

**NORTHERN TERRITORY OF AUSTRALIA**

**EMERGENCY MEDICAL OPERATIONS ACT 1973**

As in force at 7 November 2019

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 7 November 2019

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## EMERGENCY MEDICAL OPERATIONS ACT 1973

### An act relating to the performance of emergency medical operations

#### 1 Short title

This Act may be cited as the *Emergency Medical Operations Act 1973*.

#### 2 Interpretation

(1) In this Act;

**blood transfusion** means the transfusion of human blood or a constituent of human blood;

**infant** means:

- (a) a person who is under 18 years of age; or
- (b) a person whose age is unknown and who appears to be under 18 years of age.

**next of kin**, in relation to a patient, means the spouse of the patient, a de facto partner of the patient, or a person related by blood to the patient;

**operation** means a surgical operation, and includes the administration of an anaesthetic or a blood transfusion.

(2) For the purposes of this Act, the process of removing all or part of the blood of a person and replacing it with blood taken from another person shall be deemed to be a blood transfusion.

#### 3 Performance of operation without consent

(1) Subject to this section, a medical practitioner may perform an operation on a patient without the consent of the patient or of any other person having authority in law to give consent to the performance of the operation if that medical practitioner is, and, in the case of a patient who is an infant, that medical practitioner and at least one other medical practitioner are, of the opinion that:

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- (a) the patient is in danger of dying or of suffering a serious permanent disability; and
  - (b) the performance of an operation on the patient is desirable in order to prevent the death of the patient or the occurrence of the disability.
- (2) A medical practitioner is not entitled to perform an operation, being a blood transfusion, in pursuance of subsection (1), unless he is satisfied that the blood to be transfused is compatible with the blood of the patient.
- (3) If the patient is an adult who has impaired decision-making capacity, a medical practitioner is not entitled to perform an operation under subsection (1) unless the medical practitioner is of the opinion that it is not practicable to delay performing the operation until:
- (a) it can be ascertained that the patient has made an advance consent decision about the operation; or
  - (b) a consent decision about the operation can be made, in accordance with Part 4 of the *Advance Personal Planning Act 2013*:
    - (i) by a decision maker or guardian for the patient under section 42 of that Act; or
    - (ii) by NTCAT under section 44 of that Act; or
    - (iii) by another person who has a right under another law of the Territory to make a consent decision about the operation, as mentioned in section 44A of that Act.
- (3A) Further, if the patient is an adult who has impaired decision-making capacity, a medical practitioner is not entitled to perform an operation under subsection (1) in circumstances in which section 53 of the *Advance Personal Planning Act 2013* applies.

*Note for subsection (3A)*

*In broad terms, section 53 of the Advance Personal Planning Act 2013 applies if the medical practitioner knows that the patient has made an advance consent decision refusing consent for the operation, or that a decision maker, adult guardian or NTCAT has refused consent for the operation.*

- (4) A medical practitioner is not entitled to perform an operation on a patient, being an infant, in pursuance of subsection (1):
- (a) unless the medical practitioner is of the opinion that, in the circumstances, it is not practicable to delay the performance of

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the operation until the consent of a de facto partner or parent or guardian of the infant, if the infant is unmarried, or of his next of kin, if he is married, as the case may be, to the performance of the operation can be sought; or

- (b) unless a de facto partner or parent or guardian of the infant, if the infant is unmarried, or of his next of kin, if he is married, as the case may be, upon being asked to give consent to the performance of the operation has failed to give that consent.
- (6) Where an operation is performed in accordance with this section, the operation shall, for all purposes, be deemed to have been performed with the consent of the person having authority in law to consent to the performance of the operation.
- (7) Terms used in subsections (3) and (3A) that are defined in the *Advance Personal Planning Act 2013* have the same meanings in those subsections as they have in that Act.

#### **4 Liability of medical practitioner not affected**

Nothing in this Act relieves a medical practitioner from liability in respect of the performance of an operation on a patient, being a liability to which he would have been subject if the operation had been performed with the consent of the person having authority in law to consent to the performance of the operation.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Emergency Medical Operations Ordinance 1973 (Act No. 45, 1973)***

Assent date	18 July 1973
Commenced	18 July 1973

***Statute Law Revision Act 1985 (Act No. 49, 1985)***

Assent date	1 October 1985
Commenced	1 October 1985

***De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)***

Assent date	24 December 1991
Commenced	1 January 1992 (s 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 (Gaz G11, 17 March 2004, p 8)

***Advance Personal Planning (Consequential Amendments) Act 2013 (Act No.36, 2013 )***

Assent date	19 December 2013
Commenced	pt 3: 5 February 2014 (Gaz G5, 5 February 2014, p 2); rem: 17 March 2014 (Gaz S14, 17 March 2014)

***Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)***

Assent date	6 November 2019
Commenced	pts 2 and 3: nc; rem: 7 November 2019 (s 2)

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1 and 3.

**4 LIST OF AMENDMENTS**

It	amd No. 49, 1985, s 4
s 1	amd No. 49, 1985, s 4
s 2	amd No. 49, 1985, s 4; No. 82, 1991, s 6; No. 1, 2004, s 62
s 3	amd No. 82, 1991, s 6; No. 36, 2013, s 77; No. 33, 2019, s 49
s 4	amd No. 49, 1985, s 4