

2006

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

MEDICAL TREATMENT (HEALTH DIRECTIONS) BILL 2006

EXPLANATORY STATEMENT

Circulated with authority of
Simon Corbell MLA
Attorney General

MEDICAL TREATMENT (HEALTH DIRECTIONS) Bill 2006

Outline

The Medical Treatment (Health Directions) Bill 2006 (the Bill) amends the *Medical Treatment Act 1994* in view of the Powers of Attorney Bill 2006. As the latter Bill governs all types of powers of attorney, the provisions in the Medical Treatment Act that deal with powers of attorney for withholding or withdrawing medical treatment have become redundant and are removed. The Bill is a redraft of the provisions of the Medical Treatment Act that relate to medical directions for withholding or withdrawing medical treatment. Some terms such as “impaired decision-making” and “health care facility” are introduced in the Bill as result of these terms being used in the Powers of Attorney Bill.

Financial Impact Statement

The Bill is budget neutral.

Detailed Explanation

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Medical Treatment (Health Directions) Act 2006*.

Clause 2 Commencement

Clause 2 provides that this Act commences on the day the *Powers of Attorney Act 2006* commences.

Clause 3 Dictionary

Clause 3 provides that the dictionary at the end of this Act is part of this Act.

Clause 4 Notes

This clause clarifies that a note included in this Act is explanatory and is not part of this Act.

Clause 5 Objectives of Act

Clause 5 relates to the objectives of this Act. The objectives are to protect patients' right to refuse unwanted medical treatment, and ensure patients' right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.

Clause 6 Other legal rights not affected

Clause 6 provides that this Act does not affect any right a person has under any other territory law to refuse medical treatment. It also clarifies that the Act does not apply to palliative care and does not affect the power and duty of a health professional or anyone else in relation to palliative care.

Palliative care is defined in the dictionary. It includes providing a patient with reasonable medical and nursing procedures for the relief of pain, suffering and discomfort, and the reasonable provision of food and water.

Clause 6 clarifies that the refusal or withdrawal of medical treatment does not limit any duty of a health professional or anyone else to advise and inform the patient or the patient's agent or guardian, or to provide medical treatment other than that which has been refused.

Part 2 Making and revoking health directions

Clause 7 Making health directions

Clause 7 enables an adult to make a direction (a **health direction**) to refuse, or require the withdrawal of, medical treatment generally or a particular kind of medical treatment. A direction may be oral or in any other way. A person who has impaired decision-making capacity cannot make a direction as well as a person for whom a guardian is appointed under the *Guardianship and Management of Property Act 1991*. The Powers of Attorney Bill 2006, clause 9, defines a person's "impaired decision-making capacity" to be where the person cannot make decisions in relation to his or her affairs or does not understand the nature or effect of the decision the person makes.

Clause 8 Requirements for written health directions

Clause 8 provides for requirements for written health directions. A written direction is signed by the person making it or by someone else in the presence of and at the direction of the person. Two other people should witness the signature and each witness must sign in the presence of the other witness and the person making the direction. Section 21 provides for the Minister to approve forms for this Act. If a form of written direction is approved for clause 8, then that should be used.

Clause 9 Requirements for non-written health directions

Clause 9 relates to health directions other than written ones. A non-written direction must be witnessed by two health professionals (one of whom is a doctor) present at the same time. This provision is subject to section 6 (Other legal rights not affected) and section 11 (People with decision-making capacity to be informed of alternatives etc).

Clause 10 Revocation of health directions

This clause enables a person who made a health direction to revoke it by clearly expressing the decision in writing, orally or in any other way, to a health professional or someone else.

Part 3 Health directions and health professionals**Clause 11 People with decision-making capacity to be informed of alternatives etc**

Clause 11 provides for the obligation of a health professional to inform a person who made a health direction about certain alternatives, if the person has decision-making capacity. The health professional, before complying with the health direction, must take all reasonable steps to ensure that the person has been informed about the following matters:

- the nature of the person's illness; and
- any alternative forms of treatment that may be available; and
- the consequences of the available forms of treatment; and
- the consequences of remaining untreated.

Before complying with the direction, the health professional must believe on reasonable grounds that the person has understood the information provided, and has weighed the various options and, after weighing the options, has affirmed the decision to refuse medical treatment or to have medical treatment withdrawn. Otherwise, this provision prohibits the health professional from giving effect to the health direction.

Clause 12 Health professionals not to proceed if unsure

This clause imposes further responsibility on a health professional before he or she could give effect to a health direction. The health professional must have belief on reasonable grounds that the direction complies with this Act, and that the person has not revoked or changed the direction or in any way changed the person's decision.

Clause 13 Notification of patients making or revoking health direction

Clause 13 requires a health professional or someone else to notify the person in charge of a health care facility, if they become aware that a patient in that facility has made a health direction, or has revoked a health direction.

Clause 14 Copy of patients making or revoking health direction

This clause provides for the obligation of the person in charge of the health care facility, who has been advised under clause 13, to ensure that a copy of the direction is placed with the patient's file or, if that is not possible, a note about it is placed in the file.

Clause 15 Health professionals not liable for certain decisions

Clause 15 protects a health professional who makes a decision honestly about a health direction from civil or criminal liability. He or she will not be liable only because his decision was that a person revoked, or intended to revoke, a health direction, or that the person was, or was not, at the time of making a health direction capable of understanding the nature and effect of the direction.

Clause 16 Protection of health professionals relying on decisions

This clause protects a health professional or a person acting under the direction of the health professional, from civil or criminal liability, for a decision to act under a health direction. Protection is given where two elements are met. One is that the health professional makes a decision that he or she believes on reasonable grounds complies with this Act. The second is that the health professional or other person acted honestly and in reliance on that decision, and withholds or withdraws medical treatment from a person.

This clause further clarifies that the withholding or withdrawing of treatment in these circumstances is not a breach of professional etiquette or ethics, or a breach of a rule of professional conduct.

Clause 17 Adequate pain relief

This clause provides that a person who has given a health direction has, while under the care of a health professional, a right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances. The corresponding duty, when providing such relief, is cast on the health professional to give adequate consideration to the person's account of the person's level of pain and suffering.

Part 4 Health directions and other statutory instruments

Clause 18 Effect of health directions on later guardian

Clause 18 provides for the obligation of the guardian of a person to give consent to medical treatment to the person in a way that is consistent with the person's health direction. For the purpose of this provision, a doctor must have declared that the person who made a direction has become a person with impaired decision-making capacity, and a guardian must have been appointed under the *Guardianship and Management of Property Act 1991*. The objective of this provision is to respect the wish of a person expressed in his or her health direction, even after a guardian is appointed for the person.

Clause 19 Effect of enduring powers of attorney on previous health direction

Clause 19 provides for the revocation of a health direction made by a person where the person later makes an enduring power of attorney under the *Powers of Attorney Act 2006* dealing with health care matters.

The *Powers of Attorney Act 2006*, section 12, defines a health care matter for a principal to be a matter relating to the principal's health care but does not include a special health care matter. That Act further defines 'health care' for a principal to include withholding or withdrawal of a life-sustaining measure but not to include first aid treatment, a non-intrusive examination made for diagnostic purposes, or the administration of a pharmaceutical drug if a prescription is not needed for it, and the drug is normally self-administered, and the administration is for a recommended purpose and at a recommended dosage level.

'Principal' is a person who makes a power of attorney.

Part 5 Miscellaneous

Clause 20 Offence to dishonestly induce making or revocation of health direction

This clause provides for the offence of dishonestly inducing someone else to make or revoke a health direction. Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Clause 21 Approved forms

Clause 21 enables the Minister to approve forms for the Act, including a form for a particular purpose. An approved form is a notifiable instrument. A notifiable instrument must be notified under the *Legislation Act 2001*.

Clause 22 Regulation-making power

Clause 22 empowers the Executive to make regulations for the Act.

Clause 23 Repeal of Medical Treatment Act 1994

Clause 24 repeals the *Medical Treatment Act 1994* A1994-72.

Dictionary

The dictionary defines the terms used in the Act.