

SOUTH AUSTRALIA

CONSENT TO MEDICAL AND DENTAL PROCEDURES ACT, 1985

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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CONSENT TO MEDICAL AND DENTAL PROCEDURES ACT, 1985

being

Consent to Medical and Dental Procedures Act, 1985, No. 14 of 1985 [Assented to 14 March 1985]¹

as amended by

Statutes Amendment (Consent to Medical and Dental Procedures and Mental Health) Act, 1988, No. 47 of 1988
[Assented to 5 May 1988]

An Act to provide for consent to medical and dental procedures; to repeal the Emergency Medical Treatment of Children Act, 1960; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Consent to Medical and Dental Procedures Act, 1985*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.
(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

Repeal of Emergency Medical Treatment of Children Act, 1960

3. The *Emergency Medical Treatment of Children Act, 1960*, is repealed.

Interpretation

4. In this Act, unless the contrary intention appears —

“consent”, in relation to the carrying out of a medical procedure or a dental procedure, means an informed consent given after proper and sufficient explanation of the nature and likely consequences of the procedure:

“dental procedure” means any procedure carried out by, or pursuant to directions given by, a dentist in the course of practice as a dentist:

“dentist” means a person who is registered on the general register or specialist register under the *Dentists Act, 1984*:

¹Came into operation 1 May 1987: *Gaz.* 30 April 1987, p. 1115.

"medical practitioner" means a person who is registered on the general register under the *Medical Practitioners Act, 1983*:

"medical procedure" means any procedure carried out by, or pursuant to directions given by, a medical practitioner in the course of practice as a medical practitioner:

"minor" means a person who is less than eighteen years of age:

"parent", in relation to a minor, includes a guardian of the minor or a person acting *in loco parentis* in relation to the minor.

Application and effect of Act

5. (1) This Act, other than section 8, does not apply in relation to a person who is by reason of mental illness or mental handicap incapable of giving an effective consent.

(2) This Act does not affect the operation of—

(a) the *Transplantation and Anatomy Act, 1983*;

(b) the *Natural Death Act, 1983*;

or

(c) any other enactment that relates to the giving, refusal or absence of consent in relation to the carrying out of a medical procedure or dental procedure.

Consent in relation to procedures carried out on minors

6. (1) The consent or the refusal or absence of consent of a minor who is of or above the age of sixteen years in respect of a medical procedure or dental procedure to be carried out on the minor or any other person has the same effect for all purposes as if the minor were of full age.

(2) The consent of a minor who is less than sixteen years of age in respect of a medical procedure or dental procedure to be carried out on the minor has the same effect for all purposes as if the minor were of full age where, in the opinion of a medical practitioner or a dentist supported by the written opinion of one other medical practitioner or dentist, as the case may be—

(a) the minor is capable of understanding the nature and consequences of the procedure;

and

(b) the procedure is in the best interests of the health and well-being of the minor.

(3) The requirement under subsection (2) that the opinion of the medical practitioner or dentist be supported by the opinion of another medical practitioner or dentist does not apply in any circumstances where it is not reasonably practicable to obtain such an opinion having regard to the imminence of risk to the minor's life or health.

(4) The consent of a parent of a minor who is less than sixteen years of age in respect of a medical procedure or dental procedure to be carried out on the minor shall be deemed to be a consent given by the minor and to have the same effect for all purposes as if the minor were of full age.

(5) Where a medical procedure or dental procedure is carried out in prescribed circumstances by a medical practitioner or a dentist on a minor who is less than sixteen years of age, the minor shall be deemed to have consented to the carrying out of the procedure and the consent shall be deemed to have the same effect for all purposes as if the minor were of full age.

- (6) Prescribed circumstances exist for the purposes of subsection (5) if—
- (a) the minor is incapable for any reason of giving an effective consent to the carrying out of the medical procedure or dental procedure;
 - (b) no parent of the minor is reasonably available in the circumstances, or, being available, the parent, having been requested to consent to the carrying out of the procedure, has failed or refused to do so;
 - (c) the medical practitioner or dentist carrying out the procedure is of the opinion that the procedure is necessary to meet imminent risk to the minor's life or health;
- and
- (d) unless it is not reasonably practicable to do so having regard to the imminence of the risk to the minor's life or health, the opinion of the medical practitioner or dentist referred to in paragraph (c) is supported by the written opinion of one other medical practitioner or dentist.

Emergency medical procedures carried out on persons unable to consent

7. (1) Where a medical procedure or dental procedure is carried out by a medical practitioner or a dentist on a person who is of or above the age of sixteen years without the consent of that person, the person shall, if prescribed circumstances exist, be deemed to have consented to the carrying out of the procedure.

- (2) Prescribed circumstances exist for the purposes of subsection (1) if—
- (a) the person is incapable for any reason of giving an effective consent to the carrying out of the medical procedure or dental procedure;
 - (b) the medical practitioner or dentist carrying out the procedure—
 - (i) is of the opinion that the procedure is necessary to meet imminent risk to the person's life or health;
- and
- (ii) has no knowledge of any refusal on the part of the person to consent to the procedure, being a refusal communicated by that person to him or some other medical practitioner or dentist;
- and
- (c) unless it is not reasonably practicable to do so having regard to the imminence of the risk to the person's life or health, the opinion of the medical practitioner or dentist referred to in paragraph (b)(i) is supported by the written opinion of one other medical practitioner or dentist.

Protection from criminal or civil liability in respect to procedures carried out with consent

8. (1) Notwithstanding any rule of the common law, but subject to the provisions of any enactment—

- (a) the consent of a person to the carrying out of a medical procedure or dental procedure on him is effective whatever the nature of the procedure provided that the procedure is reasonably appropriate in the circumstances having regard to prevailing medical or dental standards;

and

(b) no criminal or civil liability shall be incurred in respect of the carrying out of a medical procedure or dental procedure on a person with his consent if—

(i) the procedure is reasonably appropriate in the circumstances having regard to prevailing medical or dental standards;

and

(ii) the procedure is carried out in good faith and without negligence.

(2) In subsection (1)—

“consent” of a person means a consent as defined in section 4 given or deemed under this Act or any other Act to be given by a person where—

(a) the person is of full age and is otherwise capable of giving an effective consent;

or

(b) the consent is deemed to have the same effect as if the person were of full age or were capable of giving an effective consent.

APPENDIX

Legislative History

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| Section 6(5): | amended by 47, 1988, s. 2(a), (b) |
| Section 6(6): | amended by 47, 1988, s. 2(c), (d) |
| Section 7(1): | amended by 47, 1988, s. 3(a), (b) |
| Section 7(2): | amended by 47, 1988, s. 3(c), (d) |