

(Reprint No. 2)

SOUTH AUSTRALIA

CONSENT TO MEDICAL AND DENTAL TREATMENT ACT 1985

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **6 March 1995**.*

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.

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CONSENT TO MEDICAL AND DENTAL TREATMENT 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]

Mental Health Act 1993 No. 59 of 1993 [Assented to 27 May 1993]²

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

² Came into operation 6 March 1995: *Gaz.* 2 March 1995, p. 734.

NOTE:

· Asterisks indicate repeal or deletion of text.

· For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Consent to Medical and Dental Treatment 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 The *Emergency Medical Treatment of Children Act 1960* is repealed.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 medical or dental treatment, means informed consent;

"**dental treatment**" means any treatment or procedures carried out by a dentist in the course of dental practice;

"**dentist**" means a person who is registered on the general register or specialist register under the *Dentists Act 1984*;

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

"**medical treatment**" means any treatment or procedures carried out by a medical practitioner in the course of medical or surgical practice and includes the prescription or supply of drugs;

"**mental incapacity**" has the same meaning as in the *Guardianship and Administration Act 1993*;

"**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 incapacity incapable of giving an effective consent.

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

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

(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 medical or dental treatment.

Consent in relation to treatment 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 medical or dental treatment 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 medical or dental treatment 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 treatment; and
- (b) the treatment 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 medical or dental treatment 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 medical or dental treatment 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 treatment 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 or dental treatment; and
- (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 treatment, has failed or refused to do so; and
- (c) the medical practitioner or dentist carrying out the treatment is of the opinion that the treatment 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 treatment carried out on persons unable to consent

7. (1) Where medical or dental treatment 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 treatment.

(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 or dental treatment; and
- (b) the medical practitioner or dentist carrying out the treatment—
 - (i) is of the opinion that the treatment 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 treatment, 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 treatment 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 medical or dental treatment on him is effective whatever the nature of the treatment provided that the treatment 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 medical or dental treatment on a person with his consent if—
 - (i) the treatment is reasonably appropriate in the circumstances having regard to prevailing medical or dental standards; and
 - (ii) the treatment 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.

Consent to Medical and Dental Treatment Act 1985

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 59, 1993, Sched. cl. 5(a)
Section 1:	substituted by 59, 1993, Sched. cl. 5(b)
Section 4:	definition of "consent" substituted by 59, 1993, Sched. cl. 5(c) definition of "dental procedure" repealed and definition of "dental treatment" inserted in its place by 59, 1993, Sched. cl. 5(d) definition of "medical procedure" repealed and definition of "medical treatment" inserted in its place by 59, 1993, Sched. cl. 5(e) definition of "mental incapacity" inserted by 59, 1993, Sched. cl. 5(e)
Section 5(1):	amended by 59, 1993, Sched. cl. 5(f)
Section 5(2):	amended by 59, 1993, Sched. cl. 5(g)
Section 6(1):	amended by 59, 1993, Sched. cl. 5(h)
Section 6(2):	amended by 59, 1993, Sched. cl. 5(i),(j)
Section 6(4):	amended by 59, 1993, Sched. cl. 5(k)
Section 6(5):	amended by 47, 1988, s. 2(a), (b); 59, 1993, Sched. cl. 5(l), (m)
Section 6(6):	amended by 47, 1988, s. 2(c), (d); 59, 1993, Sched. cl. 5(n), (o)
Section 7(1):	amended by 47, 1988, s. 3(a), (b); 59, 1993, Sched. cl. 5(p), (q)
Section 7(2):	amended by 47, 1988, s. 3(c), (d); 59, 1993, Sched. cl. 5(r), (s)
Section 8(1):	amended by 59, 1993, Sched. cl. 5(t)-(w)