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1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

EUTHANASIA LAWS BILL 1996

REVISED
EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Herron)

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EUTHANASIA LAWS BILL 1996

OUTLINE

Overview

- 1 The Euthanasia Laws Bill 1996 ("the Bill") seeks to amend the *Northern Territory (Self-Government) Act 1978*, the *Australian Capital Territory (Self-Government) Act 1988*, and the *Norfolk Island Act 1979*.
- 2 The purpose of the bill is to provide that the Northern Territory Legislative Assembly, the Australian Capital Territory Legislative Assembly, and the Norfolk Island Legislative Assembly do not have the power to make laws which would permit that form of intentional killing of another called euthanasia(which includes mercy-killing) or the assisting of another person to terminate his or her own life.

EUTHANASIA LAWS ACT 1996

NOTES OF INDIVIDUAL PROVISIONS

Clause 1 Short Title

- 1 This clause provides that the Act may be cited as the *Euthanasia Laws Act 1996*

Clause 2 Commencement

- 2 This clause provides that this Act commences on the day on which it receives the Royal Assent.

Clause 3 Schedule

- 3 This clause provides that the acts specified in the schedule are amended in accordance with the applicable items in the Schedule.

SCHEDULE 1— Amendment of the Northern Territory (Self-Government) Act 1978.

Item 1

This item inserts a new section 50A in the *Northern Territory (Self-Government) Act 1978*.

The *Northern Territory (Self-Government) Act*, an Act of the Commonwealth Parliament, confers self-government on the Northern Territory of Australia by establishing a Legislative Assembly with power to make laws for peace, order and good government.

Section 6 of the *Northern Territory (Self-Government) Act* provides that, subject to the Act, the Northern Territory Legislative Assembly has power to make laws for the peace, order and good government of the Territory. The existing provisions include section 50 which limits the power to make laws in regard to the acquisition of property otherwise than on just terms.

In new section 50A, subsection 50A(1) provided that the powers of the Legislative Assembly do not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her own life.

The new section 50A also contains new sub section (2) by which the limits of the exclusion in sub-section 50A(1) are identified and confirmed. Paragraph (2)(a) confirms the power of the Legislative Assembly to make laws with respect to the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient. This would allow the passing of right to refuse medical treatment legislation. New paragraph 2(b) confirms the power of the Legislative Assembly to make laws with respect to medical treatment in the provision of palliative care, but not so as to permit the intentional killing of the patient. This would allow the passing of laws which permit administering pain relief provided that it is not administered with the intention of bring about the death of the patient. New paragraph 2(c) confirms the power of the Legislative Assembly to make laws with respect to the appointment of an agent by a patient who is authorised to make decisions about the withdrawing or withholding of treatment. This

would allow the passing of laws which would permit the appointment of an agent to make medical decisions provided they do not involve the intentional killing of the patient. New paragraph 2(d) confirms the power of the Legislative Assembly to repeal legal sanctions against attempted suicide. This would permit the passing of laws to repeal legal sanctions against attempted suicide, but would allow legal sanctions for aiding, inciting or abetting suicide; and legal provisions for the protection from criminal or civil suit of a person attempting to prevent another person committing suicide.

Item 2

This item removes any doubt about the effects of the *Euthanasia Laws Act* on the enactment of the legislative assembly called the *Rights of the Terminally Ill Act*. The *Euthanasia Laws Act* would ensure that the *Rights of the Terminally Ill Act* has no force or effect as a law of the Territory, but that does not affect the lawfulness or validity of anything done in accordance with that Act prior to the commencement of the *Euthanasia Laws Act*. Thus those who had previously had recourse to the *Rights of the Terminally Ill Act* would not find that they had been in breach of the law.

SCHEDULE 2

4 Amendment of the Australian Capital Territory (Self-Government) Act 1988.

Item 1

This item adds a new sub-sections 23(1A) and 23(1B) in the *Australian Capital Territory (Self-Government) Act 1988*.

The *Australian Capital Territory (Self-Government) Act 1988*, an Act of the Commonwealth Parliament, confers self-government on the Australian Capital Territory of Australia by establishing a Legislative Assembly with power to make laws for peace, order and good government.

Section 22 of the *Australian Capital Territory (Self-Government) Act 1988* provides that, subject to the Act, the Australian Capital Territory Legislative Assembly has power to make laws for the peace, order and good government of the Territory. The existing provisions include section 23 which limits the power to make laws in regard to several items.

New sub-section 23(1A) provides that the powers of the Legislative Assembly do not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her own life.

New paragraph 23(1B)(a) confirms the power of the Legislative Assembly to make laws with respect to the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient. This would allow the passing of right to refuse medical treatment legislation. The new paragraph 23(1B)(b) confirms the power of the Legislative Assembly to make laws with respect to medical treatment in the provision of palliative care, but not so as to permit the intentional killing of the patient. This would allow the passing of laws which permit administering pain relief provided that it is not administered with the intention of bringing about the death of the patient. New paragraph 23(1B)(c) confirms the power of the Legislative Assembly to make laws with respect to the appointment of an agent by a patient who is authorised to make decisions about the withdrawing or withholding of treatment. This would allow the passing of laws which would permit the appointment of an agent to make medical decisions provided they do not involve the intentional killing of the patient. New paragraph 23(1B)(d) confirms the power of the Legislative Assembly to repeal legal sanctions against attempted suicide. This would permit the passing of laws to repeal legal sanctions against attempted suicide, but would allow legal sanctions for aiding, inciting or abetting suicide; and legal provisions for the protection from criminal or civil suit of a person attempting to prevent another person committing suicide.

SCHEDULE 3 — Amendment of the Norfolk Island Act 1979.

Item 1

This item adds a new paragraph 19(2)(d) to the *Norfolk Island Act 1979*.

The *Norfolk Island Act 1979*, an Act of the Commonwealth Parliament, confers self-government on Norfolk Island, an Australian Territory, by establishing a Legislative Assembly with power to make laws for peace, order and good government.

The existing provisions of the *Norfolk Island Act 1979* provide that, subject to the Act, the Norfolk Island Legislative Assembly has power to make laws for the peace, order and good government of the Territory. The existing provisions include section 19 which limits the power to make laws in regard to several items.

New paragraph 19(2)(d) provides that the powers of the Legislative Assembly do not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her own life.

Item 2

The new paragraph 19(2A)(a) confirms the power of the Legislative Assembly to make laws with respect to the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient. This would allow the passing of right to refuse medical treatment legislation. The new paragraph 19(2A)(b) confirms the power of the Legislative Assembly to make laws with respect to medical treatment in the provision of palliative care, but not so as to permit the intentional killing of the patient. This would allow the passing of laws which permit administering pain relief provided that it is not administered with the intention of bringing about the death of the patient. New paragraph 19(2A)(c) confirms the power of the Legislative Assembly to make laws with respect to the appointment of an agent by a patient who is authorised to make decisions about the withdrawing or withholding of treatment. This would allow the passing of laws which would permit the appointment of an agent to make medical decisions provided they do not involve the intentional killing of the patient. New paragraph 19(2A)(d) confirms the power of the Legislative Assembly to repeal legal sanctions against attempted suicide. This would permit the passing of laws to repeal legal sanctions against attempted suicide, but would allow legal sanctions for aiding, inciting or abetting suicide; and legal provisions for the protection from criminal or civil suit of a person attempting to prevent another person committing suicide.

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