

Medical Treatment (Agents) Bill

EXPLANATORY MEMORANDUM

Outline

The objective of this Bill is to provide a means for a person to appoint an alternate agent (as well as an agent) under an Enduring Power of Attorney (Medical Treatment).

As in the case of an agent, an alternate will be authorized to make decisions about the medical care of the donor of the power in the event of his or her incompetency.

However, an alternate agent will only be able to act if he or she expresses in a statutory declaration a belief that the principal agent is dead, incompetent, cannot be contacted, or his or her whereabouts are unknown.

Clause Notes

Clause 1 describes the purpose of the proposed Act.

Clause 2 provides for commencement of the Act on Royal Assent.

Clause 3 identifies the **Medical Treatment Act 1988** as being the Principal Act.

Clause 4 inserts into section 3 of the Principal Act a definition of "agent".

Clause 5 makes a number of amendments to section 5A of the Principal Act.

Sub-clause (1) inserts a new paragraph (aa) in section 5A (1) to make clear that, provided section 5AA is complied with, an alternate agent can make a decision about the medical treatment of a person in accordance with the Act.

Sub-clause (2) amends section 5A (2) primarily to provide that the appointment of an alternate agent only takes effect if section 5AA is complied with.

Sub-clause (3) inserts a new sub-section (5) after sub-section (4). The new sub-section is a transitional provision with respect to enduring powers of attorney (medical treatment) in the form existing before the commencement of the proposed Act.

Clause 6 inserts a new section 5AA after section 5A of the Principal Act.

The new section sets out the steps which must be taken by an alternate agent before he or she can make a decision about the medical treatment of the person giving the power.

In substance, it requires the alternate agent to state in a statutory declaration that he or she has made enquiries as to whether the agent is able and available to act, and that as a result of those enquiries, the alternate agent believes the agent is dead, incompetent, cannot be contacted, or his or her whereabouts are unknown.

Clause 7 makes a number of changes to section 5C of the Principal Act.

Sub-clause (1) substitutes a new sub-section (1), the effect of which is to empower the Guardianship and Administration Board to suspend or revoke an enduring power of attorney (medical treatment), determine whether a power authorizes the making of a particular decision by an alternate agent, and to resolve any question relating to a conflict between decisions made by an agent and alternate agent.

Sub-clause (2) makes consequential amendments to sub-sections (2) and (4).

Sub-clause (3) inserts a number of new sub-sections after sub-section (4).

New sub-section (4A) enables the Board, in specified circumstances, to revoke or suspend a power given to an alternate agent, or declare that it does not authorize the making of a particular decision.

New sub-section (4B) sets out the Board's powers with respect to resolving conflicting decisions made by an agent and alternate agent.

New sub-section (4C) makes clear that a determination of the Board under sub-section (4A) or (4B) does not affect the previous operation of an enduring power of attorney (medical treatment) or any decision made, or refusal of treatment certificate completed, under that power.

Clause 8 makes several amendments to section 5D of the Principal Act.

The major effect is that if the Board declares that a decision of an agent, or alternate agent, resulting in the completing of a refusal of treatment certificate is ineffective, or a decision of an alternate agent is not authorized by the enduring power of attorney (medical treatment) the refusal of treatment certificate is revoked when the declaration is made.

Clause 9 amends section 7 of the Principal Act to specify the processes for the cancellation of a refusal of treatment certificate by an alternate agent or agent.

Clause 10 makes consequential amendments to the form of an enduring power of attorney (medical treatment) prescribed in Schedule 2.

Clause 11 makes a statute law revision amendment to Schedule 3 of the Principal Act.