

# Consent Act Changes

## **What is a Person Responsible and what can they do? Can they refuse health care on the patient's behalf including medical treatment and life-sustaining treatment? Is there a legal hierarchy of third party consenters?**

A Person Responsible is the new term for those people close to a patient who are able to make health care decisions on that patient's behalf if they have impaired decision-making capacity and they do not have an Advance Care Directive (ACD) (Substitute Decision-Maker (SDM) or relevant instruction).

A Person Responsible has legal authority and can provide/refuse consent, in the following legal order:

1. Guardian with health care decision-making powers appointed by the SA Civil and Administrative Tribunal (formerly the Guardianship Board).
2. Prescribed relative<sup>1</sup> with a close and continuing relationship available and willing to make the decision.
3. Close friend available and willing to make the decision.

If none of the above:

4. Someone charged with the day to day care and well-being of a patient (eg Director of Nursing in aged care).
5. SA Civil and Administrative Tribunal, upon application (last resort).

A Person Responsible must try and make a decision the patient would have made themselves in the circumstances.

Health practitioners are protected for relying on consent/refusal in good faith and without negligence.

It is not the health practitioner's role to work out the 'close and continuing relationship' in relation to relatives and friends.

For advice or dispute resolution contact your local ACD mentor/advisor. If local advice or dispute resolution has not worked contact the Office of the Public Advocate Ph: 8342 8200 or Country free call 1800 066 969.

A Person Responsible can consent to health care offered and can refuse health care offered, but cannot demand that specific health care be given which is not considered to be of benefit to the patient.

The consent/refusal of a Person Responsible is effective consent as if it was the patient's consent/refusal.

## **Can a Person Responsible refuse to give consent to health care/medical treatment/Life Sustaining Treatment (LST)?**

Yes, provided that the Person Responsible believes that the refusal is what the patient would have done if they had full decision-making capacity. A Person Responsible's consent or refusal is legally valid as if they are the patient.

## **Do I need consent to withdraw or withhold health care/medical treatment/Life Sustaining Treatment?**

Decisions to withdraw or withhold life-sustaining treatment is a clinical decision based on good medical practice, the condition of the patient and whether it would be of benefit to the patient's health and well-being. Consent for these decisions is not legally required, although it is good practice to discuss such decisions with those close to the patient.

## **What do I do if I have concerns about third party decisions?**

If you have concerns about third party decisions, you can seek advice from your local ACD mentor/advisor. If local advice or dispute resolution has not worked contact the Office of the Public Advocate Ph: 8342 8200 or Country free call 1800 066 969.

<sup>1</sup> Adult spouse or domestic partner or adult related by blood, marriage or adoption or Aboriginal kinship rules/marriage.

### What do the changes to 17(2) of the Consent Act mean? Am I obligated to provide what I believe to be futile treatment to a dying patient?

From 1 July 2014, medical practitioners are under no obligation to use or continue to use life-sustaining treatment if to do so would be to merely prolong life in a moribund state.

In addition, if the patient (either personally, or through their ACD or SDM) or their Person Responsible (close family or friend) directs that it be withdrawn, then a medical practitioner is obligated to withdraw the life-sustaining treatment.

If there are concerns about these decisions or there is a dispute, then the Office of the Public Advocate can be contacted for advice and can conduct mediation to help resolve the dispute (for both adults and children). As a last resort, the SA Civil and Administrative Tribunal can be contacted to hear and determine the matter.

### What do I do if patients/SDMs/Persons Responsible demand treatment be continued?

If disputes about treatment decisions cannot be resolved locally, contact the Office of the Public Advocate. The Public Advocate (or delegate) can conduct mediation to help resolve the dispute (for decisions related to both adults and children). As a last resort, an application can be made to the SA Civil and Administrative Tribunal to hear and determine the matter.

### Do I need consent for the withdrawal or withholding of life-sustaining treatment?

No, consent is not legally required but it is good practice to discuss such decisions with the patient (if they have capacity). If the patient does not have decision-making capacity, and they have not expressed their wishes about this in advance, it should be discussed with their SDM(s) or Person Responsible.

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## For more information

**SA Health**  
**Finance and Corporate Services**  
**Email: [policy&legislation@health.sa.gov.au](mailto:policy&legislation@health.sa.gov.au)**  
Subject line: Advance Care Directive

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