



Australian Capital Territory

# **Medical Treatment Act 1994**

**A1994-72**

**Republication No 2**

**Effective: 7 July 2005 – 29 May 2007**

Republication date: 7 July 2005

Last amendment made by A2004-39

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Medical Treatment Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 7 July 2005. It also includes any amendment, repeal or expiry affecting the republished law to 7 July 2005.

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

# Medical Treatment Act 1994

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07/07/05

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Australian Capital Territory

## Medical Treatment Act 1994

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

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## Part 1 Preliminary

### 1 Short title

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

### 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).

***direction*** means a direction made in accordance with division 2.1.

***health professional*** means a doctor or nurse.

***medical treatment*** means—

- (a) the carrying out of an operation; or
- (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 2.2.

***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.

### 4 Objectives of Act

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.

## **5 Other legal rights not affected**

- (1) This Act does not affect any right of a person under any other Territory law 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 2 Refusal of treatment

### Division 2.1 Directions

#### 6 Making of direction

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.

#### 7 Written directions—requirements

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

- (a) it is in accordance with schedule 1, form 1; and
- (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; and
- (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.

#### 8 Other directions—requirements

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.

#### 9 Revocation of direction

- (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 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.

## **11 Competent person to be informed of alternatives etc**

- (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; and
  - (b) any alternative forms of treatment that may be available; and
  - (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.

**12 Health professional not to proceed if in doubt**

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 2.2 Powers of attorney**

**13 Granting powers of attorney**

- (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 schedule 1, form 2, 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; and
  - (b) it is signed by the grantor or by another person in the presence of and at the direction of the grantor; and
  - (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.

**14 Circumstances in which power may be exercised**

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

**15 Power of attorney—revocation**

Despite any rule of law to the contrary, a power of attorney is not revoked on 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.

**16 Conditions on exercise of power**

- (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; and
    - (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) If 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.

**17 Health professional to ensure attorney's decision is informed etc**

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 section 16 (1); and
  - (ii) has weighed the various options and, as a result, affirms his or her request.

## Part 3                      General provisions

### 18                      Effect of direction or power of attorney on other instruments

- (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.

### 19                      Direction obtained by fraud etc

- (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 commits an offence.

Maximum penalty: imprisonment for 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, misstatement or undue influence under any other law in force in the ACT.

## **20 Copies or notification of decisions**

- (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.

**21 Health professional not liable for certain decisions**

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.

**22 Protection of health professionals relying on decision**

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 Territory law; or
- (b) guilty of an offence against any Territory law; or
- (c) liable in any civil proceedings;

in connection with the withholding or withdrawal of medical treatment.

**23 Adequate pain relief**

- (1) Notwithstanding the provisions of any other Territory law, 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.

**24 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.



**Schedule 1**

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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

**Form 2****Power of attorney under Medical Treatment Act 1994**

(see s 13)

**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.

Schedule 1

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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:

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

## Endnotes

1 About the endnotes

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## 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
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
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

**Medical Treatment Act 1994 No 72**

notified 1 November 1994 (Gaz 1994 No S229)  
commenced 1 November 1994 (s 2)

as amended by

**Medical Treatment (Amendment) Act 1997 No 76**

notified 25 November 1997 (Gaz 1997 No S360)  
commenced 25 November 1997 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 248**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 248 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Health Professionals Legislation Amendment Act 2004 A2004-39  
sch 1 pt 1.7**

notified LR 8 July 2004  
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))  
sch 1 pt 1.7 commenced 7 July 2005 (s 2 and see Health  
Professionals Act 2004 A2004-38, s 2 and CN2005-11)

### 4 Amendment history

**Commencement**

s 2 om 2001 No 44 amdt 1.2863

**Definitions for Act**

s 3 def *health professional* sub A2004-39 amdt 1.35

**Directions**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R1 LA

**Making of direction**

s 6 am 1997 No 76 s 4

**Cessation of direction**

s 10 om 1997 No 76 s 5

**Powers of attorney**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R1 LA

## Endnotes

### 5 Earlier republications

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**Regulation-making power**

s 24 sub 2001 No 44 amdt 1.2864

**Amendment of Powers of Attorney Act 1956**

pt 4 hdg om 2001 No 44 amdt 1.2865

**Principal Act**

s 25 om 2001 No 44 amdt 1.2865

**Guardianship and consent to medical treatment under enduring power of attorney**

s 26 om 2001 No 44 amdt 1.2865

**Schedule**

s 27 om 2001 No 44 amdt 1.2865

**Schedule 1**

sch 1 (prev sch) am 1997 No 76 s 6  
renum R1 LA

## 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R0A 22 June 2005	25 Nov 1997– 11 Sept 2001	A1997-76	amendments by A1997-76
R1 21 Feb 2002	21 Feb 2002– 6 July 2005	A2001-44	amendments by A2001-44

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