



AUSTRALIAN CAPITAL TERRITORY

Medical Treatment Act 1994

No. 72 of 1994

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AUSTRALIAN CAPITAL TERRITORY

Medical Treatment Act 1994

No. 72 of 1994

**An Act to make provision with respect to the withholding or withdrawal
of medical treatment
and for related purposes**

[Notified in ACT Gazette S229: 1 November 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Medical Treatment Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

3. In this Act, unless the contrary intention appears—

“direction” means a direction made in accordance with Division 1 of Part II;

“health professional” means—

(a) a medical practitioner—

(i) registered under the *Medical Practitioners Act 1930*;
or

- (ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth; or
- (b) a nurse—
 - (i) registered under the *Nurses Act 1988*; or
 - (ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“medical treatment” means—

- (a) the carrying out of an operation;
- (b) the administration of a drug; or
- (c) the carrying out of any other medical procedure;

“palliative care” includes—

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

“power of attorney” means a power of attorney granted in accordance with Division 2 of Part II;

“superintendent”, in relation to a hospital, hospice or nursing home, means a person who is responsible for the day-to-day running of the hospital, hospice or nursing home.

Objectives of the Act

4. The objectives of this Act are—

- (a) to protect the right of patients to refuse unwanted medical treatment; and
- (b) to ensure the right of patients to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.

Other legal rights not affected

5. (1) This Act does not affect any right of a person under any other law of the Territory to refuse medical treatment.

(2) This Act does not apply to palliative care and does not affect any right, power or duty that a health professional or any other person has in relation to palliative care.

(3) The refusal or withdrawal of medical treatment under this Act does not limit any duty of a health professional or other person—

- (a) to advise and inform the patient or the patient's agent or guardian;
or
- (b) to provide medical treatment other than the medical treatment that has been refused or withdrawn.

PART II—REFUSAL OF TREATMENT

Division 1—Directions

Making of direction

6. A person who is of sound mind and has attained the age of 18 years may make a direction in writing, orally or in any other way in which the person can communicate to refuse, or for the withdrawal of, medical treatment—

- (a) generally; or
- (b) of a particular kind;

for a current condition.

Written directions—requirements

7. Subject to this Act, a written direction is not valid unless—

- (a) it is in accordance with Form 1 in the Schedule;
- (b) it is signed by the maker of the direction or by another person in the presence of and at the direction of the person making the direction;
- (c) the signature is witnessed by 2 persons; and
- (d) the witnesses each sign the direction in the presence of each other and the person making the direction.

Other directions—requirements

8. Subject to sections 5 and 11, a direction other than a written direction is not valid unless it is witnessed by 2 health professionals (1 of whom shall be a medical practitioner) present at the same time.

Revocation of direction

9. (1) A direction—

- (a) to refuse; or
- (b) for the withdrawal of;

medical treatment may be revoked by the person who gave the direction clearly expressing to a health professional or another person a decision to revoke the direction.

(2) For the purposes of subsection (1), a person may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

Cessation of direction

10. A direction ceases to apply to a person if the medical condition of the person has changed to such an extent that the condition in relation to which the direction was given is no longer current.

Competent person to be informed of alternatives etc.

11. (1) Before complying with a direction in respect of a person who is still competent to make a rational judgment, the health professional shall take all reasonable steps to ensure that the person has been informed about—

- (a) the nature of his or her illness;
- (b) any alternative forms of treatment that may be available;
- (c) the consequences of those forms of treatment; and
- (d) the consequences of remaining untreated.

(2) A health professional shall not give effect to the direction unless the health professional believes on reasonable grounds that the person has—

- (a) understood the information provided under subsection (1); and
- (b) weighed the various options and, as a result of this consideration, affirms the decision—
 - (i) to refuse medical treatment; or
 - (ii) to have medical treatment withdrawn.

Health professional not to proceed if in doubt

12. A health professional shall not withhold or withdraw medical treatment from a person in accordance with a direction unless the health professional believes on reasonable grounds that—

- (a) the direction complies with this Act; and
- (b) the person has not revoked the direction or in any way changed his or her decision since making the direction.

Division 2—Powers of Attorney**Granting powers of attorney**

13. (1) A person who is of sound mind and has attained the age of 18 years (in this Division called the “grantor”) may, by instrument in accordance with Form 2 in the Schedule, confer on another person (in this Division called the “grantee”) the power to consent, subject to the instrument, on behalf of the grantor to the withholding or withdrawal of medical treatment in the event that the grantor becomes incapacitated.

(2) An instrument under subsection (1) is not valid unless—

- (a) the grantee has attained the age of 18 years;

- (b) it is signed by the grantor or by another person in the presence of and at the direction of the grantor;
- (c) that signature is witnessed by 2 persons, neither of whom is the grantee, or a relative of the grantee; and
- (d) the grantee signs the instrument to indicate acceptance.

(3) A power of attorney granted in accordance with this section does not lapse by reason only of the incapacity of the grantor.

Circumstances in which power may be exercised

14. A grantee is not entitled to exercise a power conferred on him or her under the power of attorney granted pursuant to section 13 unless the grantor is declared by a medical practitioner to be incapacitated.

Power of attorney—revocation

15. Despite any rule of law to the contrary, a power of attorney is not revoked upon the appointment of a guardian under the *Guardianship and Management of Property Act 1991* in respect of the grantor, but is revoked in any other way in which a power of attorney under the *Powers of Attorney Act 1956* may be revoked.

Conditions on exercise of power

16. (1) Subject to subsection (2), a grantee shall not request the withholding or withdrawal of medical treatment from the grantor unless—

- (a) the grantee has consulted a medical practitioner about—
 - (i) the nature of the grantor’s illness;
 - (ii) any alternative forms of treatment that may be available to the grantor; and
 - (iii) the consequences to the grantor of remaining untreated; and
- (b) the grantee believes on reasonable grounds that if the grantor—
 - (i) were capable of making a rational judgment; and
 - (ii) were to give serious consideration to his or her own health and wellbeing;

the grantor would request the withholding or withdrawal of medical treatment from himself or herself.

(2) Where the grantee is—

- (a) aware the grantor has made a direction; and
- (b) not aware that the direction has been revoked;

the grantee may request the withholding or withdrawal of medical treatment from the grantor in accordance with the direction.

Health professional to ensure attorney’s decision is informed etc.

17. A health professional shall not comply with the request of a grantee to withhold or withdraw medical treatment from the grantor unless satisfied that—

- (a) the power of attorney under which the grantee's request is made complies with this Act; and
- (b) the grantee—
 - (i) understands the information given under subsection 16 (1); and
 - (ii) has weighed the various options and, as a result, affirms his or her request.

PART III—GENERAL PROVISIONS

Effect of direction or power of attorney on other instruments

18. (1) Where—

- (a) a person has made a direction or granted a power of attorney; and
- (b) a medical practitioner declares that the person has become incapacitated;

any power of a guardian to consent to medical treatment, where that guardian was appointed for the person under the *Guardianship and Management of Property Act 1991* after the direction was made or the power of attorney was granted shall be exercised in a manner that is consistent with the direction or power of attorney.

(2) A person for whom a guardian is appointed under the *Guardianship and Management of Property Act 1991* is deemed not to have the capacity to make a direction or grant a power of attorney.

(3) Where a person creates an enduring power of attorney under the *Powers of Attorney Act 1956*, any direction made or power of attorney granted by the person under this Act that is in effect shall be taken to be revoked.

(4) Where a person makes a direction or grants a power of attorney under this Act, any enduring power of attorney created by the person under the *Powers of Attorney Act 1956* that is in effect shall, to the extent that it applies to the withholding or withdrawal of medical treatment, be taken to be revoked but otherwise remains in effect.

Direction obtained by fraud etc.

19. (1) A person who—

- (a) by any deception or fraud procures or obtains; or

- (b) uses violence, threats, intimidation or otherwise hinders or interferes with another person for the purpose of procuring or obtaining;

from a person (whether directly or indirectly) a direction or power of attorney is guilty of an offence punishable, on conviction, by a term of imprisonment not exceeding 5 years.

(2) Any direction or power of attorney so procured or obtained shall be void.

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

Copies or notification of decisions

20. (1) A health professional or other person who becomes aware that a patient in a hospital, hospice or nursing home—

- (a) has made a direction or granted a power of attorney; or
- (b) having made the direction or granted the power of attorney, has revoked it;

shall notify the superintendent of that fact and the circumstances in which the direction or power of attorney was made, granted or revoked.

(2) A superintendent who is notified under subsection (1) shall take reasonable steps to ensure that—

- (a) a copy of the direction, power of attorney or revocation; or
- (b) if it is not possible to obtain a copy of the direction, power of attorney or revocation—a notation of the direction, power of attorney or revocation;

is placed with the patient's file.

Health professional not liable for certain decisions

21. A health professional incurs no liability for a decision made by him or her in good faith and without negligence as to whether a person—

- (a) revoked, or intended to revoke, a direction or power of attorney; or
- (b) was, or was not, at the time of making a direction or granting a power of attorney, capable of understanding the nature and consequences of the direction or power of attorney.

Protection of health professionals relying on decision

22. A health professional or a person acting under the direction of a health professional who, in good faith and in reliance on a decision that he or she believes on reasonable grounds complies with this Act, withholds or withdraws medical treatment from a person is not—

- (a) guilty of unsatisfactory professional conduct under any law of the Territory;
- (b) guilty of an offence against any law of the Territory; or
- (c) liable in any civil proceedings;

in connection with the withholding or withdrawal of medical treatment.

Adequate pain relief

23. (1) Notwithstanding the provisions of any other law of the Territory, a patient under the care of a health professional has a right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.

(2) In providing relief from pain and suffering to a patient, a health professional shall pay due regard to the patient's account of his or her level of pain and suffering.

Regulations

24. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART IV—AMENDMENT OF POWERS OF ATTORNEY ACT 1956

Principal Act

25. In this Part, “Principal Act” means the *Powers of Attorney Act 1956*.

Guardianship and consent to medical treatment under enduring power of attorney

26. Section 13 of the Principal Act is amended—

- (a) by omitting from subparagraph (1) (b) (i) “or”;
- (b) by adding at the end of subparagraph (1) (b) (ii) “or”; and
- (c) by adding at the end of paragraph (1) (b) the following subparagraph:
 - “(iii) the withholding or withdrawal of medical treatment.”.

Schedule

27. The Schedule to the Principal Act is amended—

- (a) by inserting in Part C of Form 2 “, or to the withholding or withdrawal of medical treatment,” after “treatment” (first occurring);
- (b) by inserting in Part C of Form 2 before clause 11 the following:

“If you sign this Part, any power of attorney under the Medical Treatment Act 1994 that you have previously signed will no longer have any effect.”; and

(c) by inserting after paragraph 15 in Part C of Form 2 the following clause:

“Authority to consent to withholding or withdrawing medical treatment

15A. My attorney or attorneys may consent on my behalf to—

- (a) medical treatment generally being withheld or withdrawn; or
- (b) the following medical treatment being withheld or withdrawn:

[Set out here any medical treatment the withholding or withdrawal of which you want your attorney or attorneys to consent to.

If you wish to authorise your attorney or attorneys to consent to the withholding or withdrawal of medical treatment generally on your behalf, cross out (b).

If you wish to authorise your attorney or attorneys to consent to the withholding or withdrawal of specified medical treatment on your behalf, cross out (a).

If you do not wish your attorney or attorneys to consent to the withholding or withdrawal of any medical treatment on your behalf, cross out paragraph 15A.

If you sign a direction or a power of attorney under the Medical Treatment Act 1994 after you have signed this form, paragraph 15A may no longer have effect.]”.

SCHEDULE

FORM 1

Section 7

**WRITTEN DIRECTION UNDER
THE MEDICAL TREATMENT ACT 1994**

IMPORTANT NOTICE:

*If you have **previously** given a power of attorney under the Powers of Attorney Act 1956, that power might be affected by filling out this form. You should note that the power to make decisions relating to the withholding or withdrawal of medical treatment for the condition to which this form relates will now be exercised according to your instructions on this form and not the form you previously filled in under the Powers of Attorney Act 1956.*

*If you give a power of attorney under the Powers of Attorney Act 1956 **after** you have filled in this form, this form will no longer have any effect.*

1. I, (name) of (address) DIRECT that, in relation to my current condition (describe current condition)—

- * (a) medical treatment generally be withheld or withdrawn; or
- * (b) medical treatment, being (specify particular kind of medical treatment), be withheld or withdrawn.

2. I REVOKE all other directions previously made by me under the *Medical Treatment Act 1994*.

3. I CERTIFY that this direction is made voluntarily and without inducement or compulsion.

4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

.....
 Signature of person making the direction (or of another person signing in the presence of and by the direction of the maker of the direction)

DATED:

.....
 Signature of witness

DATED:

.....
 Signature of witness

*Delete whichever is not applicable

SCHEDULE—continued

FORM 2

Section 13

POWER OF ATTORNEY UNDER THE MEDICAL TREATMENT ACT 1994

IMPORTANT NOTICE:

This form will allow your chosen attorney (who must be over 18) to make certain medical decisions for you if you become incapable of making those decisions yourself.

This form allows your attorney to make decisions about withholding or withdrawing medical treatment. You can provide that this is to include medical treatment generally, or you can specify a particular kind of treatment which you wish to be withheld or withdrawn.

To create a power of attorney this form must be signed and dated either by you or by another person you have asked to sign and date the form for you. If you ask another person to sign and date this form for you, they should do so in your presence. You must also have two (2) witnesses sign the form. The person to whom you are giving the power of attorney, or any of that person's relatives, cannot be witnesses.

If you have previously given a power of attorney under the Powers of Attorney Act 1956, that power might be affected by filling out this form. You should note that the power to make decisions relating to the withholding or withdrawal of medical treatment will now be exercised according to your instructions on this form and not the form you previously filled in under the Powers of Attorney Act 1956.

If you give a power of attorney under the Powers of Attorney Act 1956 after you have filled in this form, this form will no longer have any effect.

Before signing this form, you should read it carefully.

- 1. I, (name of grantor) of (address) APPOINT (name of grantee) of (address) to be my attorney for the purposes of the Medical Treatment Act 1994.
2. I AUTHORISE my attorney, if I become incapacitated, to request that—
*(a) medical treatment generally be withheld or withdrawn; or
*(b) medical treatment, being (specify particular kind of medical treatment), be withheld or withdrawn;

if he or she believes on reasonable grounds that, if I were capable of making a rational judgment and were to give serious consideration to my health and wellbeing, I would make that request.

- 3. I REVOKE all other powers of attorney previously granted by me under the Medical Treatment Act 1994.

- 4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

Signature of person giving the power (or of another person signing in the presence of and by the direction of the person giving the power)

DATED:

SCHEDULE—continued

Signature of witness [*not related to the grantee*]

DATED:

.....
Signature of witness [*not related to the grantee*]

ACCEPTANCE BY GRANTEE

I have read this power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the *Medical Treatment Act 1994*.

DATED:

.....
Signature of grantee

*Delete whichever is not applicable

[Presentation speech made in Assembly on 21 April 1994]