

**Version No. 045**  
**Medical Treatment Act 1988**  
**No. 41 of 1988**

Version incorporating amendments as at 1 July 2010

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>2</b>
1 Purpose	2
2 Commencement	2
3 Definitions	2
4 Other legal rights not affected	4
<b>PART 2—REFUSAL OF TREATMENT</b>	<b>5</b>
5 Refusal of treatment certificate	5
5A Agents and guardians	6
5AA When can an alternate agent act?	7
5B Refusal of treatment certificate by agent or guardian	8
5C Tribunal may suspend or revoke authority	9
5D Revocation or suspension of refusal of treatment certificate	13
5E Copies of refusal of treatment certificate	14
5F Penalty for obtaining certificate by fraud etc.	14
6 Offence of medical trespass	15
7 Cancellation or cessation of certificate	15
8 Effect of certificate or notice issued under this Part	16
<b>PART 3—PROTECTION OF REGISTERED MEDICAL PRACTITIONERS</b>	<b>17</b>
9 Protection of registered medical practitioners	17

<i>Section</i>	<i>Page</i>
<b>SCHEDULES</b>	<b>18</b>
SCHEDULE 1—Refusal of Treatment Certificate: Competent Person	18
SCHEDULE 2—Enduring Power of Attorney (Medical Treatment)	20
SCHEDULE 3—Refusal of Treatment Certificate Agent or Guardian of Incompetent Person	21
<hr/> <hr/>	
<b>ENDNOTES</b>	<b>24</b>
1. General Information	24
2. Table of Amendments	25
3. Explanatory Details	27

---

**Version No. 045**  
**Medical Treatment Act 1988**  
**No. 41 of 1988**

Version incorporating amendments as at 1 July 2010

**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**

**1 Purpose**

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;
- (c) to enable an agent to make decisions about medical treatment on behalf of an incompetent person.

S. 1(c)  
inserted by  
No. 7/1990  
s. 4.

**2 Commencement**

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

**3 Definitions**

In this Act—

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

S. 3 def. of  
*agent*  
inserted by  
No. 26/1992  
s. 4.

S. 3 def. of  
*medical  
practitioner*  
repealed by  
No. 23/1994  
s. 118(Sch. 1  
item 37.1(a)).

\* \* \* \* \*

*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 or 3 and, if that certificate is modified, includes that certificate as modified and in force for the time being;

S. 3 def. of *refusal of treatment certificate* amended by No. 7/1990 s. 5.

*registered medical practitioner* means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3 def. of *registered medical practitioner* inserted by No. 23/1994 s. 118(Sch. 1 item 37.1(b)), amended by No. 97/2005 s. 182(Sch. 4 item 36), substituted by No. 13/2010 s. 51(Sch. item 37).

*Tribunal* means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 3 def. of *Tribunal* inserted by No. 52/1998 s. 311(Sch. 1 item 60.1).

#### 4 Other legal rights not affected

S. 4(2)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 37.2).

S. 4(3)  
inserted by  
No. 7/1990  
s. 6.

S. 4(4)  
inserted by  
No. 7/1990  
s. 6,  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 37.2).

- (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 registered medical practitioner or any other person has in relation to palliative care.
- (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 registered 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.

---

**PART 2—REFUSAL OF TREATMENT**

**5 Refusal of treatment certificate**

- (1) If a registered 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—

S. 5(1)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 37.3).

the registered 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 subsection (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.

s. 5A

## 5A Agents and guardians

S. 5A  
inserted by  
No. 7/1990  
s. 7.

(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

S. 5A(1)(aa)  
inserted by  
No. 26/1992  
s. 5(1).

(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

S. 5A(1)(b)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.2).

(b) if the person is a represented person and an appropriate order has been made under the **Guardianship and Administration Act 1986** providing for decisions about medical treatment, by the person's guardian.

S. 5A(2)  
amended by  
No. 26/1992  
s. 5(2)(a)(b).

(2) An appointment of an agent or alternate agent—

S. 5A(2)(a)  
amended by  
No. 26/1992  
s. 5(2)(a).

(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 or alternate agent to be appointed; and

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

S. 5A(2)(c)  
inserted by  
No. 26/1992  
s. 5(2)(b).

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

(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 Act 1986**—

S. 5A(4)(b)(ii) amended by No. 52/1998 s. 311(Sch. 1 item 60.2).

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

- (5) An enduring power of attorney (medical treatment) 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 1992** if it is in the form in that Schedule as in force immediately before the commencement of that Act.

S. 5A(5) inserted by No. 26/1992 s. 5(3).

**5AA When can an alternate agent act?**

- (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 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—

S. 5AA inserted by No. 26/1992 s. 6.

**s. 5B**

- (a) giving details of the enquiries or information which forms the basis for the statement of belief in paragraph (b);
  - (b) stating that, as a result of those enquiries or that information, the alternate agent believes that the agent is dead, incompetent or cannot be contacted or that the agent's whereabouts are unknown.
- (2) A person who, under section 5B(1)(a) and (b), needs to be satisfied of a matter before an alternate agent can make a decision about medical treatment must decline to be so satisfied if—
- (a) a statutory declaration completed by the alternate agent is not produced; or
  - (b) he or she reasonably believes that—
    - (i) the enquiries or information mentioned in the statutory declaration do not form a reasonable basis for the statement of belief set out in that declaration; or
    - (ii) the person's agent can be contacted and is not incompetent.

S. 5B  
inserted by  
No. 7/1990  
s. 7.

**5B Refusal of treatment certificate by agent or guardian**

S. 5B(1)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 37.4).

- (1) If a registered 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.

**5C Tribunal may suspend or revoke authority**

S. 5C  
inserted by  
No. 7/1990  
s. 7.

- (1) On an application under this section, the Tribunal—
- (a) may in accordance with subsection (3), (4), (4A) or (4B) suspend or revoke an enduring power of attorney (medical treatment);
- (b) may in accordance with subsection (4A) 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;

S. 5C(1)  
substituted by  
No. 26/1992  
s. 7(1),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(a)).

**s. 5C**

- 
- (c) may in accordance with subsection (4B) 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.
- (2) An application may be made by—
- (a) the Public Advocate; or
  - (b) a person who, in the opinion of the Tribunal, has a special interest in the affairs of the donor of the power; or
  - (c) the agent or alternate agent appointed under the power.
- (3) If the Tribunal 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 Tribunal may suspend the power for a specified period.
- (4) If the Tribunal 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 or alternate agent, the Tribunal may revoke the power.
- S. 5C(2)(b)**  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).
- S. 5C(2)(c)**  
amended by  
No. 26/1992  
s. 7(2).
- S. 5C(3)**  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).
- S. 5C(4)**  
amended by  
Nos 26/1992  
s. 7(2),  
52/1998  
s. 311(Sch. 1  
item 60.3(b)),  
74/2000  
s. 3(Sch. 1  
item 78).

(4A) If the Tribunal is satisfied that—

- (a) an alternate agent—
  - (i) has completed a false statutory declaration under section 5AA; or
  - (ii) has set out in a statutory declaration enquiries or information that do not form a reasonable basis for the statement of belief, set out in the declaration, that a person's agent is dead, incompetent or cannot be contacted or the agent's whereabouts are unknown; or
  - (iii) is not authorised by an enduring power of attorney (medical treatment) to make a particular decision because of a failure to comply with section 5AA; and
- (b) it is in the best interests of the person giving the power to do so—

the Tribunal 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.

(4B) If the Tribunal 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 Tribunal 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);

**S. 5C(4A)**  
inserted by  
No. 26/1992  
s. 7(3),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).

**S. 5C(4B)**  
inserted by  
No. 26/1992  
s. 7(3),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).

**s. 5C**

- (e) determine that decisions of the agent or alternate agent or both are ineffective;
- (f) make any other determination about the validity or effect of any of the conflicting decisions that it considers necessary to resolve the conflict.

**S. 5C(4C)**  
inserted by  
No. 26/1992  
s. 7(3),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).

- (4C) A determination of the Tribunal under subsection (4A) or (4B) revoking or suspending an enduring power of attorney (medical treatment) 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.

**S. 5C(5)**  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).

- (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 Tribunal revokes or suspends the power—

**S. 5C(5)(b)**  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.3(b)).

the Tribunal 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.

**5D Revocation or suspension of refusal of treatment certificate**

S. 5D  
inserted by  
No. 7/1990  
s. 7.

(1) If—

S. 5D(1)  
amended by  
No. 26/1992  
s. 8(1).

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

S. 5D(1)(b)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.4(a)).

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

- (2) If the Tribunal suspends an enduring power of attorney (medical treatment), any refusal of treatment certificate completed by the agent or alternate agent before the suspension ceases to have effect during the period of the suspension.

S. 5D(2)  
amended by  
Nos 26/1992  
s. 8(2),  
52/1998  
s. 311(Sch. 1  
item 60.4(b)).

- (3) If the Tribunal declares that—

S. 5D(3)  
inserted by  
No. 26/1992  
s. 8(3),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.4(b)).

- (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 is not authorised by the enduring power of attorney (medical treatment)—

that refusal of treatment certificate is revoked when the declaration is made.

s. 5E

S. 5E  
inserted by  
No. 7/1990  
s. 7.

### 5E Copies of refusal of treatment certificate

- (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 principal registrar of the Tribunal within 7 days after the certificate is completed.

S. 5E(1)(c)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 60.5).

S. 5E(2)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 37.5),  
52/1998  
s. 311(Sch. 1  
item 60.5).

- (2) A registered 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 principal registrar of the Tribunal within 7 days after it is made.

S. 5F  
inserted by  
No. 7/1990  
s. 7.

### 5F Penalty for obtaining certificate by fraud etc.

- (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.

## 6 Offence of medical trespass

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

Penalty: 5 penalty units.

S. 6  
amended by  
Nos 7/1990  
s. 8(a),  
23/1994  
s. 118(Sch. 1  
item 37.6).

## 7 Cancellation or cessation of certificate

(1) A refusal of treatment certificate may be cancelled by the person who gave the certificate or on whose behalf it was given clearly expressing or indicating to a registered medical practitioner or another person a decision to cancel the certificate.

S. 7(1)  
amended by  
Nos 7/1990  
s. 8(b)(c),  
26/1992  
s. 9(1),  
23/1994  
s. 118(Sch. 1  
item 37.7).

(1A) A refusal of treatment certificate given by a person's agent may be cancelled in accordance with subsection (1) by the person's alternate agent, as if the alternate agent gave the certificate.

S. 7(1A)  
inserted by  
No. 26/1992  
s. 9(2).

s. 8

S. 7(1B)  
inserted by  
No. 26/1992  
s. 9(2).

- (1B) A refusal of treatment certificate given by a person's alternate agent may be cancelled in accordance with subsection (1) by the person's agent, as if the agent gave the certificate.
- (2) For the purposes of subsection (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.

#### **8 Effect of certificate or notice issued under this Part**

S. 8(1)  
amended by  
No. 7/1990  
s. 8(d).

S. 8(2)  
amended by  
No. 7/1990  
s. 8(e).

- (1) This section applies to a refusal of treatment certificate and to a written notice of a cancellation of a refusal of treatment certificate.
- (2) In any civil or criminal proceeding, production of either of the instruments mentioned in subsection (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 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 REGISTERED MEDICAL  
PRACTITIONERS**

**Pt 3 (Heading)**  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 37.8).

**9 Protection of registered medical practitioners**

- (1) A registered medical practitioner or a person acting under the direction of a registered medical practitioner who, in good faith and in reliance on a refusal of treatment certificate, refuses to perform or continue medical treatment which he or she believes on reasonable grounds has been refused in accordance with this Act is not—

**S. 9(1)**  
amended by  
Nos 7/1990  
s. 8(f), 23/1994  
s. 118(Sch. 1  
item 37.9).

(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 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, is to be treated as having acted in good faith in reliance on a refusal of treatment certificate.

**S. 9(2)**  
amended by  
No. 7/1990  
s. 8(g)(h).

Sch. 1

---

**SCHEDULES**

**SCHEDULE 1**

Sections 3, 5(2)

Sch. 1  
amended by  
Nos 7/1990  
s. 9(1)(2),  
23/1994  
s. 118(Sch. 1  
item 37.10(a)  
(b)).

**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.....(Registered Medical Practitioner)

Signed .....(Another Person)

Patient's current condition

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

Dated:

Signed: .....

(To be signed by the same registered medical practitioner)

Medical Treatment Act 1988  
No. 41 of 1988

Sch. 1

---

*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)

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)

\*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.

"**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**.

Sch. 2

Sch. 2  
inserted by  
No. 7/1990  
s. 10,  
amended by  
No. 26/1992  
s. 10(a)(b).

**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.

\*C. D. of \_\_\_\_\_ to be my agent and E. F. of

\_\_\_\_\_ to be my alternate agent.

(\*delete whichever is inapplicable)

2. I AUTHORISE my agent or, if applicable, my alternate 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**

Sch. 3  
inserted by  
No. 7/1990  
s. 10,  
amended by  
Nos 26/1992  
ss 11(a)-(d),  
12, 23/1994  
s. 118(Sch. 1  
item  
37.11(a)(b)),  
52/1998  
s. 311(Sch. 1  
item 60.6(a)  
(b)), 45/2006  
s. 4.

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 appropriate guardianship order of the Victorian Civil and Administrative Tribunal under the **Guardianship and Administration Act 1986** that provides for decisions about medical treatment.

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

Medical Treatment Act 1988  
No. 41 of 1988

Sch. 3

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: .....  
(Registered 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 registered medical practitioner)

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

I cancel this certificate

Dated:

Signed ..... (Patient, agent or guardian)

or

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

on ..... (Date)

Signed ..... (Person witnessing patient's agent's or guardian's decision)

---

NOTES: 1. "**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**.

- 2. An alternate agent can only make a decision about a patient's medical treatment if the alternate agent first produces to each medical practitioner who is to verify this certificate a statutory declaration that meets the requirements of section 5AA(1) of the **Medical Treatment Act 1988**.
- 3. If this certificate is to be completed by an alternate agent, a medical practitioner must refuse to verify this certificate if the alternate agent does not produce to him or her a statutory declaration that meets the requirements of section 5AA(1) of the **Medical Treatment Act 1988** or if the medical practitioner reasonably believes that the original agent can be contacted and is not incompetent.
- 4. If a medical practitioner is asked to sign the verification part of this certificate and has doubts about any of the following matters, an application may be made to the Victorian Civil and Administrative Tribunal to review the case—
  - (a) whether the patient is incompetent;
  - (b) in the case of an alternate agent, whether the medical practitioner or other person should decline to be satisfied of the matters referred to in paragraph (a) of the verification, in accordance with section 5AA(2) of the **Medical Treatment Act 1988**;
  - (c) whether the agent or guardian is competent to act and is acting in good faith in refusing medical treatment on behalf of the patient.

## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Council: 23 March 1988*

*Legislative Assembly: 6 May 1988*

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."

The **Medical Treatment Act 1988** was assented to on 24 May 1988 and came into operation on 1 September 1988: Government Gazette 31 August 1988 page 2598.

Medical Treatment Act 1988  
No. 41 of 1988

Endnotes

---

## 2. Table of Amendments

This Version incorporates amendments made to the **Medical Treatment Act 1988** by Acts and subordinate instruments.

---

### **Medical Treatment (Enduring Power of Attorney) Act 1990, No. 7/1990**

*Assent Date:* 10.4.90  
*Commencement Date:* 6.8.90: Government Gazette 1.9.90 p. 2288  
*Current State:* All of Act in operation

### **Medical Treatment (Agents) Act 1992, No. 26/1992**

*Assent Date:* 16.6.92  
*Commencement Date:* 16.6.92  
*Current State:* All of Act in operation

### **Medical Practice Act 1994, No. 23/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94:  
Government Gazette 23.6.94 p. 1672  
*Current State:* All of Act in operation

### **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 60) on 1.7.98: Government Gazette  
18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s  
amending the **Medical Treatment Act 1988**

### **Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 78) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Medical Treatment Act 1988**

### **Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 36) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Medical Treatment Act 1988**

### **Health Legislation (Infertility Treatment and Medical Treatment) Act 2006, No. 45/2006**

*Assent Date:* 25.7.06  
*Commencement Date:* S. 4 on 25.7.06: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Medical Treatment Act 1988**

---

Medical Treatment Act 1988  
No. 41 of 1988

**Endnotes**

---

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,  
No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 37) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Medical Treatment Act 1988**

---

**3. Explanatory Details**

No entries at date of publication.