



Australian Capital Territory

# **Tuberculosis Act 1950**

**A1950-6**

**Republication No 3**

**Effective: 27 May 2004 – 6 July 2005**

Republication date: 27 May 2004

Last amendment made by A2004-10

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Tuberculosis Act 1950* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 27 May 2004. It also includes any amendment, repeal or expiry affecting the republished law to 27 May 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Tuberculosis Act 1950

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27/05/04

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Australian Capital Territory

## Tuberculosis Act 1950

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An Act to provide for and regulate the examination of persons suffering or suspected to be suffering from tuberculosis and for the prevention and eradication of tuberculosis

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**1 Short title**

This Act may be cited as the *Tuberculosis Act 1950*.

**3 Definitions for Act**

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

**chief health officer** means the chief health officer under the *Public Health Act 1997*.

**medical practitioner** means a medical practitioner registered under the *Medical Practitioners Act 1930*.

**the court** means the Magistrates Court.

**3A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 4 (Doctors and authorised nurse practitioners—failure to notify).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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**4 Doctors and authorised nurse practitioners—failure to notify**

- (1) A doctor or authorised nurse practitioner commits an offence if—
- (a) the doctor or nurse practitioner has reasonable grounds to believe that a patient has, or may have, tuberculosis; and
  - (b) the doctor or nurse practitioner fails to notify the chief health officer about the patient's condition as soon as possible, including—
    - (i) whether the tuberculosis is or was in an active form or is suspected of being or having been in that form; and
    - (ii) whether the patient is or was in an infectious condition or is suspected of being or having been in that condition.

Maximum penalty: 5 penalty units.

- (2) A doctor commits an offence if—
- (a) the doctor has reasonable grounds to believe that a dead person had, or may have had, tuberculosis at the time of death; and
  - (b) the person was a patient of the doctor immediately before death, or was examined by the doctor after death; and
  - (c) the doctor fails to notify the chief health officer about the person's condition as soon as possible, including—
    - (i) whether the tuberculosis is or was in an active form or is suspected of being or having been in that form; and
    - (ii) whether the person is or was in an infectious condition or is suspected of being or having been in that condition.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the doctor or authorised nurse practitioner proves that he or

she believed on reasonable grounds that the chief health officer had already been told about the condition of the patient or dead person.

- (5) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***scope of practice***—see the *Health Act 1993*, section 37B (2).

## **6 Declaration requiring examination of lungs**

- (1) The Minister may, in writing, declare that people over 14 years old living in the ACT must have a radiological examination of their lungs.
- (2) A declaration must state the time and place for the examination.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A declaration does not apply to a person who holds a doctor's certificate certifying that the person has had, not earlier than 3 months before the day the declaration is notified under the *Legislation Act 2001*, a radiological examination of the person's lungs and that the person did not have tuberculosis.

### **6A Compliance with declaration**

- (1) A person to whom a declaration under section 6 (Declaration requiring examination of lungs) applies must comply with the declaration.

Maximum penalty: 10 penalty units.

- (2) A parent, guardian or anyone else in charge of a person under 18 years old to whom a declaration under section 6 applies must



take reasonable steps to ensure that the person complies with the declaration.

Maximum penalty: 10 penalty units.

**7 Notice requiring individuals to undergo certain examinations**

- (1) Where the chief health officer has reason to believe that a person (the *patient*) is or may be suffering from tuberculosis and has refused or failed to undergo medical or other examination to the satisfaction of the chief health officer in respect of that disease, the chief health officer may—
- (a) where the patient has attained the age of 14 years—by notice in writing delivered to the patient, require the patient to undergo; or
  - (b) in any other case—by notice in writing delivered to the parent, guardian or other person having the charge of the patient, require that person to do all things within the person's power to ensure that the patient undergoes;

within a period specified in the notice, such medical, radiological and bacteriological examinations as the chief health officer specifies in the notice.

- (2) A notice under this section may specify the place where the examination is to take place.
- (3) Where a notice under this section is given to a patient who has attained the age of 14 years but has not attained the age of 18 years, the chief health officer may deliver a copy of the notice to any parent, guardian or other person having the charge of the patient, and that person shall thereupon do all things within the person's power to ensure that the patient complies with the notice.

Maximum penalty: 10 penalty units.

**8 If person cannot attend examination**

- (1) This section applies if—
  - (a) a person is required by a declaration or notice under this Act to have a radiological examination; and
  - (b) the chief health officer is satisfied that it is impracticable for the person to have the examination—
    - (i) at the place required by the declaration or notice; or
    - (ii) because of the person's health.
- (2) The person is taken to comply with the declaration or notice if the person has the examination done by a doctor nominated by the chief health officer during the period required by the declaration or notice.
- (3) If the person (the *young person*) is under 18 years old, a parent, guardian or anyone else in charge of the young person is taken to comply with his or her obligation under this Act if he or she takes reasonable steps to ensure that the young person has the examination done by a doctor nominated by the chief health officer during the period required by the declaration or notice.

**9 Magistrate may order persons suffering from tuberculosis to be removed to institution etc**

- (1) Where, upon application by the chief health officer for an order under this section, the court is satisfied that a person (the *patient*) is suffering from tuberculosis in an infectious condition, and that—
  - (a) in the patient's interest the patient should be properly attended and treated; and
  - (b) the patient's circumstances are such that proper precautions to prevent the spread of the infection cannot be taken, or that such precautions are not being taken; and

- (c) substantial risk of infection is or will be thereby caused to others;

the court may order the patient to be removed to an institution (or some other place agreed upon by the patient and the chief health officer) where the patient can be properly attended and treated and to be detained there for such period, not exceeding 6 months, as the court thinks fit, or, if the patient is an in-patient in an institution and proposes, contrary to the advice of the chief health officer or of a medical officer of the institution or tuberculosis practitioner, to leave the institution, order the patient to be detained in the institution or in some other institution or suitable place for such period, not exceeding 6 months, as the court thinks fit.

- (2) At any time while the patient is detained under an order for the time being in force under subsection (1), the court may, upon application by the chief health officer for an order under this subsection, and upon being satisfied that the conditions which led to the patient's detention being ordered will again exist if the patient is not detained for a further period after the expiration of the existing period of detention, order the detention of the patient in the same place (or in some other place agreed upon by the patient and the chief health officer) for a further period, not exceeding 6 months in the case of any one order.
- (3) Where an application for an order is made under this section, the chief health officer shall give to the patient, and, if the patient has not attained the age of 18 years, to any parent, guardian or other person having, or normally having, the charge of the patient, not less than 3 clear days notice in writing of the time and place at which the application will be heard.
- (4) At any time during the currency of an order under subsection (1) or (2), any person, on behalf of the patient, may apply to the court for the revocation of the order, and the court may, if it thinks fit, revoke the order.

- (5) Where an application is made under subsection (4), the person making the application shall give to the chief health officer not less than 3 clear days notice in writing of the time and place at which the application will be heard.
- (6) Where an application is made under this section, the court may, if it thinks fit, require the patient to be examined by a medical practitioner appointed by it for the purpose.
- (7) Subject to the provisions of this section, and to the decision of the judge on any appeal under section 10, every order under this section shall be final and binding on all parties.
- (8) An order under this section may be addressed to the chief health officer or such other person as the court thinks expedient, and the person to whom the order is addressed may do all acts necessary for giving effect to the order.
- (9) The medical officer or other person in charge in an institution or other place to which a patient is ordered under this section to be removed shall, on the presentation of the order, receive the patient and arrange for the patient's medical treatment, and shall do such other acts as are necessary for giving effect to the order.
- (10) At any time while the patient is detained in an institution or other place under an order under this section, the court may, if it thinks fit, on the application of the chief health officer or of the medical officer or other person in charge of the institution or place, order the patient to be removed to another institution or suitable place and to be detained there while the firstmentioned order continues in force.
- (11) The provisions of subsections (3) to (9) shall, so far as applicable and with the necessary modifications, apply with respect to every application and every order made under subsection (10).

- (12) A person who is removed to or detained in an institution or other place under an order under this section shall not, while the order continues in force, except with the consent of the chief health officer or of the medical superintendent of the institution or place, leave or attempt to leave the institution or place.

Maximum penalty (subsection (12)): 10 penalty units.

## **10 Appeal against orders of detention**

- (1) If the chief health officer or anyone else is dissatisfied with an order or decision of the Magistrates Court under section 9, the chief health officer or other person may appeal to the Supreme Court within 7 days after the making of the order or decision or any further time the Supreme Court allows.
- (2) On the hearing of the appeal, the judge may confirm, modify, or reverse the order or decision of the court and the judge's decision shall be final and binding on all parties.
- (3) The judge shall make no order as to costs in respect of an appeal under this section except where the appeal is by or on behalf of a patient and is successful.
- (4) Subject to the provisions of this section, the procedure on the appeal shall be such as is prescribed by regulations under this Act, and, in so far as those regulations do not extend, shall be in accordance with the rules relating to appeals to the Supreme Court against final determinations of the Magistrates Court in its civil jurisdiction.

## **11 Offences**

A person shall not—

- (a) wilfully disobey an order, direction or requirement under this Act; or

- (b) obstruct, delay or interfere with the prompt execution of, or compliance with, any such order, direction or requirement;

Maximum penalty: 10 penalty units.

## **12 Delegation**

- (1) The chief health officer may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate any of his or her powers under this Act other than this power of delegation.
- (2) A power so delegated when exercised by the delegate, shall, for this Act, be deemed to have been exercised by the chief health officer.
- (3) A delegation under this section does not prevent the exercise of a power by the chief health officer.

## **13 Regulation-making power**

- (1) The Executive may make regulations for this Act.  
*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Tuberculosis Ordinance 1950* No 6 (Cwlth).

## Endnotes

### 3 Legislation history

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The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

### Legislation before self-government

#### **Tuberculosis Act 1950 No 6**

notified 10 August 1950

commenced 10 August 1950

as amended by

#### **Ordinances Revision (Decimal Currency) Ordinance 1966 No 19 (as am by Ord 1967 No 36)**

notified 23 December 1966

commenced 23 December 1966

#### **Ordinances Revision (Age of Majority) Ordinance 1974 No 47**

notified 24 October 1974

commenced 1 November 1974

#### **Ordinances Revision (Health Commission) Ordinance 1975 No 17**

notified 1 July 1975

commenced 1 July 1975

#### **Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978

commenced 28 December 1978

#### **Ordinances Revision (Penalties) Ordinance 1979 No 26**

notified 31 August 1979

commenced 31 August 1979

#### **Magistrates Court Ordinance 1985 No 67**



notified 19 December 1985  
commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

**Community and Health Service (Consequential Provisions)  
Ordinance 1988 No 29**

notified 30 June 1988  
commenced 2 July 1988

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

**Legislation after self-government**

**Health Services (Consequential Provisions) Act 1990 No 63 sch 1**

notified 28 December 1990 (Gaz 1990 No S102)  
s 1, s 2 commenced 28 December 1990 (s 2 (1))  
sch 1 commenced 31 January 1991 (s 2 (2) and see Gaz 1991 No S4)

**Public Health (Miscellaneous Provisions) Act 1997 No 70 pt 6 and  
sch 1**

notified 9 October 1997 (Gaz 1997 No S300)  
ss 1-3 commenced 9 October 1997 (s 2 (1))  
pt 6 never commenced and rep by 2000 No 36 s 13  
sch 1 commenced 13 August 1998 (s 2 (2) and Gaz 1998 No S185)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 397**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 397 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

## Endnotes

4 Amendment history

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### **Nurse Practitioners Legislation Amendment Act 2004 A2004-10 pt 13**

notified LR 19 March 2004

s 1, s 2 commenced 19 March 2004 (LA s 75 (1))

pt 13 commenced 27 May 2004 (s 2 and CN2004-9)

## **4 Amendment history**

### **Administration**

s 2 om 1978 No 46

### **Definitions for Act**

s 3 def **chief health officer** ins 1997 No 70 sch 1  
def **Commissioner** ins 1975 No 17 s 18  
om 1988 No 29 sch  
def **Director-General** om 1975 No 17 s 18  
def **General Manager** ins 1988 No 29 sch  
om 1990 No 63 sch 1  
def **medical officer of health** ins 1990 No 63 sch 1  
om 1997 No 70 sch 1  
def **Minister** om 1978 No 46 sch 2  
def **service** ins 1988 No 29 sch  
om 1990 No 63 sch 1  
def **the court** sub 1985 No 67 sch  
am 1999 No 66 sch 3

### **Offences against Act—application of Criminal Code etc**

s 3A ins A2004-10 s 61

### **Doctors and authorised nurse practitioners—failure to notify**

s 4 am 1975 No 17; 1988 No 29; 1990 No 63 sch 1; 1997 No 70  
pt 6; 1998 No 54 sch  
sub A2004-10 s 62

### **Action by Director-General upon receipt of notice**

s 5 am 1975 No 17  
om 1988 No 29

### **Declaration requiring examination of lungs**

s 6 am 1974 No 47; 1998 No 54 sch  
sub 2001 No 44 amdt 1.4117

### **Compliance with declaration**

s 6A ins 2001 No 44 amdt 1.4117

### **Notice requiring individuals to undergo certain examinations**

s 7 am 1974 No 47; 1975 No 17; 1988 No 29; 1990 No 63 sch 1;  
1997 No 70 pt 6; 1998 No 54 sch

**If person cannot attend examination**

s 8 am 1975 No 17; 1988 No 29; 1990 No 63 sch 1; 1997 No 70  
pt 6  
sub 2001 No 44 amdt 1.4118

**Magistrate may order persons suffering from tuberculosis to be removed to institution etc**

s 9 am 1974 No 47; 1975 No 17; 1988 No 29; 1990 No 63 sch 1;  
1997 No 70 pt 6; 1998 No 54 sch

**Appeal against orders of detention**

s 10 am 1975 No 17; 1985 No 67; 1988 No 29; 1990 No 63 sch 1;  
1997 No 70 pt 6; 1999 No 66 sch 3

**Offences**

s 11 am 1966 No 19 (as am 1967 No 36); 1979 No 26; 1998 No 54

**Delegation**

s 12 am 1975 No 17  
sub 1988 No 29  
am 1990 No 63 sch 1; 1997 No 70 pt 6

**Regulation-making power**

s 13 am 1966 No 19 (as am 1967 No 36); 1979 No 26; 1989 No 38;  
1998 No 54 sch  
sub 2001 No 44 amdt 1.4119

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 63	31 May 1991
2	A2001-44	4 January 2002

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