

# **Medical Treatment Act 1988**

**No. 41 of 1988**

## **TABLE OF PROVISIONS**

### **PART 1—PRELIMINARY**

*Section*

1. Purpose.
2. Commencement.
3. Definitions.
4. Other legal rights not affected.

### **PART 2—REFUSAL OF TREATMENT**

5. Refusal of treatment certificate.
6. Offence of medical trespass.
7. Cancellation, modification or cessation of certificate.
8. Effect of certificate or notice issued under this Part.

### **PART 3—PROTECTION OF MEDICAL PRACTITIONERS**

9. Protection of medical practitioners.

#### **SCHEDULE 1**

**Refusal of treatment certificate: competent person**



Victoria

No. 41 of 1988

## Medical Treatment Act 1988

[Assented to 24 May 1988]

### Preamble.

The Parliament recognises that it is desirable—

- (a) to give protection to the patient's right to refuse unwanted medical treatment;
- (b) to give protection to medical practitioners who act in good faith in accordance with a patient's express wishes;
- (c) to recognise the difficult circumstances that face medical practitioners in advising patients and providing guidance in relation to treatment options;
- (d) to state clearly the way in which a patient can signify his or her wishes in regard to medical care;
- (e) to encourage community and professional understanding of the changing focus of treatment from cure to pain relief for terminally-ill patients;
- (f) to ensure that dying patients receive maximum relief from pain and suffering.

The Parliament of Victoria therefore enacts as follows:

### PART 1—PRELIMINARY

#### **Purpose.**

1. The purposes of this Act are—
  - (a) to clarify the law relating to the right of patients to refuse medical treatment;
  - (b) to establish a procedure for clearly indicating a decision to refuse medical treatment;

#### **Commencement.**

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

#### **Definitions.**

3. In this Act—
  - “**Medical practitioner**” means a legally qualified medical practitioner.
  - “**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.
  - “**Refusal of treatment certificate**” means a certificate in the form of Schedule 1 and, if that certificate is modified, includes that certificate as modified and in force for the time being.

#### **Other legal rights not affected.**

4. (1) This Act does not affect any right of a person under any other law to refuse medical treatment.
- (2) This Act does not apply to palliative care and does not affect any right, power or duty which a medical practitioner or any other person has in relation to palliative care.

**PART 2—REFUSAL OF TREATMENT****Refusal of treatment certificate.**

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

- (a) that a patient has clearly expressed or indicated a decision—
  - (i) to refuse medical treatment generally; or
  - (ii) to refuse medical treatment of a particular kind—  
for a current condition; and
- (b) that the patient's decision is made voluntarily and without inducement or compulsion; and
- (c) that the patient has been informed about the nature of his or her condition to an extent which is reasonably sufficient to enable the patient to make a decision about whether or not to refuse medical treatment generally or of a particular kind (as the case requires) for that condition and that the patient has appeared to understand that information; and
- (d) that the patient is of sound mind and has attained the age of 18 years—

the medical practitioner and the other person may together witness a refusal of treatment certificate.

(2) A refusal of treatment certificate must be in the form of Schedule 1.

(3) For the purposes of sub-section (1) (a), the patient may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

**Offence of medical trespass.**

6. A medical practitioner must not, knowing that a refusal of treatment certificate applies to a person, undertake or continue to undertake any medical treatment which the person has refused, being treatment for the condition in relation to which the certificate was given.

Penalty: 5 penalty units.

**Cancellation, modification or cessation of certificate.**

7. (1) A refusal of treatment certificate may be cancelled or modified by the patient to whom the certificate applies clearly expressing or indicating to a medical practitioner or another person a decision to cancel or modify the certificate.

(2) For the purposes of sub-section (1), a person may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

(3) A refusal of treatment certificate ceases to apply to a person if the medical condition of the person has changed to such an extent that the condition in relation to which the certificate was given is no longer current.

**Effect of certificate or notice issued under this Part.**

8. (1) This section applies to a refusal of treatment certificate and to a written notice of a cancellation or modification of a refusal of treatment certificate.

(2) In any civil or criminal proceeding, production of either of the instruments mentioned in sub-section (1) is—

(a) evidence; and

(b) in the absence of evidence to the contrary, proof—

that the patient has refused medical treatment or has cancelled or modified a refusal of treatment certificate.

(3) This section does not affect other methods of proving a decision to refuse medical treatment.

**PART 3—PROTECTION OF MEDICAL PRACTITIONERS**

**Protection of medical practitioners.**

9. (1) A medical practitioner or a person acting under the direction of a medical practitioner who, in good faith and in reliance on a refusal of treatment certificate, refuses to perform or continue the medical treatment which the person has refused is not—

(a) guilty of misconduct or infamous misconduct in a professional respect; or

(b) guilty of an offence; or

(c) liable in any civil proceedings—

because of the failure to perform or continue that treatment.

(2) For the purposes of this section and section 6 a person who acts in good faith in reliance on a refusal of treatment certificate but who is not aware that the certificate has been cancelled or modified, is to be treated as having acted in good faith in reliance on a refusal of treatment certificate.

---

---

SCHEDULE 1

Sections 3, 5 (2)

REFUSAL OF TREATMENT CERTIFICATE:  
COMPETENT PERSON

We certify that we are satisfied—

- (a) that ..... (name of patient) has clearly expressed or indicated a decision, in relation to a current condition, to refuse—
  - \* medical treatment generally;
  - or
  - \* medical treatment, being ..... (specify particular kind of medical treatment);
- (b) that the patient's decision is made voluntarily and without inducement or compulsion;
- (c) that the patient has been informed about the nature of his/her current condition to an extent which is reasonably sufficient to enable him/her to make a decision about whether or not to refuse medical treatment generally or of a particular kind (as the case requires) and that he/she has appeared to understand that information; and
- (d) that the patient is of sound mind and has attained the age of 18 years.

Dated:

Signed.....(Medical Practitioner)

Signed.....(Another person)

*Verification to be completed by patient, if physically able to do so.*

In relation to my current condition, I refuse—

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

I give the following instructions as to palliative care:

Dated:

Signed.....(Patient)

\* Delete whichever is not applicable

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.

SCHEDULE 1—*continued*

“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*.

---

---

## NOTES

1. *Minister's second reading speech—*

*Legislative Council: 23 March 1988*

*Legislative Assembly: 6 May 1988*

- 2. The long title for the Bill for this Act was “A Bill to create an offence of medical trespass, to make other provision concerning the refusal of medical treatment and for other purposes.”.