

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Medical Treatment (Health Directions) Bill 2006

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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THE LEGISLATIVE ASSEMBLY
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(As presented)

(Attorney-General)

Medical Treatment (Health Directions) Bill 2006

A Bill for

An Act to provide for directions about the withholding or withdrawal of medical treatment, and for related purposes

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

J2005-809

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Medical Treatment (Health Directions) Act 2006*.

4 **2 Commencement**

5 This Act commences on the commencement of the *Powers of*
6 *Attorney Act 2006*.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Dictionary**

10 The dictionary at the end of this Act is part of this Act.

11 *Note 1* The dictionary at the end of this Act defines certain terms used in this
12 Act, and includes references (*signpost definitions*) to other terms
13 defined elsewhere.

14 For example, the signpost definition '*decision-making capacity*—see
15 the *Powers of Attorney Act 2006*, section 9 (1).' means that the term
16 'decision-making capacity' is defined in that section and the definition
17 applies to this Act.

18 *Note 2* A definition in the dictionary (including a signpost definition) applies to
19 the entire Act unless the definition, or another provision of the Act,
20 provides otherwise or the contrary intention otherwise appears (see
21 Legislation Act, s 155 and s 156 (1)).

22 **4 Notes**

23 A note included in this Act is explanatory and is not part of this Act.

24 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
25 notes.

1 **5 Objectives of Act**

2 The objectives of this Act are—

3 (a) to protect the right of patients to refuse unwanted medical
4 treatment; and

5 (b) to ensure the right of patients to receive relief from pain and
6 suffering to the maximum extent that is reasonable in the
7 circumstances.

8 **6 Other legal rights not affected**

9 (1) This Act does not affect any right of a person under any other
10 territory law to refuse medical treatment.

11 (2) This Act does not apply to palliative care and does not affect any
12 right, power or duty that a health professional or anyone else has in
13 relation to palliative care.

14 (3) The refusal or withdrawal of medical treatment under this Act does
15 not limit any duty of a health professional or anyone else—

16 (a) to advise and inform the patient or the patient's agent or
17 guardian; or

18 (b) to provide medical treatment other than the medical treatment
19 that has been refused or withdrawn.

1 **Part 2** **Making and revoking health**
2 **directions**

3 **7** **Making health directions**

- 4 (1) An adult can make a direction (a *health direction*) to refuse, or
5 require the withdrawal of, medical treatment generally or a
6 particular kind of medical treatment.
- 7 (2) A health direction may be made in writing, orally or in any other
8 way.
- 9 (3) However, a health direction cannot be made by—
- 10 (a) a person for whom a guardian is appointed under the
11 *Guardianship and Management of Property Act 1991*; or
- 12 (b) anyone else who has impaired decision-making capacity.

13 **8** **Requirements for written health directions**

14 A written health direction is not valid unless—

- 15 (a) it is signed by the maker of the direction or by someone else in
16 the presence of and at the direction of the person making the
17 direction; and
- 18 (b) the signature is witnessed by 2 other people; and
- 19 (c) each witness signs the direction in the presence of the other
20 witness and the person making the direction.

21 *Note* If a form is approved under s 21 for this provision, the form must be
22 used.

1 **9 Requirements for non-written health directions**

2 (1) A health direction (other than a written direction) is not valid unless
3 it is witnessed by 2 health professionals (1 of whom is a doctor)
4 present at the same time.

5 (2) Subsection (1) is subject to section 6 (Other legal rights not
6 affected) and section 11 (People with decision-making capacity to
7 be informed of alternatives etc).

8 **10 Revocation of health directions**

9 (1) A health direction to refuse, or for the withdrawal of, medical
10 treatment may be revoked by the person who gave the direction
11 clearly expressing to a health professional or someone else a
12 decision to revoke the direction.

13 (2) For subsection (1), a person may clearly express or indicate a
14 decision in writing, orally or in any other way.

1 **Part 3** **Health directions and health**
2 **professionals**

3 **11** **People with decision-making capacity to be informed of**
4 **alternatives etc**

- 5 (1) This section applies if—
6 (a) a person has made a health direction; and
7 (b) the person has decision-making capacity.
- 8 (2) Before complying with the health direction, a health professional
9 treating the person must take all reasonable steps to ensure that the
10 person has been informed about—
11 (a) the nature of the person's illness; and
12 (b) any alternative forms of treatment that may be available; and
13 (c) the consequences of the available forms of treatment; and
14 (d) the consequences of remaining untreated.
- 15 (3) The health professional must not give effect to the health direction
16 unless the health professional believes, on reasonable grounds, that
17 the person—
18 (a) has understood the information provided under subsection (2);
19 and
20 (b) has weighed the various options; and
21 (c) after weighing the options, has confirmed the decision—
22 (i) to refuse medical treatment; or
23 (ii) to have medical treatment withdrawn.

-
- 1 **12 Health professionals not to proceed if unsure**
- 2 A health professional must not withhold or withdraw medical
- 3 treatment from a person in accordance with a health direction unless
- 4 the health professional believes, on reasonable grounds, that—
- 5 (a) the direction complies with this Act; and
- 6 (b) the person has not revoked the direction or changed the
- 7 person’s decision since making the direction.
- 8 **13 Notification of patients making or revoking health**
- 9 **direction**
- 10 (1) This section applies if a health professional or someone else
- 11 becomes aware that a patient in a health care facility—
- 12 (a) has made a health direction; or
- 13 (b) has revoked a health direction.
- 14 (2) The health professional or other person must tell the person in
- 15 charge of the health care facility about the making or revoking of
- 16 the health direction and the circumstances in which the direction
- 17 was made or revoked.
- 18 **14 Copy of patients making or revoking health direction**
- 19 If the person in charge of a health facility is told under section 13
- 20 about a patient making or revoking a health direction, the person
- 21 must take reasonable steps to ensure that—
- 22 (a) a copy of the health direction or revocation is placed with the
- 23 patient’s file; or
- 24 (b) if it is not possible to get a copy of the health direction or
- 25 revocation—a note about the direction or revocation is placed
- 26 with the patient’s file.

1 **15 Health professionals not liable for certain decisions**

- 2 (1) This section applies if a health professional makes a decision
3 honestly about whether a person—
4 (a) revoked, or intended to revoke, a health direction; or
5 (b) was, or was not, at the time of making a health direction,
6 capable of understanding the nature and effect of the direction.
7 (2) Civil or criminal liability is not incurred only because of the making
8 of the decision.

9 **16 Protection of health professionals relying on decisions**

- 10 (1) This section applies to a health professional, or a person acting
11 under the direction of a health professional, if—
12 (a) the health professional makes a decision that the health
13 professional believes, on reasonable grounds, complies with
14 this Act; and
15 (b) the health professional, or other person, honestly and in
16 reliance on the decision, withholds or withdraws medical
17 treatment from a person.
18 (2) The withholding or withdrawing of treatment is not—
19 (a) a breach of professional etiquette or ethics; or
20 (b) a breach of a rule of professional conduct.
21 (3) Civil or criminal liability is not incurred only because of the
22 withholding or withdrawing of treatment.

23 **17 Adequate pain relief**

- 24 (1) This section applies in relation to a person who—
25 (a) has given a health direction that medical treatment be withheld
26 or withdrawn from the person; and

- 1 (b) is under the care of a health professional.
- 2 (2) The person has a right to receive relief from pain and suffering to
- 3 the maximum extent that is reasonable in the circumstances.
- 4 (3) In providing relief from pain and suffering to the person, the health
- 5 professional must give adequate consideration to the person's
- 6 account of the person's level of pain and suffering.

1 **Part 4** **Health directions and other**
2 **statutory instruments**

3 **18** **Effect of health directions on later guardian**

- 4 (1) This section applies if—
- 5 (a) a person has made a health direction; and
- 6 (b) a doctor declares that the person has become a person with
7 impaired decision-making capacity; and
- 8 (c) a guardian is appointed for the person under the *Guardianship*
9 *and Management of Property Act 1991* after the direction was
10 made.
- 11 (2) Any power of the guardian to consent to medical treatment for the
12 person must be exercised in a way that is consistent with the health
13 direction.

14 **19** **Effect of enduring powers of attorney on previous health**
15 **direction**

- 16 (1) This section applies if—
- 17 (a) a person makes a health direction; and
- 18 (b) the person later makes an enduring power of attorney under the
19 *Powers of Attorney Act 2006*; and
- 20 (c) the enduring power of attorney deals with health care matters.
- 21 (2) The health direction is revoked by force of this section.
- 22 (3) In this section:
- 23 *health care matter*, for a principal—see the *Powers of Attorney*
24 *Act 2006*, section 12.
- 25 *principal*—see the *Powers of Attorney Act 2006*, section 6.

1 **Part 5** **Miscellaneous**

2 **20** **Offence to dishonestly induce making or revocation of**
3 **health direction**

4 A person must not dishonestly induce someone else to make or
5 revoke a health direction.

6 Maximum penalty: 100 penalty units, imprisonment for 1 year or
7 both.

8 **21** **Approved forms**

9 (1) The Minister may approve forms for this Act.

10 (2) If the Minister approves a form for a particular purpose, the
11 approved form must be used for that purpose.

12 *Note* The Legislation Act contains provisions about forms (see s 255).

13 (3) An approved form is a notifiable instrument.

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

15 **22** **Regulation-making power**

16 The Executive may make regulations for this Act.

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

19 **23** **Repeal of Medical Treatment Act 1994**

20 The *Medical Treatment Act 1994* A1994-72 is repealed.

1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • Act
- 7 • doctor
- 8 • nurse
- 9 • power.

10 ***day hospital*** means a facility where a person is admitted for surgical
11 or medical treatment and discharged on the same day.

12 ***decision-making capacity***—see the *Powers of Attorney Act 2006*,
13 section 9 (1).

14 ***disability care*** means care that is provided to a person with a
15 disability in a residential facility in which the person is also
16 provided with accommodation that includes—

- 17 (a) appropriate staffing to meet the nursing and personal care
18 needs of the person; and
- 19 (b) meals and cleaning services; and
- 20 (c) furnishings, furniture and equipment for the provision of the
21 care and accommodation.

22 ***health care facility*** means a hospital, residential aged care facility or
23 residential disability care facility.

24 *Note* ***Hospital, residential aged care facility*** and ***residential disability care***
25 ***facility*** are defined in this dictionary.

26 ***health direction*** means a direction under section 7.

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

28 ***hospital*** means a public hospital, private hospital or day hospital.

- 1 *impaired decision-making capacity*—see the *Powers of Attorney*
2 *Act 2006*, section 9 (2).
- 3 *palliative care* includes—
- 4 (a) the provision of reasonable medical and nursing procedures for
5 the relief of pain, suffering and discomfort; and
- 6 (b) the reasonable provision of food and water.
- 7 *residential aged care facility* means a residential facility that
8 provides residential care to residents at the facility.
- 9 *residential care*—see the *Aged Care Act 1997* (Cwlth), section 41-3
10 (Meaning of *residential care*).
- 11 *residential disability care facility*—
- 12 (a) means a residential facility that provides disability care to
13 people with disabilities; but
- 14 (b) does not include a residential aged care facility.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2006.
- 2 **Notification**
Notified under the Legislation Act on 2006.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.