

TASMANIA

DIRECTIONS FOR MEDICAL TREATMENT BILL 2005

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DIRECTIONS FOR MEDICAL TREATMENT BILL 2005

(Brought in by the Honourable Norma Mary Jamieson)

A BILL FOR

An Act to provide for persons to refuse medical treatment in certain circumstances and for persons to make anticipatory directions about future medical treatment.

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1- PRELIMINARY

1. Short title

This Act may be cited as the *Directions for Medical Treatment Act 2005*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears -

“administration” of medical treatment includes the prescription or supply of drugs;

“advance directive” has the same meaning as medical directive or health care directive;

“anticipatory direction” See section 5.

“authorised witness” means

(a) a justice of the peace; or

1 a commissioner for declarations

within the meaning of the Oaths Act 2001;

“guardian” and **“enduring guardian”** have the same meanings as they have in the Guardianship and Administration Act 1995;

“life sustaining measures” means medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes assisted ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;

“medical practitioner” means a registered medical practitioner;

“medical treatment” means treatment or procedures administered or carried out by a medical practitioner in the course of medical or surgical practice and includes the prescription or supply of drugs;

“palliative care” means measures directed at maintaining or improving the comfort of a person who is, or would otherwise be, in pain or distress;

“refusal of treatment certificate” means a certificate referred to in section 4;

“Registrar” means a person appointed under section 10;

“terminal illness” means an illness or condition that is likely to result in death;

“terminal phase of a terminal illness” means the phase of the illness reached when there is no real prospect of recovery or remission of symptoms (on either a permanent or temporary basis).

PART 2- CONSENT TO MEDICAL TREATMENT

Division 1 — Refusal of treatment

4. Refusal of treatment for current condition

(1) In this section—

“person” includes a guardian or an enduring guardian acting on behalf of a person within the extent of the *Guardianship and Administration Act 1995* or of an instrument of appointment made under that Act.

(2) If a medical practitioner and another person are each satisfied—

(a) that a person has clearly expressed or indicated a decision—

(i) to refuse medical treatment generally; or

(ii) to refuse medical treatment of a particular kind—

for a current condition; and

(b) that the person's decision is made voluntarily and without inducement or compulsion; and

(c) that the person has been informed about the nature of his or her condition to an extent which is reasonably sufficient to enable the person to make a decision about whether or not to refuse medical treatment generally or of a particular kind (as the case requires) for that condition and that the person has appeared to understand that information; and

(d) that the person is of sound mind and has attained the age of 18 years-

the medical practitioner and the other person may together witness a refusal of treatment certificate.

(3) A refusal of treatment certificate is to be completed in accordance with Form 1 of Schedule 1 or in a form to similar effect.

5. Anticipatory grant or refusal of consent to medical treatment.

(1) A person of or over 18 years of age may, while of sound mind, give a direction under this section about the medical treatment that the person wants, or does not want, if he or she is at some future time—

1 in the terminal phase of a terminal illness, or in a persistent vegetative state;

and

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(b) incapable of making decisions about medical treatment when the question of administering the treatment arises.

(2) A direction under this section is not effective unless—

(a) it is completed in accordance with Form 2 of Schedule 1 or in a form to similar effect; and

(b) it is witnessed by two persons of whom one is an authorised witness and the other is a medical practitioner; and

(c) the direction is registered in accordance with section 10 of this Act.

(3) If a person by whom a direction has been given under this section—

(a) is in the terminal phase of a terminal illness or in a persistent vegetative state; and

(b) is incapable of making decisions about his or her medical treatment; and

(c) there is no reason to suppose that the person has revoked, or intended to revoke, the direction—

the person is to be taken to have consented to medical treatment that is in accordance with the wishes of the person as expressed in the direction and to have refused medical treatment that is contrary to those expressed

wishes.

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Division 2 – Cancellation of certificate or anticipatory direction

6. Cancellation of certificate

A refusal of treatment certificate may be cancelled by the person who gave the certificate clearly expressing or indicating to a medical practitioner or another person a decision to cancel the certificate.

7. Cancellation of anticipatory direction

An anticipatory direction may be cancelled by the person who gave the direction clearly expressing or indicating to a medical practitioner or another person a decision to cancel the direction.

8. Form of expressing a decision

For the purposes of subsections 4(1)(a), 6 and 7 a person may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

Division 3 - Obtaining certificate by fraud

9. Penalty for obtaining certificate by fraud etc.

(1) A person who—

(a) is a beneficiary under the will of another person; or

- (b) has an interest under any instrument under which another person is the donor, settlor or grantor; or

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- (c) would be entitled to an interest in the estate of another person on the death intestate of that person—

and who, by any deception, fraud, mis-statement or undue influence, procures or obtains, whether directly or indirectly, the execution by that other person of a certificate under this Act, forfeits any interest under the will, instrument or intestacy, as the case requires.

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

Division 4 - Copies of certificates and register of directions

10. Copies of refusal of treatment certificate

- (1) A medical practitioner who witnesses a refusal of treatment certificate for a person in a hospital or nursing home must take reasonable steps to ensure that a copy of the refusal of treatment certificate applying to that person —
 - (a) is placed with the person's patient record kept by the hospital or nursing home;
 - (b) is given to the chief executive of the hospital or nursing home; and
 - (c) is given to the Registrar within 7 days of

a making of the certificate.

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	1	A medical practitioner who witnesses a refusal of treatment certificate for a person who is not a patient in a hospital or nursing home must take reasonable steps to ensure that a copy of the refusal of treatment certificate is—	
		(a) given to the general practitioner of that person to be recorded as that person's patient record; and	
	1	given to the Registrar within 7 days of the making of the certificate.	

11. Register of anticipatory directions

- (1) The Minister must establish a register of refusal of treatment certificates and anticipatory directions made under this Act.
- (2) The Minister must appoint a suitable person as a Registrar to administer the register.
- (3) The registrar must keep a register of any refusal of treatment certificate given to the registrar under section 10.
- (4) A refusal of treatment certificate given to the Registrar by a medical practitioner under section 10 must be accompanied by the prescribed fee.
- (5) The Registrar must, at the request of a medical practitioner responsible for the treatment of a person for whom a refusal of

treatment certificate has been given to the Registrar under section 9 or any other person with a proper interest in the treatment of that person, produce a copy of the certificate for inspection by that medical practitioner or other person.

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- (6) A person who has given an anticipatory direction may on application to the Registrar have the direction registered in the register.
- (7) An application under subsection (6) must be accompanied by:
 - (a) a copy of the direction; and
 - (b) a fee prescribed by regulation.
- (8) The Registrar must, at the request of a medical practitioner responsible for the treatment of a person by whom a registered direction was given or any other person with a proper interest in a registered direction produce a copy of the direction for inspection by that medical practitioner or other person.

PART 3- PROVISIONS GOVERNING MEDICAL PRACTICE

Division 1 - Medical practice generally

12. Offence of medical trespass

- (1) A medical practitioner must not, knowing that a refusal of treatment certificate applies to a person, undertake or continue

to undertake any medical treatment to which the certificate applies, being treatment for the condition in relation to which the certificate was given.

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- (2) A medical practitioner must not, knowing that an anticipatory direction applies to a person, undertake or continue to undertake any medical treatment to which the direction applies, being treatment for the condition in relation to which the direction was given.

Penalty: Fine not exceeding 100 penalty units.

13. Protection of medical practitioners

- (1) A medical practitioner or a person acting under the direction of a medical practitioner who, in good faith and in reliance on a refusal of treatment certificate or an anticipatory direction, refuses to perform or continue medical treatment which he or she believes on reasonable grounds has been refused in accordance with this Act is not—
- (a) guilty of misconduct or infamous misconduct in a professional respect;
or
 - (b) guilty of an offence; or
 - (c) liable in any civil proceedings—
because of the failure to perform or continue that treatment.

- (2) For the purposes of this section a person who acts in good faith in reliance on a refusal of treatment certificate or an anticipatory direction but who is not aware that the certificate or direction has been cancelled, is to be treated as having acted in

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good faith in reliance on a refusal of treatment certificate or the anticipatory direction.

Division 2 - Emergency medical treatment and care of people who are dying

14. Emergency medical treatment

- (1) A medical practitioner may lawfully administer medical treatment to a person if—

(a) the person is incapable of consenting;
and

(b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that

opinion is supported by the written opinion of another medical practitioner who has personally examined the person; and;

(c) the person has not, to the best of the medical practitioner's knowledge, refused to consent to the treatment or registered an anticipatory direction.

15. The care of people who are dying

- 1 A medical practitioner responsible for the treatment or care of a person in the terminal phase of a terminal illness, or a person participating in the treatment or care of the person under the medical practitioner's supervision, incurs no civil

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or criminal liability by administering medical treatment with the intention of relieving pain or distress—

(a) with the consent of the person; and

(b) in good faith and without negligence; and

(c) in accordance with proper professional standards of palliative care, even though an incidental effect of the treatment is to hasten the death of the person.

- (2) A medical practitioner responsible for the treatment or care of a person in the terminal phase of a terminal illness, or a person participating in the treatment or care of the person under the medical practitioner's supervision, is, in the absence of an express direction by the person or the person's representative to the contrary, under no duty to use, or to continue to use, life sustaining measures in treating the person if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery or in a persistent vegetative state.

(3) For the purposes of the law of the State—

(a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1) does not constitute an intervening cause of death; and;

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(b) the non-application or discontinuance of life sustaining measures in accordance with subsection (2) does not constitute an intervening cause of death.

16. Act does not authorize assisting in suicide

(1) This Act does not authorize the administration of medical treatment for the purpose of causing the the death of the person to whom the treatment is administered.

(2) This Act does not authorise a person to assist the suicide of another.

PART 4- MISCELLANEOUS AND SUPPLEMENTAL

17. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations as to fees payable to the Registrar for lodging refusal of treatment certificates and anticipatory directions.

18. Administration of Act

Until provision is made in relation to this Act by Order under section 4 of the *Administrative Arrangements Act 1990*—

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- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1

FORM 1- REFUSAL OF TREATMENT CERTIFICATE

Section 4

We certify that we are satisfied that—

- (a) that.....(name of person) has clearly expressed or indicated a decision, in relation to a current condition, to refuse—

*medical treatment generally;

or

*medical treatment being.....

(specify particular kind of medical treatment);

- (b) that the person’s decision is made voluntarily and without inducement or compulsion;
- (c) that the person has been informed about the nature of his/her current condition to an extent which is reasonably sufficient

to enable him/her to make a decision about whether or not to refuse medical treatment generally or of a particular kind (as the case requires) and he/she has appeared to understand that information; and

(d) that the person is of sound mind and has attained the age of 18 years.

* Delete whichever is not applicable

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Dated:

Signed.....(Medical Practitioner)

Signed.....(Another Person)

The person's current condition is
.....(describe condition)

Dated:

Signed.....

To be signed by the same medical practitioner

Verification to be completed by patient, if physically able to do so.

In relation to my current condition, I refuse—

*medical treatment generally;

or

*medical treatment being
.....

(specify particular kind of medical treatment);

I give the following instructions as to palliative care:

Dated:

Signed..... (Person)

*Delete whichever is not applicable

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NOTICE OF CANCELLATION (for completion where a patient cancels the certificate under section 6 of the *Directions for Medical Treatment Act 2005*)

I cancel this certificate.

Dated:

Signed..... (Person)

or

The patient clearly expressed or indicated a decision to cancel this certificate on (Date).

Signed

.....
(Person witnessing patient’s decision)

NOTE: “Medical treatment” means the carrying out of—

- (a) an operation; or
- (b) the administration of a drug or other like substance; or
- (c) any other medical procedure—

but does not include palliative care.

“Palliative care” includes—

- (a) the provision of reasonable medical procedures for the relief of pain, suffering and discomfort; or
- (b) the reasonable provision of food and water.

The refusal of palliative care is not covered by the *Directions for Medical Treatment Act 2005*.

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FORM 2- ANTICIPATORY DIRECTION

Section 5

Part 1 — Anticipatory direction

1 I.....

(insert full name, address and occupation)

direct that if, at some future time, I am—

- (a) in the terminal phase of a terminal illness, or in a persistent vegetative state; and
- (b) incapable of making decisions about my own medical treatment, effect is to be given to the following expression of my wishes.....

[The person by whom the direction is given must include here a statement of his or her wishes. The statement should clearly set out the kinds of medical treatment that the person wants, or the kinds of medical treatment that the

person does not want, or both. If the consent, or refusal of consent, is to operate only in certain circumstances, or on certain conditions, the statement should define those circumstances or conditions].

2. This direction is given under the *Directions for Medical Treatment Act 2005*.

.....

[signature of person giving direction]

Dated this day of 200

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Part 2 — Witness Certificate

I

.....

.....

[insert full name, address of the witness and the qualifications by virtue of which the witness is an authorised witness under the Directions for Medical Treatment Act 2005]

Certify that the person whose signature appears above—

- (a) signed this direction in my presence; and
- (b) appears to understand the nature and effect of the direction.

