

**Authorised Version**

**Medical Treatment Planning and Decisions  
Act 2016**

**No. 69 of 2016**

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>Part 1—Preliminary</b>	<b>1</b>
1 Purposes	1
2 Commencement	2
3 Definitions	2
4 Decision-making capacity	11
5 VCAT orders in relation to decision-making capacity	13
6 Types of directives	14
7 Principles	15
8 Health practitioner cannot be compelled to provide particular medical treatment or futile or non-beneficial medical treatment	17
<b>Part 2—Advance care directives</b>	<b>18</b>
9 Medical treatment to include medical research	18
10 Other rights to refuse medical treatment not affected	18
11 Interpreting an advance care directive	18
12 Content of advance care directives	18
13 Who may give an advance care directive?	19
14 Offence to induce giving of advance care directive	20
15 False or misleading statements	20
16 Formal requirements	21
17 Witnessing and certification requirements	21
18 Unlawful statements in advance care directives	22
19 When is an advance care directive in force?	23
20 Amendment or revocation	23
21 Non-compliance with formal requirements	24
22 VCAT orders in relation to advance care directives	24
23 Further considerations for revoking, varying or suspending an instructional directive	26
24 Parties to VCAT proceeding	26
<b>Part 3—Medical treatment decision makers and support persons</b>	<b>27</b>
<b>Division 1—Preliminary</b>	<b>27</b>
25 Medical treatment to include medical research	27

<i>Section</i>	<i>Page</i>
<b>Division 2—Appointed medical treatment decision makers</b>	<b>27</b>
26 Appointment of medical treatment decision maker	27
27 Powers of appointed medical treatment decision maker	27
28 Formal requirements	27
29 Acceptance of appointment by appointed medical treatment decision maker	28
30 Revocation of appointment	29
<b>Division 3—Support persons</b>	<b>29</b>
31 Appointment of support person	29
32 Role of support person	30
33 Formal requirements	30
34 Acceptance of appointment by support person	31
35 Revocation of appointment	31
<b>Division 4—Procedural requirements</b>	<b>32</b>
36 Witnessing and certification requirements	32
37 Signing at the direction of the person making or revoking an appointment	33
38 When is an appointment under this Part in force?	33
39 Resignation of appointed medical treatment decision maker or support person	33
40 Appointee to be informed if appointment revoked	34
<b>Division 5—Offences</b>	<b>34</b>
41 Offence to purport to act as an appointed medical treatment decision maker or a support person	34
42 Offence to induce appointment of appointed medical treatment decision maker	35
<b>Division 6—Applications to VCAT</b>	<b>35</b>
43 VCAT orders in relation to appointed medical treatment decision makers and support persons	35
44 Further considerations for declaring an appointment or a revocation invalid	37
45 Non-compliance with formal requirements	37
46 Further considerations for revoking or varying an appointment	37
47 Parties to VCAT proceeding	38
<b>Part 4—Medical treatment decisions</b>	<b>39</b>
<b>Division 1—Preliminary</b>	<b>39</b>
48 Application of Part	39
49 Duty of care not affected	39
50 Requirement to ascertain existence of advance care directives and medical treatment decision makers	39

<i>Section</i>	<i>Page</i>	
51	Circumstances in which health practitioner may refuse to comply with an instructional directive	40
52	No liability if this Part complied with	40
53	Medical treatment and medical research procedures in an emergency	41
54	Administering palliative care	42
55	Who is a person's medical treatment decision maker?	43
56	Record keeping requirements	44
<b>Division 2—Medical treatment decision-making process</b>		<b>45</b>
57	Medical treatment to which Division does not apply	45
58	Consent to medical treatment	45
59	Consent if person is likely to recover within a reasonable time	45
60	Giving effect to an advance care directive	46
61	Decision by medical treatment decision maker	47
62	Health practitioner to notify Public Advocate if decision maker refuses significant treatment	49
63	Medical treatment decisions if there is no advance care directive and no medical treatment decision maker	49
<b>Division 3—Applications to VCAT</b>		<b>50</b>
64	Division does not apply to special medical procedure	50
65	Who can apply for an order?	50
66	Orders in relation to medical treatment decisions	50
67	Application by Public Advocate	51
68	Further orders VCAT can make	52
69	Matters of which VCAT must be satisfied before making an order	52
70	VCAT may give advisory opinion to medical treatment decision maker or health practitioner	52
71	Parties to VCAT proceeding	53
<b>Part 5—Medical research</b>		<b>54</b>
<b>Division 1—Preliminary</b>		<b>54</b>
72	Application of Part	54
73	Requirement to ascertain existence of advance care directives and medical treatment decision makers	54
74	Protection of medical research practitioner	55
<b>Division 2—Approval and consent</b>		<b>55</b>
75	Approval to administer a medical research procedure	55
76	Medical research procedure to be administered in accordance with approval	56
77	Consent of medical treatment decision maker	56

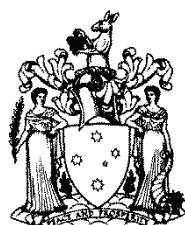
<i>Section</i>	<i>Page</i>
78 Medical research practitioner must record basis for administering medical research procedure in clinical records	58
<b>Division 3—Medical research procedures without consent</b>	<b>59</b>
79 Application of Division	59
80 Administering a medical research procedure if person has no medical treatment decision maker	59
81 Medical research practitioner's certificate	61
<b>Division 4—Applications to VCAT</b>	<b>63</b>
82 Applications to VCAT	63
83 Medical treatment decision maker may seek advice	64
<b>Division 5—Offences</b>	<b>65</b>
84 Offence to administer unapproved medical research procedure	65
85 Offence to administer medical research procedure without consent or authorisation	65
<b>Part 6—VCAT jurisdiction</b>	<b>66</b>
<b>Division 1—Applications in first instance</b>	<b>66</b>
86 Notice requirements	66
87 Interim and temporary orders	66
<b>Division 2—Rehearings</b>	<b>66</b>
88 Application for rehearing	66
89 Powers of VCAT on rehearing	67
90 Parties and notice	68
91 Stay of first instance order pending rehearing	68
92 Nature of rehearing	69
<b>Part 7—General</b>	<b>70</b>
93 Criminal liability of officers of bodies corporate—failure to exercise due diligence	70
94 Disclosure of health information to medical treatment decision maker or support person	71
95 Recognition of advance care directives made in other States and in Territories	72
96 Recognition of appointments made in other States and in Territories	73
97 Unlawful terms	73
98 Record keeping requirements	73
99 Assistance of interpreter	74
100 Regulations	74

<i>Section</i>	<i>Page</i>
<b>Part 8—Repeal and savings and transitional provisions</b>	<b>76</b>
<b>Division 1—Repeal</b>	<b>76</b>
101 Medical Treatment Act 1988 repealed	76
<b>Division 2—Savings and transitional provisions</b>	<b>76</b>
102 Refusal of treatment certificates and agents under enduring powers of attorney (medical treatment)	76
103 Enduring powers of attorney with power to make medical treatment decisions and enduring powers of guardianship	77
104 Consent to medical research procedures under the Guardianship and Administration Act 1986	77
105 Regulations dealing with transitional matters	78
<b>Part 9—Amendment of Mental Health Act 2014</b>	<b>79</b>
<b>Division 1—Electroconvulsive treatment amendments</b>	<b>79</b>
106 Section 90 substituted	79
107 Meaning of a course of electroconvulsive treatment	79
108 When may electroconvulsive treatment be performed?	80
109 Application to perform electroconvulsive treatment on a young person	80
110 New section 94A inserted	80
111 Listing of electroconvulsive treatment applications by Tribunal	82
112 Powers of Tribunal in respect of electroconvulsive treatment application	82
113 Order approving electroconvulsive treatment	84
114 Electroconvulsive treatment must not be performed in certain circumstances	84
115 Use of electroconvulsive treatment to be reported to chief psychiatrist	84
<b>Division 2—Other amendments</b>	<b>84</b>
116 Definitions	84
117 What is <i>medical treatment</i> ?	85
118 Meaning of <i>informed consent</i>	85
119 Who may consent to medical treatment if patient does not have capacity to give informed consent?	86
120 Matters authorised psychiatrist must have regard to if consenting to medical treatment of patient	86
121 Urgent medical treatment	86
122 Disclosure of health information	87
<b>Part 10—Consequential amendments and repeals</b>	<b>88</b>
<b>Division 1—Guardianship and Administration Act 1986</b>	<b>88</b>
123 Definitions	88

<i>Section</i>	<i>Page</i>
124 Objects of Act	89
125 Functions of the Public Advocate	89
126 Powers and duties of Public Advocate	89
127 Authority of plenary guardian	89
128 New section 28A inserted	90
129 Heading to Part 4A substituted	90
130 Persons to whom Part applies	90
131 Person responsible	91
132 Best interests	91
133 Section 39 substituted	91
134 Effect of consent	92
135 Section 41 substituted	92
136 Section 42 amended	92
137 Emergency treatment	93
138 Heading to Division 4 of Part 4A substituted	93
139 Section 42B amended	93
140 Guidelines for special procedures	93
141 Section 42E amended	93
142 Section 42F amended	94
143 Section 42G amended	95
144 Other medical or dental treatment and medical research procedures	96
145 Application for rehearing	96
146 General penalty	96
147 Supreme Court—Limitation of jurisdiction	96
148 Regulations	96
149 Medical research procedures	97
<b>Division 2—Powers of Attorney Act 2014</b>	<b>97</b>
150 Definitions	97
151 Power to make and scope of appointment	98
152 New Division 4 inserted into Part 10	98
<b>Division 3—Victorian Civil and Administrative Tribunal Act 1998</b>	<b>99</b>
153 Heading to Part 14 of Schedule 1 amended	99
154 New clause 46G inserted in Schedule 1	99
155 Clauses 47 to 50 of Schedule 1 amended	100
<b>Division 4—Disability Act 2006</b>	<b>100</b>
156 Information systems	100
<b>Division 5—Other amendments</b>	<b>101</b>
157 Health Records Act 2001	101
158 Privacy and Data Protection Act 2014	101
159 Road Safety Act 1986	102
160 Severe Substance Dependence Treatment Act 2010	102

<i>Section</i>	<i>Page</i>
<b>Division 6—Repeal</b>	<b>102</b>
161 Repeal of amending provisions	102
<b>Endnotes</b>	<b>103</b>
1 General information	103

**Authorised Version**



**Victoria**

# **Medical Treatment Planning and Decisions Act 2016<sup>†</sup>**

**No. 69 of 2016**

[Assented to 29 November 2016]

**The Parliament of Victoria enacts:**

## **Part 1—Preliminary**

### **1 Purposes**

The main purposes of this Act are—

- (a) to provide for a person to execute in advance a directive that gives binding instructions or expresses the person's preferences and values in relation to the person's future medical treatment;



- (b) to provide for the making of medical treatment decisions on behalf of persons who do not have decision-making capacity;
- (c) to provide for a person to appoint—
  - (i) another person to make medical treatment decisions on behalf of the person when the person does not have decision-making capacity;
  - (ii) another person to support the person and represent the interests of the person in making medical treatment decisions;
- (d) to provide for a process for obtaining approval and consent for medical research procedures to be administered to a person who does not have decision-making capacity;
- (e) to repeal the **Medical Treatment Act 1988**;
- (f) to amend the **Mental Health Act 2014** in relation to approval procedures for electroconvulsive treatment of adults who do not have capacity.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 12 March 2018, it comes into operation on that day.

## 3 Definitions

- (1) In this Act—

*administer* includes the following—

- (a) supervise the administration of;
- (b) continue to administer;

*adult* means a person of or above the age of 18 years;

*advance care directive* means a directive given under Part 2;

*appointed medical treatment decision maker* means a medical treatment decision maker appointed under Division 2 of Part 3;

*authorised psychiatrist* has the same meaning as it has in the **Mental Health Act 2014**;

*authorised witness* means either of the following—

- (a) a registered medical practitioner;
- (b) a person authorised to take affidavits by section 123C of the **Evidence (Miscellaneous Provisions) Act 1958**;

*care relationship* has the same meaning as it has in the **Carers Recognition Act 2012**;

*child* means a person under the age of 18 years;

*decision-making capacity* has the meaning given by section 4;

*domestic partner* of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides

domestic support and personal care to the person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government, a government agency, a body corporate or a charitable or benevolent organisation);

***electroconvulsive treatment*** has the same meaning as it has in the **Mental Health Act 2014**;

***eligible applicant*** means any of the following—

- (a) a health practitioner who has the care of, or is providing medical treatment to, a person;
- (b) the medical treatment decision maker of a person;
- (c) a person's support person;
- (d) the Public Advocate;
- (e) any other person whom VCAT is satisfied has a special interest in the affairs of the person concerned;

***health facility*** means—

- (a) the following within the meaning of the **Health Services Act 1988**—
  - (i) denominational hospital;
  - (ii) multi purpose service;
  - (iii) private hospital;
  - (iv) public health service;
  - (v) public hospital;
  - (vi) residential care service;

- (vii) State funded residential care service; and
- (b) the Victorian Institute of Forensic Mental Health established under Part 14 of the **Mental Health Act 2014**; and
- (c) a group home within the meaning of the **Disability Act 2006**; and
- (d) a supported residential service within the meaning of the **Supported Residential Services (Private Proprietors) Act 2010**;

*health information* has the same meaning as it has in the **Health Records Act 2001**;

*health practitioner* means the following—

- (a) a registered health practitioner;
- (b) an operational staff member within the meaning of the **Ambulance Services Act 1986**;
- (c) the holder of a non-emergency patient transport service licence within the meaning of the **Non-Emergency Patient Transport Act 2003** or an employee or contractor of such a holder who provides such a service;

*human research ethics committee* means—

- (a) a human research ethics committee established in accordance with the requirements of—
  - (i) the National Statement on Ethical Conduct in Research Involving Humans published by the National Health and Medical Research

Council in 1999 as in force from time to time; or

(ii) any superseding document of the statement referred to in subparagraph (i) published by the National Health and Medical Research Council that covers the same subject matter; or

(b) an ethics committee established under the by-laws of any of the following within the meaning of the **Health Services Act 1988**—

(i) denominational hospital;

(ii) multi purpose service;

(iii) public health service;

(iv) public hospital;

*instructional directive* has the meaning given by section 6;

*medical research practitioner* means—

(a) a registered medical practitioner; or

(b) a person registered under the Health Practitioner Regulation National Law—

(i) to practise in the dental profession as a dentist (other than as a student); and

(ii) in the dentist division of that profession;

*medical research procedure* means—

(a) a procedure carried out for the purposes of medical research, including, as part of a clinical trial—

- (i) the administration of pharmaceuticals; or
- (ii) the use of equipment or a device; or

(b) a prescribed medical research procedure—

but does not include any of the following—

- (c) any non-intrusive examination including—
  - (i) a visual examination of the mouth, throat, nasal cavity, eyes or ears; or
  - (ii) the measuring of a person's height, weight or vision;
- (d) observing a person's activities;
- (e) undertaking a survey;
- (f) collecting or using information, including either of the following—
  - (i) personal information within the meaning of the **Privacy and Data Protection Act 2014**;
  - (ii) health information;
- (g) any other procedure prescribed not to be a medical research procedure;

***medical treatment*** means any of the following treatments of a person by a health practitioner for the purposes of diagnosing a physical or mental condition, preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life—

- (a) treatment with physical or surgical therapy;

- (b) treatment for mental illness;
- (c) treatment with—
  - (i) prescription pharmaceuticals; or
  - (ii) an approved medicinal cannabis product within the meaning of the **Access to Medicinal Cannabis Act 2016**;
- (d) dental treatment;
- (e) palliative care—

but does not include a medical research procedure;

*medical treatment decision* means a decision to consent to or refuse the commencement or continuation of medical treatment or a medical research procedure;

*medical treatment decision maker* in relation to a person means the person identified in accordance with section 55 at a particular time;

*mental health patient* means a patient within the meaning of the **Mental Health Act 2014**;

*mental illness* has the same meaning as it has in the **Mental Health Act 2014**;

*neurosurgery for mental illness* has the same meaning as it has in the **Mental Health Act 2014**;

*palliative care* includes the following—

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

*primary carer* of a person means an adult who—

- (a) is in a care relationship with the person;  
and
- (b) has principal responsibility for the person's care;

*professional misconduct* has the same meaning as it has in the Health Practitioner Regulation National Law;

*psychiatrist* means a person who is registered under the Health Practitioner Regulation National Law as a medical practitioner in the specialty of psychiatry (other than as a student);

*Public Advocate* has the same meaning as it has in the **Guardianship and Administration Act 1986**;

*registered health practitioner* has the same meaning as it has in the Health Practitioner Regulation National Law;

*relevant human research ethics committee* in relation to a medical research procedure means the human research ethics committee responsible for approving the relevant research project;

*relevant research project* in relation to a medical research procedure means the research project for the purposes of which the procedure is administered;

*routine treatment* means any medical treatment other than significant treatment;

*Secretary* means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health and Human Services;



***significant treatment*** means any medical treatment of a person that involves any of the following—

- (a) a significant degree of bodily intrusion;
- (b) a significant risk to the person;
- (c) significant side effects;
- (d) significant distress to the person;

***special medical procedure*** has the same meaning as it has in the **Guardianship and Administration Act 1986**;

***spouse*** of a person means a person to whom the person is married;

***support person*** means a person appointed under Division 3 of Part 3;

***treatment for mental illness*** means the following—

- (a) things that are done in the course of the exercise of professional skills—
  - (i) to remedy a person's mental illness; or
  - (ii) to alleviate the symptoms and reduce the ill effects of a person's mental illness;
- (b) electroconvulsive treatment;
- (c) neurosurgery for mental illness;

***Tribunal*** means the Mental Health Tribunal established under section 152 of the **Mental Health Act 2014**;

*unprofessional conduct* has the same meaning as it has in the Health Practitioner Regulation National Law;

*values directive* has the meaning given by sections 6 and 12.

(2) For the purposes of the definition of *domestic partner* in subsection (1)—

(a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

(c) a person is not a domestic partner of another person merely because they are co-tenants.

(3) For the purposes of the definition of *primary carer* in subsection (1), a person who is cared for in a health facility at which the person is cared for by another person is not, by reason only of that fact, to be regarded as being in the care of that other person and remains in the care relationship that the person was in immediately before being cared for in that health facility.

#### 4 Decision-making capacity

(1) A person has *decision-making capacity* to make a decision to which this Act applies if the person is able to do the following—

(a) understand the information relevant to the decision and the effect of the decision;

- (b) retain that information to the extent necessary to make the decision;
  - (c) use or weigh that information as part of the process of making the decision;
  - (d) communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.
- (2) For the purposes of subsection (1), an adult is presumed to have decision-making capacity unless there is evidence to the contrary.
- (3) For the purposes of subsection (1)(a), a person is taken to understand information relevant to a decision if the person understands an explanation of the information given to the person in a way that is appropriate to the person's circumstances, whether by using modified language, visual aids or any other means.
- (4) In determining whether or not a person has decision-making capacity, regard must be had to the following—
- (a) a person may have decision-making capacity to make some decisions and not others;
  - (b) if a person does not have decision-making capacity for a particular decision, it may be temporary and not permanent;
  - (c) it should not be assumed that a person does not have decision-making capacity to make a decision—
    - (i) on the basis of the person's appearance;  
or
    - (ii) because the person makes a decision that is, in the opinion of others, unwise;

- (d) a person has decision-making capacity to make a decision if it is possible for the person to make a decision with practicable and appropriate support.

**Examples**

Practicable and appropriate support includes the following—

- (a) using information or formats tailored to the particular needs of a person;
  - (b) communicating or assisting a person to communicate the person's decision;
  - (c) giving a person additional time and discussing the matter with the person;
  - (d) using technology that alleviates the effects of a person's disability.
- (5) A person who is assessing whether a person has decision-making capacity must take reasonable steps to conduct the assessment at a time and in an environment in which the person's decision-making capacity can be most accurately assessed.

**5 VCAT orders in relation to decision-making capacity**

- (1) An eligible applicant may apply to VCAT for an order in relation to the decision-making capacity of a person to make a decision to which this Act applies.
- (2) On application under subsection (1), or on its own motion in any hearing before it, VCAT may make an order about the decision-making capacity of a person in relation to a decision to which this Act applies.
- (3) VCAT may make an order that a person has, or does not have, decision-making capacity in relation to a decision to which this Act applies.

## 6 Types of directives

- (1) For the purposes of this Act, an *instructional directive*—
- (a) is an express statement in an advance care directive of a person's medical treatment decision; and
  - (b) takes effect as if the person who gave it has consented to, or refused the commencement or continuation of, medical treatment, as the case may be.

### Examples

A statement that a person consents to a heart bypass operation in specified circumstances.

A statement that a person refuses cardiopulmonary resuscitation.

- (2) For the purposes of this Act, a *values directive* is a statement in an advance care directive of a person's preferences and values as the basis on which the person would like any medical treatment decisions to be made on behalf of the person, including, but not limited to, a statement of medical treatment outcomes that the person regards as acceptable.

### Examples

The following statements—

"If I am unable to recognise my family and friends, and cannot communicate, I do not want any medical treatment to prolong my life."

"If a time comes when I cannot make decisions about my medical treatment, I would like to receive any life prolonging medical treatments that are beneficial. This includes receiving a medical research procedure to see if the procedure has any benefit for me."

- (3) For the purposes of subsections (1) and (2), an instructional directive or a values directive—
- (a) may be given in relation to—
    - (i) medical treatment or a medical research procedure to be provided in a particular instance; or
    - (ii) a course of medical treatment or medical research procedures to be provided over a period of time; and
  - (b) may be given about—
    - (i) one or more particular forms of medical treatment or medical research procedures; or
    - (ii) generally about all medical treatment or medical research procedures; and
  - (c) may be given so as to apply—
    - (i) in all circumstances; or
    - (ii) only in specified circumstances; or
    - (iii) in all circumstances except in specified circumstances.

**Note**

See section 12.

**7 Principles**

- (1) A person exercising a power or performing a function or duty under this Act must have regard to the following principles—
- (a) a person—
    - (i) has the right to make informed decisions about the person's medical treatment or medical research procedures that may be administered to the person; and

- (ii) should be given, in a sensitively communicated and clear and open manner, information about medical treatment or medical research procedure options, including comfort and palliative care, to enable the person to make informed decisions;
- (b) the informed decisions of a person made under paragraph (a) should be respected and given effect to;
- (c) a person has the right to be shown respect for the person's culture, beliefs, values and personal characteristics;
- (d) a person's preferences, values and personal and social wellbeing should direct decisions about the person's medical treatment or medical research procedures that may be administered to the person;
- (e) a person should be supported to enable the person to make decisions about the person's medical treatment or medical research procedures that may be administered to the person;
- (f) a person may exercise autonomy with regards to medical treatment or medical research procedures that may be administered to the person by—
  - (i) making decisions; and
  - (ii) setting out preferences and values in advance; and
  - (iii) appointing a medical treatment decision maker; and
  - (iv) appointing a support person; and
  - (v) making collaborative decisions with family or community;

(g) a partnership between a person and the person's family and carers and health practitioners is important to achieve the best possible outcomes.

(2) In subsection (1), the reference to a person exercising a power or performing a function or duty under this Act includes VCAT.

**8 Health practitioner cannot be compelled to provide particular medical treatment or futile or non-beneficial medical treatment**

(1) Nothing in this Act authorises the making of either of the following that purports to compel a health practitioner to administer a particular form of medical treatment or medical research procedure to a person—

(a) a statement in an advance care directive;

(b) a decision by a medical treatment decision maker.

(2) Nothing in this Act requires a health practitioner to administer a futile or non-beneficial medical treatment or medical research procedure to a person.



## **Part 2—Advance care directives**

### **9 Medical treatment to include medical research**

In this Part, *medical treatment* includes a medical research procedure.

### **10 Other rights to refuse medical treatment not affected**

Nothing in this Part affects any right of a person under any other law to refuse medical treatment.

### **11 Interpreting an advance care directive**

Subject to any statement in an advance care directive to the contrary, a reference in an advance care directive to particular medical treatment includes a reference to any other medical treatment that is—

- (a) of substantially the same kind; or
- (b) only distinguishable on technical grounds not likely to be understood or appreciated by the person who gave the advance care directive.

### **12 Content of advance care directives**

- (1) An advance care directive is a document that sets out a person's binding instructions or preferences and values in relation to the medical treatment of that person in the event that the person does not have decision-making capacity for that medical treatment.
- (2) An advance care directive may contain either or both of the following—
  - (a) an instructional directive;
  - (b) a values directive.

- (3) For the purposes of subsection (2), each of the following is a values directive—
- (a) any statement that is not expressly identified on the face of the document as an instructional directive;
  - (b) any instructional directive that is of unclear or uncertain application in relation to particular circumstances but that is still indicative of a person's preferences or values in relation to those circumstances;
  - (c) any statement—
    - (i) purporting to consent to a special medical procedure; or
    - (ii) concerning palliative care; or
    - (iii) made in a document of another State or a Territory recognised as an advance care directive under section 95.

**Note**

See Part 4A of the **Guardianship and Administration Act 1986**.

**13 Who may give an advance care directive?**

Any person (including a child) may give an advance care directive if—

- (a) the person—
  - (i) has decision-making capacity in relation to each statement in the directive; and
  - (ii) understands the nature and effect of each statement in the directive; and

- (b) the requirements of this Part are complied with.

**Note**

An adult may also appoint a medical treatment decision maker. See Division 2 of Part 3.

**14 Offence to induce giving of advance care directive**

- (1) A person must not, by dishonesty or undue influence, induce another person to give an advance care directive.

Penalty: 600 penalty units or imprisonment for 5 years or both in the case of a natural person;  
2400 penalty units in the case of a body corporate.

- (2) An advance care directive given in contravention of subsection (1) is void and of no effect.

**15 False or misleading statements**

- (1) A person must not knowingly make a false or misleading statement in relation to another person's advance care directive.

Penalty: 600 penalty units or imprisonment for 5 years or both in the case of a natural person;  
2400 penalty units in the case of a body corporate.

- (2) A person must not knowingly make a false or misleading statement in relation to an attempt by another person to give an advance care directive.

Penalty: 600 penalty units or imprisonment for 5 years or both in the case of a natural person;  
2400 penalty units in the case of a body corporate.

## **16 Formal requirements**

- (1) An advance care directive—
  - (a) must be in writing in English; and
  - (b) must include the full name, date of birth and address of the person giving it; and
  - (c) subject to subsection (2), must be signed by the person giving it; and
  - (d) must be witnessed and certified in accordance with the requirements set out in section 17.
- (2) A person may sign an advance care directive at the direction of the person giving the directive if the person signing—
  - (a) is an adult; and
  - (b) is not a witness to the signing of the document.

## **17 Witnessing and certification requirements**

- (1) The witnessing requirements for an advance care directive are the following—
  - (a) 2 adult witnesses are required to witness the signing of the document;
  - (b) each witness must sign and date the document in the presence of—
    - (i) the person giving the advance care directive; and
    - (ii) each other;
  - (c) at least one of the witnesses must be a registered medical practitioner and must write the qualification of that registered medical practitioner on the document;

- (d) neither witness may be an appointed medical treatment decision maker of the person giving the advance care directive;
  - (e) in the case of an advance care directive being given by a child, at least one of the witnesses must be a registered medical practitioner or psychologist with the prescribed training and experience.
- (2) Each witness referred to in subsection (1) must certify on the document that—
- (a) at the time of signing the document, the person giving the advance care directive appeared to have decision-making capacity in relation to each statement in the directive; and
  - (b) the person appeared to freely and voluntarily sign the document; and
  - (c) the person signed the document in the presence of the 2 witnesses; and
  - (d) the witness is not an appointed medical treatment decision maker of the person.
- (3) Each witness referred to in subsection (1) must certify on the document that, at the time of signing the document, the person giving the advance care directive appeared to understand the nature and effect of each statement in the directive.

### **18 Unlawful statements in advance care directives**

- (1) An advance care directive must not include any of the following statements—
- (a) a statement that is unlawful or would require an unlawful act to be performed;
  - (b) a statement that would, if given effect, cause a health practitioner to contravene a professional standard or code of conduct

(however described) applying to the profession of that health practitioner;

- (c) a statement—
  - (i) of a prescribed kind; or
  - (ii) containing a prescribed instruction or prescribed kind of instruction.

- (2) If a statement in an advance care directive contravenes subsection (1)—
  - (a) that statement is void and is severed from the directive; and
  - (b) if the remaining statements in the directive are capable of applying with the voided statement severed, the advance care directive has effect as if it were made without the severed statement, subject to this Part.

### **19 When is an advance care directive in force?**

- (1) An advance care directive comes into force at the time it is signed in accordance with this Part.
- (2) An advance care directive remains in force until—
  - (a) any expiry date that is specified in it; or
  - (b) it is revoked in accordance with this Act.

### **20 Amendment or revocation**

- (1) An advance care directive may be amended or revoked by complying with the requirements of this Part for the giving of an advance care directive, with any necessary modification.
- (2) An amendment to an advance care directive must be done on the face of the original advance care directive that it is amending.
- (3) An advance care directive given by a person is revoked by any later advance care directive given by that person.

## **21 Non-compliance with formal requirements**

- (1) If a person attempts to give, amend or revoke an advance care directive in a form that is not in accordance with this Part, the document does not take effect as an advance care directive or amendment or revocation of an advance care directive, as the case may be, unless VCAT makes an order referred to in section 22(2)(b)(ii).
- (2) A document referred to in subsection (1) may nevertheless constitute a statement of the person's preferences and values that may be taken into account by a medical treatment decision maker, a health practitioner or the Public Advocate.

## **22 VCAT orders in relation to advance care directives**

- (1) An eligible applicant may apply to VCAT for an order in relation to the following—
  - (a) the validity of—
    - (i) an advance care directive; or
    - (ii) an amendment to or the revocation of an advance care directive;
  - (b) the meaning and effect of an advance care directive;
  - (c) whether a statement in an advance care directive is still applicable, because circumstances have changed since the advance care directive was given so that the practical effect of the statement would no longer be consistent with the preferences and values of the person who gave the directive;
  - (d) with the permission of VCAT, any other matter in relation to an advance care directive.

- (2) On application under subsection (1), or on its own motion in any hearing before it, VCAT may do any of the following—
- (a) make an order—
    - (i) revoking all or part of an advance care directive; or
    - (ii) varying the effect of an advance care directive; or
    - (iii) suspending an advance care directive for a specified period;
  - (b) make an order declaring—
    - (i) that an advance care directive is invalid because of a failure to comply with a requirement of this Part; or
    - (ii) that an advance care directive is valid despite a failure to comply with a requirement of this Part, if a person's intention to give, amend or revoke an advance care directive is sufficiently clear;
  - (c) make any other order it considers necessary.
- (3) Before making an order under this section, VCAT must be satisfied that the order is consistent with the following—
- (a) any known preferences and values of the person who gave the advance care directive, whether—
    - (i) expressed by way of a values directive or otherwise; or
    - (ii) inferred from the person's life;
  - (b) promoting the personal and social wellbeing of the person, having regard to the need to respect the person's individuality.



- (4) In this section, *advance care directive* includes a purported advance care directive.

**23 Further considerations for revoking, varying or suspending an instructional directive**

VCAT must not make an order revoking, varying or suspending an instructional directive unless it is satisfied that—

- (a) the person who gave the instructional directive does not have decision-making capacity in relation to that directive; and
- (b) either of the following applies—
  - (i) circumstances have changed since the instructional directive was given so that the practical effect of the instructional directive would no longer be consistent with the preferences and values of the person who gave it; or
  - (ii) the person who gave the instructional directive relied on incorrect information or made incorrect assumptions when giving it.

**24 Parties to VCAT proceeding**

If an application to VCAT is made under section 22, the person who gave the advance care directive is a party to the proceeding.

**Note**

See also section 59 of the **Victorian Civil and Administrative Tribunal Act 1998**.

## **Part 3—Medical treatment decision makers and support persons**

### **Division 1—Preliminary**

#### **25 Medical treatment to include medical research**

In this Part, *medical treatment* includes a medical research procedure.

### **Division 2—Appointed medical treatment decision makers**

#### **26 Appointment of medical treatment decision maker**

- (1) An adult who has decision-making capacity may appoint another adult as the person's appointed medical treatment decision maker.
- (2) An appointment as an appointed medical treatment decision maker may be made—
  - (a) at the same time as an advance care directive is given; or
  - (b) at any other time.

#### **27 Powers of appointed medical treatment decision maker**

An appointed medical treatment decision maker has the powers set out in Parts 4 and 5 or in any other Act, subject to any limitations or conditions specified in the document of appointment.

#### **28 Formal requirements**

- (1) An appointment of an appointed medical treatment decision maker—
  - (a) must be in writing in English; and
  - (b) must include the full name, date of birth and address of the person making it; and

- (c) must include any prescribed details in relation to any appointee; and
  - (d) subject to section 37, must be signed by the person making it; and
  - (e) may appoint more than one person as a medical treatment decision maker; and
  - (f) must be witnessed and certified in accordance with the requirements set out in section 36; and
  - (g) must be accepted by each appointee in accordance with section 29 before it comes into effect.
- (2) The appointed medical treatment decision maker of a person is the first person listed in the appointment who is reasonably available and willing and able to act at the particular time.

## **29 Acceptance of appointment by appointed medical treatment decision maker**

An acceptance of appointment as an appointed medical treatment decision maker must—

- (a) be in writing on the same document as the appointment; and
- (b) be signed by each appointee; and
- (c) include a statement of acceptance by each appointee to the effect that the appointee—
  - (i) understands the obligations of an appointed medical treatment decision maker; and
  - (ii) undertakes to act in accordance with any known preferences and values of the person making the appointment; and

- (iii) undertakes to promote the personal and social wellbeing of the person making the appointment, having regard to the need to respect the person's individuality; and
  - (iv) has read and understands any advance care directive that the person has given before, or at the same time as, the appointment; and
- (d) be witnessed by an adult who certifies as to witnessing the signing of the acceptance.

### **30 Revocation of appointment**

A person who appointed a medical treatment decision maker may revoke that appointment—

- (a) if the person has decision-making capacity in relation to the revocation decision; and
- (b) by complying with the requirements for the making of an appointment set out in section 28(1), other than paragraph (g).

#### **Note**

VCAT also has power to revoke an appointment of an appointed medical treatment decision maker. See Division 6.

## **Division 3—Support persons**

### **31 Appointment of support person**

- (1) Any person (including a child) who has decision-making capacity may appoint another person (including a child) as the person's support person.
- (2) Only one support person may be appointed for a person.

### **32 Role of support person**

- (1) The role of a support person for the person making the appointment is—
  - (a) to support the person to make, communicate and give effect to the person's medical treatment decisions; and
  - (b) to represent the interests of the person in respect of the person's medical treatment, including when the person does not have decision-making capacity in relation to medical treatment decisions.
- (2) A support person acting in the capacity of a support person does not have the power to make a person's medical treatment decisions.

#### **Note**

Being a support person does not preclude a person from also being a medical treatment decision maker (see section 55).

### **33 Formal requirements**

An appointment of a support person—

- (a) must be in writing in English; and
- (b) must include the full name, date of birth and address of the person making it; and
- (c) must include any prescribed details in relation to any appointee; and
- (d) subject to section 37, must be signed by the person making it; and
- (e) must be witnessed and certified in accordance with the requirements set out in section 36; and
- (f) must be accepted by the appointee in accordance with section 34 before it comes into effect.

### **34 Acceptance of appointment by support person**

An acceptance of appointment as a support person must—

- (a) be in writing on the same document as the appointment; and
- (b) be signed by the appointee; and
- (c) include a statement of acceptance by the appointee to the effect that the appointee—
  - (i) accepts the appointment; and
  - (ii) understands the role of a support person; and
- (d) be certified by an adult who certifies as to witnessing the signing of the acceptance.

### **35 Revocation of appointment**

- (1) A person who appointed a support person may revoke that appointment—
  - (a) if the person has decision-making capacity in relation to the revocation decision; and
  - (b) by complying with the requirements for the making of an appointment set out in section 33, other than paragraph (f).

**Note**

VCAT also has power to revoke an appointment of a support person. See Division 6.

- (2) An appointment of a support person is revoked by any later appointment of a support person.

## **Division 4—Procedural requirements**

### **36 Witnessing and certification requirements**

- (1) The witnessing requirements for an appointment of an appointed medical treatment decision maker or a support person or the revocation of such an appointment are the following—
  - (a) 2 adult witnesses are required to witness the signing of the document making or revoking the appointment;
  - (b) each witness must sign and date the document in the presence of—
    - (i) the person making or revoking the appointment; and
    - (ii) each other;
  - (c) at least one of the witnesses must be an authorised witness and must write the qualification of that authorised witness on the document.
- (2) Each witness referred to in subsection (1) must certify on the document that—
  - (a) at the time of signing the document, the person making or revoking the appointment—
    - (i) appears to have decision-making capacity; and
    - (ii) appears to understand the nature and consequences of making or revoking the appointment; and
  - (b) the person appeared to freely and voluntarily sign the document; and
  - (c) the person signed the document in the presence of the 2 witnesses; and

- (d) the witness is not an appointee under the appointment.

**37 Signing at the direction of the person making or revoking an appointment**

A person may sign an appointment or a revocation of appointment under this Part at the direction of the person making the appointment or revoking the appointment if the person signing—

- (a) is an adult; and
- (b) is not a witness to the signing of the appointment or revocation; and
- (c) is not an appointee.

**38 When is an appointment under this Part in force?**

- (1) An appointment under this Part comes into force on the date it is made.
- (2) An appointment under this Part remains in force until—
  - (a) it is revoked in accordance with this Act; or
  - (b) the appointee resigns from the appointment.

**39 Resignation of appointed medical treatment decision maker or support person**

- (1) An appointee under this Part may resign from the appointment.
- (2) A person who resigns from an appointment under this Part must take all reasonable steps to inform the following persons of the resignation—
  - (a) the person who made the appointment;
  - (b) in the case of a mental health patient, the authorised psychiatrist treating the patient;



- (c) in the case of an appointed medical treatment decision maker, any other appointed medical treatment decision maker appointed by the same appointment.
- (3) A failure by an appointee to comply with subsection (2) does not affect the validity of the resignation.
- (4) A resignation under this Part—
  - (a) must be in writing and expressly state an intention to resign; and
  - (b) must be signed and dated by the appointee; and
  - (c) must be witnessed by one adult witness.

**40 Appointee to be informed if appointment revoked**

- (1) If the appointment of an appointee under this Part is revoked, the person who revoked the appointment must take reasonable steps to inform the appointee that the appointment has been revoked.
- (2) A failure to inform the appointee under subsection (1) does not affect the validity of the revocation.

**Division 5—Offences**

**41 Offence to purport to act as an appointed medical treatment decision maker or a support person**

- (1) A person must not purport to act as an appointed medical treatment decision maker of another person if the person is not the appointed medical treatment decision maker of that other person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) A person must not purport to act as the support person of another person if the person is not the support person of that other person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

**42 Offence to induce appointment of appointed medical treatment decision maker**

- (1) A person must not, by dishonesty or undue influence, induce another person to appoint an appointed medical treatment decision maker.

Penalty: 600 penalty units or imprisonment for 5 years or both in the case of a natural person;

2400 penalty units in the case of a body corporate.

- (2) If a person contravenes subsection (1), the appointment is void and of no effect.

**Division 6—Applications to VCAT**

**43 VCAT orders in relation to appointed medical treatment decision makers and support persons**

- (1) An eligible applicant may apply to VCAT for an order in respect of the following matters in relation to an appointment of, or a revocation of an appointment of, an appointed medical treatment decision maker or a support person—

(a) the validity of the appointment or revocation of the appointment;

(b) the effect on the appointment of any failure to comply with—

- (i) in the case of an appointment of an appointed medical treatment decision maker, the requirements in section 28;  
or

- (ii) in the case of an appointment of a support person, the requirements in section 33;
  - (c) with the permission of VCAT, any other matter in relation to an appointment under this Part.
- (2) On application under subsection (1), or on its own motion in any hearing before it, VCAT may do any of the following—
  - (a) subject to section 46, make an order—
    - (i) revoking the appointment; or
    - (ii) varying the matters in respect of which the appointment of an appointed medical treatment decision maker applies;
  - (b) make an order declaring—
    - (i) that an appointment or a revocation is invalid; or
    - (ii) that an attempt to appoint, or revoke the appointment of, an appointed medical treatment decision maker or a support person is effective;
  - (c) make any other order it considers necessary.
- (3) Before making an order under this Part, VCAT must be satisfied that the order is consistent with the following—
  - (a) any known preferences and values of the person who made the appointment, whether—
    - (i) expressed by way of a values directive or otherwise; or
    - (ii) inferred from the person's life;

- (b) promoting the personal and social wellbeing of the person, having regard to the need to respect the person's individuality.

#### **44 Further considerations for declaring an appointment or a revocation invalid**

VCAT must not make an order declaring that an appointment or a revocation of an appointed medical treatment decision maker or a support person is invalid unless VCAT is satisfied that—

- (a) the person who made the appointment or revocation did not have decision-making capacity at the time the appointment or revocation was made; or
- (b) subject to section 45, at the time the appointment or revocation was made the appointment did not comply with a requirement of this Part; or
- (c) a person was induced by dishonesty or undue influence to make the appointment or revocation.

#### **45 Non-compliance with formal requirements**

If VCAT is satisfied that a person's intention to appoint an appointed medical treatment decision maker or a support person is sufficiently clear, it may by order declare effective the attempt to make a valid appointment despite any non-compliance with this Part.

#### **46 Further considerations for revoking or varying an appointment**

- (1) VCAT must not make an order revoking or varying an appointment made under this Part unless satisfied that the person who made the appointment does not have decision-making capacity to revoke the appointment.

- (2) VCAT must not make an order revoking or varying an appointment made under this Part unless VCAT is satisfied that the appointee—
- (a) is not acting in accordance with the following—
    - (i) any known preferences and values of the person who made the appointment, whether—
      - (A) expressed by way of a values directive or otherwise; or
      - (B) inferred from the person's life;
    - (ii) promoting the personal and social wellbeing of the person, having regard to the need to respect the person's individuality; or
  - (b) is not complying with the requirements of this Act.

#### **47 Parties to VCAT proceeding**

If an application is made to VCAT under section 43, the following persons are a party to the proceeding—

- (a) the person who made the relevant appointment under this Part;
- (b) in the case of a matter concerning an appointment of an appointed medical treatment decision maker, the appointed medical treatment decision maker;
- (c) in the case of a matter concerning an appointment of a support person, the support person.

#### **Note**

See also section 59 of the **Victorian Civil and Administrative Tribunal Act 1998**.

## **Part 4—Medical treatment decisions**

### **Division 1—Preliminary**

#### **48 Application of Part**

- (1) This Part does not apply in relation to the following—
  - (a) medical treatment that is treatment for mental illness at any time that the person being treated is a mental health patient;
  - (b) neurosurgery for mental illness.

**Note**

See Part 5 of the **Mental Health Act 2014**.

- (2) Nothing in this Part affects the operation of section 24 of the **Human Tissue Act 1982**.

#### **49 Duty of care not affected**

Nothing in this Part affects any duty of care owed by a health practitioner to a patient.

#### **50 Requirement to ascertain existence of advance care directives and medical treatment decision makers**

- (1) Before a health practitioner administers medical treatment to a person who does not have decision-making capacity to make the medical treatment decision, the health practitioner must make reasonable efforts in the circumstances to ascertain if the person has either or both of the following—
  - (a) an advance care directive;
  - (b) a medical treatment decision maker.

**Note**

Section 4(4)(a) provides that a person may have decision-making capacity for some decisions but not for others.

- (2) If a registered health practitioner contravenes subsection (1), that contravention is unprofessional conduct.

**51 Circumstances in which health practitioner may refuse to comply with an instructional directive**

A health practitioner may refuse under this Part to comply with an instructional directive if the health practitioner believes on reasonable grounds that—

- (a) circumstances have changed since the person gave the advance care directive so that the practical effect of the instructional directive would no longer be consistent with the person's preferences and values; and
- (b) the delay that would be caused by an application to VCAT under section 22 would result in a significant deterioration of the person's condition.

**52 No liability if this Part complied with**

- (1) A health practitioner who, in good faith and without negligence, administers or does not administer medical treatment to a person under this Part and believes on reasonable grounds that the requirements of this Part have been complied with is not—
- (a) guilty of an offence; or
  - (b) liable for unprofessional conduct or professional misconduct; or
  - (c) liable in any civil proceeding; or
  - (d) liable for contravention of any code of conduct.

- (2) A health practitioner who, in good faith, without negligence and in reliance on an instructional directive, administers or does not administer medical treatment that the practitioner believes on reasonable grounds is in accordance with that instructional directive is not because of the administration or failure to administer that medical treatment—
- (a) guilty of an offence; or
  - (b) liable for unprofessional conduct or professional misconduct; or
  - (c) liable in any civil proceeding; or
  - (d) liable for contravention of any code of conduct.
- (3) For the purposes of subsection (2), a person who acts in good faith in reliance on an advance care directive that has been revoked or is invalid, but who is not aware of the revocation or invalidity, is to be treated as having acted in good faith in reliance on that directive.

**Note**

An instructional directive that is voided and severed from an advance care directive by section 18 is not part of that advance care directive.

**53 Medical treatment and medical research procedures in an emergency**

- (1) Subject to subsection (2), a health practitioner may administer medical treatment (other than electroconvulsive treatment) or a medical research procedure to a person without consent under this Part or without consent or authorisation under Part 5 if the practitioner believes on reasonable grounds that the medical treatment or medical research procedure is necessary, as a matter of urgency to—



- (a) save the person's life; or
  - (b) prevent serious damage to the person's health; or
  - (c) prevent the person from suffering or continuing to suffer significant pain or distress.
- (2) A health practitioner is not permitted to administer medical treatment or a medical research procedure to a person under subsection (1) if the practitioner is aware that the person has refused the particular medical treatment or procedure, whether by way of an instructional directive or a legally valid and informed refusal of treatment by or under another form of informed consent.
- (3) Nothing in subsection (2) requires a health practitioner to search for an advance care directive that is not readily available to the practitioner if the circumstances set out in subsection (1) apply to the person to whom medical treatment or a medical research procedure is being administered.

#### **54 Administering palliative care**

A health practitioner may administer palliative care to any person who does not have decision-making capacity for that care despite any decision of the person's medical treatment decision maker, but in making a decision to administer that care must—

- (a) have regard to any preferences and values of the person, whether expressed by way of a values directive or otherwise; and
- (b) consult with the person's medical treatment decision maker (if any).

**55 Who is a person's medical treatment decision maker?**

- (1) If an adult has an appointed medical treatment decision maker, the appointee is the person's medical treatment decision maker if the appointee is reasonably available and willing and able to make the medical treatment decision.

**Note**

See sections 102(2) and 103.

- (2) If subsection (1) does not apply and a guardian appointed by VCAT under the **Guardianship and Administration Act 1986** has the power under that appointment to make medical treatment decisions on behalf of a person, that guardian is the person's medical treatment decision maker if the guardian, in the circumstances, is reasonably available and willing and able to make the medical treatment decision.
- (3) If subsections (1) and (2) do not apply, the medical treatment decision maker of an adult is the first of the following persons who is in a close and continuing relationship with the person and who, in the circumstances, is reasonably available and willing and able to make the medical treatment decision—
- (a) the spouse or domestic partner of the person;
  - (b) the primary carer of the person;
  - (c) the first of the following and, if more than one person fits the description in the subparagraph, the oldest of those persons—
    - (i) an adult child of the person;
    - (ii) a parent of the person;
    - (iii) an adult sibling of the person.

- (4) The medical treatment decision maker of a child is the child's parent or guardian or other person with parental responsibility for the child who is reasonably available and willing and able to make the medical treatment decision.
- (5) Subsections (1), (2), (3) and (4) do not apply at any time that the person is a mental health patient.

**Note**

See section 75 of the **Mental Health Act 2014**.

**56 Record keeping requirements**

- (1) Before, or as soon as practicable after, administering medical treatment in accordance with this Part to a person who does not have decision-making capacity for that medical treatment, a health practitioner must record in writing in the person's clinical records—
  - (a) that the practitioner was satisfied that the person did not have decision-making capacity; and
  - (b) the reason or reasons for being so satisfied.
- (2) Without limiting subsection (1), a health practitioner who forms a belief under section 51 or 59(b) must record this belief in writing in the clinical records of the person to whom medical treatment is being administered.
- (3) A health practitioner who administers routine treatment to a person under section 63(1)(a) must set out in the person's clinical records details of—
  - (a) the practitioner's attempts to locate an advance care directive and a medical treatment decision maker; and
  - (b) the exact nature of the routine treatment and the reason for the decision to administer the routine treatment.

## **Division 2—Medical treatment decision-making process**

### **57 Medical treatment to which Division does not apply**

- (1) This Division does not apply to palliative care.

**Note**

See section 54.

- (2) This Division does not apply to a special medical procedure.

**Note**

See Part 4A of the **Guardianship and Administration Act 1986**.

### **58 Consent to medical treatment**

- (1) If a health practitioner proposes to administer medical treatment to which this Division applies to a person who does not have decision-making capacity for that medical treatment, a medical treatment decision must be obtained or ascertained in accordance with this Division.
- (2) For the avoidance of doubt, medical treatment may be refused at any time during the course of the medical treatment being provided.

**Note**

See paragraph (b) of the definition of *administer* in section 3(1).

### **59 Consent if person is likely to recover within a reasonable time**

If a health practitioner proposes to administer medical treatment to a person and the person does not have decision-making capacity in relation to the medical treatment decision but is likely to recover decision-making capacity for that decision within a reasonable time, the health practitioner may only administer the medical treatment before the person recovers decision-making capacity if—

- (a) the medical treatment—
  - (i) is in accordance with any relevant instructional directive; or
  - (ii) has been consented to by the person's medical treatment decision maker; and
- (b) the health practitioner reasonably believes that a further delay in carrying out the medical treatment would result in a significant deterioration of the person's condition.

#### **60 Giving effect to an advance care directive**

- (1) If a health practitioner proposes to administer medical treatment to a person who has an advance care directive and the person does not have decision-making capacity in respect of that medical treatment, the health practitioner must, as far as reasonably practicable—
  - (a) subject to section 51, give effect to any relevant instructional directive by—
    - (i) in the case of an instructional directive refusing particular medical treatment, withholding or withdrawing that medical treatment; and
    - (ii) in the case of an instructional directive consenting to particular medical treatment, administering that medical treatment if the health practitioner is of the opinion that it is clinically appropriate to do so; and
  - (b) in the case of an advance care directive that does not include a relevant instructional directive, refer any medical treatment decision to the person's medical treatment decision maker for a decision under section 61; and

- (c) consider any values directive in offering and administering medical treatment.
- (2) If a registered health practitioner contravenes subsection (1), that contravention is unprofessional conduct.

### **61 Decision by medical treatment decision maker**

- (1) A medical treatment decision maker who is making a medical treatment decision on behalf of a person who does not have decision-making capacity in respect of that medical treatment must make the medical treatment decision that the medical treatment decision maker reasonably believes is the decision that the person would have made if the person had decision-making capacity.
- (2) To make a decision in accordance with subsection (1), the medical treatment decision maker must do the following—
  - (a) first consider any valid and relevant values directive;
  - (b) next consider any other relevant preferences that the person has expressed and the circumstances in which those preferences were expressed;
  - (c) if the medical treatment decision maker is unable to identify any relevant preferences under paragraph (a) or (b), give consideration to the person's values, whether—
    - (i) expressed other than by way of a values directive; or
    - (ii) inferred from the person's life;

- (d) also consider the following—
  - (i) the likely effects and consequences of the medical treatment, including the likely effectiveness of the medical treatment, and whether these are consistent with the person's preferences or values;
  - (ii) whether there are any alternatives, including refusing medical treatment, that would be more consistent with the person's preferences or values;
- (e) act in good faith and with due diligence.
- (3) If the medical treatment decision maker is unable to apply the process required by subsection (2) because it is not possible to ascertain or apply the person's preferences or values, the medical treatment decision maker must—
  - (a) make a decision under subsection (1) that promotes the personal and social wellbeing of the person, having regard to the need to respect the person's individuality; and
  - (b) consider the following—
    - (i) the likely effects and consequences of the medical treatment, including the likely effectiveness of the medical treatment, and whether these promote the person's personal and social wellbeing, having regard to the need to respect the person's individuality;
    - (ii) whether there are any alternatives, including refusing medical treatment, that would better promote the person's personal and social wellbeing, having regard to the need to respect the person's individuality;

- (c) act in good faith and with due diligence.
- (4) In the case of either subsection (2) or (3), the medical treatment decision maker must also consult with any person who the medical treatment decision maker reasonably believes the person would want to be consulted in the circumstances.
- (5) A contravention of subsection (1), (2), (3) or (4) does not, of itself, result in any civil or criminal liability on the part of the medical treatment decision maker.

**62 Health practitioner to notify Public Advocate if decision maker refuses significant treatment**

A health practitioner must notify the Public Advocate if—

- (a) the medical treatment decision maker of a person refuses significant treatment under section 61; and
- (b) the health practitioner reasonably believes that the preferences and values of the person are not known or are unable to be known or inferred by that medical treatment decision maker.

**63 Medical treatment decisions if there is no advance care directive and no medical treatment decision maker**

- (1) If a health practitioner proposes to administer medical treatment to a person who does not have decision-making capacity in respect of that medical treatment and, despite having complied with section 50, has not been able to locate an advance care directive or a medical treatment decision maker for that person—



- (a) if the medical treatment is routine treatment, the health practitioner may administer that routine treatment without consent; or
  - (b) if the medical treatment is significant treatment, the health practitioner may only administer that significant treatment if the Public Advocate consents under subsection (2).
- (2) If a health practitioner seeks the consent of the Public Advocate to administer significant treatment to a person, the Public Advocate may consent to or refuse the significant treatment in accordance with section 61 as if the Public Advocate were the person's medical treatment decision maker.
- (3) Subsections (1) and (2) do not apply at any time that the person is a mental health patient.

### **Division 3—Applications to VCAT**

#### **64 Division does not apply to special medical procedure**

This Division does not apply to a special medical procedure.

**Note**

See Part 4A of the **Guardianship and Administration Act 1986**.

#### **65 Who can apply for an order?**

An eligible applicant may apply to VCAT for an order under this Division.

#### **66 Orders in relation to medical treatment decisions**

- (1) On application under section 65, or on its own motion in any hearing before it, VCAT may make an order about the authority of a person to make a medical treatment decision on behalf of a person.

- (2) VCAT may make an order—
  - (a) limiting the authority of the person to make a medical treatment decision on behalf of a person; or
  - (b) declaring that the person is not the medical treatment decision maker of a person.
- (3) If VCAT makes an order under subsection (2), VCAT may make an order affirming or setting aside the medical treatment decision.

#### **67 Application by Public Advocate**

- (1) If the Public Advocate is notified under section 62 and is of the opinion that the decision by the medical treatment decision maker to refuse the medical treatment is not unreasonable in the circumstances, the Public Advocate must notify the health practitioner as soon as possible that no application to VCAT will be made in relation to that decision.
- (2) If the Public Advocate is notified under section 62 and is of the opinion that the decision by the medical treatment decision maker to refuse the medical treatment is unreasonable in the circumstances, the Public Advocate, as soon as practicable but not more than 14 days after receiving that notification, must apply to VCAT for a review of that decision.
- (3) On application under subsection (2), VCAT may make an order about a decision of a medical treatment decision maker to consent to or refuse significant medical treatment of a person.
- (4) In an order under this section, VCAT may affirm, vary, set aside or substitute the decision of a medical treatment decision maker to consent to or refuse significant medical treatment of a person.

**68 Further orders VCAT can make**

If VCAT makes an order under this Division it may make any other order it considers necessary.

**69 Matters of which VCAT must be satisfied before making an order**

- (1) Before making an order under this Division in respect of a person to whom medical treatment is being administered, VCAT must be satisfied that the person does not have decision-making capacity in relation to the medical treatment decision that is the subject of the proceeding.
- (2) Before making an order under this Division, VCAT must be satisfied that the order is consistent with the following—
  - (a) any known preferences and values of the person to whom medical treatment is being administered, whether—
    - (i) expressed by way of a values directive or otherwise; or
    - (ii) inferred from the person's life;
  - (b) promoting the personal and social wellbeing of the person, having regard to the need to respect the person's individuality.

**70 VCAT may give advisory opinion to medical treatment decision maker or health practitioner**

- (1) A person's medical treatment decision maker or health practitioner may apply to VCAT for directions or an advisory opinion on any matter or question relating to an advance care directive or the medical treatment of the person.
- (2) VCAT may give an advisory opinion or directions on any matter which is the subject of an application under subsection (1).

## **71 Parties to VCAT proceeding**

If an application is made under this Division, the following persons are parties to the proceeding before VCAT—

- (a) the person to whom medical treatment is being administered;
- (b) in the case of a matter referred to in section 66, the person who made the medical treatment decision;
- (c) in the case of a matter referred to in section 67, the Public Advocate

### **Note**

See also section 59 of the **Victorian Civil and Administrative Tribunal Act 1998**.

## **Part 5—Medical research**

### **Division 1—Preliminary**

#### **72 Application of Part**

- (1) This Part applies to the administration of a medical research procedure to an adult who does not have decision-making capacity in relation to the procedure.
- (2) If a person is likely to recover decision-making capacity within a reasonable time to make a medical treatment decision in relation to a medical research procedure, a medical research practitioner must not administer the medical research procedure to that person under this Part.
- (3) For the purposes of subsection (2), a reasonable time is the time by which, given the nature of the relevant research project, the procedure would need to be administered to the person, having regard to the following—
  - (a) the medical or physical condition of the person;
  - (b) the stage of medical treatment or care;
  - (c) other circumstances specific to the person.

#### **73 Requirement to ascertain existence of advance care directives and medical treatment decision makers**

- (1) Before a medical research practitioner administers a medical research procedure to a person, the medical research practitioner must make reasonable efforts in the circumstances to ascertain if the person has either or both of the following—
  - (a) an advance care directive;
  - (b) a medical treatment decision maker.

- (2) If a medical research practitioner contravenes subsection (1), that contravention is unprofessional conduct.

#### **74 Protection of medical research practitioner**

- (1) A medical research practitioner who, in good faith, administers a medical research procedure to a person and believes on reasonable grounds that the requirements of this Part have been complied with is not—
- (a) guilty of an offence of assault or an offence against section 85; or
  - (b) liable for unprofessional conduct or professional misconduct; or
  - (c) liable in any civil proceeding for assault or battery; or
  - (d) liable for contravention of any code of conduct.
- (2) Nothing in this section affects any duty of care owed by a medical research practitioner to a person.

### **Division 2—Approval and consent**

#### **75 Approval to administer a medical research procedure**

A medical research practitioner must not administer a medical research procedure to a person who does not have decision-making capacity to make a medical treatment decision in respect of that procedure unless—

- (a) the relevant research project has been approved by the relevant human research ethics committee; and

- (b) subject to section 53—
- (i) the person has consented to the procedure being administered under an instructional directive; or
  - (ii) if there is no relevant instructional directive, the person's medical treatment decision maker has consented to the procedure being administered; or
  - (iii) if the person does not have a medical treatment decision maker, the procedure is authorised under Division 3.

**76 Medical research procedure to be administered in accordance with approval**

A medical research procedure must be administered in accordance with the relevant human research ethics committee approval, including any conditions of that approval.

**77 Consent of medical treatment decision maker**

- (1) A person's medical treatment decision maker may consent to the administration of a medical research procedure to the person if the medical treatment decision maker reasonably believes that the person would have consented to the procedure if the person had decision-making capacity.
- (2) To make a decision in accordance with subsection (1), the medical treatment decision maker must do the following—
  - (a) first consider any valid and relevant values directive;

- (b) next consider any other relevant preferences that the person has expressed and the circumstances in which those preferences were expressed;
  - (c) if the medical treatment decision maker is unable to identify any relevant preferences under paragraph (a) or (b), give consideration to the person's values, whether—
    - (i) expressed other than by way of a values directive; or
    - (ii) inferred from the person's life;
  - (d) also consider the following—
    - (i) the likely effects and consequences of the medical research procedure, including the likely effectiveness of the procedure, and whether these are consistent with the person's preferences or values;
    - (ii) whether there are any alternatives, including not administering the medical research procedure, that would be more consistent with the person's preferences or values;
  - (e) act in good faith and with due diligence.
- (3) If the medical treatment decision maker is unable to apply the process required by subsection (2) because it is not possible to ascertain the person's preferences or values, the medical treatment decision maker must—
- (a) make a decision under subsection (1) that promotes the personal and social wellbeing of the person, having regard to the need to respect the person's individuality; and



- (b) consider the following—
- (i) the likely effects and consequences of the medical research procedure, including the likely effectiveness of the procedure, and whether these promote the person's personal and social wellbeing, having regard to the need to protect the person's individuality;
  - (ii) whether there are any alternatives, including refusing the medical research procedure, that would better promote the person's personal and social wellbeing, having regard to the need to protect the person's individuality.
- (4) In the case of either subsection (2) or (3), the medical treatment decision maker must also consult with any person who the medical treatment decision maker reasonably believes the person would want to be consulted in the circumstances.
- (5) A failure to comply with subsection (1), (2), (3) or (4) does not, of itself, result in any civil or criminal liability on the part of the medical treatment decision maker.
- (6) The consent must be consistent with any requirements for consent specified in the relevant human research ethics committee approval for the relevant research project or the conditions of that approval.

**78 Medical research practitioner must record basis for administering medical research procedure in clinical records**

Before, or as soon as practicable after, administering a medical research procedure to a person who does not have decision-making capacity in relation to the procedure, a medical

research practitioner must record in writing in the person's clinical records—

- (a) that the practitioner was satisfied that—
  - (i) the person did not have decision-making capacity; and
  - (ii) the person was not likely to recover decision-making capacity within a reasonable time; and
- (b) the reason or reasons for being so satisfied.

### **Division 3—Medical research procedures without consent**

#### **79 Application of Division**

This Division applies if a medical research practitioner has taken reasonable steps in the circumstances to—

- (a) locate a person's instructional directive (if any), but has been unable to do so; and
- (b) identify and contact the medical treatment decision maker of the person to obtain consent to the administration of a medical research procedure to the person but has been unable to do so.

#### **80 Administering a medical research procedure if person has no medical treatment decision maker**

- (1) A medical research practitioner may administer a medical research procedure under this Division without consent to a person who does not have a medical treatment decision maker if—
  - (a) the medical research practitioner believes on reasonable grounds that inclusion of the person in the relevant research project, and being the subject of the proposed procedure, would not be contrary to the following—

- (i) the person's values, whether—
    - (A) expressed by way of a values directive or otherwise; or
    - (B) inferred from the person's life;
  - (ii) any other relevant preferences that the person has expressed, having regard to the circumstances in which those preferences were expressed;
  - (iii) the personal and social wellbeing of the person, having regard to the need to respect the person's individuality; and
- (b) the medical research practitioner believes on reasonable grounds that the relevant human research ethics committee has approved the relevant research project in the knowledge that a person may participate in the project without the prior consent of—
- (i) the person; or
  - (ii) a medical treatment decision maker; and
- (c) the medical research practitioner believes on reasonable grounds that—
- (i) one of the purposes of the relevant research project is to assess the effectiveness of the procedure being researched; and
  - (ii) the medical research procedure poses no more of a risk to the person than the risk that is inherent in the person's condition and alternative medical treatment; and

- (d) the medical research practitioner believes on reasonable grounds that the relevant research project is based on valid scientific hypotheses that support a reasonable possibility of benefit for the person as compared with standard medical treatment.
- (2) A medical research practitioner must continue to take reasonable steps to identify and contact the person's medical treatment decision maker to seek consent to the continuation of the procedure on the person.

### **81 Medical research practitioner's certificate**

- (1) Before, or as soon as practicable after, administering a medical research procedure under this Division (and in the case of a procedure lasting longer than 30 days, at intervals of no longer than 30 days), a medical research practitioner a must sign a certificate—
  - (a) certifying—
    - (i) that the person to whom the medical research procedure is being administered does not have decision-making capacity to make a medical treatment decision in respect of that procedure; and
    - (ii) that the person's medical treatment decision maker cannot be identified or contacted (as the case may be); and
    - (iii) as to each of the matters set out in section 80; and
  - (b) stating that—
    - (i) the person's medical treatment decision maker (if one is subsequently identified) will be informed of the procedure; or

- (ii) if the person recovers decision-making capacity, the person will be informed of the procedure.
- (2) The medical research practitioner must inform the person's medical treatment decision maker (if one is subsequently identified) or, if the person recovers decision-making capacity, the person, as soon as reasonably practicable of—
  - (a) the person's inclusion in the relevant research project; and
  - (b) the option to refuse the continuation of the procedure and withdraw the person from future participation in the project without compromising the person's ability to receive any available alternative medical treatment or care.
- (3) The medical research practitioner must—
  - (a) forward a copy of each certificate referred to in subsection (1) to the Public Advocate and the relevant human research ethics committee—
    - (i) in the case of the first certificate, as soon as practicable (and in any event within 2 business days) after administering the procedure; or
    - (ii) in any other case, at intervals of no more than 30 days; and
  - (b) ensure that each certificate is kept in the person's clinical records.
- (4) A medical research practitioner must not sign a certificate under this section that the practitioner knows to be false.

Penalty: 120 penalty units.

## **Division 4—Applications to VCAT**

### **82 Applications to VCAT**

- (1) Each of the following persons may apply to VCAT in relation to any matter, question or dispute under this Part relating to the administration of a medical research procedure to a person—
  - (a) the person's medical treatment decision maker;
  - (b) a person who, in the opinion of VCAT, has a special interest in the affairs of the person, including a medical research practitioner.
- (2) Despite subsection (1)(b), a medical research practitioner who is involved in the relevant research project is not entitled to apply to VCAT in relation to a refusal of a medical research procedure by a medical treatment decision maker.
- (3) If an application is made under subsection (1), the person to whom the medical research procedure is being administered is a party to the proceeding.

#### **Note**

See also section 59 of the **Victorian Civil and Administrative Tribunal Act 1998**.

- (4) The principal registrar of VCAT must give notice of an application, of the hearing of the application and of any order of VCAT in respect of the application to—
  - (a) the Public Advocate; and
  - (b) any other person whom VCAT considers has a special interest in the affairs of the person.

- (5) On an application under subsection (1), VCAT may—
- (a) make an order declaring that any proposed medical research procedure is or is not contrary to any known preferences and values of the person to whom medical treatment is being administered, whether—
    - (i) expressed by way of a values directive or otherwise; or
    - (ii) inferred from the person's life; or
  - (b) if the person's preferences and values are not known, order that any proposed medical research procedure is or is not contrary to promoting the personal and social wellbeing of the person, having regard to the need to respect the person's individuality; or
  - (c) make an order declaring that a decision relating to a medical research procedure is valid or invalid or effective or ineffective; or
  - (d) give an advisory opinion or directions in relation to the scope or exercise of the medical treatment decision maker's authority; or
  - (e) make any other orders it considers necessary.

### **83 Medical treatment decision maker may seek advice**

- (1) A person's medical treatment decision maker may apply to VCAT for directions or an advisory opinion on any matter or question relating to the scope or exercise of the person's authority to consent to a medical research procedure on behalf of the person.
- (2) The principal registrar of VCAT must give notice of the application, of the hearing of the application and of any order, directions or advisory opinion of VCAT in respect of the application to any person

whom VCAT considers has a special interest in the affairs of the person.

- (3) VCAT may—
- (a) give any directions or advisory opinion it considers necessary; and
  - (b) make any order it considers necessary.

### **Division 5—Offences**

#### **84 Offence to administer unapproved medical research procedure**

A medical research practitioner must not administer a medical research procedure to a person who does not have decision-making capacity to make a medical treatment decision in respect of the procedure unless the relevant research project has been approved by the relevant human research ethics committee.

Penalty: 240 penalty units.

#### **85 Offence to administer medical research procedure without consent or authorisation**

Subject to section 53, a medical research practitioner must not administer a medical research procedure to a person who does not have decision-making capacity to consent to the procedure unless—

- (a) the person has consented, by an instructional directive, to the procedure being administered; or
- (b) the person's medical treatment decision maker has consented to the procedure; or
- (c) the procedure is authorised under Division 3 or otherwise by law.

Penalty: 240 penalty units or imprisonment for 2 years or both.



## **Part 6—VCAT jurisdiction**

### **Division 1—Applications in first instance**

#### **86 Notice requirements**

The principal registrar of VCAT must give notice of an application under this Act, of the hearing of an application and of any order, direction or advisory opinion of VCAT in respect of the application to the following persons—

- (a) any person who VCAT considers has a special interest in the affairs of the person who gave the advance care directive, made the appointment or to whom medical treatment or a medical research procedure is being administered (as the case requires);
- (b) any other person who VCAT determines should be notified.

#### **87 Interim and temporary orders**

In an application under this Act, VCAT may make any interim orders or temporary orders that it considers necessary.

### **Division 2—Rehearings**

#### **88 Application for rehearing**

- (1) Subject to subsection (2), a person may apply to VCAT for a rehearing of an application in relation to which VCAT made an order under this Act—
  - (a) if the person was a party to the hearing of the application at first instance; or
  - (b) if the person was given notice of the hearing of the application at first instance but was not a party to the hearing of the application—

- (i) with the leave of VCAT; or
  - (ii) in the case of the Public Advocate,  
without seeking the leave of VCAT.
- (2) A person is not entitled to apply for a rehearing of any of the following—
- (a) an interim order or a temporary order;
  - (b) an application for an order to suspend or revoke the appointment of an appointed medical treatment decision maker or a support person;
  - (c) an application under Division 4 of Part 5;
  - (d) an order made by VCAT constituted by the President, whether with or without other members;
  - (e) an application for a rehearing or leave to apply for a rehearing.
- (3) An application for a rehearing or for leave to apply for a rehearing must be made within 28 days after the day that the order which is the subject of the rehearing is made.
- (4) For the purposes of subsection (3), if VCAT gives oral reasons for making an order and a party then requests written reasons under section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the written reasons are given to the party is taken to be the day of the order.

### **89 Powers of VCAT on rehearing**

- (1) On an application under section 88, VCAT must rehear the application and, for that purpose, VCAT has all the functions and powers that VCAT had with respect to the application at first instance.

- (2) On a rehearing, VCAT may—
- (a) affirm the order of VCAT at first instance; or
  - (b) vary the order of VCAT at first instance; or
  - (c) set aside the order of VCAT at first instance and make another order in substitution of it.

### **90 Parties and notice**

- (1) In addition to any other parties, each person who was a party to the proceeding in VCAT at first instance is a party to the rehearing.

**Note**

See also section 59 of the **Victorian Civil and Administrative Tribunal Act 1998**.

- (2) The principal registrar of VCAT must give notice of an application for rehearing, of the hearing of an application for a rehearing and of any order of VCAT in respect of the application for rehearing to—
- (a) each person who was entitled to notice of the proceeding at first instance; and
  - (b) any other person who VCAT determines should be notified.

### **91 Stay of first instance order pending rehearing**

- (1) Subject to subsection (2), an application for a rehearing does not affect the operation of any order to which the application relates or prevent the taking of action to enforce the order.
- (2) VCAT may make an order staying the operation of an order to which an application for rehearing relates pending the determination of the rehearing of the application.

## **92 Nature of rehearing**

Subject to anything to the contrary in this Act, the **Victorian Civil and Administrative Tribunal Act 1998** applies to a rehearing under this Part as if it were a hearing under that Act.

## **Part 7—General**

### **93 Criminal liability of officers of bodies corporate— failure to exercise due diligence**

- (1) If a body corporate commits an offence against section 14(1), 15(1) or (2) or 42(1), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to the following—
  - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate;
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate;
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate;
  - (d) any other relevant matter.
- (3) Without limiting any other defence available to an officer of a body corporate, the officer may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(4) An officer of a body corporate may commit an offence against section 14(1), 15(1) or (2) or 42(1) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(5) In this section—

*body corporate* means corporation within the meaning of section 57A of the Corporations Act;

*officer*, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

#### **94 Disclosure of health information to medical treatment decision maker or support person**

(1) A person's medical treatment decision maker or support person is authorised to access or collect or assist the person in accessing or collecting health information about the person—

(a) that is relevant to a medical treatment decision to be made by the person, medical treatment decision maker or support person; and

(b) that may lawfully be collected by the person.

(2) For the purposes of subsection (1), a health practitioner is authorised to disclose health information about a person to the person's medical treatment decision maker or support person.

- (3) A medical treatment decision maker or support person may disclose any health information given to the medical treatment decision maker or support person under subsection (1) for—
- (a) the purpose of carrying out the functions and duties of the medical treatment decision maker or support person; or
  - (b) the purpose of any proceeding under this Act, or any report of a proceeding under this Act; or
  - (c) any other lawful purpose.

**Note**

See also the **Disability Act 2006**, the **Health Records Act 2001** and the **Mental Health Act 2014** for provisions as to disclosure of personal information to medical treatment decision makers and support persons and access to personal information by medical treatment decision makers and support persons.

**95 Recognition of advance care directives made in other States and in Territories**

- (1) If an advance care directive is given in another State or a Territory and complies with the requirements of that other State or the Territory then, to the extent the powers it gives could validly have been given by an advance care directive made under this Act, the advance care directive is taken to be an advance care directive given under, and in compliance with, this Act.
- (2) If an advance care directive is not recognised, whether wholly or partly, as a valid advance care directive under subsection (1), the directive may nevertheless be taken into consideration under this Act as an expression of a person's preferences and values.

- (3) This section applies to an advance care directive given in another State or a Territory, whether made before, on or after the commencement of this section.
- (4) In this section, a reference to an advance care directive given in another State or a Territory includes a reference to an instrument in the nature of an advance care directive, whether or not described as an advance care directive.

#### **96 Recognition of appointments made in other States and in Territories**

- (1) If a medical treatment decision maker or a support person is appointed in another State or a Territory and the appointment complies with the requirements of that other State or the Territory then, to the extent that the powers the instrument of appointment gives could validly have been given by an appointment under Part 3, the appointment is taken to be an appointment of an appointed medical treatment decision maker or support person (as the case may be).
- (2) This section applies whether the appointment is made before, on or after the commencement of this section.

#### **97 Unlawful terms**

Despite sections 95 and 96, a term of an instrument in the nature of an advance care directive or appointment of an appointed medical treatment decision maker or a support person that would be unlawful under this Act is void and of no effect.

#### **98 Record keeping requirements**

- (1) The operator of a health facility must take reasonable steps to ascertain whether either of the following is in force in relation to any patient in the facility—



- (a) an advance care directive;
  - (b) an appointment of an appointed medical treatment decision maker or a support person.
- (2) If the operator of a health facility ascertains that a patient in the facility has an advance care directive, the health facility must take reasonable steps to ensure that the following are placed with the patient's clinical records kept by the facility—
- (a) a copy of the advance care directive;
  - (b) a copy of any amendment of the advance care directive.
- (3) In this section, *operator* means the entity that has day-to-day responsibility for managing and operating the health facility.

#### **99 Assistance of interpreter**

If a person obtains the assistance of an interpreter in preparing a document under this Act, the interpreter must certify on the relevant document that the person appeared to understand the document.

#### **100 Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;

- (c) may require matters to be—
  - (i) in accordance with specified standards or specified requirements; or
  - (ii) approved by, or to the satisfaction of, a specified person or body or a specified class of persons or bodies; or
  - (iii) as specified in both subparagraphs (i) and (ii);
- (d) may apply, adopt or incorporate any matter contained in any document, standard or code whether—
  - (i) wholly or partially or as amended by the regulations; or
  - (ii) as in force at a particular time; or
  - (iii) as amended from time to time;
- (e) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any provision of the regulations—
  - (i) whether unconditionally or on specified conditions; and
  - (ii) either wholly or to such an extent as is specified.

## **Part 8—Repeal and savings and transitional provisions**

### **Division 1—Repeal**

#### **101 Medical Treatment Act 1988 repealed**

The **Medical Treatment Act 1988** is repealed.

### **Division 2—Savings and transitional provisions**

#### **102 Refusal of treatment certificates and agents under enduring powers of attorney (medical treatment)**

- (1) Despite the repeal of the **Medical Treatment Act 1988**—
  - (a) a refusal of treatment certificate under that Act that is in force immediately before that repeal continues in force until it is revoked or otherwise ceases to have effect in accordance with that Act; and
  - (b) for the purposes of paragraph (a), any relevant provision of that Act as in force immediately before its repeal is taken to continue in operation in relation to the refusal of treatment certificate despite its repeal.
- (2) The appointment of an agent or an alternate agent under an enduring power of attorney (medical treatment) under the **Medical Treatment Act 1988** that is in force immediately before that Act is repealed is taken, on and after that repeal, to be an appointment of an appointed medical treatment decision maker.

**103 Enduring powers of attorney with power to make medical treatment decisions and enduring powers of guardianship**

- (1) An attorney under an enduring power of attorney who continues, under section 155 of the **Powers of Attorney Act 2014**, to have the power to make medical treatment decisions on behalf of a person is taken to be the person's appointed medical treatment decision maker and may make medical treatment decisions to the extent that the enduring power of attorney provides.
- (2) A guardian under an enduring power of guardianship saved by section 143 of the **Powers of Attorney Act 2014** who, immediately before the commencement of this subsection, has the power to make medical treatment decisions on behalf of a person is taken to be the person's appointed medical treatment decision maker and may make medical treatment decisions to the extent that the enduring power of guardianship provides.

**104 Consent to medical research procedures under the Guardianship and Administration Act 1986**

- (1) On and after the commencement of section 77, the consent of a person responsible under section 42S of the **Guardianship and Administration Act 1986** to the administration of a medical research procedure to a person is taken to be consent of the medical treatment decision maker under section 77.
- (2) On and after the commencement of section 80(1), authorisation under section 42T of the **Guardianship and Administration Act 1986** to the administration of a medical research procedure to a person is taken to be authorisation under section 80(1).

### **105 Regulations dealing with transitional matters**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.
- (2) Regulations made under this section may—
  - (a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent;
  - (b) be of limited or general application;
  - (c) leave any matter or thing to be decided by a specified person or class of person;
  - (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.

## **Part 9—Amendment of Mental Health Act 2014**

### **Division 1—Electroconvulsive treatment amendments**

#### **106 Section 90 substituted**

For section 90 of the **Mental Health Act 2014** substitute—

##### **"90 Definitions**

In this Division—

*other applicable person* means a person who—

- (a) is not a patient; and
- (b) is not a young person;

*young person* means a person who is under the age of 18 years."

#### **107 Meaning of a course of electroconvulsive treatment**

- (1) In section 91(1) of the **Mental Health Act 2014**, for "or young person" (where twice occurring) **substitute** ", young person or other applicable person".
- (2) In section 91(3) of the **Mental Health Act 2014**—
  - (a) in paragraph (c), **omit** "patient who is not a young person or the young";
  - (b) in paragraph (d), for "treatment." **substitute** "treatment;";
  - (c) after paragraph (d) **insert**—
    - "(e) in the case of an other applicable person, the person's medical treatment decision maker withdraws consent to

continue with the course of  
electroconvulsive treatment."

**108 When may electroconvulsive treatment be performed?**

After section 92(2) of the **Mental Health Act 2014** insert—

"(3) Electroconvulsive treatment may be performed on an other applicable person if the Tribunal has granted an application for the performance of a course of electroconvulsive treatment made under section 94A."

**109 Application to perform electroconvulsive treatment on a young person**

In section 94(3)(d) of the **Mental Health Act 2014**, after "if" insert "the".

**110 New section 94A inserted**

After section 94 of the **Mental Health Act 2014** insert—

**"94A Application to perform electroconvulsive treatment on an other applicable person**

- (1) A psychiatrist may apply to the Tribunal to perform a course of electroconvulsive treatment on an other applicable person who does not have capacity to give informed consent to that electroconvulsive treatment if the psychiatrist is satisfied in the circumstances that there is no less restrictive way for the person to be treated and—
- (a) the person has an instructional directive giving informed consent to electroconvulsive treatment; or

- (b) if the person does not have a relevant instructional directive, the person's medical treatment decision maker gives informed consent in writing to the electroconvulsive treatment.
- (2) In determining under subsection (1) whether there is no less restrictive way for an other applicable person to be treated, the psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—
- (a) the views and preferences of the person in relation to electroconvulsive treatment and any beneficial alternative treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes the person would like to achieve;
  - (b) any values directive of the person;
  - (c) the views of the person's medical treatment decision maker or support person (if any);
  - (d) the views of a carer of the person, if the psychiatrist is satisfied that the decision to perform a course of electroconvulsive treatment will directly affect the carer and the care relationship;
  - (e) the likely consequences for the person if the electroconvulsive treatment is not performed;
  - (f) any psychiatric opinion given by another psychiatrist that has been given to the psychiatrist making the application.



- (3) A psychiatrist may make a further application under subsection (1) during or after the performance of a course of electroconvulsive treatment on an other applicable person."

**111 Listing of electroconvulsive treatment applications by Tribunal**

- (1) In section 95(1), (2) and (3) of the **Mental Health Act 2014**, for "or 94" **substitute** ", 94 or 94A".
- (2) In section 95(2)(a), (b) and (c) of the **Mental Health Act 2014**, **omit** "patient or young".

**112 Powers of Tribunal in respect of electroconvulsive treatment application**

- (1) After section 96(2) of the **Mental Health Act 2014** **insert**—

"(2A) In relation to an application under section 94A, the Tribunal must—

- (a) grant the application if the Tribunal is satisfied that the other applicable person does not have capacity to give informed consent to the performance of the course of electroconvulsive treatment and that there is no less restrictive way for the person to be treated and that either—
- (i) the person has an instructional directive giving informed consent to electroconvulsive treatment; or
- (ii) the person's medical treatment decision maker has given informed consent in writing to the treatment; or
- (b) refuse to grant the application if the Tribunal is not satisfied as to any of the matters referred to in paragraph (a)."

(2) In section 96(3) of the **Mental Health Act 2014**—

- (a) for "or (2) whether there is no less restrictive way for a patient who is not a young person or for a young" **substitute** ", (2) or (2A) whether there is no less restrictive way for the";
- (b) in paragraph (b)—
  - (i) for "of the" **substitute** "of a";
  - (ii) for "94(3)." **substitute** "94(3); and";
- (c) after paragraph (b) **insert**—

"(c) in respect of an other applicable person, the matters specified in section 94A(2)."

(3) In section 96(4) of the **Mental Health Act 2014**—

- (a) **omit** "patient who is not a young person or the young";
- (b) for "or 94" **substitute** ", 94 or 94A";
- (c) after paragraph (c) **insert**—
  - "(ca) any medical treatment decision maker who gave informed consent under section 96(2A)(a)(ii);
  - (cb) any support person of the young person or other applicable person on whom the electroconvulsive treatment was proposed to be performed;"
- (d) in paragraph (f), **omit** "patient or young".

### **113 Order approving electroconvulsive treatment**

In section 97 of the **Mental Health Act 2014** omit "patient who is not a young person or on a young".

### **114 Electroconvulsive treatment must not be performed in certain circumstances**

After section 98(2) of the **Mental Health Act 2014** insert—

- "(3) Electroconvulsive treatment must not be performed on an other applicable person if, at any time before or during the course of electroconvulsive treatment—
- (a) the person develops the capacity to give informed consent and does not consent to the electroconvulsive treatment; or
  - (b) the person who gave informed consent under section 96(2A)(a)(ii) withdraws consent."

### **115 Use of electroconvulsive treatment to be reported to chief psychiatrist**

In section 99 of the **Mental Health Act 2014**, for "or young person (irrespective of whether the person or young person is a patient)" substitute "under this Division".

## **Division 2—Other amendments**

### **116 Definitions**

In section 3(1) of the **Mental Health Act 2014**—

- (a) for the definition of *medical treatment* substitute—

"*medical treatment* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**, but does not include treatment;"

(b) in the definition of *Tribunal*, for "152."  
**substitute** "152;"

(c) **insert** the following definitions—

*instructional directive* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

*medical treatment decision maker* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

*support person* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

*values directive* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**."

#### **117 What is *medical treatment*?**

Section 7 of the **Mental Health Act 2014** is **repealed**.

#### **118 Meaning of *informed consent***

After section 69(3) of the **Mental Health Act 2014** **insert**—

"(4) Without limiting anything in subsections (1), (2) or (3), for the purposes of medical treatment that is given in accordance with this Act, a person may give informed consent by instructional directive."

**119 Who may consent to medical treatment if patient does not have capacity to give informed consent?**

(1) In section 75(1) of the **Mental Health Act 2014**—

(a) for paragraph (a) **substitute**—

"(a) the patient's appointed medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**";

(b) paragraph (d) is **repealed**.

(2) At the foot of section 75 of the **Mental Health Act 2014** **insert**—

**"Note**

See section 53 of the **Medical Treatment Planning and Decisions Act 2016** in respect of medical treatment in an emergency."

**120 Matters authorised psychiatrist must have regard to if consenting to medical treatment of patient**

In section 76(2) of the **Mental Health Act 2014**—

(a) after paragraph (a) **insert**—

"(ab) any relevant values directive given by the patient;"

(b) after paragraph (e) **insert**—

"(ea) the views of the patient's support person;"

**121 Urgent medical treatment**

Section 77 of the **Mental Health Act 2014** is **repealed**.

## **122 Disclosure of health information**

For section 346(2)(p) of the **Mental Health Act 2014 substitute**—

"(p) the disclosure is—

- (i) made to the medical treatment decision maker of the person to whom the health information relates; and
- (ii) reasonably required in connection with the performance of a duty or the exercise of a power by the medical treatment decision maker;

(pa) the disclosure is—

- (i) made to a support person of the person to whom the health information relates; and
- (ii) reasonably required in connection with the performance of a duty or the exercise of a power by the support person;"

## **Part 10—Consequential amendments and repeals**

### **Division 1—Guardianship and Administration Act 1986**

#### **123 Definitions**

In section 3(1) of the **Guardianship and  
Administration Act 1986**—

- (a) for the definition of *special procedure  
substitute*—

*"special medical procedure* means—

- (a) any procedure that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) termination of pregnancy; or
- (c) any removal of tissue for the purposes of transplantation to another person; or
- (d) any other medical treatment within the meaning of the **Medical Treatment Planning and Decisions Act 2016** that is prescribed to be a special medical procedure for the purposes of Part 4A;"

- (b) **insert** the following definition—

*"medical treatment decision maker* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;"

- (c) the definitions of *emergency treatment*, *human research ethics committee*, *medical or dental treatment*, *medical research procedure*, *National Statement*, *person responsible*, *relevant human research ethics committee* and *relevant research project* are **repealed**.

#### **124 Objects of Act**

For section 4(1)(f) of the **Guardianship and Administration Act 1986** substitute—

- "(f) to provide for consent to special medical procedures on behalf of persons incapable of giving consent to those procedures; and".

#### **125 Functions of the Public Advocate**

In section 15 of the **Guardianship and Administration Act 1986**—

- (a) in paragraph (d), for "by the Minister." substitute "by the Minister; and";
- (b) after paragraph (d) **insert**—
- "(e) any function conferred by or under any other Act."

#### **126 Powers and duties of Public Advocate**

Section 16(1)(ja) of the **Guardianship and Administration Act 1986** is **repealed**.

#### **127 Authority of plenary guardian**

In section 24(2)(d) of the **Guardianship and Administration Act 1986**, after "Part 4A" **insert** "or in the **Medical Treatment Planning and Decisions Act 2016**".



**128 New section 28A inserted**

After section 28 of the **Guardianship and Administration Act 1986** insert—

**"28A Exercise of authority by guardian under Medical Treatment Planning and Decisions Act 2016**

A guardian making a medical treatment decision for a person in accordance with the **Medical Treatment Planning and Decisions Act 2016** is taken to be complying with section 28 of this Act.

**Note**

The **Medical Treatment Planning and Decisions Act 2016** sets out the scheme under which a guardian must make medical treatment decisions, except those concerning special medical procedures."

**129 Heading to Part 4A substituted**

For the heading to Part 4A of the **Guardianship and Administration Act 1986** substitute—

**"Part 4A—Special medical procedures"**.

**130 Persons to whom Part applies**

- (1) In section 36(1)(b) of the **Guardianship and Administration Act 1986**, for "special procedure, a medical research procedure or medical or dental treatment" **substitute** "special medical procedure".
- (2) In section 36(2) of the **Guardianship and Administration Act 1986**—
  - (a) for "special procedure, a medical research procedure or medical or dental treatment" **substitute** "special medical procedure";

- (b) in paragraphs (a) and (b) **omit** "or treatment".

**131 Person responsible**

Section 37 of the **Guardianship and Administration Act 1986** is repealed.

**132 Best interests**

- (1) In section 38(1) of the **Guardianship and Administration Act 1986**—
- (a) for "any special procedure or any medical or dental treatment" **substitute** "a special medical procedure";
  - (b) in paragraphs (c), (e) and (f), for "the treatment" **substitute** "the procedure".
- (2) In section 38(2) of the **Guardianship and Administration Act 1986**—
- (a) in paragraph (a), for "special procedure or medical or dental treatment" **substitute** "special medical procedure";
  - (b) in paragraph (b), for "special procedure to be carried out on the patient or the patient's medical or dental treatment" **substitute** "special medical procedure to be carried out on the patient".

**133 Section 39 substituted**

For section 39 of the **Guardianship and Administration Act 1986** substitute—

**"39 Tribunal may consent to special medical procedure**

Subject to Division 4, consent to the carrying out of a special medical procedure may be given by the Tribunal."

### **134 Effect of consent**

In section 40 of the **Guardianship and Administration Act 1986**—

- (a) for "special procedure, a medical research procedure or any medical or dental treatment" **substitute** "special medical procedure";
- (b) in paragraphs (a) and (b), **omit** "or treatment".

### **135 Section 41 substituted**

For section 41 of the **Guardianship and Administration Act 1986** substitute—

#### **"41 Refusal of special medical procedure under an advance care directive**

A medical research practitioner must not carry out a special medical procedure under this Part if the patient has refused consent to the procedure under an instructional directive within the meaning of the **Medical Treatment Planning and Decisions Act 2016**".

### **136 Section 42 amended**

- (1) **Insert** the following heading to section 42 of the **Guardianship and Administration Act 1986**—  
**"Unlawful consent to special medical procedure an offence"**.
- (2) For section 42(a) of the **Guardianship and Administration Act 1986** substitute—  
"(a) purport to give consent to the continuation of a special medical procedure or a further special medical procedure under section 42F on behalf of a patient; or".

**137 Emergency treatment**

Division 3 of Part 4A of the **Guardianship and Administration Act 1986** is repealed.

**138 Heading to Division 4 of Part 4A substituted**

For the heading to Division 4 of Part 4A of the **Guardianship and Administration Act 1986** substitute—

**"Division 4—Applications to the Tribunal".**

**139 Section 42B amended**

(1) **Insert** the following heading to section 42B of the **Guardianship and Administration Act 1986**—

**"Application for consent of Tribunal to special medical procedure".**

(2) In section 42B(1) of the **Guardianship and Administration Act 1986**—

(a) for "special procedure" **substitute** "special medical procedure";

(b) for paragraph (a) **substitute**—

"(a) the patient's medical treatment decision maker; or".

**140 Guidelines for special procedures**

Section 42C of the **Guardianship and Administration Act 1986** is repealed.

**141 Section 42E amended**

(1) In the heading to section 42E of the **Guardianship and Administration Act 1986**, after "special" **insert** "medical".

- (2) In section 42E of the **Guardianship and Administration Act 1986**—
- (a) for "a special procedure" **substitute** "a special medical procedure";
  - (b) before paragraph (a) **insert**—
    - "(aa) the patient has not given an instructional directive (within the meaning of the **Medical Treatment Planning and Decisions Act 2016**) in relation to the special medical procedure; and";
  - (c) after paragraph (b) **insert**—
    - "(ba) if the patient has given a values directive (within the meaning of the **Medical Treatment Planning and Decisions Act 2016**), that the carrying out of the special medical procedure would not be inconsistent with that directive; and";
  - (d) in paragraph (c), for "the special procedure" **substitute** "the special medical procedure".

**142 Section 42F amended**

- (1) **Insert** the following heading to section 42F of the **Guardianship and Administration Act 1986**—  
**"Tribunal may confer authority to consent to continuing or further special medical procedure"**.
- (2) In section 42F(1) of the **Guardianship and Administration Act 1986**—
- (a) for "a special procedure" **substitute** "a special medical procedure";
  - (b) for "person responsible for the patient" **substitute** "patient's medical treatment decision maker";

- (c) in paragraphs (a) and (b), for "special procedure" **substitute** "special medical procedure".
- (3) In section 42F(2) of the **Guardianship and Administration Act 1986**, for "person responsible" **substitute** "patient's medical treatment decision maker".
- (4) In section 42F(3) of the **Guardianship and Administration Act 1986**—
  - (a) for "the person responsible" **substitute** "the patient's medical treatment decision maker";
  - (b) for "new person responsible" **substitute** "patient's new medical treatment decision maker".
- (5) In section 42F(5) of the **Guardianship and Administration Act 1986**—
  - (a) for "person responsible" **substitute** "patient's medical treatment decision maker";
  - (b) for "special procedure" **substitute** "special medical procedure".

#### **143 Section 42G amended**

- (1) **Insert** the following heading to section 42G of the **Guardianship and Administration Act 1986**—  
**"Special medical procedure without consent of Tribunal an offence"**.
- (2) In section 42G(1) of the **Guardianship and Administration Act 1986**—
  - (a) for "section 42A" **substitute** "section 53 of the **Medical Treatment Planning and Decisions Act 2016**";
  - (b) for "any special procedure" **substitute** "any special medical procedure";

(c) for paragraph (b) **substitute**—

"(b) the patient's medical treatment decision maker, with authority to consent to the continuation of the procedure or a further special medical procedure under section 42F, has consented to the carrying out of that procedure."

(3) In section 42G(2) of the **Guardianship and Administration Act 1986**, for "special procedure" **substitute** "special medical procedure".

**144 Other medical or dental treatment and medical research procedures**

Divisions 5 and 6 of Part 4A of the **Guardianship and Administration Act 1986** are **repealed**.

**145 Application for rehearing**

Section 60A(6)(b) and (c) of the **Guardianship and Administration Act 1986** are **repealed**.

**146 General penalty**

In section 80 of the **Guardianship and Administration Act 1986**, subsection (2) and the note at the foot of that subsection are **repealed**.

**147 Supreme Court—Limitation of jurisdiction**

Section 81A of the **Guardianship and Administration Act 1986** is **repealed**.

**148 Regulations**

In section 82(1) of the **Guardianship and Administration Act 1986**—

(a) paragraphs (ca), (cab) and (cac) are **repealed**;

(b) in paragraph (cb), for "special procedure or medical or dental treatment" **substitute** "special medical procedure".

## 149 Medical research procedures

Section 88 of the **Guardianship and Administration Act 1986** is repealed.

## Division 2—Powers of Attorney Act 2014

### 150 Definitions

In section 3(1) of the **Powers of Attorney Act 2014**—

(a) **insert** the following definitions—

*"medical treatment* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

*medical research procedure* has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**";

(b) in the definition of *personal matter*, after "affairs" (where secondly occurring) **insert** ", but does not include any matter that relates to medical treatment or medical research procedures";

(c) in the examples at the foot of the definition of *personal matter*—

(i) in paragraph (e), for "dress;" **substitute** "dress.";

(ii) paragraph (f) is **repealed**;

(d) after the examples at the foot of the definition of *personal matter* **insert** the following note—

**Note**

See the **Medical Treatment Planning and Decisions Act 2016** for matters relating to medical treatment and medical research procedures."



**151 Power to make and scope of appointment**

In section 85(1) of the **Powers of Attorney Act 2014**, for "personal or financial or other matters" **substitute** "personal matters, financial matters or other matters (excluding matters concerning medical treatment and medical research procedures)".

**152 New Division 4 inserted into Part 10**

At the end of Part 10 of the **Powers of Attorney Act 2014** insert—

**"Division 4—Transitional—Medical  
Treatment Planning and Decisions  
Act 2016**

**155 Saving—effect of broader definition of  
*personal matter***

Despite the amendment of the definition of *personal matter* in section 3(1) by the **Medical Treatment Planning and Decisions Act 2016**—

- (a) an enduring power of attorney as in force immediately before that amendment that applies in respect of medical treatment or medical research procedures continues to apply in the same manner on and after that amendment as if that amendment had not been made; and
- (b) a supportive attorney whose appointment is in force immediately before that amendment that applies in respect of medical treatment or medical research procedures continues to apply in the same manner on and after that amendment."

### **Division 3—Victorian Civil and Administrative Tribunal Act 1998**

#### **153 Heading to Part 14 of Schedule 1 amended**

In the heading to Part 14 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, for "**Medical Treatment Act 1988**" substitute "**Medical Treatment Planning and Decisions Act 2016**".

#### **154 New clause 46G inserted in Schedule 1**

Before clause 47 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

##### **"46G Constitution of Tribunal for proceedings**

The Tribunal is to be constituted for the purposes of a rehearing under Division 2 of Part 6 of the **Medical Treatment Planning and Decisions Act 2016** by—

- (a) a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;
- (b) a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;
- (c) a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;
- (d) a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);

- (e) the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others)."

**155 Clauses 47 to 50 of Schedule 1 amended**

In clauses 47, 48(1), 49 and 50(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, for "section 5C of the **Medical Treatment Act 1988**" substitute "the **Medical Treatment Planning and Decisions Act 2016**".

**Division 4—Disability Act 2006**

**156 Information systems**

After section 39(4)(ca) of the **Disability Act 2006** insert—

- "(cb) to a medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**, to the extent that it is necessary to enable the medical treatment decision maker to make medical treatment decisions on behalf of the person to whom the information relates;
- (cc) to a support person within the meaning of the **Medical Treatment Planning and Decisions Act 2016** to the extent that is necessary to enable the support person to carry out the functions of a support person under that Act;"

## **Division 5—Other amendments**

### **157 Health Records Act 2001**

- (1) In section 85(2)(a) of the **Health Records Act 2001**—
- (a) in subparagraph (ii), for "and" **substitute** "or";
  - (b) after subparagraph (ii) **insert**—
    - "(iii) a support person within the meaning of the **Medical Treatment Planning and Decisions Act 2016** acting in accordance with the appointment of that support person; and".
- (2) In section 85(6) of the **Health Records Act 2001**—
- (a) for paragraph (c) **substitute**—
    - "(c) the individual's medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**";
  - (b) in paragraph (d), **omit** "or a person responsible".

### **158 Privacy and Data Protection Act 2014**

In section 28(6) of the **Privacy and Data Protection Act 2014**, in the definition of *authorised representative*—

- (a) in paragraph (a), for subparagraph (iii) **substitute**—
  - "(iii) a medical treatment decision maker for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or

(iiia) a support person for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or";

(b) in paragraph (a)(iv), **omit** "or a person responsible".

### **159 Road Safety Act 1986**

In section 90I of the **Road Safety Act 1986**, in the definition of *authorised representative*—

(a) for paragraph (c) **substitute**—

"(c) a medical treatment decision maker for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or";

(b) in paragraph (d), **omit** "or a person responsible".

### **160 Severe Substance Dependence Treatment Act 2010**

In section 6(2) of the **Severe Substance Dependence Treatment Act 2010**, for "Medical Treatment Act 1988" **substitute** "Medical Treatment Planning and Decisions Act 2016".

## **Division 6—Repeal**

### **161 Repeal of amending provisions**

Part 9 and this Part are **repealed** on 12 March 2019.

#### **Note**

The repeal of these Parts does not affect the continuing operation of the amendments made by them (see section 15(1) of the **Interpretation of Legislation Act 1984**).

---

---

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

† *Minister's second reading speech—*

*Legislative Assembly: 14 September 2016*

*Legislative Council: 9 November 2016*

The long title for the Bill for this Act was "A Bill for an Act to provide for a scheme of medical treatment planning, to provide for the making of medical treatment decisions on behalf of, and the administration of medical research procedures to, persons who do not have decision-making capacity, to repeal the **Medical Treatment Act 1988**, to amend the **Mental Health Act 2014** in relation to approval procedures for electroconvulsive treatment of adults who do not have capacity, to make consequential amendments to that and other Acts and for other purposes."