



Advance Care Directives Act 2013

An overview- what's new, what's different



Government of South Australia
SA Health



Today....

- > Current regime
- > Advance Care Directives Act
- > What's new, what's different
- > Changes to consent provisions
- > Next steps

Current regime of Advance Directives

- > *Consent to Medical Treatment and Palliative Care Act 1995*
 - Medical Power of Attorney (medical treatment)
 - Anticipatory Direction (medical treatment - end of life)
- > *Guardianship and Administration Act 1993*
 - Enduring Power of Guardianship (health care, residential, accommodation and personal matters)

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Drivers for reform

- > Different forms
- > Different provisions
- > Apply at different times
- > Need to list specific treatments (in advance of illness/unknown circumstances)

Complex, confusing, limited uptake,

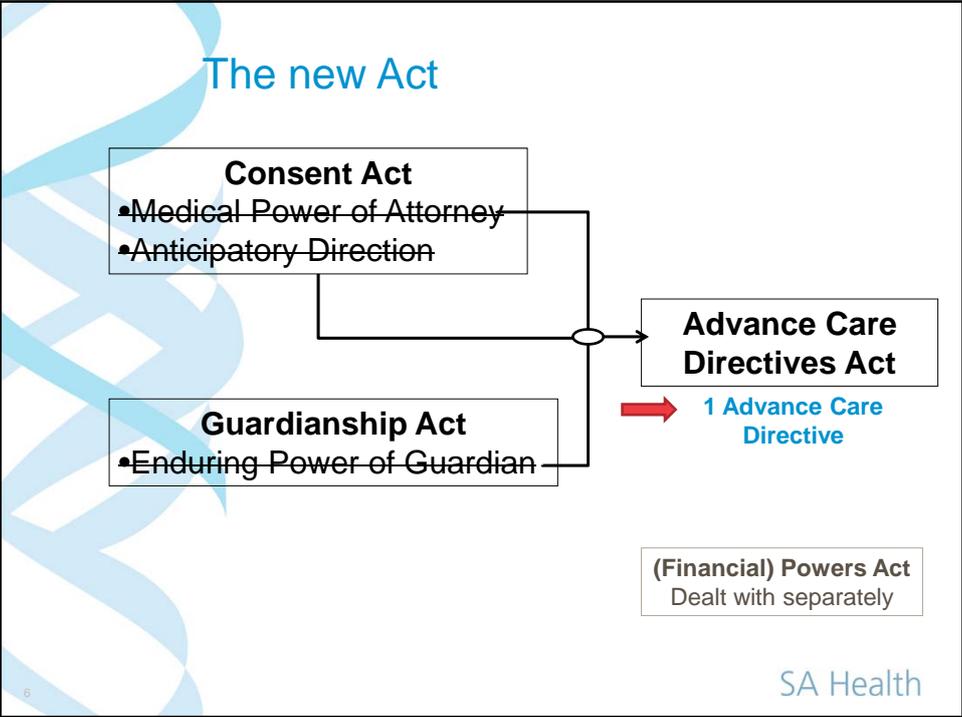
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Drivers for reform

- > Advance Directives Review 2008
 - 67 recommendations for changes to law and policy and implementation
- > National Framework for Advance Care Directives
 - Endorsed by AHMC in 2011

5

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Advance Care Directives Act

- > One Advance Care Directive (form) in which competent adults can:
 - Appoint one or more substitute-decision-makers (SDM) (for different types of decisions) and/or
 - Write down their future wishes, care goals, values and levels of acceptable functional ability **NEW**
 - Apply to any period of impaired decision-making capacity (as specified by the person), not only at the end of life **NEW**

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Key provisions

- > Person centric principles- **NEW**
 - > Respect for autonomy
 - Giving effect to person's wishes
 - Encourage supported decision-making
 - Presumption of decision-making capacity
- > Completion and revocation provisions **NEW**
- > Witnessing requirements **Different**
- > Substitute Decision-Maker (SDM) and health practitioner obligations **NEW**
- > Protections for SDMs and health practitioners and others eg paramedics **NEW**
- > Dispute resolution process **NEW**

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Completing the form

- > Must be competent to complete
 - Understand what one is and what it does
- > Ministerial approved form
- > Must be witnessed to be valid
- > Interpreter can assist- but form must be written in English **NEW**
- > Accommodates people with a disability who cannot sign

→ Form + Guidelines = DIY Kit **NEW**

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9

Witnessing requirements

- > Witnessing requirements **Different**
 - Suitable witness as defined by regulations
 - Expanded list of witnesses- more accessible
 - Cannot be SDM, person with interest in person's estate, health prac responsible for person's care, person in authority
 - Must certify that, to their best knowledge, person understood the nature and effect of completing an ACD and is doing so free of coercion
 - Guidelines and checklist for witnesses in Kit

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10

When do they take effect

- > Person has impaired decision-making capacity
 - In relation to the particular decision **NEW**
- > Impaired decision-making **NEW**
 - Decision specific – not a global assessment
 - Not able to understand:
 - information relevant to the decision
 - retain the information
 - weigh up the benefits/risks etc
 - communicate decision in some manner
 - Respectful of residual capacity
 - Accommodates fluctuating capacity

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11

Substitute Decision-Makers

- > Cannot be someone with a conflict of interest/duty **Different**
- > Must make a decision the person would have made **Different**
- > Make all lawful decisions as if they are the person **NEW**
- > Cannot refuse drugs to relieve pain/distress or food and water by mouth
- > Protected if acting in good faith and without negligence **NEW**

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12



Health practitioners obligations- **NEW**

- > If relevant/applicable - must comply with binding refusals of health care
- > If reasonable, comply with non-binding provisions
- > Avoid outcomes or interventions that the person wanted to avoid
- > Not required to breach Professional Code or Standard
- > Conscientious objection
- > Protections for compliance
 - acting in good faith and without negligence

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13



Revocation - **Different**

- > New automatically replaces old
- > Competent – can revoke
- > Person not competent
 - If appropriate, Guardianship Board can revoke
 - (where appropriate) relevant provisions retained
 - Requirement to notify others

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14

Resolving disputes – **NEW** and **Different**

- > Advice and mediation by Public Advocate
- > Declarations by the Public Advocate
 - Scope of powers/decisions
 - Decision-making capacity (binding)
- > Guardianship Board review
 - Binding declarations/directions
 - Cannot compel health care
 - Limit its intervention to the minimum amount necessary
 - Apply the principles in the Advance Care Directives Act

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15

The Act provides for:

- > Recognition of interstate ACDs **NEW**
- > Increased penalties for those who hold out, give false statements, undue influence **Different**
- > A review in 5 years **NEW**
- > Transitional provisions to recognise existing instruments (as if they were made under the Act) **NEW**
 - According to their terms
 - Protections & dispute process applies

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16

Consent to medical treatment (+ health care)

Current provisions

- > *Consent to Medical Treatment and Palliative Care Act 1995*
 - General consent provisions
- > *Guardianship and Administration Act 1993*
 - Consent by **relatives** if a person has a mental incapacity
 - Appointment of Guardian by the Guardianship Board

17

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Guardianship Act

- Consent to medical and healthcare treatment (mentally-incapacitated)

Consent Act

- Consent to healthcare medical treatment

18

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Relatives “Person Responsible” NEW

In the absence of an ACD (instructions or SDM) in the following order:

1. Guardian (if appointed)
2. Prescribed relative*
 - Spouse/domestic partner
 - Adult related by blood or marriage
 - Related by adoption
 - Aboriginal or Torres Strait Islander kinship/marriage
3. Adult friend*
4. Adult charged with overseeing ongoing day-to-day care of the patient (retained)
5. Guardianship Board

*must have close and continuing relationship and be available and willing to make decision **NEW**

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19

Consent Act - amendments

- > Remove Medical Power of Attorney and Anticipatory Direction provisions (⇒ACD)
- > Amend S.17(2) to clarify that dying patients cannot demand treatment **Different**
- > Provide for dispute resolution **NEW**
 - Similar to ACD Act
 - Mediation by Public Advocate
 - > Cannot issue declarations
 - (binding) declaration by the Guardianship Board

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20

Who will make decisions if you cant? Consent to health care – the new regime

Advance Care Directives Act

- impaired decision-making capacity
- Substitute Decision Maker and/or
- As per instructions (relevant instructions = effective consent)
- Dispute resolution process

Consent Act

- impaired decision-making capacity
- No ACD (or N/A) = person responsible
- Dispute resolution process

Guardianship Act

- No ACD + no person responsible (or N/A) + mental incapacity = Board or guardian appointed by the Board
- Dispute resolution process

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21

Next steps - Implementation

- > Form and guidelines for **all** parties (DIY Kit)
 - Online interactive Form (LSC)
- > Education and awareness
 - Professionals and the public
- > LSC – advice on completing ACD
- > OPA – advice, mediation, declarations
- > GB – determinations and binding declarations
- > Strategic and consultative approach to implementation
- > Overseen by Implementation Steering Committee
- > **Act likely to commence mid 2014**

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22



If interested in being involved,
please contact

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23



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24