

# Medical Treatment (Enduring Power of Attorney) Act 1990

No. 7 of 1990

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Victoria

No. 7 of 1990

## Medical Treatment (Enduring Power of Attorney) Act 1990

[Assented to 10 April 1990]

The Parliament of Victoria enacts as follows:

### Purposes

1. The purposes of this Act are—
  - (a) to define the power of an agent appointed under an enduring power of attorney (medical treatment);
  - (b) to provide for safeguards over the exercise of an enduring power of attorney (medical treatment);
  - (c) to amend the *Instruments Act* 1958 to make it clear that the powers of an agent under an enduring power of attorney under that Act do not include a power to make decisions about medical treatment;
  - (d) to provide that sections 6B (2) and 463 (B) of the *Crimes Act* 1958 continue to have effect and that inciting, aiding or abetting suicide, or homicide, continue to be offences.

### Commencement

2. This Act comes into operation on a day to be proclaimed.

### Principal Act

3. In this Act, the *Medical Treatment Act 1988* is called the Principal Act.

### Amendment of section 1—purpose

4. After section 1 (b) of the Principal Act, insert—  
“(c) to enable an agent to make decisions about medical treatment on behalf of an incompetent person.”.

### Amendment of section 3

5. In section 3 of the Principal Act, in the definition of “Refusal of treatment certificate”, after “Schedule 1” insert “or 3”.

### Provisions relating to suicide and other laws

6. After section 4 (2) of the Principal Act, insert—  
“(3) This Act does not—  
(a) affect the operation of section 6B (2) or 463B of the *Crimes Act 1958*; or  
(b) limit the operation of any other law.  
(4) A refusal of medical treatment under this Act does not limit any duty of a medical practitioner 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 medical treatment that has been refused.”.

### New sections 5A–5E inserted

7. After section 5 of the Principal Act insert—

### Agents and guardians

- “5A. (1) A decision about medical treatment of a person may be made in accordance with this Act—  
(a) if the person has appointed an agent in accordance with this section, by that agent; or  
(b) if the person is a represented person and an appropriate order has been made under the *Guardianship and Administration Board Act 1986* providing for decisions about medical treatment, by the person’s guardian.  
(2) An appointment of an agent—  
(a) shall be by way of an enduring power of attorney (medical treatment) in the form of Schedule 2 and must be witnessed by two persons, one of whom shall be a person authorised by law to take and receive statutory declarations and neither of whom shall be the agent to be appointed; and

(b) takes effect if and only if the person giving the power becomes incompetent.

(3) If a person gives an enduring power of attorney (medical treatment), any earlier power of attorney (medical treatment) given by that person is revoked.

(4) Despite any rule of law to the contrary, an enduring power of attorney (medical treatment) is not revoked—

(a) by the subsequent incapacity of the donor of the power; or

(b) upon the donor of the power becoming—

(i) a protected person within the meaning of the *Public Trustee Act 1958*; or

(ii) a represented person within the meaning of the *Guardianship and Administration Board Act 1986*—

but is revoked in any other way in which a general power of attorney is revoked.”

#### **Refusal of treatment certificate by agent or guardian**

“5B. (1) If a medical practitioner and another person are each satisfied—

(a) that the patient’s agent or guardian has been informed about the nature of the patient’s current condition to an extent that would be reasonably sufficient to enable the patient, if he or she were competent, to make a decision about whether or not to refuse medical treatment generally or of a particular kind for that condition; and

(b) that the agent or guardian understands that information—

the agent or guardian, on behalf of the patient—

(c) may refuse medical treatment generally; or

(d) may refuse medical treatment of a particular kind—

for that condition.

(2) An agent or guardian may only refuse medical treatment on behalf of a patient if—

(a) the medical treatment would cause unreasonable distress to the patient; or

(b) there are reasonable grounds for believing that the patient, if competent, and after giving serious consideration to his or her health and well-being, would consider that the medical treatment is unwarranted.

(3) Where a refusal is made by an agent or a guardian, a refusal of treatment certificate must be completed in the form of Schedule 3.”

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**Guardianship and Administration Board may suspend or revoke authority**

“5C. (1) The Guardianship and Administration Board may suspend or revoke an enduring power of attorney (medical treatment) on an application under this section.

(2) An application may be made by—

- (a) the Public Advocate; or
- (b) a person who, in the opinion of the Board, has a special interest in the affairs of the donor of the power; or
- (c) the agent appointed under the power.

(3) If the Board is satisfied that refusal of medical treatment, either generally or of a particular kind, at a particular time or in particular circumstances is not in the best interests of the donor, the Board may suspend the power for a specified period.

(4) If the Board is satisfied that it is not in the best interests of the donor of a power for the power to continue, or for the power to continue to be exercisable by the agent, the Board may revoke the power.

(5) Where—

- (a) the donor of a power is a patient in a public hospital, denominational hospital, private hospital or nursing home; and
- (b) the Board revokes or suspends the power—

the Board must give written notice of the revocation or suspension to the chief executive officer (by whatever name called) of the hospital or home and the chief executive officer must ensure that a copy of the notice is placed with the patient’s record kept by the hospital or home.”

**Revocation or suspension of refusal of treatment certificate**

“5D. (1) If—

- (a) an enduring power of attorney (medical treatment) is revoked; or
- (b) the order appointing a guardian under the *Guardianship and Administration Board Act 1986* is revoked—

any refusal of treatment certificate completed by the agent or guardian is also revoked.

(2) If the Guardianship and Administration Board suspends an enduring power of attorney (medical treatment), any refusal of treatment certificate completed by the agent before the suspension ceases to have effect during the period of the suspension.”

**Copies of refusal of treatment certificate**

“5E. (1) The Board of a public hospital or denominational hospital and the proprietor of a private hospital or nursing home must take reasonable steps to ensure that a copy of any refusal of treatment

certificate applying to a person who is a patient in the hospital or home and of any notification of the cancellation of such a certificate—

- (a) is placed with the patient's record kept by the hospital or home; and
- (b) is given to the chief executive officer (by whatever name called) of the hospital or home;
- (c) is given to the Guardianship and Administration Board within 7 days after the certificate is completed.

(2) A medical practitioner who signs the verification in a refusal of treatment certificate for a person who is not a patient in a public hospital, denominational hospital, private hospital or nursing home must take reasonable steps to ensure that a copy of the refusal of treatment certificate is given to the Guardianship and Administration Board within 7 days after it is made.”

**Penalty for obtaining certificate by fraud etc.**

“5F. (1) A person who—

- (a) is a beneficiary under the will of another person; or
- (b) has an interest under any instrument under which another person is the donor, settlor or grantor; or
- (c) would be entitled to an interest in the estate of another person on the death intestate of that person—

and who, by any deception, fraud, mis-statement or undue influence, procures or obtains, whether directly or indirectly, the execution by that other person of a certificate under this Act, forfeits any interest under the will, instrument or intestacy, as the case requires.

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

**Amendment of sections 6, 7 and 9**

8. The Principal Act is amended as follows:

- (a) In section 6, for “which the person has refused” substitute “to which the certificate applies”;
- (b) In section 7 (1), for “or modified by the patient to whom the certificate applies” substitute “by the person who gave the certificate”;
- (c) In section 7 (1), omit “or modify”;
- (d) In section 8 (1), omit “or modification”;
- (e) In section 8 (2), omit “or modified”;
- (f) In section 9 (1), for “the medical treatment which the person has refused” substitute “medical treatment which he or she believes on reasonable grounds has been refused in accordance with this Act”;

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s. 9

- (g) In section 9 (2), omit “and section 6”;
- (h) In section 9 (2), omit “or modified”.

**Amendment of Schedule 1**

9. (1) In Schedule 1 to the Principal Act, before “*Verification to be completed by patient, if physically able to do so*” insert—

“Patient’s current condition

The patient’s current condition is ..... (describe condition)

Dated:

Signed: .....

(To be signed by the same medical practitioner)”.

(2) In Schedule 1 to the Principal Act, after “Signed .....(Patient)” insert—

“NOTICE OF CANCELLATION (*for completion where patient cancels the certificate under section 7 of the Medical Treatment Act 1988*)

I cancel this certificate

Dated:

Signed: (Patient)

*or*

The patient clearly expressed or indicated a decision to cancel this certificate on (Date).

Signed .....(Person witnessing patient’s decision)”.

**New Schedules 2 and 3 inserted**

10. After Schedule 1 to the Principal Act insert—

‘SCHEDULE 2

Section 5A (2)

**ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)**

THIS ENDURING POWER OF ATTORNEY is given on the \_\_\_\_\_ day of 19\_\_\_\_, by A.B. of \_\_\_\_\_ under section 5A of the *Medical Treatment Act 1988*.

1. I APPOINT C.D. of \_\_\_\_\_ to be my agent.

2. I AUTHORISE my agent to make decisions about medical treatment on my behalf.

3. I REVOKE all other enduring powers of attorney (medical treatment) previously given by me.

SIGNED SEALED AND DELIVERED by:

We .....(names of witnesses) each believe that A.B. in making this Enduring Power of Attorney (Medical Treatment) is of sound mind and understands the import of this document.

WITNESSED by:

(Signature of Witness)

(Signature of Witness)

(Name of Witness)

(Name of Witness)

(Address of Witness)

(Address of Witness)

NOTE: Section 5A (2) (a) requires at least one of the witnesses to this instrument to be a person authorised by law to take and receive statutory declarations.

SCHEDULE 3

Sections 3, 5B

REFUSAL OF TREATMENT CERTIFICATE  
AGENT OR GUARDIAN OF INCOMPETENT PERSON

I ..... [name] ..... [address] certify that I am empowered to act in relation to decisions about medical treatment of.....[name of patient] ("the patient").

I have been appointed to act by—

- \* an enduring power of attorney (medical treatment) issued under the *Medical Treatment Act 1988*.
- \* an order of the Guardianship and Administration Board under the *Guardianship and Administration Board Act 1986*.

I certify that—

- (a) the patient has attained the age of 18 years;
- (b) I have been informed about and understand the nature of the patient's current condition to an extent that would be reasonably sufficient to enable the patient, if he/she were competent, to make a decision about whether or not to refuse medical treatment generally or of a particular kind for that condition. I believe that the patient would request that no medical treatment, or no medical treatment of the particular kind mentioned below, be administered to him/her.

On behalf of the patient, in relation to his/her current condition, I refuse—

- \* medical treatment generally.
- \* medical treatment, being .....  
(specify particular kind of medical treatment).

Dated:

Signed: .....(Agent/Guardian for ..... [Name of patient])

\*Delete whichever is not applicable

Verification

We each certify as follows:

- (a) I am satisfied that ..... [name of agent or guardian] has been informed about the nature of the patient's current condition to an extent that would be reasonably sufficient to enable the patient, if he/she were competent, to make a decision about whether or not to refuse medical treatment generally or of a particular kind for that condition and that the agent/guardian understands that information;
- (b) I was not a witness to the enduring power of attorney (medical treatment) under which ..... (name of agent) was appointed.

Dated:

Signed: ..... Signed: .....  
(Medical Practitioner) (Another Person)

Patient's current condition

The patient's current condition is .....(describe condition)

The patient is incompetent.

Dated:

Signed:

(To be signed by the same medical practitioner)

NOTICE OF CANCELLATION (For completion where agent or guardian cancels the certificate under section 7 of the *Medical Treatment Act 1988*)

I cancel this certificate

Dated:

Signed: (Agent or guardian)

or

The agent or guardian clearly expressed or indicated a decision to cancel this certificate



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on \_\_\_\_\_ (Date)  
Signed \_\_\_\_\_ (Person witnessing agent or guardian's decision)

NOTE: "Medical treatment" means the carrying out of—

- (a) an operation; or
- (b) the administration of a drug or other like substance; or
- (c) any other medical procedure—

but does not include palliative care.

"Palliative care" includes—

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

The refusal of palliative care is not covered by the *Medical Treatment Act 1988*.

A medical practitioner who has doubts about the circumstances of the issue of this certificate, the competency of the patient or the competency, good faith or motives of the agent or guardian in giving a direction about medical treatment under this certificate is advised to request the Guardianship and Administration Board to review the case.

**Amendment of Part XI of the *Instruments Act 1958***

**11.** After section 117 (4) of the *Instruments Act 1958* insert—

“(5) An enduring power of attorney, whether made before or after the commencement of the *Medical Treatment (Enduring Power of Attorney) Act 1990*, does not authorise the attorney to make a decision about the medical treatment of the donor of the power.”

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NOTES

1. *Minister's second reading speech—*

*Legislative Council: 3 May 1989*

*Legislative Assembly: 7 September 1989*

2. The long title for the Bill for this Act was “A Bill to amend the *Medical Treatment Act 1988* and Part XI of the *Instruments Act 1958* and for other purposes.”