

Medical Treatment (Agents) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 19 November 1991

(Brought in by the Honourable M. A. Lyster)

A BILL

to amend the **Medical Treatment Act 1988** and for other purposes.

Medical Treatment (Agents) Act 1991

The Parliament of Victoria enacts as follows:

1. *Purpose*

5 The purpose of this Act is to enable a person to appoint an alternate agent to make decisions about the medical treatment of the person if the person becomes incompetent and the agent is unable or unavailable to act.

2. *Commencement*

This Act comes into operation on the day on which it receives the Royal Assent.

10 3. *Principal Act*

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

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No. 7/1990.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

4. New definition

In section 3 of the Principal Act before the definition of
“medical practitioner” insert—

‘**“agent”** means an agent appointed under an enduring
 power of attorney (medical treatment) and, except 5
 in sections 5A, 5AA, 5C, 5D and 7 and Schedule 2,
 includes an alternate agent appointed under an
 enduring power of attorney (medical treatment);’.

5. Appointment of alternate agent 10

(1) In section 5A (1) of the Principal Act after paragraph (a)
insert—

“(aa) if the person has appointed an alternate agent in
 accordance with this section, and section 5AA is
 complied with, by the alternate agent; or” 15

(2) In section 5A (2) of the Principal Act—

(a) after **“agent”** (wherever occurring) **insert** **“or
 alternate agent”**;

(b) after paragraph (b) **insert—**

“ and 20

(c) in the case of an appointment of an alternate
 agent, takes effect if and only if section 5AA is
 complied with”.

(3) After section 5A (4) of the Principal Act **insert—**

“(5) An enduring power of attorney (medical treatment) 25
 given to an agent (but not an alternate agent) must
 be taken to be in the form in Schedule 2 as amended
 by the **Medical Treatment (Agents) Act 1991** if it is
 in the form in that Schedule as in force immediately
 before the commencement of that Act.”. 30

6. Section 5AA inserted

After section 5A of the Principal Act insert—

“5AA. When can an alternate agent act?”

5 (1) An enduring power of attorney (medical
treatment) given to an alternate agent
authorises the alternate agent to make a
decision about medical treatment of the person
giving the power if and only if, not more than
10 7 days before making the decision, the alternate
agent completes and, before making that
decision, produces to each person required to
be satisfied of a matter mentioned in section
5B (1) (a) and (b) a statutory declaration—

15 (a) giving details of enquiries made by the
alternate agent to find out whether the
person’s agent is able and available to act;
and

20 (b) stating that, as a result of those enquiries,
the alternate agent believes that the agent
is dead, incompetent or cannot be
contacted or that the agent’s whereabouts
are unknown.

25 (2) A person who, under section 5B (1) (a) or (b),
needs to be satisfied of a matter before an
alternate agent can make a decision about
medical treatment may decline to be so satisfied
if —

30 (a) a statutory declaration completed by the
alternate agent is not produced; or

(b) he or she reasonably believes that—

(i) the enquiries set out in the declaration
do not constitute reasonable enquiries
to find out whether the person’s agent
is able and available to act; and

35 (ii) the person’s agent is able and
available to act.”

7. Jurisdiction of Guardianship and Administration Board

- (1) In section 5C of the Principal Act for subsection (1) **substitute—**
- “(1) On an application under this section, the Guardianship and Administration Board— 5
- (a) may suspend or revoke an enduring power of attorney (medical treatment);
- (b) may determine whether an enduring power of attorney (medical treatment) given to an alternate agent does or does not authorise the making of a particular decision by the alternate agent; 10
- (c) may determine any question arising out of a conflict between a decision made about a person’s medical treatment by the person’s agent and alternate agent, including a determination that any or all of those decisions are ineffective.”. 15
- (2) In section 5C (2) and (4) of the Principal Act after “agent” **insert** “or alternate agent”. 20
- (3) After section 5C (4) of the Principal Act **insert—**
- “(4A) If the Board is satisfied that—
- (a) an alternate agent—
- (i) has completed a false statutory declaration under section 5AA; or 25
- (ii) has not made reasonable enquiries before stating in the statutory declaration that a person’s agent is dead, incompetent or cannot be contacted or the agent’s whereabouts are unknown; and 30
- (b) it is in the best interests of the person giving the power to do so—
- the Board may, to the extent that the power is given to the alternate agent, revoke it, suspend it for a specified period or declare that it does not authorise the making of a particular decision. 35
- (4B) If the Board is satisfied that—

(a) a person's agent and alternate agent have made conflicting decisions about the medical treatment of the person; and

(b) it is in the best interests of the person to do so—

the Board may do any of the following—

(c) revoke the enduring power of attorney (medical treatment);

(d) suspend for a specified period the enduring power of attorney (medical treatment);

(e) determine that decisions of the agent or alternate agent or both are ineffective;

(f) make any other determination it considers necessary to resolve the conflict.

(4C) A determination of the Board under sub-section (4A) or (4B) does not affect the previous operation of—

(a) an enduring power of attorney (medical treatment); or

(b) any decision made under that power; or

(c) any refusal of treatment certificate completed under that power.”

8. Consequences of Board's decisions

(1) In section 5D (1) of the Principal Act after “agent” insert “alternate agent”.

(2) In section 5D (2) of the Principal Act after “agent” insert “or alternate agent”.

(3) After section 5D (2) of the Principal Act insert—

“(3) If the Guardianship and Administration Board declares that—

(a) a decision of an agent or alternate agent resulting in the completion of a refusal of treatment certificate is ineffective; or

(b) a decision of an alternate agent resulting in the completion of a refusal of treatment certificate

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is not authorised by the enduring power of attorney (medical treatment)—
that refusal of treatment certificate is revoked on the date on which the declaration is made.”.

9. Cancellation of refusal of treatment certificates 5

(1) In section 7 (1) of the Principal Act after “gave the certificate” **insert** “or on whose behalf it was given”.

(2) After section 7 (1) of the Principal Act **insert**—

“(1A) A refusal of treatment certificate given by a person’s agent may be cancelled in accordance with sub-section (1) by the person’s alternate agent, as if the alternate agent gave the certificate. 10

(1B) A refusal of treatment certificate given by a person’s alternate agent may be cancelled in accordance with sub-section (1) by the person’s agent, as if the agent gave the certificate.”. 15

10. Form of enduring power of attorney (medical treatment)

In Schedule 2 of the Principal Act—

(a) for clause 1 **substitute**—

“1. I APPOINT 20
* C. D. of to be my agent.
* C. D. of to be my agent and E. F. of
to be my alternate agent.

(* delete whichever is inapplicable);

(b) in clause 2, after “agent” **insert** “or, if applicable, my alternate agent.”. 25

11. Statute law revision

In Schedule 3 of the Principal Act under the heading “NOTICE OF CANCELLATION” for “agent or guardian’s” **substitute** “agent’s or guardian’s”. 30

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