

PARLIAMENT OF VICTORIA

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**Medical Treatment (Physician Assisted Dying) Bill  
2008**

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# PARLIAMENT OF VICTORIA

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Introduced in the Council by Ms Colleen Hartland

## **Medical Treatment (Physician Assisted Dying) Bill 2008**

A Bill for an Act to enable a mentally competent adult person suffering intolerably from a terminal or advanced incurable illness to exercise their right to end their life by requesting medical assistance from their doctors, to protect doctors who so assist, to prevent misuse of their ability to assist, and for other purposes.

### **Preamble**

The Parliament of Victoria affirms its belief that life is precious, yet recognises that some persons with a terminal or advanced incurable illness may suffer intolerably and have a compassionate right to a death they believe to be peaceful and dignified.

**The Parliament of Victoria therefore enacts:**

## 1 Purpose

The purpose of this Act is—

- 5 (a) to recognise the right of a mentally competent adult person, who is suffering intolerably from a terminal illness or advanced incurable illness, to request a doctor to provide medical assistance that allows that person to end his or her life peacefully; and
- 10 (b) to grant a doctor who does so immunity from liability in criminal, civil and disciplinary proceedings; and
- 15 (c) to provide procedural protections against the possibility of abuse of the rights recognised by this Act; and
- (d) for other purposes.

## 2 Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

## 3 Definitions

In this Act—

**adult** means a person who is 18 years of age or more;

25 **agent** means an adult person who is not the treating doctor or the independent doctor and who is appointed by the sufferer under a Certificate of Appointment of Agent in or to the effect of the form in Schedule 1 and who acts only under present direction of the sufferer;

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5                    *assistance* includes any one or more of: the giving  
                         of information, the prescribing of a drug, the  
                         preparation of a drug, the providing of a  
                         drug, and the providing of assistance to the  
                         sufferer to ingest a drug. It does not include  
                         assistance by injection through a needle;

10                   *doctor* means an individual who is a legally  
                         qualified medical practitioner in the State of  
                         Victoria and has been a legally qualified  
                         medical practitioner anywhere in Australia  
                         for at least 5 years;

*financial benefit* does not include an entitlement  
                         to reasonable payment for medical services;

15                   *health care provider* means a health care facility  
                         licensed, certified, or otherwise authorised  
                         by or permitted by law to administer health  
                         care or dispense medication in the ordinary  
                         course of business or practice of a  
                         profession;

20                   *incurable illness* means an advanced illness  
                         which is incurable despite all reasonable and  
                         available medical treatment, but is not a  
                         terminal illness;

25                   *independent doctor* means a doctor who is not  
                         related to the treating doctor or sufferer by  
                         blood, marriage or close personal  
                         relationship, and who is not being supervised  
                         by, employed by, trained by the treating  
                         doctor, and who is not answerable to him or  
30                   her in any professional respect;

*intolerable suffering* means profound suffering  
                         and/or distress, whether physical,  
                         psychological or existential, that is  
                         intolerable to the patient;

s. 4

5                    *mentally competent* means an ability of the sufferer after being given relevant information to understand the general nature of the illness or condition; and to understand the benefits and risks of, and to weigh the pros and cons of, presented medical treatment and palliative care options as well as a request for assistance to end his or her life;

10                  *nurse* means a person registered by the Nurses Board of Victoria to practise as a nurse in the State of Victoria;

15                  *pharmacist* means a person registered by the Pharmacy Board of Victoria to practise as a pharmacist in the State of Victoria;

*psychiatrist* means a doctor who is authorised to practice psychiatry in the State of Victoria;

*sufferer* means a person who has a terminal illness or incurable illness;

20                  *terminal illness* means an illness or condition that according to reasonable medical opinion is likely to result in the sufferer's death in the foreseeable future;

25                  *treating doctor* means a doctor who is the primary medical caregiver for the purposes of this Act.

#### 4 Doctors to respect life

30                  Doctors should always assume that persons usually have a strong wish to continue with life. The request for assistance to end life is an unusual request that is treated with both caution and respect.

**5 Conditions under which the treating doctor may provide assistance**

At the request of an adult sufferer, the treating doctor may provide assistance to that sufferer to end his or her life. However, the treating doctor may only do so if all of the following conditions are met—

- (a) the treating doctor is not related to the sufferer by blood, marriage or close personal relationship; and
- (b) the treating doctor is satisfied on reasonable grounds that the sufferer has had his or her settled or usual residence in the State of Victoria for a minimum of 12 months; and
- (c) the treating doctor is satisfied on reasonable grounds that the sufferer has a terminal or incurable illness that is causing the sufferer intolerable suffering; and
- (d) the treating doctor has informed the sufferer of the nature of his or her illness, its likely course, and medical treatments, including palliative care, which might be available; and
- (e) the sufferer has received the advice of a doctor practising in palliative care concerning the availability and likely effects of palliative care; and
- (f) no medical treatment, including palliative care, is available that is acceptable to the sufferer, and that is likely to relieve the sufferer's intolerable suffering; and
- (g) after being informed in accordance with subsections (d) and (e), the sufferer indicates to the treating doctor that he or she has decided to end his or her life; and

**s. 5**

(h) the treating doctor is satisfied, on reasonable grounds, that the sufferer's decision to end his or her life has been made freely, voluntarily and after due consideration; and

(i) if the sufferer has a terminal illness—The treating doctor is satisfied, on reasonable grounds, that the sufferer is mentally competent. This condition is not satisfied if the treating doctor has reason to believe that the sufferer's decision may have resulted from a mental illness, unless the treating doctor has obtained an opinion from a qualified psychiatrist that the sufferer is mentally competent and that either—

(i) the sufferer is not suffering from a mental illness; or

(ii) the sufferer's decision has not resulted from a mental illness; or

(iii) any treatment of the sufferer's mental illness is unlikely to alter the sufferer's decision; and

(j) if the sufferer has an incurable illness—

(i) the treating doctor obtains the opinion of a qualified psychiatrist that the sufferer is mentally competent, and that he or she is not suffering from a treatable mental illness that could influence his or her decision to request assistance; and

(ii) the treating doctor arranges and the sufferer must attend a consultation with a doctor who practices in palliative care to advise the sufferer of the availability of palliative care and of its possible benefits; and

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- 5 (iii) a cooling off period of 14 days has elapsed after the sufferer has had both the psychiatric and palliative care consultations before signing Part A of the Certificate of Request; and
- 10 (k) the sufferer (or, if the sufferer is physically unable to do so, his or her agent) signs Part A of the Certificate of Request (in or to the effect of the form in Schedule 2) asking the treating doctor to provide assistance; and
- 15 (l) the treating doctor witnesses the sufferer's or agent's signature on Part A of the Certificate of Request; and
- 20 (m) an independent doctor, after reviewing the sufferer's medical file, interviewing and examining the sufferer, and discussing the case with the treating doctor and the sufferer, and after being satisfied on reasonable grounds that the sufferer is an adult and mentally competent, and is experiencing intolerable suffering from a terminal illness or incurable illness and that the patient's request for assistance in dying is made with due consideration and without undue
- 25 influence, signs Part B of the Certificate of Request; and
- 30 (n) at least one of the treating doctor and the independent doctor has special or particular knowledge and experience in the sufferer's type of illness; and
- (o) Part C of the Certificate of Request is completed after both Parts A and B of the Certificate have been completed; and at least 48 hours after Part A is completed; and

s. 5

- 5 (p) before the treating doctor provides assistance, the sufferer (or, if the sufferer is physically unable to do so, his or her agent) signs Part C of the Certificate of Request and the signature is witnessed by a person who is not the treating doctor or the independent doctor; and
- 10 (q) if the treating doctor is providing services to the sufferer in a health care provider's facility or under an arrangement with a health care provider, the treating doctor provides to the manager (or person fulfilling the role of manager) of the health care provider, a copy of the Certificate of Request (Parts A, B and C) before providing assistance; and
- 15 (r) the treating doctor has no reasonable grounds to believe that he or she, or the independent doctor, or a close relative or associate of either of them, or the Certificate of Request Part C witness, will gain a financial or other benefit, directly or indirectly, as a result of the death of the sufferer under the provisions of this Act; and
- 20 (s) at the time of providing assistance, the treating doctor is satisfied on reasonable grounds that the sufferer is mentally competent and still wants to end his or her life; and
- 25 (t) the treating doctor writes a note on any prescription that it is for use under this Act.
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**6 Sufferer may revoke a certificate**

5 A sufferer or, if the sufferer is physically unable  
to do so, his or her agent may revoke a Certificate  
of Request by writing across the certificate the  
word "Cancelled" or "Revoked" and signing such  
revocation. Immediately upon revocation the  
sufferer or their agent must return in full to a  
10 pharmacist any prescription that has been issued  
in respect of the Certificate. Within 48 hours of  
notification of revocation to the treating doctor,  
the treating doctor must forward notice of such  
revocation to the State Coroner.

**7 Immunity of providing assistance or being present**

- 15 (1) A treating doctor who provides assistance in  
accordance with this Act is immune from  
criminal, civil and disciplinary liability and  
proceedings in respect of that assistance.  
This does not relieve the doctor from liability for  
negligence in providing the assistance.
- 20 (2) A nurse, health care provider or agent who in  
good faith follows the instructions of a treating  
doctor is immune from criminal, civil and  
disciplinary liability and proceedings in respect of  
his or her actions. This does not relieve the nurse,  
25 health care provider or agent from liability for  
negligence in following the treating doctor's  
instructions.
- 30 (3) A pharmacist who dispenses in good faith a  
prescription issued by a treating doctor is immune  
from criminal, civil and disciplinary liability and  
proceedings in respect of that dispensing.  
This does not relieve the pharmacist from liability  
for negligence in dispensing the prescription.
- 35 (4) Any person who is present at or before the time  
the sufferer ends his or her life, and who has a  
reasonably held belief that the sufferer intends to

or has ended his or her life in accordance with the provisions of this Act, is immune from criminal, civil, and disciplinary liability in respect of that presence.

5                   **8 Doctor's and nurse's immunity in relation to information**

10                   A doctor, nurse, lawyer or other individual is immune from criminal, civil or disciplinary proceedings in relation to providing information or advice to a sufferer, agent or sufferer's relatives in good faith concerning this Act or what can be done under it.

15                   **9 Duty when declining to provide assistance**

20                   (1) A doctor is not under any duty to provide assistance under this Act. A doctor who, for conscience, professional or other reasons, declines to provide assistance must tell the sufferer that other doctors may be willing to provide assistance. A doctor who fails to do so is guilty of an offence.

                    Penalty: a fine not exceeding 5 Penalty Units.

25                   (2) A health care provider is not under any duty, whether by employment, contract, statute or other legal requirement, to participate in the provision of assistance to a sufferer under this Act. If a health care provider is unable or unwilling to permit assistance to be given in accordance with this Act and the sufferer transfers his or her care to another health care provider, the former health care provider must, on request, transfer a full copy of the patient's relevant medical records to the new health care provider.

30                   Penalty: a fine not exceeding 5 Penalty Units.

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**10 Duty to respect assistance or refusal to provide assistance**

5 (1) A professional organisation, association or health care provider must not subject a person to censure, discipline, suspension, loss of licence, certificate or other authority to practise, loss of privilege, loss of membership or other prejudicial pressure or penalty for anything that, in good faith and without negligence, was done or refused to be done by the person and which may under this Act lawfully be done or refused to be done.

10  
15 Penalty: a fine not exceeding 50 Penalty Units for an individual, or a fine not exceeding 500 Penalty Units for an organisation, association or health care provider.

20 (2) Subsection (1) does not apply to a health care provider in respect of a person who knew or reasonably ought to have known that the health care provider did not allow in its facility or under any arrangement with it, assistance which is provided for in this Act.

**11 Not for resuscitation**

25 A person who knows or should reasonably know that a sufferer has ingested a drug to end his or her life under the provisions of this Act must not resuscitate or attempt to resuscitate the sufferer.

30 Penalty: a fine not exceeding 1,000 Penalty Units and/or imprisonment of not more than 5 years.

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**12 Certificates to be kept and copies provided to the Coroner**

- 5 (1) A treating doctor who witnesses the signature of a sufferer or his or her agent must keep the original Certificate of Request (Parts A, B and C), and Certificate of Appointment of Agent (if any).
- 10 (2) The treating doctor must send a copy of the Certificate of Request (Parts A, B and C), and the Certificate of Appointment of Agent (if any), to the State Coroner within 48 hours of the completion of Part C of the Certificate of Request.
- 15 (3) The issuing pharmacist must send a copy of the record of fulfilment of the prescription to the State Coroner within 48 hours of fulfilment.

**13 Confidentiality of records and reports**

Information obtained by any person or health care provider from or about a sufferer is confidential and may not be disclosed without the requesting sufferer's consent, except as this Act or any other law may require.

**14 Helpers must not benefit**

25 A person or health care provider who provides advice in respect of a death under the provisions of this Act, signs, countersigns, witnesses a Certificate of Appointment of Agent, a Certificate of Request, or doctor, nurse or agent who helps the sufferer to ingest the drug, forfeits any financial benefit he or she would otherwise obtain, directly or indirectly, from the death of the sufferer if that death results under the provisions of this Act.

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**15 Improper conduct**

5 An individual who by fraud, deception or  
improper influence, procures the signing,  
witnessing or countersigning of a Certificate of  
Request, or the ingesting of the drug by the  
sufferer, commits an offence and forfeits any  
financial benefit he or she would otherwise obtain,  
10 directly or indirectly, from the death of a sufferer  
if that death results under the provisions of this  
Act.

Penalty: a fine of not more than 2,500 Penalty  
Units and/or imprisonment for not more  
than 14 years.

**16 Death certificate**

15 The doctor completing the certificate of death  
must note on the certificate of death that the  
person ended his or her life with the treating  
doctor's assistance under this Act. The doctor  
completing the certificate of death must provide  
20 the State Coroner with a copy of the certificate of  
death within 48 hours. The cause of death is to be  
recorded as the terminal illness or incurable illness  
that led to the request for assistance.

**17 Not a suicide**

25 Neither permissible actions taken under, nor a  
death resulting from, the provisions of this Act  
constitutes suicide, aiding or abetting suicide,  
mercy killing, manslaughter or homicide.

**18 Certificates are evidence**

30 In the absence of contrary evidence, a Certificate  
of Appointment of Agent, a Certificate of Request  
and a certificate of death that is signed as required  
by this Act is proof that the requirements of this  
Act have been met.

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**19 Coroner's report**

5 The State Coroner must provide an annual report to Parliament with details concerning the nature and frequency of assistance and deaths under this Act. The report must not allow the identification of any individual sufferer or doctor.

The State Coroner's report must be reviewed by a joint, all-party Parliamentary Committee.

**20 Power to issue guidelines**

10 The Health Minister may issue guidelines in relation to the procedures to be followed in respect of the provision of the lethal dose to the sufferer and the disposal of any remaining drug, or  
15 other administrative matters but not so as to circumvent or obstruct the intentions of this Act.

**21 Effect on construction of wills, contracts and statutes**

20 (1) Any will, contract or other agreement, whether or not in writing or executed or made before or after the commencement of this Act, is void to the extent that it affects whether a sufferer may make or rescind a request for assistance under this Act, or the giving of such assistance.

25 (2) Subsection (1) shall not apply to an employment or other engagement contract, or published code of conduct, between a health care provider and a person so employed or engaged, in relation to the giving of such assistance.

30 (3) An obligation owing under a contract or agreement, whether made before or after the commencement of this Act, is void to the extent that it is conditioned or affected by the making or rescinding of a request for assistance under this Act or the giving of such assistance.

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**22 Insurance or annuity policies**

The sale, procurement or issuing of any life, health or accident insurance or annuity policy or the rate charged for such a policy must not be conditioned on or affected by the making or rescinding of a request for assistance under this Act or the giving of such assistance with the exception of any new policy commenced and which is not a renewal, within 366 days of the death of the sufferer under the provisions of this Act.

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Sch. 1

SCHEDULES

SCHEDULE 1

Section 3 ("agent")

CERTIFICATE OF APPOINTMENT OF AGENT

5 I have agreed to act as Agent under the Medical Treatment (Physician Assisted Dying) Act 2008, acting under the direct and current instruction of (patient's name and address):

\_\_\_\_\_

10 I understand that as Agent I may, under direct and current instructions of the patient, sign on behalf of the patient a Certificate of Request for Assistance in Dying, and/or revoke a Certificate of Request for Assistance in Dying, and/or assist the patient to ingest a drug issued under the provisions of the Medical Treatment (Physician Assisted Dying) Act 2008.

15 I further understand that should I be negligent in following a doctor's instructions regarding the ingestion of the drug by the patient, that I may be liable for prosecution for such negligence. I agree to act as Agent.

20 Agent<sup>s</sup> Witness<sup>s</sup>

Date: Date:

Signed: Signed:

Name: Name:

\_\_\_\_\_

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Address:

Address:

5 *§ By signing this Certificate, the Agent and the Witness each certify that he or she does not reasonably expect to receive a financial benefit resulting directly or indirectly from the death of the patient under the provisions of the Medical Treatment (Physician Assisted Dying) Act 2008, and further certify that should such a benefit arise, the Agent or Witness forfeits all rights to such benefit. He or she also certifies that he or she is not, and does not expect to become, the patient's treating doctor.*

10 *The Witness further certifies that he or she is not related to the patient by blood, marriage or close personal relationship; and is satisfied on reasonable grounds that the patient has asked the person identified as Agent to act as agent under the patient's direct instructions; and has witnessed the Agent's signature.*

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Sch. 2

SCHEDULE 2

CERTIFICATE OF REQUEST FOR ASSISTANCE IN DYING:  
PART A

Section 5(k)

5 I have been informed by my treating doctor that I am suffering from a terminal / incurable\* illness from which there is no reasonable prospect of recovery.

The terminal / incurable\* illness is causing me intolerable suffering that cannot be relieved to my satisfaction.

10 My treating doctor (name and address below) has explained to me the nature of my illness, its likely course, and medical treatments, including palliative care, that might be available.

I am 18 years of age or older, and my settled or usual residence has been in the State of Victoria for at least 12 months.

15 I have decided to request medical assistance in dying in accordance with the *Medical Treatment (Physician Assisted Dying) Act 2008*. This is a free and voluntary decision made by me after due consideration and without undue influence.

I now make my request.

20 *Patient* *Treating Doctor*<sup>s</sup>

Date: Date:

Signed: Signed:

Name: Name:

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Address:

Address:

Provider Number:

\* ~~Strike through~~ whichever is not applicable.

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*§ By countersigning this Certificate, the Treating Doctor further certifies that he or she is certified to practice medicine in the State of Victoria and has been registered to practice medicine anywhere in Australia for a minimum of five years; that he or she has witnessed the patient's (or his or her Agent's) signature; that he or she is not related to the patient by blood, marriage or close personal relationship, and reasonably does not expect to receive any financial benefit (other than reasonable payment for medical services) resulting directly or indirectly from the death of the patient under the provisions of the Medical Treatment (Physician Assisted Dying) Act 2008; and is not the appointed Agent of the patient under Schedule 1 of the Act.*

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Sch. 2

**CERTIFICATE OF REQUEST FOR ASSISTANCE IN DYING:  
PART B**

**OPINION OF INDEPENDENT DOCTOR**

Section 5(m)

5

I have inspected the medical records of, interviewed and examined the patient (name and address below). I have discussed the case with the treating doctor and the patient.

10

I am satisfied, on reasonable grounds, that the patient is suffering intolerably from a terminal / incurable\* illness, is mentally competent, and that the patient's request for assistance in dying is made with due consideration and without undue influence.

I have witnessed the patient's (or his or her Agent's) signature.

*Patient*

*Independent Doctor<sup>†</sup>*

15

Date:

Date:

Signed:

Signed:

Name:

Name:

Address:

Address:

Provider Number:

20

\* ~~Strike through~~ whichever is not applicable.

<sup>†</sup> By signing this Certificate, the Independent Doctor further certifies that he or she is certified to practice medicine in the State of Victoria and has been certified to practice medicine anywhere in Australia for a minimum of five years; that he or she is not related to the patient or to the Treating Doctor

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*(whose signatures appear in Part A of this Certificate) by blood, marriage or close personal relationship, and reasonably does not expect to receive any financial benefit (other than reasonable payment for medical services) resulting directly or indirectly from the death of the patient under the provisions of the Medical Treatment (Physician Assisted Dying) Act 2008. The Independent Doctor further certifies that he or she is not being supervised by, employed by, trained by, and is not answerable to, the Treating Doctor.*



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*resulting directly or indirectly from the death of the patient under the provisions of the Medical Treatment (Physician Assisted Dying) Act 2008.*

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**ENDNOTES**

By Authority. Government Printer for the State of Victoria.

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