life
- 15 under this Act.

Penalty: 100 penalty units or imprisonment for 1 year, or both.

“(2) A person is not entitled to retain any property or benefit given, conferred, procured, received or obtained in contravention of subsection (1) and any such property or benefit is forfeited to the Territory.”.

20 **Copies or notification of decisions**

30. Section 20 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or granted” and substituting “or request or conferred”;
- 25 (b) by omitting from paragraph (1) (b) “or granted” and “revoked” and substituting “or request or conferred” and “revoked or withdrawn”, respectively;
- (c) by omitting from subsection (1) “or power of attorney was made, granted or revoked” and substituting “, request or power of attorney was made, conferred, revoked or withdrawn”;
- 30 (d) by omitting paragraph (2) (a) and substituting the following paragraph:
- “(a) a copy of the direction, request, power of attorney, revocation or withdrawal; or”; and
- 35 (e) by omitting from paragraph (2) (b) “direction, power of attorney or revocation” (wherever occurring) and substituting “direction, request, power of attorney, revocation or withdrawal”.

Insertion

31. After section 20 of the Principal Act the following sections are inserted:

Medical practitioner may assign case

5 “20A. Where—

(a) a medical practitioner is unable or unwilling to give effect to a request under section 6A or the request of a grantee pursuant to a power of attorney under subsection 13 (2); and

(b) the patient or grantee consults another medical practitioner;

10 the first-mentioned medical practitioner shall, at the request of the second-mentioned medical practitioner, give a copy of the patient’s medical record to the second-mentioned medical practitioner.

Time and manner of death

15 “20B. (1) In giving effect to a direction or request under Part II or the request of a grantee under a power of attorney, a health professional shall take reasonable steps to ensure that the time and manner of any death so procured does not cause avoidable distress to other persons.

20 “(2) Before giving effect to a request under section 6A in respect of a person who is still competent, a medical practitioner shall consult the person about the time and manner of his or her death.

Medical practitioner shall remain with person until death

“20C. A medical practitioner shall be present—

(a) to supervise the administration of a substance by a person to himself or herself under section 12A; or

25 (b) to administer the substance to the person where the person is not capable of administering or assisting to administer that substance to himself or herself or does not wish to do so;

as the case requires, and shall remain with the person until the person’s death.

30 Death under this Act—inquest

35 “20D. Where a death occurs as the result of the administration or provision of an anaesthetic or other substance by a medical practitioner in accordance with this Act, that death, by reason only of its occurrence, shall not be regarded as a death in respect of which an inquest is required under subsection 12 (1) or 13 (2) of the *Coroners Act 1956*.

Copy of direction etc. to be sent to Coroner

“20E. (1) For the purposes of subsection 34 (1) of the *Registration of Births, Deaths and Marriages Act 1963*, where—

5 (a) a medical practitioner has given effect to a direction or request under Part II or the request of a grantee under a power of attorney in respect of a person; and

(b) the person’s death was procured as a result;

the medical practitioner shall be taken to have attended the person during the person’s last illness.

10 “(2) The medical practitioner mentioned in subsection (1) shall, as soon as practicable after the person’s death, send to the Coroner—

(a) a copy of the Medical Certificate of the Cause of Death under paragraph 34 (1) (a) of the *Registration of Births, Deaths and Marriages Act 1963*;

15 (b) a copy of the direction, request or power of attorney;

(c) a copy of the record attached to the request or power of attorney pursuant to paragraph 6D (b) or 13C (b); and

(d) a copy of that part of the medical record that relates to—

(i) the person’s medical condition at the time of death;

20 (ii) where the death was procured at the request of a grantee under a power of attorney—the incapacity of the grantor; and

(iii) the death of the person.

Reporting on operation of Act

25 “20F. (1) The Coroner shall, as soon as practicable after the end of each financial year, notify the Attorney-General in writing of—

(a) the number of persons who have died in that year as a result of assistance given under this Act, including the withholding and withdrawal of medical treatment;

30 (b) an analysis of that number according to age, sex, ethnicity, type of illness, and means of assistance;

(c) the number of medical practitioners who during that year have assisted persons to terminate their lives in accordance with a request or a power of attorney under subsection 13 (2); and

35 (d) any other matter about the operation of the Act of which, in the opinion of the Coroner, the Attorney-General should be notified.

“(2) A notice under subsection (1) shall not contain any information from which an individual’s identity is apparent or can reasonably be ascertained.

5 “(3) The Attorney-General shall, within 6 sitting days after receiving a notice under subsection (1), table the notice.

“(4) In addition to notifying the Attorney-General pursuant to subsection (1), the Coroner may at any time report in writing to the Attorney-General on the operation of, or any matter connected with the operation of, this Act.

10 “(5) The Attorney-General shall—

(a) as soon as practicable after receiving a report under subsection (4), give a copy of the report to the Minister for the time being responsible for administering palliative care; and

(b) within 3 sitting days after receiving the report, table the report.

15 “(6) The Minister who receives a copy of a report under paragraph (5) (a) shall, within 6 sitting days after receiving that copy, table a report detailing the availability and standard of palliative care in the Territory.

“(7) In this section—

‘table’ means table in the Legislative Assembly.

20 Protection of grantees

“20G. A grantee acting under a power of attorney that he or she believes on reasonable grounds complies with this Act who, in good faith, requests—

25 (a) the withholding or withdrawal of medical treatment from the grantor; or

(b) the administration of a substance to terminate the grantor’s life;
is not—

(c) guilty of an offence against any law of the Territory; or

(d) liable in any civil proceedings;

30 in connection with the withholding or withdrawal of that medical treatment or the administration of that substance.”.

Health professional not liable for certain decisions

32. Section 21 of the Principal Act is amended—

- (a) by omitting paragraph (a) and substituting the following paragraph:

“(a) has revoked or withdrawn, or intended to revoke or withdraw, a direction, request or power of attorney; or”;
and

- (b) by omitting from paragraph (b) “or granting” and “direction” (last occurring) and substituting “or request or conferring” and “direction, request”, respectively.

Protection of health professionals relying on decision

33. Section 22 of the Principal Act is amended—

- (a) by inserting “, or administers or provides a substance to a person to terminate a person’s life,” after “person” (second occurring);
and
(b) by adding at the end “or the administration or provision of the substance to terminate life”.

Repeal

34. Part IV of the Principal Act is repealed.

Schedule

35. The Schedule to the Principal Act is amended—

- (a) by inserting in the heading to Form 1 “TO WITHHOLD OR WITHDRAW MEDICAL TREATMENT” after “DIRECTION”;
(b) by inserting in clause 2 of Form 1 “, and WITHDRAW all requests,” after “directions”;
(c) by inserting after Form 1 the Form 1A set out in the Schedule;
(d) by inserting in the heading to Form 2 “TO WITHHOLD OR WITHDRAW MEDICAL TREATMENT” after “ATTORNEY”;
(e) by inserting in clause 1 of Form 2 “of subsection 13 (1)” after “purposes”;
(f) by omitting from clause 2 of Form 2 “request” (first occurring) and substituting “direct”;
(g) by omitting from clause 2 of Form 2 “make that request” and substituting “give that direction”;

- 5
- (h) by omitting from clause 3 of Form 2 “granted” and substituting “conferred”;
 - (j) by inserting after clause 3 in Form 2 the following clause:
“3A. I CERTIFY that this power of attorney is given voluntarily and without inducement or compulsion.”; and
 - (k) by adding at the end the Form 3 set out in the Schedule.
-

SCHEDULE

Section 35

FORM 1A

Section 7

REQUEST TO TERMINATE LIFE UNDER THE MEDICAL TREATMENT ACT 1994

IMPORTANT NOTICE:

If you have previously given a power of attorney under the Powers of Attorney Act 1956, that power might be affected by filling out this form. You should note that the power to make decisions relating to the withholding or withdrawal of medical treatment for the condition to which this form relates will no longer be exercised according to your instructions on the form you previously filled in under the Powers of Attorney Act 1956.

If you give a power of attorney under the Powers of Attorney Act 1956 after you have filled in this form, this form will no longer have any effect.

1. I, (name) of (address) REQUEST my medical practitioner (name of medical practitioner) to administer or provide a substance to terminate my life because I am in the terminal phase of the terminal illness (name of illness) which is causing me severe pain and/or distress which cannot be controlled by medical treatment or palliative care to my satisfaction.

2. I HAVE BEEN EXAMINED by a second medical practitioner who has confirmed that I am in the terminal phase of that illness.

3. I HAVE BEEN INFORMED by my medical practitioner about—

- (a) the nature of my illness and its likely course;
- (b) the alternative forms of treatment that may be available, including palliative care;
- (c) the consequences of those forms of treatment, including the consequences of palliative care; and
- (d) the consequences of remaining untreated, including the consequences of not receiving palliative care.

4. I WITHDRAW all other requests, and REVOKE all directions, previously made by me under the *Medical Treatment Act 1994*.

5. I CERTIFY that this request is made voluntarily and without inducement or compulsion.

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

DATED:

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

SCHEDULE—continued

DECLARATION OF PERSON SIGNING ON BEHALF OF PERSON MAKING REQUEST (Delete this declaration if not required)

I, (name) DECLARE that—

- (a) I have attained the age of 18 years;
- (b) I am not a relative of the person making this request;
- (c) to my knowledge, I am not entitled to any portion of the estate of the person under any will or codicil; and
- (d) to my knowledge, I will not gain any financial advantage for myself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the person making this request.

DATED:

.....
Signature of person signing in the
presence of and by the direction of
the person making the request

DECLARATION OF MEDICAL PRACTITIONER NAMED IN REQUEST

I, (name) DECLARE that—

- (a) the person making this request is my patient;
- (b) I am satisfied that the person is in the terminal phase of the terminal illness (name of illness) which is causing the person severe pain and/or distress which cannot be controlled by medical treatment or palliative care to the person's satisfaction;
- (c) this request was signed in my presence and in the presence of the witness whose signature appears below; and
- (d) I am satisfied that the person is of sound mind and has made this request voluntarily and without inducement or compulsion.

DATED:

.....
Signature of medical practitioner

*[Medical practitioner to attach signed copy of record kept pursuant to
section 6D of the Medical Treatment Act 1994]*

DECLARATION OF SECOND WITNESS

I, (name) DECLARE that—

- (a) I have attained the age of 18 years;
- (b) I am not a relative of the person making this request;
- (c) to my knowledge, I am not entitled to any portion of the estate of the person under any will or codicil;

SCHEDULE—continued

- (d) to my knowledge, I will not gain any financial advantage for myself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the person making this request; and
- (e) this request was signed in my presence and in the presence of the person's medical practitioner.

DATED:

.....
Signature of witness

FORM 3

Section 13

**POWER OF ATTORNEY TO TERMINATE LIFE UNDER THE
MEDICAL TREATMENT ACT 1994**

IMPORTANT NOTICE:

This form will allow your chosen attorney (who must be over the age of 18 years) to ask your medical practitioner to terminate your life because you are in the terminal phase of a terminal illness, if you become incapable of asking your medical practitioner yourself.

To create a power of attorney this form must be signed and dated either by you or by another person you have asked to sign and date the form for you. If you ask another person to sign and date this form for you, they should do so in your presence. You must also have your medical practitioner and one (1) other witness sign the form. The person to whom you are giving the power of attorney, or any of that person's relatives, cannot be witnesses.

If you have previously given a power of attorney under the Powers of Attorney Act 1956, that power might be affected by filling out this form. You should note that the power to make decisions relating to the withholding or withdrawal of medical treatment for the condition to which this form relates will no longer be exercised according to your instructions on the form you previously filled in under the Powers of Attorney Act 1956.

If you give a power of attorney under the Powers of Attorney Act 1956 after you have filled in this form, this form will no longer have any effect.

Before signing this form, you should read it carefully.

1. I, (name of grantor) of (address) APPOINT (name of grantee) of (address) to be my attorney for the purposes of subsection 13 (2) of the Medical Treatment Act 1994.

2. I AUTHORISE my attorney, if I become incapacitated, to request my medical practitioner (name of medical practitioner) to administer a substance to terminate my life because I am in the terminal phase of the terminal illness (name of illness) which is causing me severe pain and/or distress which cannot be controlled by medical treatment or palliative care to my satisfaction, if my attorney 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.

SCHEDULE—continued

3. I HAVE BEEN EXAMINED by a second medical practitioner who has confirmed that I am in the terminal phase of that illness.

4. I HAVE BEEN INFORMED by my medical practitioner about—

- (a) the nature of my illness and its likely course;
- (b) the alternative forms of treatment that may be available, including palliative care;
- (c) the consequences of those forms of treatment, including the consequences of palliative care; and
- (d) the consequences of remaining untreated, including the consequences of not receiving palliative care.

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

6. I CERTIFY that this power of attorney is given voluntarily and without inducement or compulsion.

7. 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)

DECLARATION OF PERSON SIGNING ON BEHALF OF GRANTOR (Delete this declaration if not required)

I, (name) DECLARE that—

- (a) I have attained the age of 18 years;
- (b) I am not the grantee or a relative of the grantee;
- (c) to my knowledge, I am not entitled to any portion of the estate of the grantor under any will or codicil; and
- (d) to my knowledge, I will not gain any financial advantage for myself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the grantor.

DATED:

.....
Signature of person signing in the
presence of and by the direction of
the grantor

SCHEDULE—continued

DECLARATION OF MEDICAL PRACTITIONER NAMED IN POWER OF ATTORNEY

I, (name) DECLARE that—

- (a) the grantor is my patient;
- (b) I am satisfied that the grantor is in the terminal phase of the terminal illness (name of illness) which is causing the grantor severe pain and/or distress which cannot be controlled by medical treatment or palliative care to the grantor's satisfaction;
- (c) this power of attorney was signed in my presence and in the presence of the witness whose signature appears below; and
- (d) I am satisfied that the grantor is of sound mind and has given this power of attorney voluntarily and without inducement or compulsion.

DATED:

.....
Signature of medical practitioner

[Medical practitioner to attach signed copy of record kept pursuant to section 13C of the Medical Treatment Act 1994]

DECLARATION OF SECOND WITNESS

I, (name) DECLARE that—

- (a) I have attained the age of 18 years;
- (b) I am not the grantee or a relative of the grantee;
- (c) to my knowledge, I am not entitled to any portion of the estate of the grantor under any will or codicil;
- (d) to my knowledge, I will not gain any financial advantage for myself or a close relative or associate (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the grantor; and
- (e) this power of attorney was signed in my presence and in the presence of the grantor's medical practitioner.

DATED:

.....
Signature of witness

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

NOTES

Principal Act

1. Act No. 72, 1994.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section heading

On the day on which the *Medical Treatment Act 1994* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, the heading to section 6 of the Principal Act is omitted and the following heading substituted: "**Direction to withhold or withdraw treatment**".

Printed by Authority of Nigel Hardiman, ACT Government Printer

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