



Australian Capital Territory

# **Medical Treatment (Health Directions) Act 2006**

**A2006-51**

**Republication No 2**

**Effective: 1 September 2016**

Republication date: 1 September 2016

Last amendment made by [A2016-10](#)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Medical Treatment (Health Directions) Act 2006* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 September 2016.

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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### 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 the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Medical Treatment (Health Directions) Act 2006

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
3	Dictionary 2
4	Notes 2
5	Objectives of Act 2
6	Other legal rights not affected 3
<b>Part 2</b>	<b>Making and revoking health directions</b>
7	Making health directions 4
8	Requirements for written health directions 4
9	Requirements for non-written health directions 5
10	Revocation of health directions 5

---

R2 Medical Treatment (Health Directions) Act 2006 contents 1  
01/09/16 Effective: 01/09/16

	Page
<b>Part 3</b>	<b>Health directions and health professionals</b>
11	People with decision-making capacity to be informed of alternatives etc 6
12	Health professionals not to proceed if unsure 7
13	Notification of patients making or revoking health direction 7
14	Copy of patients making or revoking health direction 7
15	Health professionals not liable for certain decisions 8
16	Protection of health professionals relying on decisions 8
17	Adequate pain relief 9
<b>Part 4</b>	<b>Health directions and other statutory instruments</b>
18	Effect of health directions on later guardian or health attorney 10
19	Relationship between health directions and enduring powers of attorney 11
<b>Part 5</b>	<b>Miscellaneous</b>
20	Offence to dishonestly induce making or revocation of health direction 13
21	Approved forms 13
22	Regulation-making power 13
<b>Dictionary</b>	14
<b>Endnotes</b>	
1	About the endnotes 16
2	Abbreviation key 16
3	Legislation history 17
4	Amendment history 17
5	Earlier republications 18



Australian Capital Territory

# Medical Treatment (Health Directions) Act 2006

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

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## Part 1 Preliminary

### 1 Name of Act

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

### 3 Dictionary

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

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

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

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

### 4 Notes

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

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

### 5 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.

**6 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 anyone else 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 anyone else—
  - (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 Making and revoking health directions

### 7 Making health directions

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

### 8 Requirements for written health directions

A written health direction is not valid unless—

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

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



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

- (1) A health direction (other than a written direction) is not valid unless it is witnessed by 2 health professionals (1 of whom is a doctor) present at the same time.
- (2) Subsection (1) is subject to section 6 (Other legal rights not affected) and section 11 (People with decision-making capacity to be informed of alternatives etc).

**10 Revocation of health directions**

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

## **Part 3 Health directions and health professionals**

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

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

**12 Health professionals not to proceed if unsure**

A health professional must not withhold or withdraw medical treatment from a person in accordance with a health 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 changed the person's decision since making the direction.

**13 Notification of patients making or revoking health direction**

- (1) This section applies if a health professional or someone else becomes aware that a patient in a health care facility—
  - (a) has made a health direction; or
  - (b) has revoked a health direction.
- (2) The health professional or other person must tell the person in charge of the health care facility about the making or revoking of the health direction and the circumstances in which the direction was made or revoked.

**14 Copy of patients making or revoking health direction**

If the person in charge of a health facility is told under section 13 about a patient making or revoking a health direction, the person must take reasonable steps to ensure that—

- (a) a copy of the health direction or revocation is placed with the patient's file; or
- (b) if it is not possible to get a copy of the health direction or revocation—a note about the direction or revocation is placed with the patient's file.

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

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

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

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

**17 Adequate pain relief**

- (1) This section applies in relation to a person who—
  - (a) has given a health direction that medical treatment be withheld or withdrawn from the person; and
  - (b) is under the care of a health professional.
- (2) The person has a right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.
- (3) In providing relief from pain and suffering to the person, the health professional must 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

### 18 Effect of health directions on later guardian or health attorney

- (1) This section applies if—
  - (a) a person has made a health direction; and
  - (b) a doctor declares that the person has become a person with impaired decision-making capacity; and
  - (c) after the direction was made—
    - (i) a guardian is appointed for the person under the *Guardianship and Management of Property Act 1991*; or
    - (ii) a health attorney is asked to give a consent under the *Guardianship and Management of Property Act 1991*, section 32D.
- (2) Any power of the guardian or health attorney to consent to medical treatment for the person, or to the person participating in medical research or low-risk research, must be exercised in a way that is consistent with the health direction.
- (3) However, a health attorney need not act consistently with a health direction if it is not reasonable to do so.

#### Examples

- 1 a health attorney is asked to make an urgent medical decision and the health attorney does not have time to look at the health direction
- 2 a health attorney is unaware, after making reasonable enquiries, that a health direction exists

*Note 1* A health attorney is protected from civil and criminal actions and proceedings in relation to consent given, or not given, in good faith as a health attorney (see *Guardianship and Management of Property Act 1991*, s 32K).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(4) In this section:

*low-risk research*, in relation to a person—see the [Powers of Attorney Act 2006](#), section 41A.

*medical research*, in relation to a person—see the [Powers of Attorney Act 2006](#), section 41A.

## 19 Relationship between health directions and enduring powers of attorney

(1) This section applies if—

(a) a person makes—

(i) a health direction; and

(ii) an enduring power of attorney under the [Powers of Attorney Act 2006](#); and

(b) the enduring power of attorney deals with a health care matter or a medical research matter.

(2) If the health direction is consistent with the enduring power of attorney, an attorney authorised under the enduring power of attorney must comply with the health direction when making a decision about a health care matter or medical research matter.

(3) However, if the health direction is inconsistent with the enduring power of attorney, when making a decision about a health care matter or medical research matter, the attorney must comply with—

(a) if the health direction was made before the power of attorney—the power of attorney; or

(b) if the health direction was made after the power of attorney—the health direction.

(4) The ACAT may, on application by an attorney, declare that a health direction is consistent or inconsistent with an enduring power of attorney.

(5) In this section:

*attorney*—see the *Powers of Attorney Act 2006*, section 6.

*health care matter*, for a principal—see the *Powers of Attorney Act 2006*, section 12.

*medical research matter*, for a principal—see the *Powers of Attorney Act 2006*, section 12A.

*principal*—see the *Powers of Attorney Act 2006*, section 6.



## Part 5                      Miscellaneous

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

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

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

### 21                      **Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*            The [Legislation Act](#) contains provisions about forms (see s 255).

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

*Note*            A notifiable instrument must be notified under the [Legislation Act](#).

### 22                      **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](#).

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- Act
- doctor
- nurse
- power.

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

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

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

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

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

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

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

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

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

***impaired decision-making capacity***—see the [Powers of Attorney Act 2006](#), section 9 (2).

***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.

***residential aged care facility*** means a residential facility that provides residential care to residents at the facility.

***residential care***—see the [Aged Care Act 1997](#) (Cwlth), section 41-3 (Meaning of *residential care*).

***residential disability care facility***—

- (a) means a residential facility that provides disability care to people with disabilities; but
- (b) does not include a residential aged care facility.

## 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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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

### 3 Legislation history

#### **Medical Treatment (Health Directions) Act 2006 A2006-51**

notified LR 29 November 2006

s 1, s 2 commenced 29 November 2006 (LA s 75 (1))

remainder commenced 30 May 2007 (s 2 and see [Powers of Attorney Act 2006 A2006-50 s 2](#))

as amended by

#### **[Powers of Attorney Amendment Act 2016 A2016-10 sch 1 pt 1.2](#)**

notified LR 1 March 2016

s 1, s 2 commenced 1 March 2016 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 September 2016 (s 2 and LA s 79)

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Effect of health directions on later guardian or health attorney**

s 18 sub [A2016-10](#) amdt 1.30

#### **Relationship between health directions and enduring powers of attorney**

s 19 sub [A2016-10](#) amdt 1.30

#### **Repeal of Medical Treatment Act 1994**

s 23 om LA s 89 (3)

## Endnotes

5 Earlier republications

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### 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>
R1 30 May 2007	30 May 2007– 31 Aug 2016	not amended	new Act

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